



LEISURE LIFE VILLAGE *Residents' Committee*

3 Parkside Parade,
Toronto NSW 2283
24/2/2021

Statutory Review of the Residential (Land Lease) Communities Act 2013
Policy and Strategy Division
Department of Customer Service
4 Parramatta Square
12 Darcy St
PARRAMATTA NSW 2150

Dear Sirs,

On behalf of the residents of Leisure Life Village in Toronto NSW we submit the following in support of the Review of the Residential (Land Lease) Communities Act 2013.

Note sections shown in "Extract from" font are extracts, included by permission, from the Tenants Union report titled "5 years of the Residential (Land Lease) Communities Act 2013" dated August 2020. We fully support the views expressed by the Tenants Union and have relied upon their report for consistent expression of the key problems that our experience shows are limitations or failings within the Act as it currently stands.

Site Fee Increases:

This village operates on the "by Notice" method and an increase in fees occurs every twelve months.

The biggest issue of contention by residents is the lack of transparency in respect of these fees, particularly in regard of what many see as either insufficient or limited repair and maintenance of safe and complying vehicle/pedestrian access to sites and effective drainage of ground water being provided.

The 2020 increase was not well received by many residents particularly when salary increases were included as justification in a year when so many had been retrenched or fired. An approach was made to management and a decrease was negotiated though many still feel strongly that no increase was justified at all because of the circumstances of the Covid Pandemic.

It appears the Act was originally prepared with the intention of ensuring that operators were able to establish the profitability of their businesses and this aim seems now to have certainly been achieved. It could now be considered that these businesses are a "virtual annuity income" model where income flows continuously to the operator in a limited or non-transparent way thus limiting or denying residents informed consent on matters directly impacting their living costs. Taken in the context of predominately fixed incomes and limited returns on investments in recent times, a more balanced process would benefit all parties.





LEISURE LIFE VILLAGE *Residents' Committee*

Section 4.2.2 Increase by notice of the Tenants Union report titled “5 years of the Residential (Land Lease) Communities Act 2013” dated August 2020 advises:

“On the whole the provisions regarding site fee increases by notice appear to be working. Other than the issues regarding the provision of evidence outlined later in the report the only other frustration we hear regularly is that the explanations contained in the notices of increase are not actually explanations.

Generally speaking, the intention behind the requirement for an explanation under section 67 is a good one, but in practice operators just provide a generic list of costs which have purportedly increased. For example, Gateway Lifestyle provides the same explanation in site fee increase notices in all of their communities. Such ‘explanations’ have been found by the Tribunal to satisfy the requirements of the Act but in reality, they add nothing to the transparency of the increase. *The Act needs to demand greater specificity of operators.*”

Many residents request more specificity and justification including the nomination of specific costs linked to site fees, year on year comparison and % changes underlying the proposed cost increase calculations. We clearly recognize that the operators are in business and fully entitled to a fair commercial return on their investment. Without such returns the business may fail, an event that serves no one. That said, it is important that all tenants experience fee changes in a consistent and transparent manner to fully understand the rationale behind any proposed increase.

Site fee increases are always an emotive issue and the provision of more transparency would allow residents to see more fairly why an increase is being requested. The general statement provision that exists in the current act is considered by residents as meaningless.

Mediation of site fee increase disputes

Section 4.4.2 of the Tenants Union report titled “5 years of the Residential (Land Lease) Communities Act 2013” dated August 2020 advises:

Mediation is primarily used for site fee increase disputes and is a mandatory part of the process. However, it is only mandatory for home owners - if the operator does not participate there is no penalty or adverse outcome other than failed mediation. If mediation is mandatory, it should be mandatory for both parties.

Anecdotal evidence suggests that mediation is largely successful in site fee increase disputes, with the majority of applications resulting in agreements. However, the TU is concerned that home owners are reaching settlement without access to evidence and information and they may therefore be paying higher increases than are warranted.

The RLLC Act at section 151 (2) enables a mediator to require a party to disclose details of their case and evidence in support of that case, however NSW Fair Trading (the mediator) has advised they never have, and never would, require a party to disclose evidence.

The mediation process provided for by the RLLC Act is robust. It deals with confidentiality and inadmissibility in proceedings of things said and done in mediation. There really is no valid reason for the non-disclosure of information by any party.

If mediation fails and the site fee increase dispute goes to the Tribunal the operator must provide the evidence or risk not being allowed to increase the site fees. In *Laing v Yamba Operations Pty Ltd*





LEISURE LIFE VILLAGE *Residents' Committee*

[2018] (unpublished) the Tribunal set aside the full increase sought because the operator failed to provide evidence in support of their claim.

In 2019 the operator of Sunrise Property Holdings Pty Ltd appealed against a decision of the Tribunal to award an increase of 2% rather than 5.32%. At first instance the operator provided a document regarding the outgoings and operating expenses but declined to provide any evidence in support. The Appeal Panel found no error in the decision and dismissed the appeal.

The TU supports the use of mediation to resolve site fee increase disputes but the process must be balanced and fair. If one party holds all of the information and there is no requirement to disclose that information to the other party it is questionable whether the making of any agreement is proper.

The extract above particularly advises:

"The RLLC Act at section 151 (2) enables a mediator to require a party to disclose details of their case and evidence in support of that case, however NSW Fair Trading (the mediator) has advised they never have, and never would require a party to disclose evidence."

Surely the Dept of Fair Trading position, re disclosure, shows it is an ineffective regulator and the Act should be changed to ensure disclosure of evidence is a part of the process. This would then ensure the process follows the clear and fair model of judicial evidence of our court system.

Tribunal limitation periods

"All applications to the Tribunal must be made within a specific period of time (limitation period) prescribed by the enabling legislation. Where the enabling legislation does not specify a limitation period the application becomes subject to NCAT Rule 23, which provides a default limitation period of 28 days.

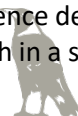
Whilst it is often desirable to have a dispute resolved quickly, in many instances 28 days is insufficient time for a party to become aware of a point of dispute, communicate with the other party and lodge an application with the Tribunal. The Act must provide appropriate limitation periods for Tribunal applications."

The Tenants Union has worked with home owners and resident representatives and determined suggested limitation periods that might be included in the revised Act. We suggest these may form the basis of change for the Act.

Group applications

"Land lease community home owners often share similar values and concerns about their community and through residents committees or other less formal structures, act in a collective way. This collective process is sometimes extended to Tribunal applications but, site fee increase disputes aside, this is an expensive and burdensome process.

The Tribunal has an appropriate process for handling group applications but, other than in site fee increase disputes, when multiple applicants are seeking the same orders every home owner must make an individual application and pay an application fee. In one community where home owners sought a reduction in site fees the 80 plus home owners paid over \$1000 in application fees and the Tribunal initially advised that every home owner had to submit a bundle of evidence despite the evidence being common to all applications. The matter was eventually dealt with in a single hearing





LEISURE LIFE VILLAGE *Residents' Committee*

with all home owners relying on a single bundle of evidence, but only after strenuous advocacy by the home owners' representative.

The Tribunal cannot make orders in favour of home owners who are not a party to proceedings, hence the current need for multiple applications. The RLLC Act should contain a provision that enables a group application to be made regarding any dispute arising out of facts or circumstances that are the same or similar for each individual. Alternatively group applications should be specifically available for disputes regarding: maintenance and repair of common areas and facilities; safety and security; community access arrangements; emergency evacuation procedures; reduction of site fees; refund of overpaid site fees; utility charges and refunds; review of utility cost and reduction in site fees; community rules; and, rules of conduct for operators.

Group applications will significantly reduce the administrative burden on the Tribunal and home owners as well as ensuring the fee is appropriate to the service."

Further

"Section 44 (5) should be extended to include children who the home owner is a 'guardian' for in accordance with the definition of that term under s 79A *Children and Young Persons (Care and Protection) Act 1998* (NSW). This is an appropriate measure to ensure that home owners who unexpectedly become the guardians of children, can have the children live with them in their home."

On behalf of the residents of Leisure Life Village



Alan Chate
VP and Acting Secretary

