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Mr Paul Kerin,
Chief Executive Officer,
Essential Services Commission of South Australia,
GPO Box 2605;
Adelaide SA 5001

4 November 2013

Dear Mr Kerin,

Re: SA Water Drinking Water and Sewerage Pricing Reform Inquiry

Thank you for your letter of 20 September 2013, and the opportunity to provide a written submission on the Inquiry into the reform of SA Water's drinking water and sewerage prices. I was also grateful for the invitation for the Registrar and me to attend a meeting on 18 October 2013 to discuss the issues arising from the Inquiry from the perspective of the Residential Tenancies Tribunal (the RTT).

The Issues paper 6 which deals with billing consumers rather than landowners is most relevant to the operations of the RTT and I make the following comments in relation to the proposals contained in that paper.

Background

The RTT deals with disputes:-

- between landlords and tenants arising from residential tenancy agreements;
- between rooming house proprietors and residents arising from rooming house agreements;
- arising from residential parks agreements;
- arising between an administering authority and a resident of a retirement village.

The RTT deals with 11,000 - 12,000 applications each year. The RTT regularly deals with disputes between landlords and tenants about water. Generally a tenant will be obliged to pay for most if not all water use and often water supply. Disputes generally arise because the tenant has failed to pay outstanding invoices for water supply or use. If the tenancy is still continuing then the landlord/agent will issue a *Notice of Termination* requiring the tenant to either pay all outstanding invoices or vacate the property. If the tenant does not make the payment or vacate, then the landlord/agent will apply to the RTT seeking either an order for vacant possession or a payment plan. If the tenancy has terminated, then the landlord/agent will make a claim for payment out of the bond or compensation to address the unpaid invoices.

In my experience the issues which commonly arise in these claims are:-

- the agent/landlord has failed to provide the SA Water invoices to the tenant;
- the agent/landlord does not keep a separate record for water payments and the tenant challenges the entries on the rent record for water;
- the agent/landlord has not properly carried out calculations to take into account an annual allowance in favour of the tenant;
- the tenant alleges there is a leak which has been reported but not fixed;

- the tenancy agreement is silent about the responsibility for water use and supply and the agent/landlord has not applied the appropriate provisions in the Residential Tenancies Act, 1995 (the Act);
- there are inconsistent provisions in the tenancy agreement about water;
- a leak is detected after the tenant incurs a substantial water bill.

The options contained in Issues Paper No 6

Option 1: Continue billing landowners I note the benefits of this option which are discussed in the issues paper. From the perspective of the RTT, the current billing system does not work well. I consider this is a contributing factor to the volume of water disputes dealt with by the RTT.

The current system creates delays in water bills being provided to tenants. Often the landlord will receive the water bill. The landlord will provide the bill to an agent (if there is one) and then the bill should be provided to the tenant. In our experience at the RTT it is reasonably common for the tenant to receive no SA invoice at all or to receive only the front page of the invoice. It is also common for a tenant to receive no SA Water invoices until the expiry of a 12 month tenancy.¹ The current system used by most agents for water payments and charges to be recorded on the rent record adds to the confusion.

Perhaps the clearest example of the unfairness which can result from the current arrangement is where there is an undetected leak which results in a large water use bill for the tenant. The law is that until a defect is reported to a landlord, the landlord is under no obligation to take any action to fix it.² At the RTT we have seen applications claiming amounts in the vicinity of \$2,000.00 for one quarter for water use where a leak is detected by the tenant only after the bill is issued. As the law currently stands, the tenant must pay for all of that bill (assuming the tenancy agreement requires the tenant to pay for all water use).

As you would be aware in this situation the landowner may apply for a rebate from SA Water. This is a matter within the landlord's discretion, and regularly at the RTT the landlord has refused to make that application.

Option 2: Directly bill tenants for all water and sewerage charges including supply charges

I note that the Issues paper suggests that a tenant should be billed directly where the property is separately metered. In my view this is the preferred option. I consider that it would result in a more efficient and just system as it would ensure that the person paying for the service (the tenant) is the person to whom the information is provided. Billing tenants direct would be more efficient and I would expect to result in less disputes coming to the RTT.

I also note that it is consistent with the Amending Act which amends Section 73 of the Act so that (unless a tenancy agreement contains a specific provision to the contrary), the tenant pays for all water use and supply if the property has a separate meter.

Tenants do not currently pay for sewerage supply charges³ and this would not change under the Amending Act. It seems to me that arrangement is consistent with a general policy

¹ Note: this will be addressed by the Residential Tenancies (Miscellaneous) Amendment Act, 2013 (the Amending Act)

² See for example, the District Court decision of Knueppel v Zarpas, 25 November 2004

³ See Section 73 of the Residential Tenancies Act, 1995 (the Act)

approach that the landlord should pay for anything in relation to capital repairs or improvements for a property whereas a tenant should be responsible generally to maintain the property and for outgoings in that regard.

I note that in the discussion concerning the disadvantages of this option, there is a reference to landlords recovering water costs through rent. I have been in the Tribunal since 2008 and have never seen such an arrangement. Therefore I consider this is not a significant consideration.

The only reservation I have about this option relates to existing tenancies where the tenant has an annual allowance. I anticipate that the introduction of this option may effectively see the phasing out of such arrangements, and this may be to the detriment of some tenants. On balance however, I think the advantages of this option far outweigh its disadvantages.

Option 3 Directly bill tenants for water use and sewerage disposal only. Landowners remain responsible for supply charges The Amending Act requires a tenant to pay for all water use and supply (if the tenancy agreement is silent and the property is separately metered). This approach would be inconsistent with those amendments. It is also increasingly the experience of the RTT that tenancy agreements require tenants to pay for all water use and supply. Therefore it seems more logical for tenants to be liable for water use and supply and billed for those items.

Option 4 Require landlords to instal water efficient products before passing on charges I consider this option to be unrealistic considering the provisions of the Amending Act. I also consider it to be an unreasonable burden on landlords. If a tenant is particularly concerned about water use, that tenant should be making enquiries as to the installation of water efficient products at the property prior to signing the tenancy agreement.

However, it is interesting to note the amendment introduced to Section 70 of the Act (by the Amending Act) which will provide that the landlord may not unreasonably withhold consent to alterations of a prescribed kind. Although those amendments were primarily intended to deal with issues such as the national broadband network, it seems to me they are entirely suited to these purposes as well. Accordingly, I will suggest an amendment to the proposed regulations which would effectively require a landlord not to unreasonably withhold consent to a tenant's request to instal water efficient products.

In conclusion, I support a proposal for water use and supply to be billed direct to tenants (where the tenants are responsible to pay for water use and supply). I believe that in most cases such an arrangement would be beneficial to both parties.

I hope my comments are useful. Please do not hesitate to contact me if you would like to discuss any of the issues I have raised in this letter.

Yours faithfully



4 NOV 2013