

FINES UNDER THE RESIDENTIAL TENANCIES AMENDMENT BILL 2011

Adam Bettison, President, Property Owners Association of Western Australia

Tuesday, 24th May 2011

Study the following fines and send an email to your local member

If unsure of your electorate go to

www.boundaries.wa.gov.au

click on current map and profiles or download PDF

To view the proposed new legislation click on the following

<http://www.parliament.wa.gov.au/web/newwebparl.nsf/iframewebpages/Members+-+Current>

click on bills

Scroll down to and click on "Residential Tenancies Amendment Bill 2011"

click on the 3rd PDF file under "links "

To find the member of your electorate

click on the members tab then go to current members

click on "by name"

NEW FINES

- S27(a) Lease must be on the prescribed form – fine \$5,000 – if an owner happens to use one of the old forms you can buy now from the newsagency or post office, they will be liable for a fine.
- S27(b) Must hand the tenant an information booklet at time of lease signing – fine \$5,000 – if an owner forgets to bring the booklet to the property for the lease signing, it is time for a fine.
- S27(c) Provide a Property Condition Report within 7 days (two copies to tenant) – fine \$5,000 – that is a tight timeframe for an owner who is usually working a full-time job and has often been flat out preparing the property for renting.
- S28(2) Cannot receive more than 2 weeks rent at a time – fine \$5,000 – this appears to prohibit tenants paying monthly rent, which some like to do for budgeting purposes – the nanny state wins again.
- S29(a)(8) Cannot sign a bond disposal form until the lease has ended and the amounts are stipulated on the form – fine \$5,000 - sounds sensible however sometimes tenants request that they sign the form before heading off to work remotely or interstate – a kind hearted owner may end up with a huge fine if they agree to that.
- S51(1)(b) Failure to give the tenant the owner's address – fine \$5,000 – some owners are reluctant to give tenants their address given the many incidents of violence from tenants towards owners.

- S51(2) Failure to give the tenant the owner's name – fine \$5,000 – some owners use a property manager to achieve a degree of anonymity – owner privacy is prevented by law.
- S51(4) Failure to notify the tenant that the owner has changed address – fine \$5,000 – yes owners must let tenants know within 14 days of their moving house or they will be fined.
- S57(2)(A) Accelerated Rent provisions banned – fine \$5,000 – POAWA have never actually seen a lease with Accelerated Rent provisions but in case we were thinking about it, there is now a fine
- S59(E) Interference with Tenant's Quiet Enjoyment – fine \$10,000 – and still subject to further civil liability – this is a very grey area with the word 'reasonable' used which often ends up being the Magistrate's interpretation on the day of court.
- S59(F) (1) & (2) Changing the locks without reasonable excuse – fine \$20,000 – why? Owners used to have the right to change the locks at their own property – not anymore.
- S63(3) Falsely claiming the property is sold to terminate a tenancy – fine \$10,000 – with these new laws, owners may as well just hand tenants cash if they want them to leave.
- S79(2) Failure to comply with the strict and detailed instructions of how to dispose of the tenant's abandoned goods – fine \$5,000. The tenant has abandoned the property, it is full of rotting food, used nappies, syringes, old clothes and broken household goods, the owner is flat out cleaning it up; however if they do not comply precisely with the law, they will be fined \$5,000. Have these legislators ever cleaned up an abandoned rental?
- S79(3) Abandoned Goods – must write to the tenant AND publish an advertisement in the newspaper – fine \$5,000. Remember to send that letter and keep evidence that you posted it, otherwise it is fine time!
- S80(A)(3) Abandoned Documents – fine \$5,000 – the tenant doesn't want their old stuff but the owner must take care of it for 60 days or they will be fined.
- S80(A)(4) Find the Abandoned Tenant – fine \$5,000 – the owner must try and find the tenant who abandoned the old stuff, or they will be fined. Note that "reasonable steps" is undefined and the onus is on the owner to demonstrate they have taken reasonable steps. Why is the owner the bad guy here? What about the tenant, why are there no fines for the tenant who abandoned the premises and likely owes thousands of dollars in rent and damages?
- S80(A)(6) Must Hand Over Abandoned Documents – fine \$5,000 – remember to hand over the formerly abandoned old stuff, or the owner will be fined. We call it "storage at his majesty the tenant's pleasure".
- S82(C)(2) Tenancy Databases – owner must disclose all databases used at time of tenancy application – fine \$5,000 – owners remember to list them all, forget one and it is \$5,000.
- S82(D)(2) Notify Bad Tenants they are on a Database within 7 days – Fine \$5,000 – owners must be fast with their paperwork or they will be fined. Note that this is the busiest time of a landlord's workload as they are processing applications, often a number at any one time.

- S82(E) Database Listings can only be for Breaches – fine \$5,000 – note tenants are given a get out of jail free card here as they can only be listed after the lease is ended which means they can be evicted and get into the next property before their name hits the database.
- S82(F) Tenants given 14 days to review proposed database listing – fine \$5,000 – gives the tenant some more time to rent their next property without being on the database.
- S82(G)(2) Owners must update databases within 7 days – fine \$5,000 – don't be slow with those forms now.
- S82(G)(3) Keep a copy of the notice for 1 year – fine \$5,000 – don't lose that piece of paper, it is worth \$5,000.
- S82(H) Database operators must update the information within 14 days – fine \$5,000 – who would want to be a database operator after all this, anyway? Hang on, I think that may be the intention of this legislation!
- S82(I)(1) Owners to Provide Personal Information to Tenants within 14 days – Fine \$5,000.
- S82(I)(2) Database Operators to provide personal information to tenants within 14 days – Fine \$5,000.
- S82(K)(2) Database Records to be removed after 3 years – Fine \$5,000 – note this provision more than any other destroys the value of tenancy databases – bad tenants will be free to re-offend after three years.
- S93 Existing Bonds with Banks to be transferred to Government within 18 months – fine \$5,000 – we are not sure why we are punishing owners here, but there it is. Big brother must be obeyed. Banks are bad, government is good.
- S95(3) Comply with Government orders regarding bonds – fine \$3,000. Obey.
- S95(4) No lying about bonds – fine \$3,000. Confess Mr Owner, where are you hiding that \$800 bond.
- S96(2) Bonds to be disposed within 7 days - fine \$5,000. Don't be slow about it.

EXISTING FINES INCREASED

- S16 (1) Failing to comply with an order of the Court, other than an order for payment – increased from \$2,000 to \$10,000 – note that orders for payment are issued in their thousands to tenants, who routinely fail to comply. Our Association conservatively estimates that tenants do not pay around \$5m of court orders every year, and they will never receive a fine. Fines are aimed at owners failing to comply with a court order for maintenance, repairs or other specific performance events.
- S20(b) Fail to comply with a Court request – increased from \$2,000 to \$10,000 – POAWA estimates that tenants do not attend 70% of residential tenancy hearings, yet are never fined. This fine will be used to force owners to provide documentation for hearings.

- S22(5) Payment for attending Court – increased from \$1,000 to \$5,000. Owners who find the laws complex are prevented from employing a solicitor, whereas tenants often receive free legal aid.
- S27(1) No money apart from rent or bond – increased from \$1,000 to \$5,000.
- S28(1) Rent in advance – increased from \$1,000 to \$5,000. Tenants sometimes offer to pay extra rent up front so they have their bills sorted for the first month or two. No owner is going to agree to the tenants request now as the fine represents around 13 weeks rent for the average property.
- S29(1)(b) Bond cannot exceed 4 weeks rent – increased from \$1,000 to \$5,000 – note that forcing bond to be no more than 4 weeks rent is legislated loss for property owners, as it is impossible to evict a non-paying tenant in less than 4 weeks due to the statutory notice periods and court waiting times (it takes an average of 22 days to have a court hearing).
- S29(a)(6) No false record of bond – increased from \$1,000 to \$5,000.
- S29(a)(4)(d) Failure to give the tenant a copy of the bond form – increased from \$4,000 to \$20,000 – yes a \$20,000 fine if an owner forgets to hand over a copy of a form.
- S29(a)(6) Making a false bond record – increased from \$1,000 to \$5,000. Given that the entire amount of the average bond is \$1,600, these fines are extremely punitive.
- S33(7) The Court is able to assess the appropriate rent for a rental property, and if an owner charges a different amount, their fine is increased from \$1,000 to \$5,000. Do we want Magistrates to be setting rent levels instead of the free market? Do Magistrates themselves want to be conducting rental appraisals?
- S33(1) failure to issue rent receipt – fine increased from \$1,000 to \$5,000 – owners, carry your receipt book in the car at all times because if you forget it is going to cost you 13 weeks rent.
- S34(1) Failure to keep proper rent records – fine increased from \$1,000 to \$5,000 – I always thought disorganisation carried its own penalty but here in nanny state WA you will be wacked with a huge fine.
- S34(2) False rent records – fine increased from \$1,000 to \$5,000 – remind me how the usual fine for assault compares with this?
- S35 No Post Dated Cheques – fine increased from \$1,000 to \$5,000 – who pays with cheques these days anyway? Better not take cheques in case you get a fine.
- S52 Rent from Bond – fine increased from \$1,000 to \$5,000 – note this is one of very few tenant fines. POAWA is unaware of any tenant ever in the history of the Act being prosecuted for breach of this provision.
- S53(1), (2) and (3) – tenant must update address and employment details – fine increased from \$1,000 to \$5,000 – POAWA is aware of tenants disappearing every single week of the

year – their names are published every Thursday in the West Australian public notices – yet we are unaware of a single prosecution under this provision.

- S54(1) – Owner must provide a copy of the lease to the tenant within 14 days – fine increased from \$1,000 to \$5,000 – don't get behind in your paperwork or you will be fined 13 weeks rent.
- S56(1) & (2) – No discrimination against children – fine increased from \$1,000 to \$5,000.
- S80 Recovery of Premises – not without a court order – fine increased from \$4,000 to \$20,000 – we suggest owners just pay bad tenants \$5,000 to move out, it will be cheaper (joke).
- S82(2) No evading the Act – fine increased from \$2,000 to \$10,000 – don't even think about it!

NO FINES AT ALL!

- Maliciously damaging an owner's property – this happens every week in Western Australia – our busy police force will usually dismiss the damage as a 'civil matter'.
- Owner Harassment – tenants will sometimes engage in a harassment campaign against owners – phone calls, personal visits, aggressive letters and emails – again not taken seriously by the law.
- Abandoning a Property. Tenants can abandon a property and walk away from their lease agreement with no special penalty. Note that once the tenant abandons the property, there is a legal obligation upon the owner to comply with detailed procedures and fines if they do not comply with the laws.

SUMMARY

- New Fines – 30 new fines for owners, 2 new fines for both owners and tenants, zero new fines for tenants. Fine amounts ranging from \$3,000 to \$20,000 with \$5,000 being the most common owner fine amount.
- Existing Fines increased – 23 increased fines, typically from \$1,000 to \$5,000. 15 of these fines are specifically for owners with 4 fines specifically for tenants – we are running at around 4 to 1 odds against owners here.