

Wrestling the landlord to get the money back

Tenants in \$60 million bondage

They can get you coming and going, so this is a big issue with big money involved, writes **Brian Thomas**

QUEENSLAND tenants lost more than \$60 million in rental bonds when they moved house last financial year.

According to the Residential Tenancies Authority, which holds all bonds in trust, 27 per cent of bonds were forfeited, 36 per cent were refunded only in part, and 37 per cent were refunded in full.

However, these percentages do not take into account the non-payment of rent at the end of a tenancy in lieu of a bond refund.

Landlords, for whom bonds are sometimes the only insurance, can ask for as much as four times the weekly rent as bond if the rent is \$500 or less. More than that and the bond amount is unlimited.

Janice McDonald, Brisbane inner-northern suburbs coordinator for the Tenant Advice and Advocacy Service, said that when people moved into a property, they were often asked for bond of four weeks' rent and then two weeks' rent in advance.

"It's a big issue. And often people at the end of a tenancy who have left the property in good condition, had the carpets cleaned and so on, don't get their bond back straight away even if they have done the right thing," she said.

"It's tied up in a bond dispute, which could take months. So they have to take out a bridging loan. We call it the 'bond gap'."

Tenancies authority general manager Fergus Smith said a full refund was contingent on the premises being left in good condition (taking into account fair wear and tear) and the rent was up to date.

He said that if the allocation of the bond was disputed, the authority generally tried to mediate. In the event it failed, the dispute was sent to the Small Claims Tribunal of the Office of Fair Trading.

Often tenants did not turn up, and when they did the odds were stacked against them said Penny Carr, state organiser for the Tenants Union, which helps about 7000 people a year.

"At present a referee makes a decision, there's no recording or scrutiny of it, it's not open to the public and you can't appeal on the basis of a matter of law," Ms Carr said.

The tribunal settled matters rather than judging them, making a decision on what was put in front of it, she said.

She said a referee had told her that when faced with conflicting stories, they will split the difference and halve the claim.

"This is always detrimental to the tenant."

Ms Carr said a new tribunal proposed for Queensland that should be up and running by next year looked like it would incorporate tenancy disputes.

"We think it will bring much better outcomes for tenants

because there will be a little more openness and scrutiny about the decisions and how they are made."

The tenancies authority holds about \$432 million in bonds, of which \$3.6 million is unclaimed.

The money is unclaimed because the bond refund was either not cashed or it was returned to the authority because the tenant had not provided a forwarding address.

Mr Smith said the proportion of bonds going back to tenants had increased from 69 per cent in 2005-06 to 73 per cent in the financial year just ended, almost half of which was refunded in full. However, landlords who rely on bonds as their only form of insurance can be caught out, says Terri Scheer Insurance Brokers.

General manager of insurance services Carolyn Majda said that in more than half of insurance claims paid to landlords for loss of rent as a result of damage to property and absconding tenants, the landlord had no available bond left over.

"When taken on its own, the bond is clearly an inadequate risk-management tool," she said.

Ms Majda said even those landlords who had the utmost confidence in their tenants could be faced with reparation costs or loss of rental income.



CLEAN SWEEP: It's a pain but it's essential if you want a chance of getting your bond returned

Rules of evidence in rental dispute claims

TENANTS need to think about protecting their bond the moment they move into a property.

A lot of new renters go in the door, have a quick look around and sign the entry report provided by the lessor or agent.

They don't take advantage of the three days they have to get to know a place's faults.

"Do the entry condition report thoroughly and do it with the agent present if possible," said Penny Carr of the Tenants Union.

"Make a note of absolutely everything, even if you're being pedantic."

She advised taking photos, perhaps with a newspaper in the pictures to verify the date.

"And when you're moving out, and you've cleaned the

place, take photos again, especially of anything you think might be problematic.

"It's good evidence, just in case you have to show how it was when you moved in and when you moved out."

When tenants move out, it's up to them to obtain an exit report (from the post office or Rental Tenancies Authority), fill it in and hand it to the lessor or landlord. And the other thing that is important is to fill in the exit condition report.

Ms Carr said tenants should pursue a bond settlement.

If a tenant thinks this is all too hard, the agent or lessor can then potentially claim there is some sort of debt above the bond, she said.

Often this happens and the

tenant finds out later. "Even if (tenants) feel they owe the whole bond, they ought to come to an agreement that it is the full and final settlement," she said.

"It's where the tenant owes more than the bond in rent and certain other circumstances that they could be blacklisted on a tenancy database."

But the databases now had stricter criteria for listing than a few years ago.

It should be remembered that the lessors were depreciating the fixtures in the property every year through tax.

"So if they are claiming against the tenants, even if they did damage, the tenants shouldn't be charged the costs of replacing old with new."

Brian Thomas