

TENANCY AGREEMENTS AND FURNITURE

June 2005

Introduction

This paper has been prepared to assist community housing providers to understand the relationship between the Residential Tenancies Act (1987), the Community Housing Branch Program Guidelines, and the supply, (and any fees charged), for the use of furniture in community housing properties.

Background

The Residential Tenancies Act (1987) ("the RTA") is one of the key pieces of legislation underpinning the relationship between the community housing provider and the community housing tenant.

Discussions with the Department of Consumer and Employment Protection (DOCEP) (Building and Tenancy Industries Branch), have indicated that some community housing providers may be unaware that, by charging a fee for the use of the furniture, they may be in technical breach of the RTA.

If your organisation is charging a fee for the use of furniture, there are two relevant sections of the RTA, which need to be understood. The first of these is section 27 (1), which says that landlords are not allowed to charge tenants for anything - apart from rent and a security bond. The second section is 42 (2) - which clarifies that the "premises" includes chattels, whether included in the tenancy agreement or not. (A "chattel" is "*an item of movable personal property, such as furniture,...*".¹) Further section 42 says that it is the landlord's responsibility to maintain the chattels in a reasonable state of repair, at their expense.

Properties funded through the Department of Housing and Works, Community Housing Branch, are also expected to comply with the Program Guidelines. The Program Guidelines discuss both the maximum rent that can be charged and the charging of service fees, such as for furniture.

According to the Guidelines, the rent that an organisation can charge "*...shall be set at but not exceed 25% of the household's weekly income (excluding all available subsidies) OR market rent whichever is the lesser of these amounts.*"² The Guidelines do allow organisations to charge "additional service fees" for such things as furniture, (subject to the approval of the Department of Housing and Works). These fees cannot, however, exceed the cost of providing these services and should be accumulated and identified separately in the financial accounts.³

The Issues

Essentially community housing providers cannot link the provision of, and charging for, furniture with a tenancy.

The reasons are that under sections 27 (1) and 42 of the RTA, if the furniture is included in the tenancy it is considered to be part of the premises, (chattels) and therefore must be included in the rent. Therefore any additional charges, levied against the tenant for furniture, may constitute a technical breach of the RTA. Further

¹ Collins English Dictionary

² Community Housing Branch (Feb 2005) *Program Guidelines* (p 15)

³ *Ibid* (p 16)

under section 42, a community housing provider is responsible for maintaining these items in a reasonable state of repair at no charge to the tenants.

The question could then be asked, why not just increase the rent to include a charge for the furniture and then rent the property as fully furnished? The answer to this lies within the Program Guidelines, which state:

1. That rent can't be set at more than 25% of weekly income - as a result your organisation can't increase the rent to cover the costs;
2. That "additional service fees" "...*should be separately identified, receipted and accounted for, and should not be included as part of the rental charge.*"⁴ and
3. "*Replacement furniture cannot be purchased from operational surpluses or rental income.*"⁵ This means even if you did rent the premises as fully furnished, technically your organisation would not be able to replace the furniture.

The Solution

There are some relatively clear steps that community housing providers must take to resolve this problem. However, it is important to understand the basic principle which underpin this; this is that the supply of, and charging for, furniture to tenants can in no way be connected to entering into, renewing, extending or continuing a residential tenancy agreement.

Once this principle is understood, community housing providers need to arrange the provision of any furniture, and the collection of any fees, to reflect this. This includes understanding that:

- The tenancy is in no way dependent upon the tenant taking the furniture - and there is no coercion for them to do this;
- Payment for the furniture is separately recorded in the accounts, and separately receipted;
- Any damage to the furniture is not linked back to the tenant's rental bond;
- Items of furniture are clearly identified in a separate agreement;
- The tenant can terminate the furniture agreement at any time; and
- Failure to pay for the use of the furniture does not affect the tenancy.

It should be noted that some of these guidelines may be difficult to implement in certain situations and circumstances, however, every effort should however be made to comply with them. Further, neither DOCEP nor the Community Housing Coalition of WA can provide any guarantee as to how a magistrate sitting in the Small Disputes Division would view any arrangement.

Your Questions Answered

How do we set this up? Ideally all new tenants should be offered both a tenancy agreement and a separate agreement for the use of furniture and white goods. We have developed a suggested form called a "Furniture Use Agreement" (A copy is attached to this paper, it should be noted that this a suggestion only and it will not cover all situations.)

Arrangements with existing tenants should also be renegotiated as soon as is possible. This will include renegotiating the existing tenancy agreement and establishing a furniture use agreement. Your organisation should understand

⁴ Ibid

⁵ Ibid

that you can't change the conditions of an existing tenancy agreement, without the consent of the tenant.

You will need to clearly spell out exactly what the 'chattels' are in the renegotiated tenancy agreement. For example, under a renegotiated tenancy agreement the 'chattels' could include simply "window treatments and floor coverings". Describing exactly what is a chattel, excludes other items of furniture and whitegoods.

Organisations may face some concerns from the existing tenants during this renegotiation period. Your organisation will need to reassure the tenant that the change will not make them worse off. You could even suggest that they may be better off. The rationale could be the change will mean that the furniture and white goods will, in future, have no impact on their tenancy. What is important is that your organisation has in place a strategy that is fair and reasonable.

If we charge for furniture, can we charge a bond? There is no reason why you can't include a 'deposit' as a condition of the furniture use agreement. You will need to ensure that this is affordable to the tenant, does not create problems with other legislation, such as the GST, and is approved by the Community Housing Branch. Such a deposit would need to be separately accounted for and a receipt provided to the tenant, and cannot be lodged with the Bond Administrator.

What do we do if we don't charge for the furniture and white goods and take no responsibility for their repair and maintenance? There are two possibilities. Firstly, you could have a tenancy agreement, which includes the furniture and whitegoods as chattels. You would need, however to contract out of maintaining, repairing and replacing them. You can do this under Section 82 of the RTA. The advantage of this is that it will allow you to pursue the tenant for liability under the RTA - if the furniture or white goods are maliciously damaged or removed.

Alternatively you can renegotiate the tenancy agreement and create a furniture use agreement for these items, spelling out the conditions under which the white goods and furniture are provided. You would only do this if you didn't wish to pursue tenant liability for damage or removal of the furniture.

Our organisations provides sheets, towels, and kitchenware, do these need to be included on the agreement as well? Essentially the decision is up to your organisation, some chose to do so, and others chose to consider these items as 'consumables'.

What happens if the tenant doesn't pay? It is important that the tenant understands the consequences of not paying the furniture fee. This should be explained when first negotiating the furniture use agreement. In the suggested furniture use agreement is a provision to remove the furniture and white goods. If the tenant does not allow access to the property, the community housing provider may need to seek remedy in the Local Court. (It should be noted that there have been recent changes to the Magistrate's Court. You can find out more by ringing 9425 2248 or visiting the Department of Justice's website on www.justice.wa.gov.au and following the links.) Your organisation should seek legal advice before commencing any legal proceedings.

Our current arrangements are that the tenant(s) are 'given' the furniture and white goods after a number of years, how will this be affected? The structure of such an arrangement will need to be carefully examined as it may

fall under legislation related to hire purchase. If your organisation has such an arrangement you should seek independent legal advice.

Over time we often take furniture out of the property or put new furniture in, how should we handle this? It is well worth considering how you manage the furniture assets you have; for example how you fund the replacement and keep track of where the furniture is? An idea is to ensure that a receipt or acknowledgement is provided to the client if any furniture is removed or new furniture brought into the property.

Further information

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FURNITURE USE AGREEMENT

The following items of furniture, white goods or other items listed below are provided by **(the organisation)** for use in the property by the client(s).

By signing this Agreement the client(s):

- agrees to pay to **(the organisation)** the Furniture Use Fee on a fortnightly (or other approved term) basis;
- agrees that the furniture and white goods will not be removed from the property listed below without the written permission of **(the organisation)**;
- agrees that the furniture and white goods have been received in good working order and condition. Any fault, damage or defect is to be advised to **(the organisation)** within seven days of signing this Agreement;
- will accept responsibility for the cost of repair, or replacement (with an item of similar quality) if the damage is a result of the misuse by the client(s) or any of their family or visitors. Client(s) must have the permission of **(the organisation)** before organizing the repairs or replacement of the furniture or white goods;
- will obtain a Police Report Number and advise **(the organisation)** within 24 hours if any of the items of furniture or white goods are stolen from the property or damaged by unwanted or unlawful visitors; and
- agrees that if they no longer wish to continue to use the furniture and white goods, **or** pay the Furniture Use Fee, they will advise **(the organisation)** and allow access to remove the items from the property.

Insurance of the furniture and white goods will be the responsibility of **(the organisation)**, and the goods will remain their property at all times.

Repair, maintenance and/or replacement of the furniture and white goods, resulting from a fault that arises from normal domestic use, will be the responsibility of **(the organisation)**. Please contact the **(the organisation)** on **(phone number)** to arrange for the repair or maintenance. **(The organisation)** agrees to carry these out in a timely manner, subject to the availability of supply or services.

ITEM	DESCRIPTION	SERIAL NUMBER	DATE ACCEPTED	DATE REMOVED	CLIENT (S) SIGNATURE

A Furniture Use Fee of \$..... per fortnight will be paid by the client(s) for the use of the items listed above commencing on **(date)**.

I **(client(s) name)**, being the tenant of the property located at **(property address)** do hereby agree to the terms set out in this Agreement.

CLIENT(S) SIGNATURE:.....DATE:.....

WITNESSED BY: DATE:.....

NAME AND POSITION: