ADDRESS TO RESIDENTIAL TENANCIES FORUM
16 September 2005

A Response to Issues raised by Forum Members
by
Judge Marshall P. Irwin
Chief Magistrate, Queensland Magistrates Courts

I thank the Forum for again giving me an opportunity to address its members. The purpose of this address is to respond to a list of issues which have been raised by Forum Members. I note that there is some overlap in these issues

TENANTS' UNION OF QUEENSLAND

The first series of issues have been raised by the Tenant's Union of Queensland. For convenience I have summarised each issue under a heading which identifies the thrust of the matter.

Delays

In Brisbane, Tribunal delays existed in the early part of the year due to volume of claims filed and the number of public holidays. The number of matters dealt with on a daily basis was increased during this period to compensate but delays were still of a concern.

At the present time urgent matters are being set down for hearing within seven to ten days of processing.

Some delays are caused by parties not being able to attend the hearing on the first appointed date and the matter has to be adjourned to another date.

Because of the number of other places where Tribunals are held in Queensland with the resulting local variations, it is difficult to comment on the issue of delays elsewhere. Much depends on what is meant by the term "delay". I would be better placed to comment on specific examples of delay (*if the location and time frame could be identified).*

Evidence produced by parties

Magistrates are aware of the need to conduct all proceedings before them fairly and in accordance with the principles of natural justice. This is reinforced in the case of the Tribunal by making a failure to comply with these principles one of the limited grounds of appeal.

However, the Tribunal will only consider evidence that is relevant to the issue which is to be decided, for example, if the claim is for termination for non payment of rent, evidence relating to the condition of the premises is not relevant to the issue to be decided. Where there are problems of this nature, it would assist if specific examples of this are brought to my attention, in addition to any appeal that is lodged on this basis.

Claims for personal damages and loss of income

There is no specific provision in the *Residential Tenancies Act 1994* relating to the granting of damages for personal loss or loss of income. Section 250 sets out general orders that can be made but it is not considered to be wide enough to cover these types of awards. The law relating to these matters is

complex and would require solid legal argument which is not suitable within the Tribunal's format.

Consistency of decisions of Tribunals

Workshop sessions are held at conferences. Easy access to the articles of Mr. Randall has been placed on the Magistrates webpage. Mr. Randall is always available to discuss with other magistrates their concerns about residential tenancies matters.

While accepting the desirability of consistency of decision making by Tribunals, because of the principle of judicial independence neither the Chief Magistrate nor Mr Randall are able to direct other magistrates as to how they must address particular cases which come before them to decide.

Written reasons

There is no requirement on magistrates to deliver written reasons. Compulsory provisions to deliver written reasons are not desirable as this would decrease the number of matters a magistrate would be able to hear in a day. Over 95% of claims decided in the tribunal are relatively simple matters which are decided on an individual set of facts, and the decision would not be of assistance as a precedent.

Assistance to tenants at hearing

There is no provision in the legislation to prevent a person appearing to assist or support a tenant. That person can not be an advocate and make

submissions on behalf of the tenant if the tenant is present. The person can appear in the absence of the tenant and make submissions if that person has sufficient knowledge of the dispute.

Adjournment of hearings

The registrar has a duty under that legislation to set a hearing of a claim on a date which is suitable to the claimant and to adjourn the hearing upon request of the claimant. The respondent may make an application to have the hearing adjourned and that application will be considered on its merits. The object is to have a date of hearing which is suitable to both parties. However sometimes this is not practicable. A few situations arise where one party suffers a sudden illness and is unable to attend and in this case the refusal of an adjournment would be unfair and a denial of natural justice.

TENANCY ADVICE AND ADVOCACY SERVICE

Issues have also been raised by the Tenancy Advice and Advocacy Service. Again, I have summarised these issues under specific headings.

Training of Magistrates

Sessions on small claims are held at conferences. A guide as to the jurisdiction of the tribunal is made available to new magistrates as well as material written by Mr. Randall. As indicated Mr Randall's articles are available on the Magistrates Website.

Professionalism of Magistrates

I agree that it is inappropriate to address any party to a proceeding by his or her first name.

Ambiguous legislation

Some provisions of the legislation are difficult to interpret and the Act in places is disjointed and can be difficult to follow and apply. There can always be different opinions about the interpretation of legislative provisions. The Database listing provision does result in some confusion in the industry but the provisions of S284C must be considered prior to consideration of the regulations.

Consistency in decision-making

As indicated, while it is desirable to maintain a consistency in how magistrates approach and deal with matters, all claims have their individual facts and there is no magical formula which can be used to determine "*reasonableness*", "*fair wear and tear*", "*duty to mitigate*" and "*any other factor*". A number of magistrates could reasonably offer different decisions on these matters in the same way as real estate agents or tenants' advocates would have different approaches and views on these matters. All that can be expected is that the final decision is given in accordance with the principles of procedural fairness, is structured and explained to the parties by the magistrates and is open to be reached on the evidence, having regard to the determination of any issues of creditability.

If a particular problem exists in the legislation with the interpretation of a part of the legislation, it is always an option to amend the legislation to give the provision greater clarity.

CONCLUSION

I trust that these responses answer the questions and concerns which have been identified. As the Forum would be aware because of the principle of judicial independence I am unable to review decisions made by individual magistrates constituting the Tribunal or direct them as to what decision should be made in particular cases. In relation to these cases, the parties are provided specific, if limited rights of appeal.

However, within these limits I will always be accessible to the Residential Tenancy Authority and the Forum members to answer issues that they may wish to raise. In a similar way, Mr Randall is always available to address issues through his regular updates.