

Improving New South Wales rental laws

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In this country we rely on private investment to supply rental accommodation. We also seem to rely on immigration to drive economic growth. So, with more people coming to Australia to live, it is critical that there is enough rental accommodation to absorb the population growth.

I understand that it is important to acknowledge tenants' rights, but in doing we also needs to acknowledge that property investment needs to remain an attractive asset class to retain private investment.

Over the years I've seen some very tenant centric laws introduced which were designed to make renting easier for tenants. But invariably the legislators failed to foresee or consider the likely knock-on effects. To give an example:

As we know, it is very difficult for a landlord to break a fixed term agreement (almost impossible). On the flipside, laws were recently introduced that made it very easy for a tenant to break their fixed term agreement. And not only could tenants easily break their fixed term agreement, they could do so without providing the landlord any reason or notice - so the landlord would then forfeit his right / opportunity to gain access to the property during the last two weeks of the tenancy to show other prospective tenants through. (As an aside, I am still amazed that legislation has been passed allowing a legal agreement to be broken without any formal notice).

Obviously, this law was introduced to make renting easier for tenants. However, most landlords now see very little value in entering into a longer term lease - the landlord ends up totally committed to the longer lease term without the opportunity to break it, but the tenant can break it at any time without notice and with very little penalty. A lease is now basically a one-sided option in favour of the tenant. So it could be argued that the opportunity for tenants to enter into longer leases has diminished – it's certainly my opinion that there is no upside in a landlord entering into a long-term lease.

So now the legislators have to solve another problem, less commitment from Landlords - which ultimately the Legislators created: How do we provide tenants more security of tenure when the tenant is not actually making any real commitment to the lease?

Well, it seems legislators are addressing this issue by removing (or at least heavily restricting) the ability for a Landlord to end a lease. In other words, introducing layer upon layer upon layer of legislation - each layer being introduced to plug the hole that the previous layer created.

Two points to consider:

1. It seems to be getting harder and harder for an owner to control his investment in residential property. At the moment it is very difficult to remove a substandard tenant - for example a tenant who is constantly in arrears in excess of 14 days. Successfully terminating a tenant based on arrears is almost impossible, so the landlord currently relies on the opportunity to terminate that tenant when the lease expires (quite contrary to an arrears termination, an end of fixed term termination is a very clear and undisputable termination). So, to provide the security of tenure that the previous legislation compromised, the proposed legislation looks to be restricting the Landlords ability to terminate a lease at the end of a fixed term (or indeed during a continuing agreement). Accordingly, I would be very interested to know where the opportunity to terminate a substandard tenant lies? If indeed the landlord needs to provide a reason to terminate a tenant, I truly hope that acceptable reason would be that the landlord is not happy with the quality of the tenancy.
2. Having been involved in property management for 20 years, I can tell you with good authority that a property manager's role is largely thankless. Further, it is hard to find good property managers. In my business, the cornerstone in providing our property managers with a harmonious, positive and stress free environment comes down to the quality of our tenants. If we have good tenants, employee morale is high, our owners are happy and our business is more harmonious and profitable. If our ability to remove substandard tenants is severely restricted or removed then we end up with a growing percentage of our portfolio being problematic tenants - our office morale goes down, our staff turnover goes up, we spend more time dealing with the growing percentage of our problematic tenants rather than spending our time and energy towards more productive pursuits, and our profitability plummets. I should also note that we do not tolerate unreasonable landlords for the same reasons.

I could go on and on about the knock-on effects of introducing legislation that limits the Landlords ability to terminate a tenancy or dictate if pets are allowed, or the quantum and frequency of rent increases ... and how more layers of legislation would then need to be introduced to plug the resulting opportunities for the owner to achieve a reasonable return on their investment within such a framework ... but ultimately the outcome would be less investment in rental accommodation. And I think everybody has a clear understanding of what happens to rents when demand significantly exceeds supply.

But instead of pointing out the ill thought legislation that has been introduced and is now proposed, I would rather recall a time in the not-too-distant past where (i) the balance of rental supply and demand was more equal and (ii) there was less bias between landlord and tenant rights. Back then landlords

were offering two weeks free rent to entice the right tenant into their property, would make upgrades like painting and renewing carpets to keep tenants happy and would do almost anything to retain a good long term tenant.

It's not up to private investors to recreate that environment. And introducing sweeping legislation to protect the lowest common denominator is counter productive.

I would suggest that the government stop pushing the housing shortage problem onto private investors and start creating policy and incentives to restore a more balanced marketplace where tenants wield as much power as landlords.