

Darwin Community Legal Service- ACCC NORTHERN AUSTRALIA INSURANCE INQUIRY- SUBMISSION

From: Andrew Smith [REDACTED]
To: Insurance <insurance@acc.gov.au>
Cc: [REDACTED]
Date: Fri, 19 Jan 2018 17:28:21 +1100

Good afternoon,

Please find below our short submission to this inquiry. Thank you for the opportunity to contribute.

ACCC NORTHERN AUSTRALIA INSURANCE INQUIRY- SUBMISSION

Darwin Community Legal Service (DCLS) is a free, confidential service. We assist disadvantaged members of the community to protect their legal rights. We work towards a community where everyone has access to legal advice and support. We seek to challenge unjust laws and procedures, and to ensure that people are aware of their legal rights.

The Tenants' Advice Service (TAS) operates within DCLS as a NT wide, community-based advice and advocacy service for residential tenants.

DCLS supports broadly an inquiry into Northern Australian insurance that could improve the position of consumers in the Northern Territory.

TAS would like to raise as a particular issue a trend relating to landlord's insurance claims and where some of the conduct by insurance companies is impacting on vulnerable residents in the Northern Territory.

The situation arises when a landlord makes a claim under his insurance policy relating to their investment property for alleged property damage or unpaid rent. We have assisted clients in multiple examples of insurance companies paying out the landlord's claim and then, sometimes months later, pursuing the tenants at the time to pay the full amount to the insurance companies. Legal action is threatened by the insurance companies using the right of subrogation and usually they engage debt collectors. Tenants are often unsure of their legal rights when this occurs and are intimidated into believing that if they do not pay there could be serious consequences for them, including jeopardising their tenancy.

This is concerning for our service as it is unconscionable conduct because the insurance companies, some based in the Northern Territory and some interstate, are seemingly making the claim without investigating whether it is an accurate and legally enforceable claim under NT residential tenancies legislation.

Pre-existing relationships between landlords and tenants are governed by the lease agreement and the *Residential Tenancies Act* provides a mechanism for settling disputes.

A landlord already has a security deposit in the event of unpaid rent and/or tenant damage at the end of an agreement. The majority of the claims we have witnessed have been for disputed amounts above the amount of the security deposit. A landlord would only be entitled to such amounts where they have successfully proven their case at the Northern Territory Civil and Administrative Tribunal (NTCAT). In none of the cases that our service has assisted with has a tribunal order been made. This means that insurance companies are pursuing claims against Northern Australian tenants without establishing the legitimacy of their claim, especially when the claim involves an existing contractual relationship via a tenancy agreement.

A landlord is also able to claim certain property related expenditure on taxation, including landlord's insurance, as a deduction therefore they are potentially 'double-dipping'. It should be noted that this potentially exposes insurance companies to fraudulent claims.

There would also be privacy concerns about how the insurance companies and their agents are obtaining the tenants' personal data and using that information to pursue tenants.

TAS raised this issue at the Issues Paper public forum in Darwin on 22 November 2017 and were advised as it related to an insurance product related to a structure it may be considered as part of this inquiry.

TAS would like to see some stricter regulations that ensure an insurance company and their agents could only pursue a tenant for claims where they have in their possession a tribunal order that substantiates the landlord's claim or where the claim is not disputed by the tenant.

When a landlord has insurance that covers accidental or disputed damage, it is unethical for the insurance company to then pursue the tenants for the amount paid. Nor is it appropriate for the landlord to insist the tenants meet the costs of repairs or insurance excess where the landlord is insured for damage. Tenants can only be liable for damage in some circumstances and it is not the role of the landlord or their insurer to determine if a tenant is liable for damage arbitrarily. A fundamental question is, whether this creates bad faith in the contractual relationship between the parties (landlord/tenant), and whether a tenant would enter into a residential tenancy agreement knowing of this potential risk? TAS would like the rights of tenants in situations such as these be protected by barring landlords' insurers from pursuing their subrogated rights of recovery from negligent tenants.

Regards,

Andrew Smith

Tenancy Solicitor

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