

Avoidable Evictions

... OUR NEXT MOVE

2012

Maria Tennant and Penny Carr



Tenants' Union
of Queensland Inc

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About the Authors

Maria Tennant (MSWAP-Res., 2001; BSwk ,1981) was the lead researcher on this project. She has 30 years' experience working in organisations across the housing, community, government and academic sectors. Most recently, she worked with Penny Carr and members of the National Association of Tenant Organisations (NATO) to produce "A Better Lease on Life - a National Review of Tenancy Law" for National Shelter. Currently, she works as in a consultancy capacity doing community engagement, planning and development, research, evaluation and teaching.

Penny Carr (BSwk, 1985; Grad Cert HM&P 2005– must look) is the Statewide Coordinator of the Tenants' Union of Queensland. She has held this position for 14 years. She has been a major player in driving tenancy law reform in Queensland and influenced work at the National level through her participation in the National Association of Tenant Organisations.

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The findings of this research make a small, but significant, contribution to the limited knowledge base and understanding about evictions in Australia.

Moving and being forced to move (eviction) are integral and common aspects of renting. However, whilst eviction is not an uncommon experience for Australian renters, there have been few studies conducted in the area. The extent of evictions is unknown in absolute terms and the experience of evicted tenants has been largely overlooked. Little is known about it – such as the number of households affected, reasons for eviction and the impacts and costs (financial and personal) of evictions.

The purpose of this research, undertaken by the Tenants' Union of Queensland, was to better understand the eviction experience of tenants, through in depth inquiry, to inform tenancy related policy advocacy.

The definition of eviction adopted in this research reflects a broad view of eviction as a forced move that is against the wishes of the tenant. It includes any involuntary move that is a consequence of lessor generated eviction or change in the conditions of occupancy of a household unit. It also includes where an agreement is ended after the tenant received a notice to leave without ground.

An important part of the work of tenant advocates involves advising tenants who are at threat of being evicted or in the process of eviction. This research project provided tenant advocates an opportunity to participate in in-depth interviews with affected tenants. Research participants were recruited from the pool of tenants who had called the Tenants' Union in regards to an eviction situation between April and July 2011.

The research found that most frequently evictions occurred for no stated reason – executed with a Notice to Leave without ground. Fewer than 20 per cent of evicted tenants in the study had received a Notice to Leave for rent arrears. Only one household had received a Warrant of Possession.

Whilst the evicted tenants were most commonly issued with a Notice to Leave without ground, the research found that many tenants felt that there was a reason or issue that was influencing the situation at the time of the eviction. This research has indicated that many of these reasons were not fully justifiable or reasonable because they were for reasons other than breaches (such as rent arrears or disturbance), sale of the property or because a new owner wanted to move into the property. Most commonly reported reasons for being forced to move were associated with situations arising from disputes with lessors (alleged arrears, incorrect notices and unlawful water billing) and lessors failing to carry out repairs and maintenance.

Not surprisingly, eviction was reported by nearly all respondents as a difficult and often traumatic event, most especially for the elderly and households with children, where significant disruption was reported. For a few households the eviction became a pathway to homelessness.

During the period this research was being conducted, a fatal incident occurred that focussed public attention on property management issues in the rental market in Queensland. The issue of housing standards and agents' conduct have long been considered factors that are often tied to avoidable evictions. The Coroner found that the child's death could have been prevented if there were better

property management practices and better standards for rental properties. Following the inquest, the Coroner's office has made recommendations to the Queensland Government and industry groups for improvements. A list of thirteen recommendations covers improvements required in property standards and inspections and improvements in property managers' training and real estate agents' property management practices. Had these recommendations be implemented, prior to this research, several of the evictions, discussed in this report, may have been prevented.

The Australian private rental market is steadily growing and increasingly becoming a more important part of the Australian housing landscape – no longer, just a tenure of transition to home ownership. This research has highlighted the need to consider policy, practice and legal remedies to help prevent avoidable evictions and to further investigate evictions as a part of the growing rental housing landscape.

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LIST OF ABBREVIATIONS /GLOSSARY OF TERMS

Agent: An agent is a person or company, including real estate agents, appointed by the lessor and authorised to act on their behalf.

Notice to Leave (NTL): Used also to refer to the variety of terms used by different jurisdictions such as notices to vacate, terminate. These are notices served by one party to a tenancy agreement to another party to notify of their intent to end the agreement. Notices to leave may be with or without ground.

Notice to Leave - without ground: a lessor may give a Notice to Leave the premises to the tenant without stating a ground for the notice.

Notice to Remedy Breach (NTRB): Used also to refer the variety of terms used by different jurisdiction such as Breach of Duty. These are notices served by one party on the other to formally notify them of an alleged breach by the party being notified.

Periodic (agreement): This applies to a tenancy agreement which has a start date but no end date. Some fixed-term agreements roll over to become periodic if no notices to end the tenancy or no new agreement is signed prior to the end date of the fixed term.

Residential tenancy databases (RTDs): Residential tenancy databases are operated by private companies who provide membership to real estate agents and sometimes lessors. Predominantly RTDs record the names of so called ‘problem’ renters listed by members and these people are subsequently excluded from the pool of applicants by other members in their pre-tenancy checks.

RTA: Residential Tenancies Authority: The Residential Tenancies Authority is a state government statutory body that provides tenancy information, bond management, dispute resolution, compliance as well as policy and education services.

RTRAA 2008: Residential Tenancies and Rooming Accommodation Act 2008 (RTRAA), (the ‘Act’), covers tenants in detached houses, units, flats, social housing, tenants in caravans, and rental units in a retirement village. Boarders or rooming house tenants are covered (by specific provisions with fewer rights) unless the provider lives on site, in which case there must be at least four rooms available for occupation.

Tenant/renter: This term is used generically to indicate a person who rents their place of residence. It can also be used more specifically to indicate a person who is given the right to occupy a residential premise by the lessor or their agent and who is covered by mainstream tenancy laws.

QCAT / Tribunal: Queensland Civil and Administrative Tribunal (referred to as the Tribunal) hears a wide range of disputes between tenants, lessors or agents and the residents, providers of, or agents for rooming accommodation.

TAASQ: Tenant Advice and Advocacy Service is a program funded from tenants’ bonds and administered by the Queensland Department of Housing. It provides free information, advice and advocacy services to tenants and residents in Queensland (across 26 community based services) to help them to better understand their rights and

responsibilities regarding Queensland's residential tenancy and rooming accommodation laws and related legislation.

WOP: Warrant of Possession (WOP): A Tribunal order to make a tenant leave following an expired Notice to Leave.

Form 11: A Form 11 or F11 is an RTA standard form. This form is a formal Notice to Remedy Breach Form

Form 16: A Form 16 Request for Conciliation or F16 is an RTA standard form. It is a form used by either party to a tenancy to request the RTA's dispute resolution services. Some tenancy disputes must attempt RTA dispute resolution before they can proceed to QCAT.

Form 12: A Form 12 Notice to Leave or F12 is an RTA standard form. This form is served by the lessor, or by the agent on their behalf, to the tenant to inform they tenant they must leave the premises. F12s can be with or without grounds.

Form 4: A Form 4 Bond Return or F4 is an RTA standard form. This form is sent to the RTA to seek the return or payment out of a bond. F4s signed by both parties to a tenancy agreement are refunded quickly as there is no dispute about how the bond is to be paid out. The RTA has legislated dispute resolution steps to follow when they receive a F4 signed only by one party. These steps allow the other party to dispute the claim.

INTRODUCTION

Regardless of the apparent prevalence of evictions in the rental market and the fact that about 30 per cent of Australian households are renters, a proportion that is higher in Queensland, there has been little research in the area.

The scale of evictions is difficult to define and information that includes non bailiff-assisted evictions is not collected. However, Beer and Slatter (2006) estimated from research conducted by Slatter in 2003, that there are approximately 12, 000 bailiff-assisted evictions each year in South Australia and estimated that there would be approximately 80,000 to 100,000 bailiff-assisted (or local equivalent) evictions in total across Australia each year.

Many people who are forced to move from their tenancy have not been ordered to move by the Tribunal, with a Warrant of Possession. Many leave as soon as they are issued with a Notice to Leave and even as a result of difficulties dealing with the lessor or agent. Others are forced to leave, effectively evicted, because the conditions of the tenancy agreement are not being met by the lessor. In order to capture the experiences of tenants, across the spectrum of those who are forced to move, the researchers have defined eviction more broadly than a bailiff assisted eviction. The definition used here reflects a broad view of eviction as a forced move that is against the wishes of the tenant. It includes any involuntary move that is a consequence of lessor generated eviction or change in the conditions of occupancy of a household unit. It includes where an agreement is ended after the tenant received a Notice to Leave without ground. The full definition is described in detail in the next chapter.

Despite eviction being a relatively common feature of Australian residential tenancies, the growing reliance of the private rental market to provide housing to Australians, the negative impacts of eviction on tenants, and the costs to all involved (Slatter 2003,) - there is very little evidence available to guide review and consideration of the issue.

The Tenants' Union of Queensland conducted this research project during 2011-2012 to investigate the circumstances and experiences of tenants who are evicted.

The overall purpose of the research project was to better understand the eviction circumstances, tenant experience and processes in order to better support the broader community of renters and to inform tenancy related policy and law reform.

Approximately 11 per cent of the tenants who contact the Tenants' Union are at threat of being evicted or in the process of eviction. Similar prevalence of eviction is reported by tenants accessing tenant advice and advocacy services across Australia.

Interest in pursuing this research project followed a study undertaken by the Tenants' Union in 2007, which broadly explored tenants' views on renting. The tenants participating in focus groups reported that evictions were commonly executed without a stated reason and that tenants often reported being reluctant to request repairs and maintenance or to challenge rent for fear of eviction. They also suggested that the tenants' relationship with their agent or lessor was linked to preventing or creating eviction. In addition, tenants reported that the circumstances of ending the

tenancy and eviction often led to problems with securing and establishing another tenancy (due to tenancy database listing, losing bonds or break lease penalties).

In 2010, a national review of tenancy law and its role in mitigating homelessness, conducted by the Tenants' Union and NATO for National Shelter, highlighted the potential to prevent unnecessary evictions to lessen the number of households falling into homelessness. The review recommended further investigation to better understand the links between evictions and homelessness.

However, as a result of the lack of enquiry there is very little known about eviction. For example, we do not know how many people are evicted annually in absolute terms or why they are evicted. Given the nature of the experience of households that are forced to move from their home; we do not know what happens to the evicted households, the impacts of the eviction on the households, nor do we know how evicted tenants go about finding a new home.

There have been only two significant studies to investigate evictions incorporating the tenants experience in Australia. One of these studies was conducted by Slatter in South Australia (2003). The study was later taken up by AHURI and the research project was extended to include evicted tenants in New South Wales and Victoria (Beer and Slatter 2006). Their sample of participants was recruited through homelessness and community centres where evicted households, most of whom were particularly vulnerable, were seeking assistance. Their research highlights the importance of effective and proactive housing management approaches to sustain tenancies and reduce costs to government created by having vulnerable people caught up in a rolling process of eviction and rehousing.

The other study was conducted by Jones et al (2006) for the, then, Department of Housing. Their study of public housing evictions in Queensland focussed, once again, on the more vulnerable groups of people and highlighted risk factors that can assist housing managers to detect potentially vulnerable tenants and develop strategies to support their tenancies.

The Beer and Slatter study (2003 and 2006) interviewed tenants who had mainly been evicted by private lessors, whereas in the Jones et al (2006) study the tenants had been evicted from public housing. There is a key difference between this study and those conducted by Beer, Slatter et al (2006) and Jones et al (2006). That difference lies in the demographic of the tenants interviewed for the research. The sample population of this evictions research project is significantly different.

This study recruited people who had contacted the Tenants' Union for advice. A large percentage of the tenants interviewed were working and paying median rent. Both Beer and Slatter and Jones' research sample included a majority of people who were described by the researchers as vulnerable beyond their status in the housing market, including those on low to very low income with additional disadvantages. Many were paying low rent and over one third were evicted due to rent arrears. Most of the participants in the Beer and Slatter research were recruited via homelessness services. This could be considered an indicator that the tenants' personal and familial support resources and capacity may have been exhausted at the time.

Once again, the sample population in the Jones et al research (2006) is markedly different to the sample for this study. Their research focused solely on evicted public housing tenants many who could be considered vulnerable in terms of financial stresses, isolation and/or health issues.

The Tenants' Union research sample of tenants consists of a broader cross-section of people, in socio-economic terms, with a minority of households who could be considered very low socio-economic households or particularly vulnerable in the housing market. Many of the tenants interviewed in this research were working. Only three of the households had sought assistance from homelessness services or emergency accommodation.

The tenants in the other two studies' sample had largely identified themselves as having been at fault, indicating grounds for eviction. On the other hand, the majority of the tenants in this research did not identify themselves as being at fault. The majority in the Beer and Slatter study were evicted for rent arrears, closely followed by complaints from neighbours. In this study the majority were evicted for no reason, cause or fault of their own and against their wishes.

Eviction is recognised internationally as a massive, albeit largely hidden housing problem and in need of serious recognition and study by housing officials and policy makers. Hartman and Robinson writing in the USA, 2003, recommended "Creating a national database on evictions – how many, where, who, why and what happened to evictees ... (as) an important first step in focussing attention on the neglected issue" (2003 p 461).

Whilst this research will not address the need to quantify this hidden housing problem, here in Queensland it does make a significant contribution to the small body of research on evictions in Australia.

Report structure

The report is structured around three main parts. The first part provides the necessary contextual information about how the study was conceptualised, structured and conducted. This material outlines the background to the study, and the processes followed in terms of recruitment of participants and the research methods used.

The second part of the report provides the analysis of the data collected by both indicators and qualitative methods.

The third and final part of the report outlines the conclusions and policy implications for tenancy law reform and tenancy related policy reform.

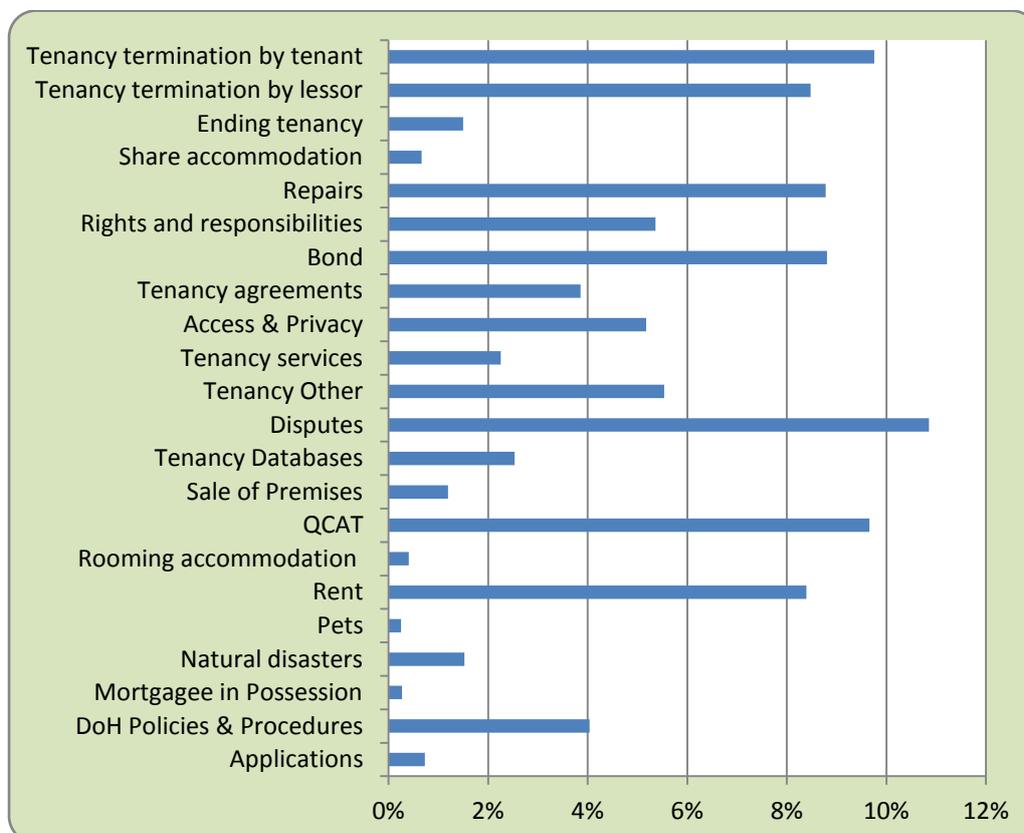
RESIDENTIAL TENANCIES EVICTIONS: DEFINITION AND CONCEPTUALISATION

The context of the inquiry

The Tenants' Union of Queensland is a statewide community organisation that provides services for residential tenants in Queensland and represents their interests. The Tenants' Union provides direct services to tenants that include tenancy advice, legal case work and advocacy, and community education and referral. In addition to the direct services to tenants, the organisation provides a range of services to support other agencies who work with tenants. These include tenancy law training, legal analysis and interpretation, tenancy law publications, and educational materials. The Tenants' Union aims to improve and protect the rights of all Queensland tenants, including caravan park and boarding house residents. The Tenants' Union plays a lead role in promoting and advocating the interests of all renters in law reform policy making and rental industry practices development.

Advising tenants in matters of terminations by lessors and Warrants of Possession forms a considerable part of the work that tenant advocates do with tenants who contact the Tenants' Union. In the 12 months to June 30, 2011, the TUQ provided 7,270 advices to tenants and their advocates on 12,556 tenancy problem types. Of those, tenancy terminations by lessor were one of the most commonly raised problems (Tenants' Union of Queensland, 2011).

Figure 1: TUQ Tenancy Advice Problem Types



Total = 7,270 advices with 12,556 problem types

Much of the work performed by Tenants' Union staff with individual tenants is focused on addressing tenancy problems and specific requests for assistance and advice in telephone advice and face to face client work. Individual advice sessions are usually very focused and do not provide an extended opportunity for staff to engage in hearing the tenants whole story, the circumstances leading to the eviction or threat thereof or for discussing the impacts of various situations on people's lives. This research project provided an opportunity for the organisation to develop more depth of understanding through participation in an in-depth discussion with tenants about their experiences and the circumstances leading up to the eviction, the impact that the experience had on the tenant's household and to explore the factors that could have prevented the eviction.

Prior to the development of the project proposal, as part of scoping the issues and conceptualising the research, we consulted Tenants' Union staff through a brainstorming exercise about their concerns about evictions. The following is a summary list of concerns or areas that tenant advocates wished to know more about:

- The legality of evictions
- The costs of evictions - financial and psychological - on tenants
- The impacts of eviction on education and children's schooling
- The impacts of bond loan disputes on accessing a new home post eviction when the bond has been provided by the Department of Housing
- The difficulties in finding a new property, in particular, when a tenant receives bad references from an agent on rental applications for a new property
- The difficulty for tenants who do not have a car or internet access to locate rental properties and the lack of community support services to assist them, including support with the physical relocation to another property if elderly or disabled
- The impact of tenants being listed on tenancy databases and their ability to access rental housing
- The impact of negative verbal references to prospective agents including cases where the tenant has a good rent record
- The difficulty tenants face in trying to locate a new property that is still accessible to their work, schools, services and informal support networks, family and friends
- The particular challenges that arise when the evicted household is also subject to a child safety intervention – in which case, securing a new home is critically important if tied to access to children
- The particular experiences of tenants evicted from rooming accommodation
- Inconsistencies in procedures and rulings from QCAT.

Understanding evictions

Residential tenancies legislation across Australia provides the legal basis, regulatory structure and processes governing aspects of the lessor tenant relationship. In Queensland, the Residential Tenancies and Rooming Accommodation Act 2008 (RTRAA), referred to in this report as the 'Act', is the legislation governing the eviction process. The Act covers tenants in detached houses, units, flats, social housing tenants in caravans, and rental units in a retirement village. Boarders or rooming house tenants are covered by specific provisions with fewer rights unless the provider lives on site, then there must be at least four rooms available for occupation (Tenants' Union of Queensland, 2010).

Definition

Evictions in Queensland can be made by the lessor by issuing a Notice to Leave either with ground or without ground.

With ground evictions, arising from the fault of the tenant, may be for rent arrears or a serious and / or persistent breach of the tenancy agreement under the Act. Whilst evictions without ground, which arise from no fault of the tenant, include when the premises are uninhabitable, the property is on the market and the contract of sale requires vacant possession or there is an approved change of use or major renovation of the premises.

An eviction, by a Notice to Leave without ground, can be made by the lessor by giving two months notice. If there is a lease in place, the notice can be issued two months prior to the end of lease. In this case, no grounds or reasons need to be stated on the Notice to Leave. This means that tenants can be evicted for no cause or fault of their making. The household's security of tenure lies at the discretion of the lessor.

An eviction is the removal of the tenant, a forced move that is most commonly initiated by the lessor and in the interests of the lessor. Forced moves, initiated by the tenant, can and do occur from time to time in response to a change in the conditions of the tenancy thus making the tenancy untenable for the household. This circumstance is considered a forced move and is provided for in the definition below. The definition of eviction used for this research reflects a broad view of eviction as a forced move that is against the wishes of the tenant.

- Eviction is any involuntary move that is a consequence of lessor generated eviction or change (or threat of same) in the conditions of occupancy of a household unit.
- Eviction also includes where an agreement is ended after the tenant received a Notice to Leave without ground.

This definition also includes forced moves initiated by the tenant in response to changes in the conditions of occupancy, such as not being able to have repairs done to fulfil the conditions of the tenancy agreement.

The eviction process

The circumstances that surround evictions are often complex and the processes can be convoluted. There is no straight forward way of representing the eviction process as the formal processes around a problem (such as failure to repair, disturbance) or a default (such as rent arrears) can be initiated by either party – tenant or lessor. As mentioned earlier, a smaller number of evicted tenants complete the eviction process by receiving a Warrant of Possession (WOP). Many tenants leave the property once a Notice to Leave has been issued or threatened (including a Notice to Leave or even a Notice to Remedy for a breach, such as rent arrears). Other tenants leave because they cannot enforce their rights.

METHODOLOGY

Purpose

The purposes and aims of this research are framed within the Tenants' Union's expressed interest to better understand the eviction experience of tenants to inform tenancy related policy advocacy.

The objectives of this research are as follows:

- To investigate the experiences of tenants in the eviction process
- To investigate the circumstances and processes of eviction
- To understand the impacts on tenants
- To identify tenancy law and policy reforms that would better protect tenants. In particular, changes which would reduce unreasonable eviction of residential tenants, and policy changes which would reduce unreasonable, unnecessary or arbitrary eviction.

Research methods

This research has employed both quantitative and qualitative research methods to investigate and capture the tenants' eviction experiences. As an exploration of the tenants' experiences (as opposed to lessor or agent experiences) the views reported by the tenants are influenced by their own subjective position. As such, it is recognised that a tenant's view will be 'positioned' within their own perceptions, that is, they may have emphasised some aspects of the circumstances leading to the eviction and downplay other factors. Nevertheless, the report of their experiences of evictions is a valuable contribution to the evidence base around this topic.

It is important to note that the data presented in this report is not drawn from a large and random sample of tenants and therefore cannot be interpreted as being representative of the population of renters as a whole. However, the data does reflect the experiences of a broader demographic than has been reported in the other two notable Australian eviction research projects.

The primary method of data collection was telephone interviews with tenants who either had been evicted, was in the process of eviction or had averted eviction following an earlier threat of eviction or Notice to Leave.

A research proposal was made and a survey instrument was developed. Approval was gained on the grounds of ethical research guidelines from the Board of the Tenants' Union. A pilot study was conducted with a sample of eight tenants. Slight modifications were made following the pilot, and the survey was applied as a guide to interview 43 tenant participants.

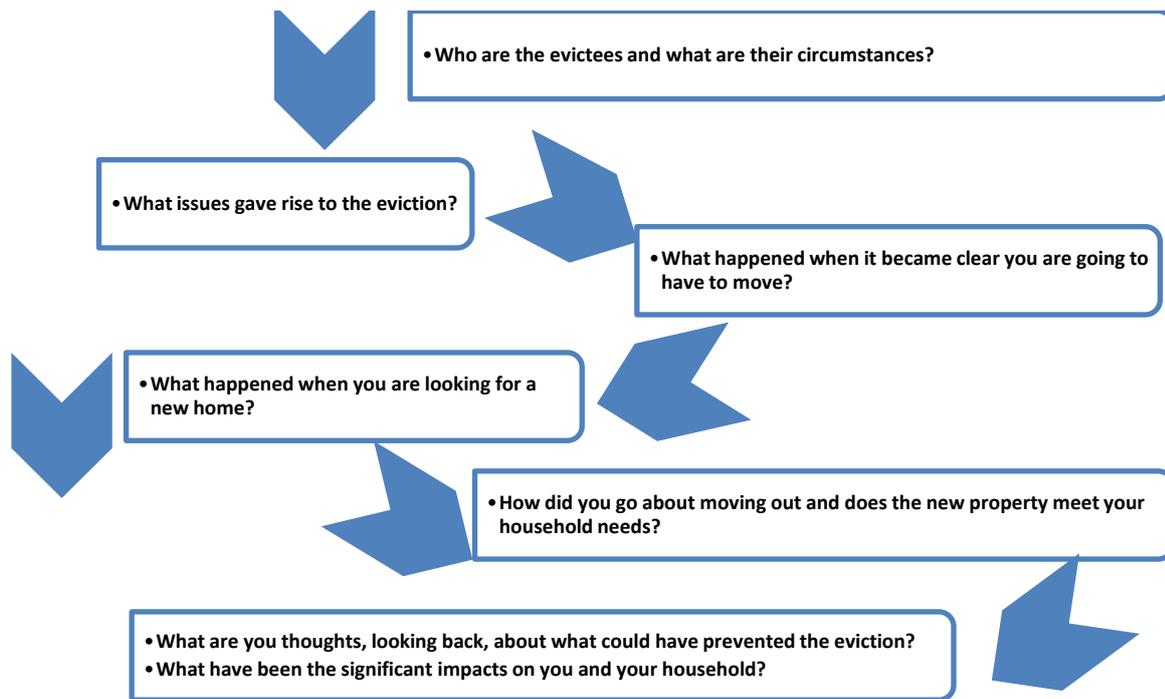
Survey questionnaire

The survey instrument was a semi-structured questionnaire, providing participants with an opportunity to answer closed questions as well as to respond to a number of open ended questions where they could expand on their experience, in effect, 'tell their story'. Demographic details of

participants were also collected. Case notes were recorded at the end of each interview noting the household's situation and recording the tenant advocates view about the tenancy law and policy issues arising as well as what could have prevented the eviction.

The questionnaire tracked through the process of the eviction, highlighting the legal processes involved and the experiences of the household as the process unfolded. The process, as experienced by tenants - like a journey, can be represented diagrammatically.

Figure 2: The process of eviction informing the questionnaire design



The questionnaire was designed in seven sections following the process logic explained in the flowchart above (excluding the demographic data section). The sections of the survey were as follows.

- Section 1: Background information on the eviction - covering eviction status, notices, property type, time of residence, rent, lessor agreement, and relationship with the lessor.
- Section 2: Issues that gave rise to the evictions - covering the issues and circumstances that gave rise to the eviction situation and whether the tenants disputed the eviction.
- Section 3: Preparing to move - covering when the tenant moved, who made the decision to move and any decisions that tenant needed to make that may have affected the tenancy.
- Section 4: Finding a new home.
- Section 5: Moving to a new home.
- Section 6: The impacts of the eviction - covering reflections on what could have prevented the situation and significant impacts on the tenant's household.
- Section 7: Demographic data - including gender, age, household type, language, ethnicity, place of birth, labour force status, and income source.

Recruitment

Recruitment for this study was a fairly straightforward process. Research participants were recruited from the pool of tenants who had called the Tenants' Union in regard to an eviction situation within a four month period from April to July 2011.

Included were tenants who had been evicted as well as those who were in the process of being evicted and tenants at threat of eviction as well as some who had averted eviction. This spectrum purposively includes tenants at varying stages in the eviction process and thus captures more of the context, tenant experiences (at different stages) and outcomes associated with eviction.

Eligible tenants were contacted and asked if they would participate in the study. The vast majority of tenants contacted agreed to participate as they were keen to 'tell their story'. Once participants were recruited, the appropriate consents and processes were followed and participants were offered a participation fee.

The interview process

The interviews using the survey instrument were conducted on the phone. Interviews lasted between 30 and 90 minutes. The length of the interview depended on where the tenant was in the eviction process and the complexity of the tenant's situation. Both of these factors impacted on the time involved in relaying their experiences.

Tenant advocates were present at every interview. This was seen as an important part of the process. Having the services of a tenant advocate present at each interview provided a point of clarification around technical tenancy law matters and processes as well as an opportunity to provide advice to tenants following the interview should the need arise.

Tenant advocates, following each interview, were asked to comment about the causes of the eviction (sometimes accessing their internal advice file for clarification of notices and timeframes). They were also asked to provide their assessment on measures or circumstances that could have prevented the eviction.

ANALYSIS: ADDRESSING THE RESEARCH QUESTIONS

This section calls upon the qualitative and quantitative data to evidence the key areas of enquiry and exploration that lie at the core of this project, namely:

1. Question One : Who are the evictees and what are their circumstances?
2. Question Two: What issues gave rise to the eviction?
3. Question Three: What happened when it became clear the household had to move?
4. Question Four: What happened whilst looking for a new home?
5. Question Five: How did you go about moving out and does the new property meet your household needs?
6. Question Six: What are tenants' thoughts, looking back, about what could have prevented the eviction? ... and... What have been the significant impacts on the evictees' households?

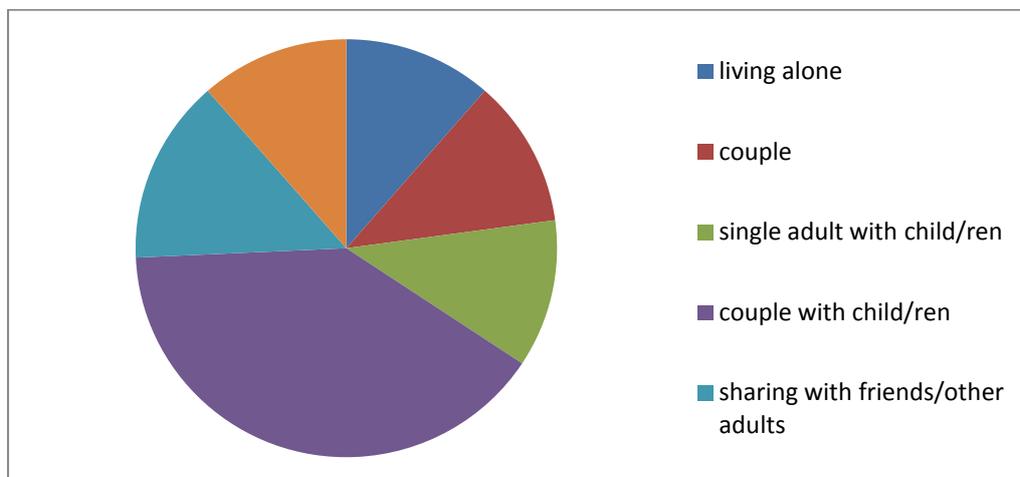
Following a brief description of the sample population - demographics and circumstances, each of the above questions is addressed and insights gained from the research are discussed. The discussion of policy implications is left to a later section.

1. Who are the evicted households?

The sample population consisted of 60 per cent women and 40 per cent men. The sample included some young people and some in their later years, with ages ranging from early 20's to over 65 years of age. 30 per cent of the participants were within the age range of 35 to 44 years, 16 per cent were between 45 and 54 years, 17 per cent were between 25 and 34 and 12 per cent were over 65 years.

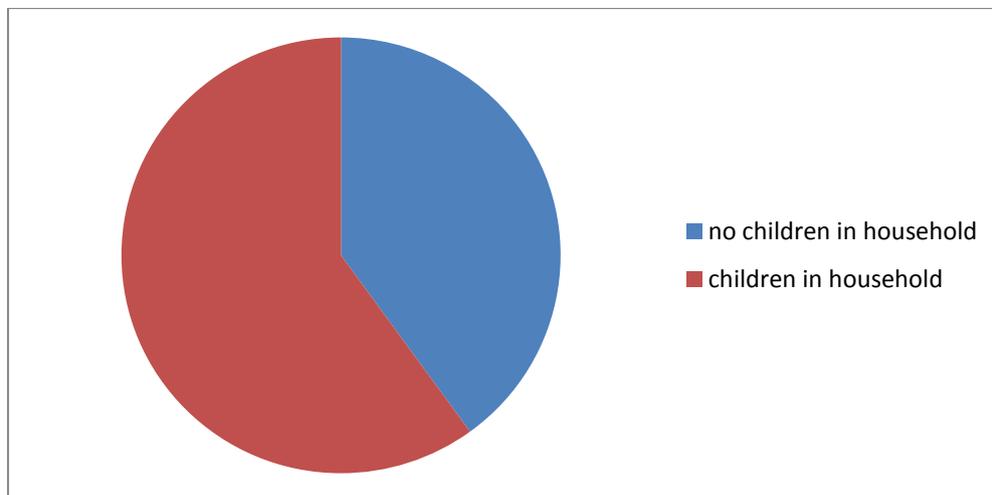
There was also a fair spread of household types in the sample. At the time of the eviction 33 per cent of the sample were couples with children, 21 per cent were single adults with children, 16 per cent were couples, 9 per cent were living alone and 12 per cent were sharing with friends or other adults.

Figure 3: Household type at the time of the eviction



Eviction was reported by nearly all respondents as a difficult and often traumatic event for adults. However, nearly 60 per cent of the households also had children who were significantly affected by the disruption to their life.

Figure 4: Households with children



For those 25 households that included children the following table provides a distribution of the number of children in each households.

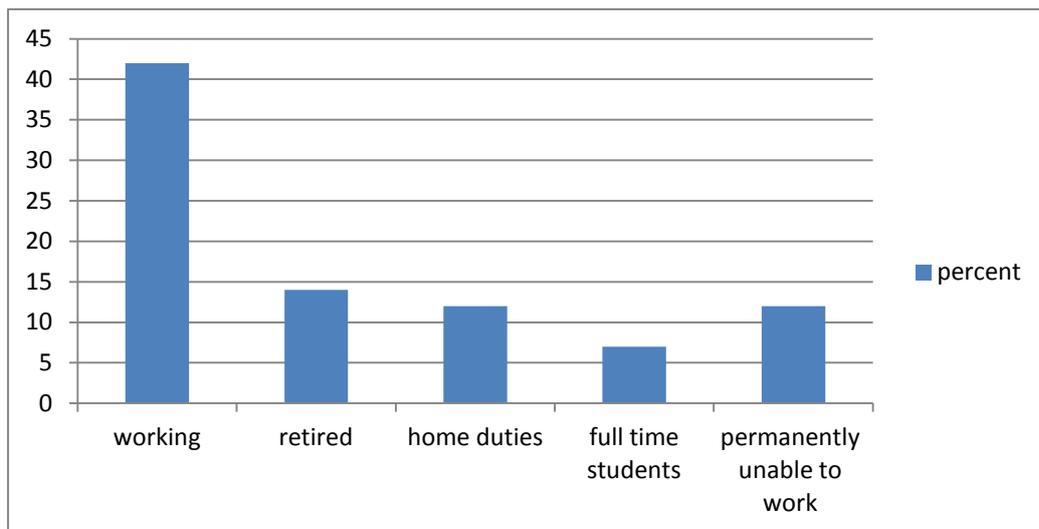
Figure 5: Distribution of children in households with children

	Number/ count	Per centage of households with children	Per centage of total sample
Households with 1 child	11	44	25.6
Households with 2 children	4	16	9.3
Households with 4 children	5	20	11.6
Households with 5 children	3	12	7.0
Households with 6 children (plus 2 grand children week on/week off)	1	4	2.3
Households with 7 children	1	4	2.3
Total	25 (of 43)	100	58.1

All households, bar one, spoke English at home. 16 per cent of the households were not born in Australia; however, only one was born in a non-English-speaking country. Seven of the 43 households were of Aboriginal or Torres Strait Islander origin comprising 16 per cent of the total sample.

Many of the households in this study were working in some capacity. Over a quarter of the tenants were working full time. Prior to the eviction, 42 per cent of the tenants participating in the study were working (either full time, part time, casual or in their own business), while 14 per cent were retired and 12 per cent were performing home duties, 7 per cent were full time students and 12 per cent were permanently unable to work.

Figure 6: Labour force status – prior to eviction

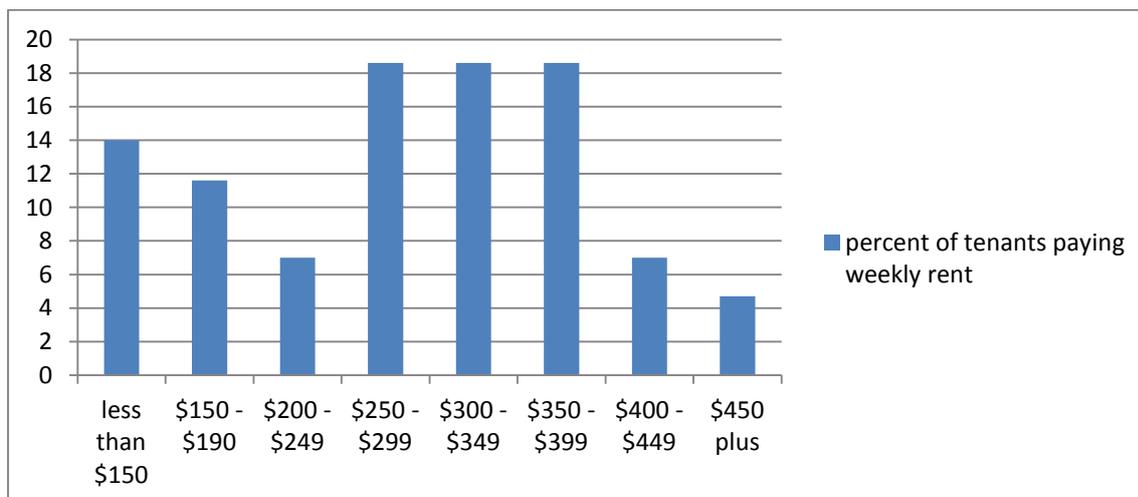


Participants' incomes sources reflected the household breadwinner's job status (not always the participant in this study). Nearly half the tenants in this study, approximately 47 per cent, were receiving salary, wages, income from their own business or their spouse's income or wages, some supplemented by a government payment. 40 per cent of the households were receiving a government payment.

Rents paid by tenants

The range of rents paid by households in the study reflected the range of household demographics in general. Households were paying from (less than) \$150 to over \$450 week in rent. Nearly 60 per cent of the sample was paying between \$250 and \$400 a week in rent. Approximately one quarter of the households were paying a lower rent of less than \$200 a week. Approximately 12 per cent were paying a higher rental of over \$400 a week.

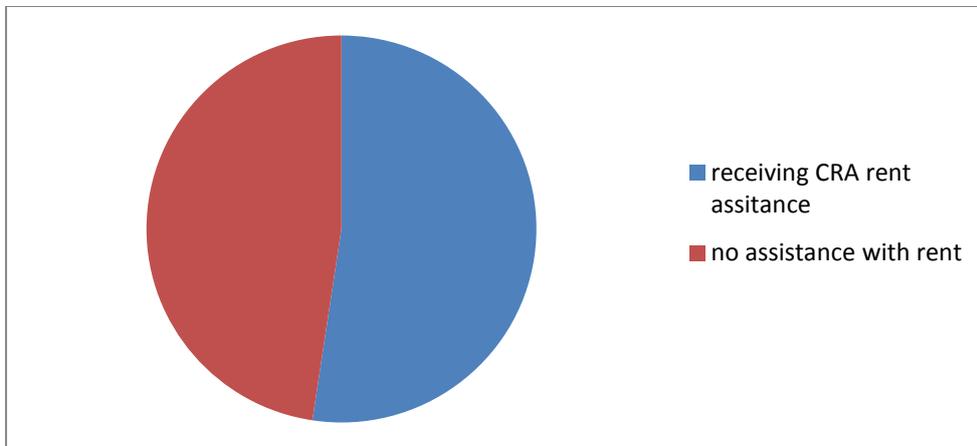
Figure 7: Rents paid by tenants



Tenants paying less than \$150 per week were living in marginal properties such as share housing, uninhabitable properties (e.g. dwellings without amenities such as a kitchen and granny flats).

Just over 50 per cent of households were in receipt of Commonwealth Rent Assistance (CRA), while 47.5 per cent of tenants received no assistance with meeting their rental costs.

Figure 8: Tenants in receipt of assistance with rent payments

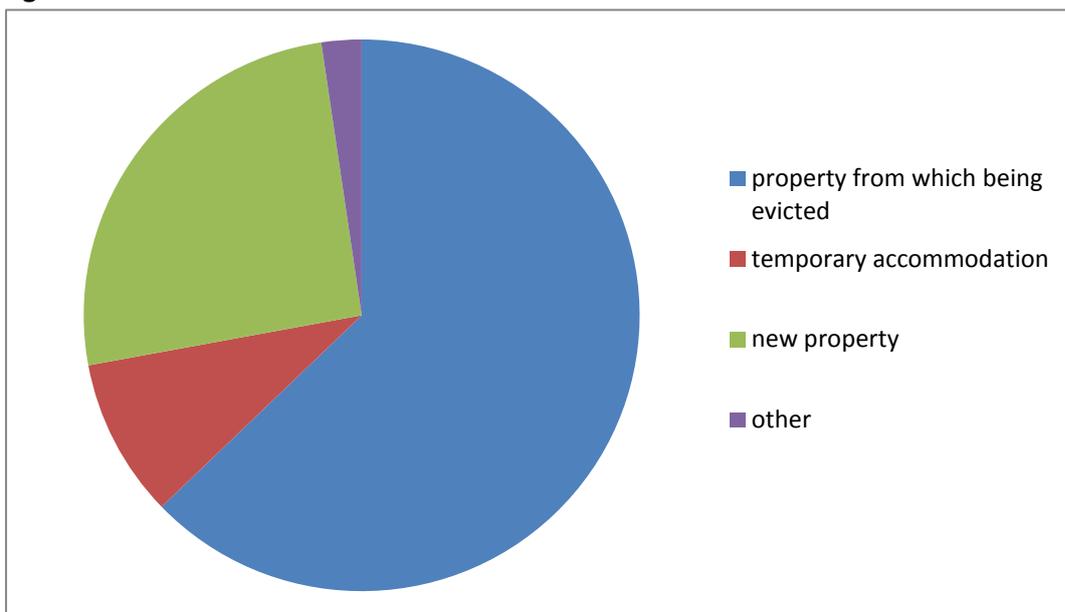


Fewer than 20 per cent (9 tenants) were in receipt of both rent assistance and a Bond Loan. Due to eligibility criteria for a state government Bond Loan, this 20 per cent of households would be considered having a low to very low income at the time of interview.

Where were the evictees living?

At the time of interview, the majority of participants, approximately two thirds of the households were living in the eviction property, while a quarter had moved into a new property and a small number (just under 10 per cent) were living in temporary accommodation.

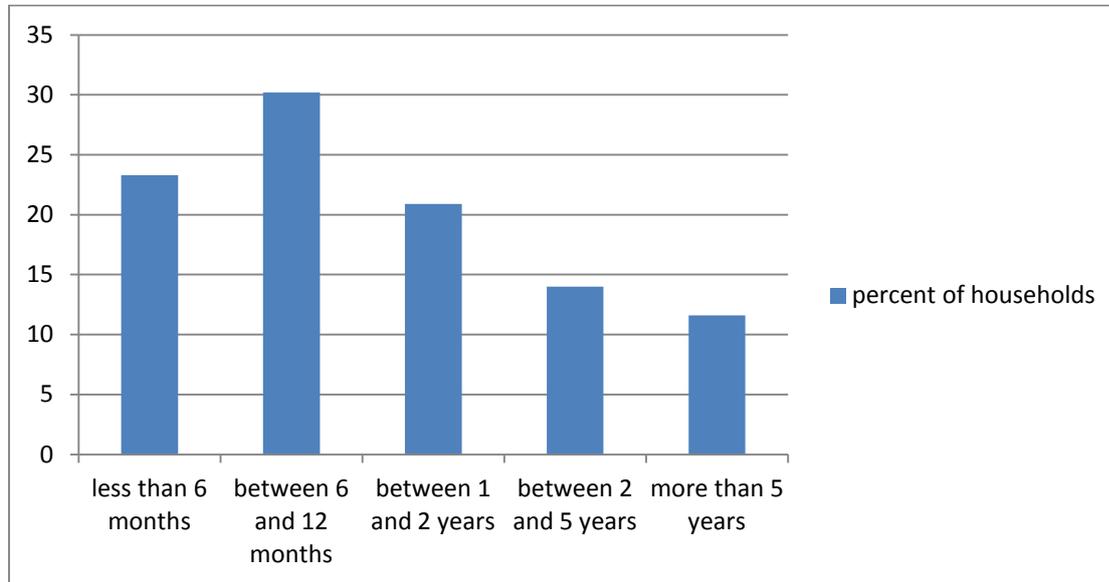
Figure 9: Place of residence at the time of interview



The tenants who found themselves evicted or at threat of eviction had been living at the (eviction) address from between less than six months to over five years. Around 75 per cent had lived in the property for more than 6 months and 45 per cent for more than 12 months. Just less than one

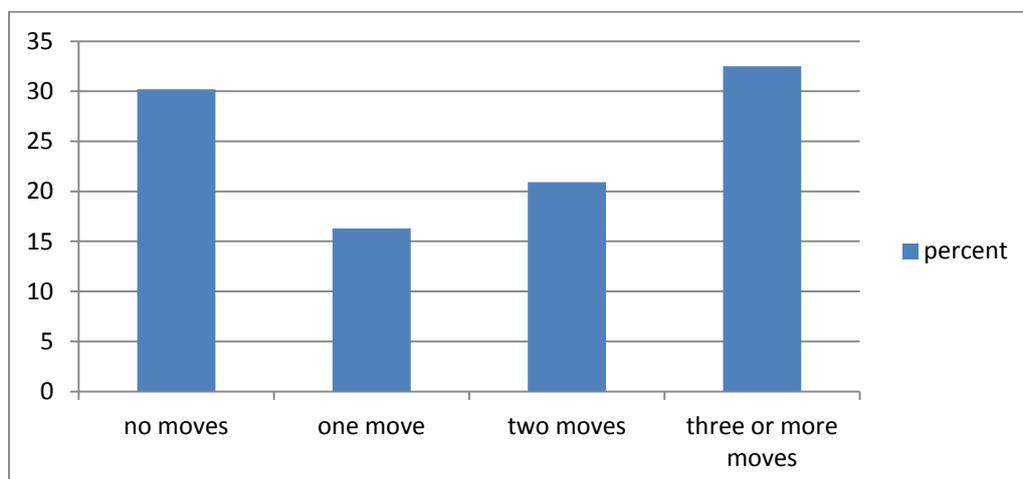
quarter of households had lived at the eviction address less than six months, whilst 30 per cent had been in the dwelling for longer than six months but less than 12 months. 20 per cent had lived in the dwelling for between one and two years. Nearly one quarter of households were long term tenants, with 14 per cent having lived in that dwelling for between two and five years. Over 10 per cent of the households had lived in the dwelling for more than five years.

Figure 10: Length of time living at eviction property



Excluding the current eviction situation (where some households were still in the property and at threat of eviction), 20 per cent (nine) households reported not having moved at all in the last two years (since March 2009). Seven households reported having moved once. Nine households reported having moved twice and thirteen households reported having moved more than two times in the last two years. The following table details the number of times that tenants had moved in the last two years, including the move into the current (eviction) dwelling.

Figure 11: Moves in the last 2 years (excluding move into eviction dwelling)



Whilst over 30 per cent of households had not moved in the last 2 years, five households reported that the reason for their move into the current eviction dwelling was due to an eviction from the

previous dwelling. In these cases, the circumstances surrounding the eviction included relationship breakdown, unknown reason for eviction from a share house, evicted by the same lessor (living in granny flats), and to situations of rent arrears. Other circumstances leading to their previous moves affected 33 per cent of the tenants, included being forced to move from their previous home due to the property being sold, to meet family needs and for work.

- Five households moved because the rental property was sold or was going on the market
- Six families need moved due to family requirements
- Another three households moved to the current property for work reasons.

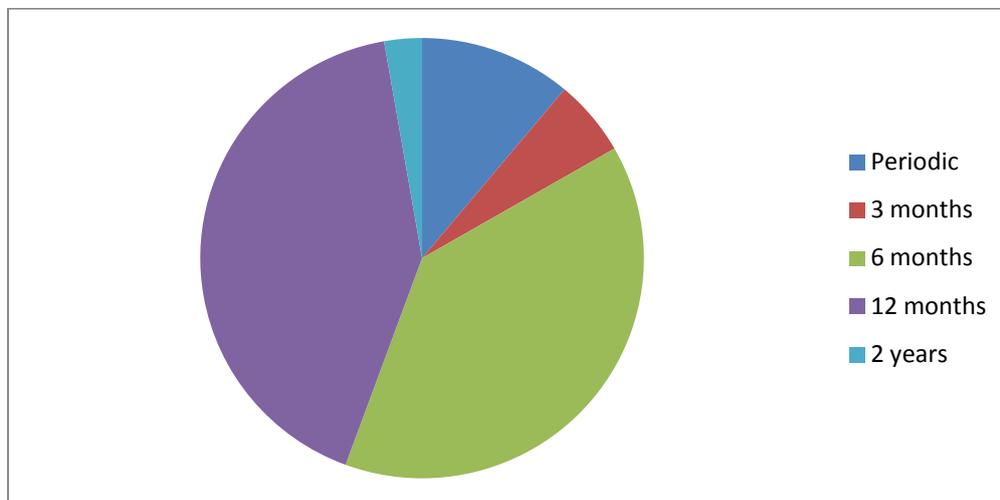
Tenancy Agreements

The majority of households (33 of the 43 households) held a fixed term agreement for renting the eviction dwelling.

For the 33 tenants with fixed term agreements, approximately one third were in 6 month tenancy agreements and another one third were in 12 month agreements.

Although 33 per cent of tenants were in 6 month tenancy agreements, 75 per cent had been living at the property for more than six months, most likely, having had the lease renewed. This would seem to indicate that there were no significant tenancy issues during the first six months of tenure or the lease would not have been renewed.

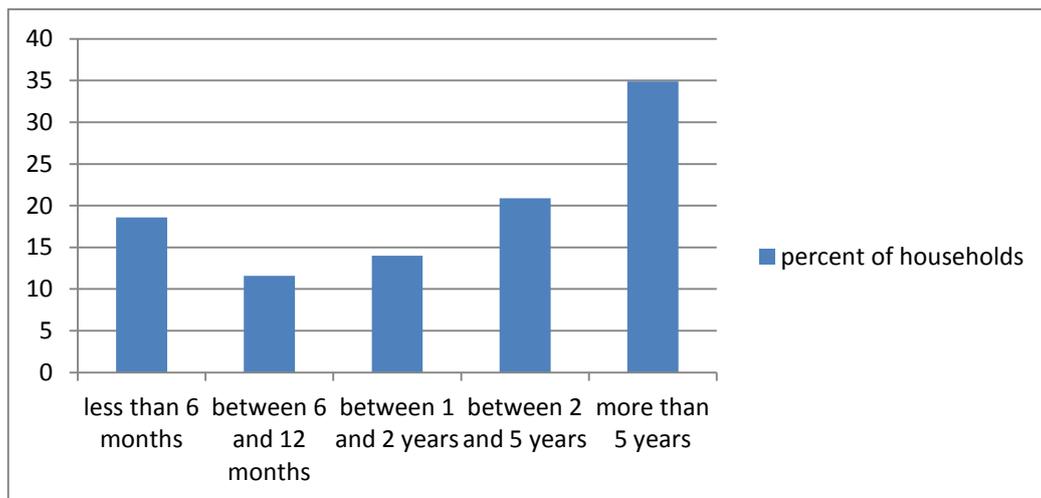
Figure 12: Length of tenancy agreement



The majority of dwelling types were either houses (56 per cent) or units (23 per cent). Two households were living in a hostel or boarding house, one household was living in a caravan and the other six households were living in either student accommodation, share housing or rental house on a rural property.

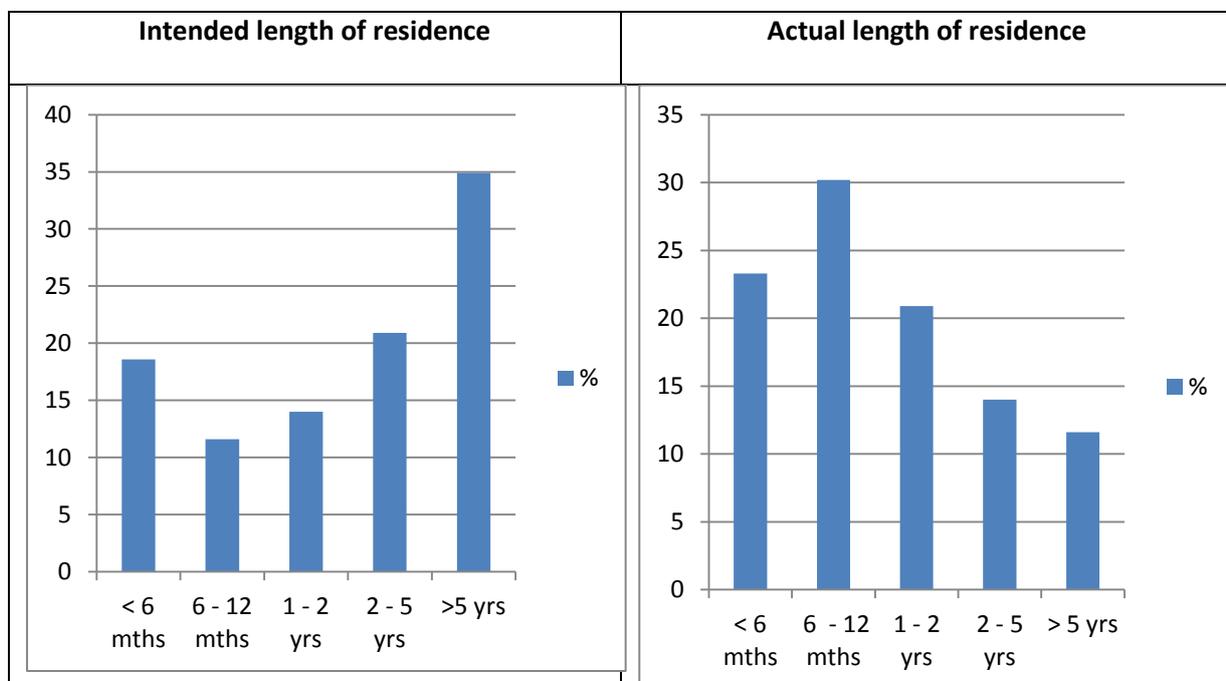
Many households had intended to stay in the (eviction) property for the medium to long term. Over a third of the tenants had intended to stay for more than five years (35 per cent), whilst 21 per cent had intended to stay for between two and five years.

Figure 13: Intended length of residence at eviction property



Whilst most of the households had intended to stay in the eviction property for medium and long terms, most of the households were evicted, or at threat of eviction, well before their intended departure date. This indicates that tenants were forced to for reasons other than breaches. It indicates that they were moving against their wishes and intention to stay in the dwelling or perhaps because they felt they had to move because they could not enforce their rights in that property or with that lessor or agent. The figure below compares tenants' intended length of residency at the eviction address with the actual time they lived there (at the time of interview). The comparison shows a near inversion of the tenants' intended outcome and the actual outcome.

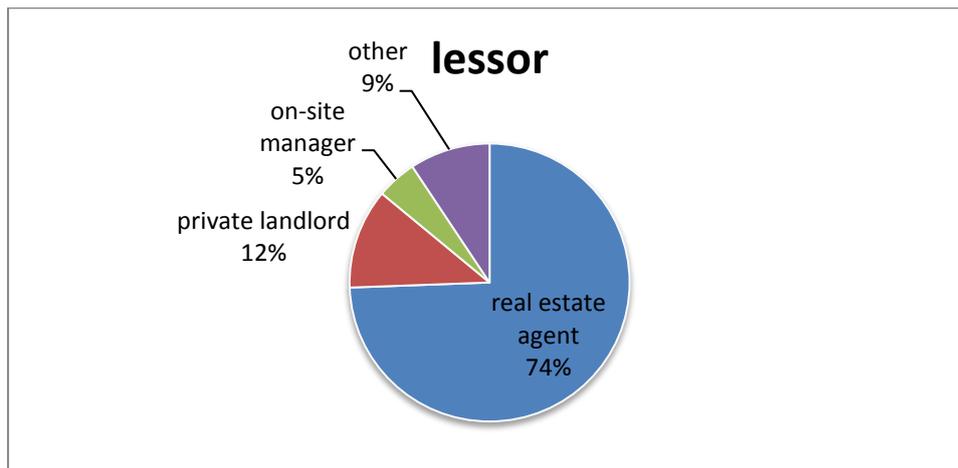
Figure 14: Comparison of households intended to actual length of residence



The lessors

The vast majority of dwellings occupied by the tenants were rented from a real estate agent (74.4 per cent). Approximately 12 per cent rented directly from a private lessor whilst 5 per cent rented from an on-site manager. Only one household was renting from a social housing provider, in this case non-government/community provider. There is similar level (80 per cent) of professional management in the overall sector.

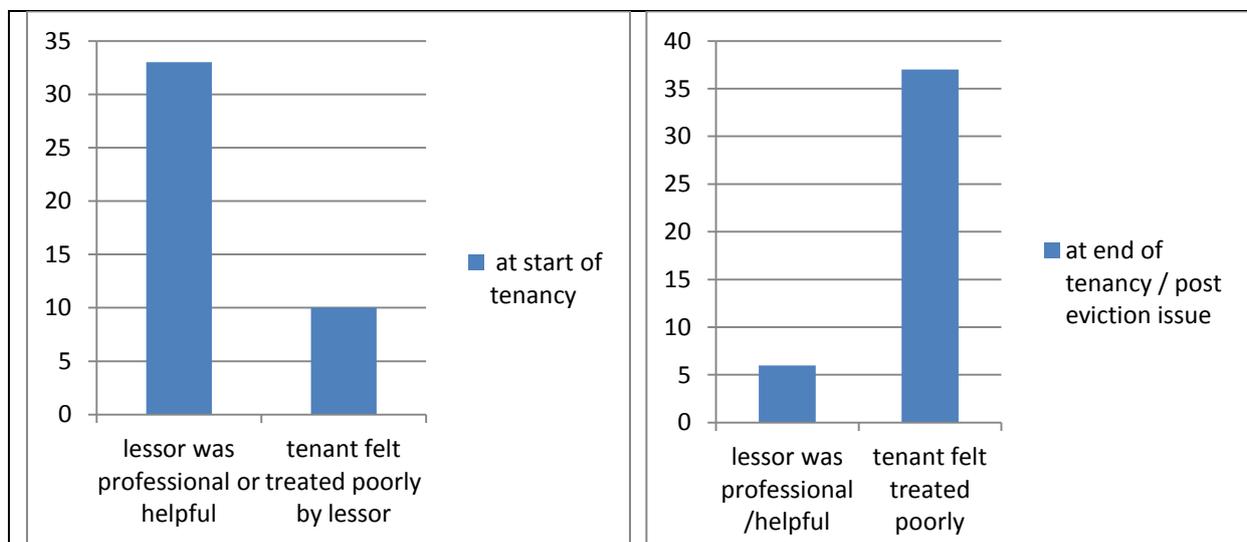
Figure 15: Property lessors



Tenants relationship with lessor over time

The relationship with lessors deteriorated over time in the majority of cases. At the start of the tenancy, most tenants (76.7 per cent) reported that the relationship with the lessor was helpful or professional and less than a quarter reported that they felt poorly treated. However, this picture was reversed once the issues leading to the eviction took hold. At the end of the tenancy or post the eviction issue, the vast majority of tenants reported feeling they were treated very poorly by the lessors - who in this research were largely real estate agents as indicated in the figure below.

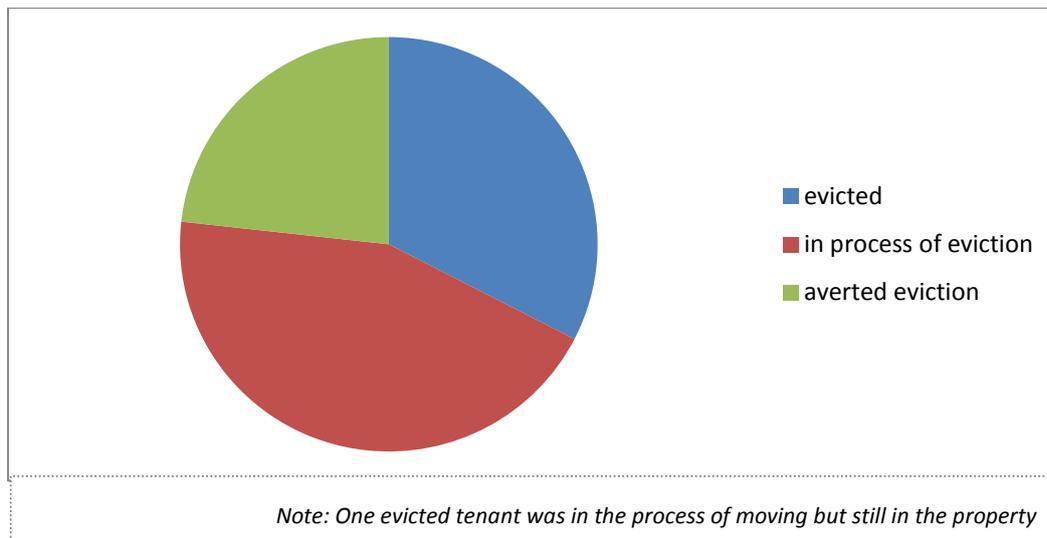
Figure 16: Relationship with lessor at the start and end of tenancy



Eviction status at the time of interview

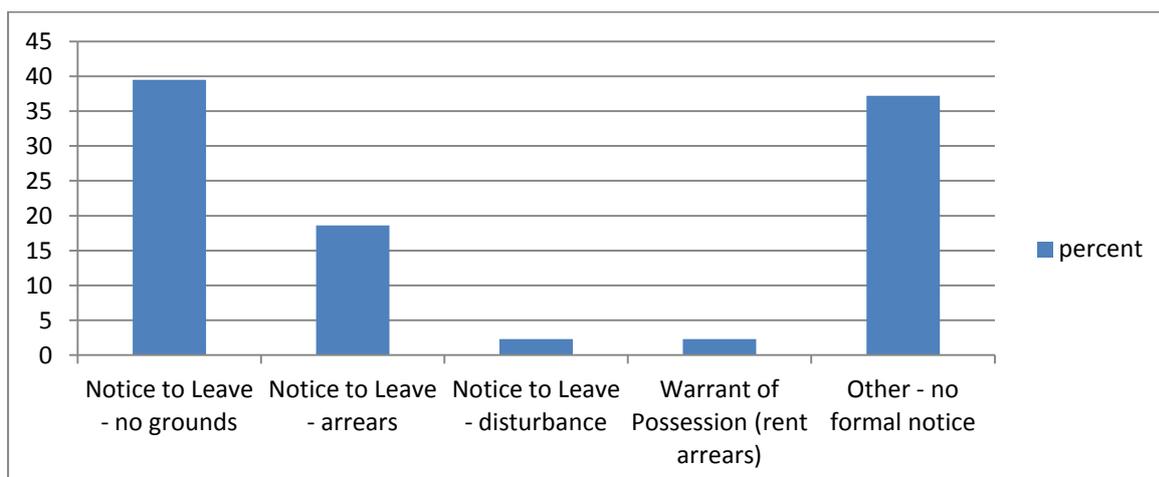
All households in the sample group were recruited because they were either evicted or at threat of eviction. At the time of interview, one third of the households had been evicted, whilst another 44 per cent were in the process of eviction. A significant number of tenants had managed to avert eviction by the time of interview. This group constituted 23.3 per cent of the sample.

Figure 17: Eviction status at time of interview



At the time of interview nearly three quarters (72.1 per cent) of the households had been given a notice. The most frequent notice tenants had received was a Notice to Leave without ground. Just under one fifth (18.5 per cent) had received a Notice to Leave for a rent arrears breach. One household had received a Notice to Leave for allegedly creating a disturbance and only one household had received a Warrant of Possession at the time of interview.

Figure 18: Notices to Leave and other forms of notice received by tenants at the time of interview

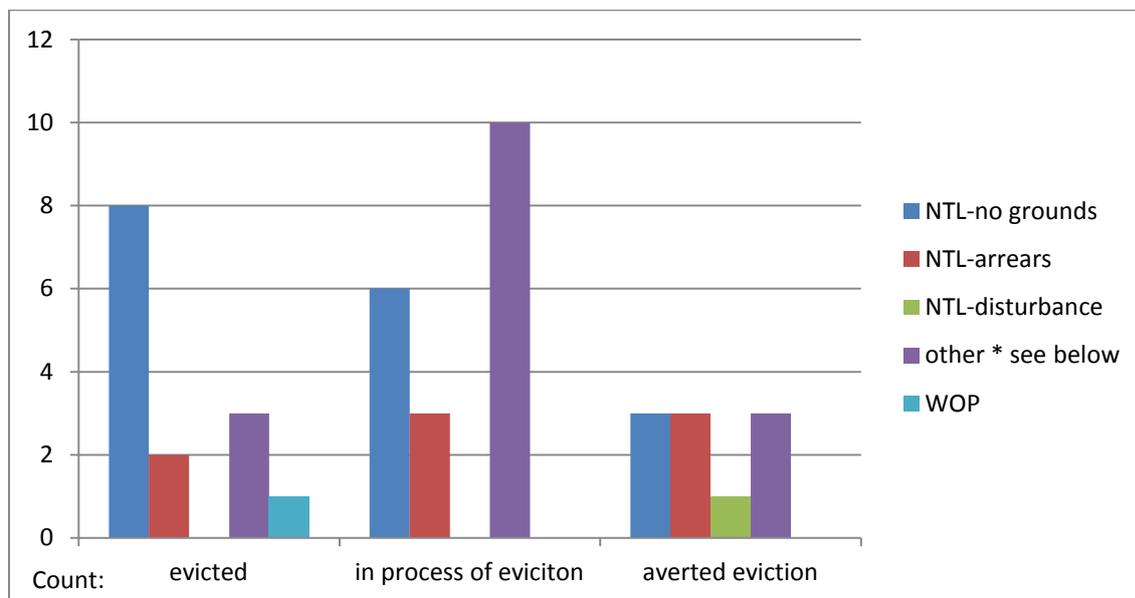


The formal process of notices, given the no fault or grounds terminations provision, creates a potentially fertile ground for confusion. Many tenants reported feeling confused on receiving a Notice to Leave without ground, and others believed that there were reasons that were not

reflected in the notices. Further to these methods for termination, there were the ‘other ways’ reported that are outside the residential tenancies legislation by which many tenancies are ended. These are discussed later in this chapter.

The following table compares the eviction status of tenants with the notice that they had received at the time of interview.

Figure 19: Comparison of eviction status with notice received



As mentioned previously, under residential tenancies legislation in Queensland, tenants who are at the end of their fixed leases or on periodic tenancies can have their tenancies terminated (i.e. be evicted) for no stated or apparent reason. This is because, under the Act, there is no requirement for specific reasons to be provided and the lessor can simply record ‘without ground’ on the notice.

This provision can result in evictions in all manner of circumstances including unreasonable circumstances such as retaliatory. This provision can also undermine tenants’ willingness to pursue other tenancy rights, such as, repairs and their right to quiet enjoyment, due to their concerns over losing their home and tenancy as well as potentially jeopardising future tenancies. The capacity of tenants to argue in the Tribunal that an eviction is a retaliatory eviction is poor. Retaliatory clauses in the Act are limited and without ground evictions, the easy ‘fall back’ for lessors, is lawful. As a result, a lessor needs only to issue a Notice to Leave without ground to remove the tenants from the property giving a short notice, just two months prior to the end of a fixed term lease and the same notice for a periodic tenancy.

The 16 households who had not received a notice at the time of interview are referred to as ‘other’ in the figure above. Of these households, four tenants reported a range of significant incidents associated with the eviction situation (including Mortgagee in Possession and being moved from an illegal/inhabitable dwellings) whilst others reported informal communications and situations impacting on the terms of the tenancy.

The following table sets out some of the tenants' comments from the 'other' category (in the figure above) regarding the circumstances and communications concerning the eviction situation with explanatory notes.

*‘Other’ category circumstances	Further explanation
Two tenants reported receiving letters from a solicitor or mortgagee informing them of Mortgagee In Possession on the property	There is no legal recourse and both tenants reported being unable to contact the solicitor or mortgagor to discuss or negotiate fairer timeframes for moving.
Two tenants found themselves living in uninhabitable properties which led to eviction.	One occurred following a letter from Council. The other received instructions from the owner following builder’s inspection condemning the property as structurally unsound and dangerous to the tenant.
One household reported being threatened verbally with a Notice to Leave for alleged objectionable behaviour following a dispute with the lessor about repairs and maintenance and land usage.	This tenant was living on a rural property and said that the lessor (real estate agent) was frustrated by the tenant’s request for repairs to the leaking sewerage system that the agent said was due to tenant damage.
Three tenants reported a verbal eviction and another by email message	These are not lawful means for termination but are not uncommon as tenants would sometimes prefer to move out of a tenancy where the relationship with the lessor or agent has fallen down.
Two tenants reported a Notice to Leave for unremedied breaches including failure to remove derelict cars; and failure to remove illegal ‘kiddies’ pool.	Failure to remove derelict vehicles is not a ground for eviction. It may have been that the lessor was alleging a breach for failure to keep the property clean.
Another tenant reported a Notice to Remedy breach for an alleged unapproved occupant.	The tenant did have his mother, who had recently fallen ill, living with him and his family on a temporary basis in order to care for her. However, the Act does not stipulate that every person residing in the property must be approved (although standard tenancy agreements ask if there is a maximum number of people who can reside in the property).
One household found that they were suddenly in an insecure situation unable to assure long term tenancy to meet their households needs when the property went on market a few months after signing the tenancy agreement.	The tenant rented this property only after being assured at ‘sign up’ that the house was available for long term tenure. Furthermore, the tenant found that as soon as the property went to market all repairs and maintenance work ceased and the agent would not respond to their requests. This is a case where a forced move was being initiated by the tenant in response to a change in the terms and conditions of the tenancy (including loss of security of tenure when premises go on the market, or vital repairs are not done by the lessor).

2. Issues that gave rise to the evictions

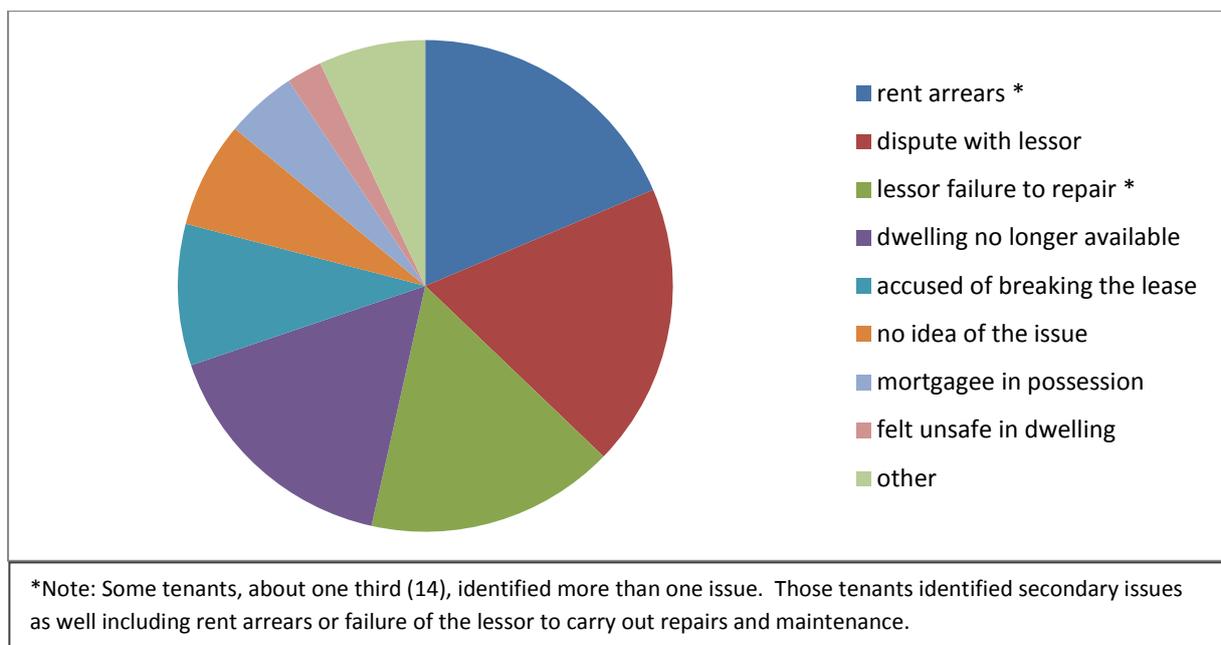
Even though many of the tenants had been issued with a Notice to Leave without ground, tenants identified a range of issues that gave rise, or they suspected gave rise to the eviction or threat of eviction, as mentioned above. In addition to the circumstances identified in the table above, a small number of tenants said they were unaware of the issues giving rise to the eviction.

The majority, 70 per cent, of the issues that tenants identified, as giving rise to the eviction, included one or more of the following issues:

- Situations of a dispute with the lessor
- Rent arrears
- Lessor failing to carry out repairs and maintenance
- Dwelling being no longer available.

The following table details the full list of primary issues as identified by the tenants in this study.

Figure 20: Issues that gave rise to eviction or threat of eviction



Tenants were asked to describe the issues and circumstances in their own words. There were 58 separate comment occurrences described by the tenants. The largest category of comments regarded a dispute with the lessor or agent, and most commonly the managing agent. The types of comments included the following:

- Disputes about alleged rent arrears (such as different calculations about amounts and date paid)
- Interference by the agent with tenant's quiet enjoyment
- Unreasonable or unlawful entry by the agent
- Disputes about the use of the land subject to the tenancy agreement
- Disputes about the lack of definition of about the term 'reasonably clean' in the Act
- Disputes about the terms of the tenancy (for example, the use of rural land)

- Disputes about water billing being deducted from rent payments
- Intimidation by the agent including being threatened with a Notice to Leave and coercion to sign new a lease at threat of eviction.

Two of the seven Indigenous households in this study reported (unsolicited) feeling discriminated against on the basis of their race. In one case the household was living in two separate rooms of a boarding house being unable to rent a house together as a family. The tenant reported ongoing intimidation by the agent, who spied through the windows of her rooms. When she was asked why she thought this was happening, she said, "Well I'm Aboriginal ... what do you reckon?" The other case was a Torres Strait Islander family (with seven children) who were breached for rent arrears following the agent unlawfully taking water usage charges from her rent payments. Her story follows.

Case Study I – Agent's non compliance with legislation – taking water charges from rent

The tenant lives with her husband and seven children in Cairns, North Queensland. She was born in the Torres Strait Islands and the principle language spoken at home is Creole. She had been working full time prior to the eviction situation.

The tenant lived in the property for two years. Apart from the move from this property, the tenant had moved once in the past two years. The tenant was on a 12 month fixed term agreement and paying \$320 per week in rent.

The issue that gave rise to the eviction was that the agent, unbeknown to the tenant, was using the rent money to pay water charges. This led to a situation of alleged rent arrears. The tenants said, "The real estate agent was taking money out (of rent payments) to pay the water, they knew it would push me into arrears. I got two notices to remedy and then a Notice to Leave and order to appear at a court hearing (Tribunal). They were trying to find a way to get me kicked out of the house." She added, "The agent knew that we'd pulled out all stops to pay the bills but she still wanted a WOP." By the time of the hearing the tenant had paid all the money owing (including the water bills). The agent did not attend the hearing and no orders were made against the tenant.

The stress of the threatened eviction had gone on for over a year. The tenant felt that relationship with the agent had deteriorated further following her failed attempt at a being ordered a WOP. Finally the tenant gave a Notice of Intention to Leave. The tenant reflected, "I needed to find a way out of this (situation)." Unable to secure a new rental property, due to receiving bad references, a friend's sister helped find them a new home. The tenant arranged a loan from Centrelink, paid all the rent up-to-date and enlisted the support of her extended family to move. The bond was not returned. The family moved to a smaller house that was close to shops, services and hospital.

The financial impact on the family has been significant, however the greatest impact the tenant identified was the disruption to her family. She spoke about the stress of having to tell her children that they had to move. She said, "I had tears in my eyes when I got the first Notice to Leave... and seeing the look on my kids' faces when I told them, they said 'Mum, where are we going to live now?'"

The tenant commented that the family's forced move could have been prevented had the agent provided the water bill instead of taking it out of the rent.

In this case the agent was not compliant with the law by deducting water bills from rent (under S96 of the Act, rent cannot be applied for another purpose).

Nearly 20 per cent of the tenants reported that a dispute with the lessor or agent was an issue at the time of the eviction. The relationship between the tenant and the lessor (particularly the real estate agents) was a point of much comment in the interviews. Unsurprisingly, as discussed earlier, tenants identified a decline in rapport with the lessor or agent over time (dropping from 76.7 to 14 per cent of tenants rating the lessor as either helpful or professional at the start of the tenancy and then after the eviction issue arose respectively).

The second largest category of comments was about issues relating to outstanding requests for repairs and maintenance. The issues included situations such as, house flooding during downpours (when the agent would not acknowledge the problem and therefore the lessor did not remedy the issue) to tenants moving into substandard properties on the promise of repairs being done (and no housing standards in Queensland to guard against the letting of sub-standard houses). The following case study provides an insight into one tenant's experience of frustration with regards to housing standards, maintenance and repairs issue.

Case Study II – Dispute with the agent over maintaining housing standards and bad verbal references

The tenant is a woman who was living with her partner in a house in suburban Brisbane for two years rented through this agent for \$350 a week. The tenant was permanently unable to work at the time of interview.

The lower floor of the house had become inhabitable due to repeated flooding, which started in May 2010. It was pooling in the store room where the tenant had furniture and storage boxes. The agent would not acknowledge the flooding problem. After trying to work through the issue with the agent, the tenant issued a Notice to Remedy to the lessor in October 2010. The tenant contacted the Council about the building and health issues (mould specifically).

She received a Notice to Leave without ground at the end of the lease. The notice was received after a long long battle with the agent over the damage caused by flooding to the tenant's property.

The tenant had great difficulty finding a new property following the eviction. In the two-month notice period, she received 20 rejections on rental applications. Finally she contacted the RTA who advised her to withhold the lessor's name from her rental applications and to use references from her previous tenancy. Following this advice she was able to secure a property but not without having to apply to the Tribunal for a one week extension to the lease to prevent her from becoming homeless.

The tenant felt that the situation could have been prevented and eviction averted if the agent had addressed the flooding problem. She also said that her appearance at the Tribunal to request an extension was only necessary because the agent was giving bad verbal references to prospective agents preventing re-housing.

Had the tenant sought advice earlier, a claim for compensation for damages could have been made. Also a case for retaliatory eviction could have been made, as an agent should not be able to use the Notice to Leave without grounds provision to remove a tenant who is exercising their rights (i.e. asking for repairs). This case highlights the need for more transparency around verbal references given by agents on rental applications as well as the need for clearer minimum standards for rental housing along with prompt advice available tenant services.

In cases where repairs and maintenance issues had been outstanding for long periods of time (in one case since 2009) tenants noted that the relationship with the lessor deteriorated. Several tenants also mentioned feeling intimidated by agents following, repeated but unattended to, requests for vital repairs and maintenance. Several tenants who found they were living in properties that were put on the market commented that repairs and maintenance were not being done once the property was for sale. Many tenants reported being given a Notice to Leave (often without ground) but sometimes for other reasons, including alleged unapproved occupant or alleged breaches (such as, noise disturbance, cleanliness - derelict car, after requesting repairs).

A significant development, pertinent to the discussion about repairs and agents' responses to those requests, occurred recently in Queensland. It has brought to government's attention the need to assess the standard of rental properties and the appropriate conduct and responsibilities of agents. The issue of housing standards and lessors' and agents' conduct, has long been considered factors that are often tied to evictions, most especially those where there is no breach by the tenant to the terms of the tenancy agreement.

An inquest was held into the death of an infant who child dropped to her death out of her father's arms as he fell through rotten deck flooring. The Coroner concluded that the child's death could have been prevented if there were better property management practices and better standards for rental properties. Following the inquest, she made recommendations to the Queensland Government and industry groups, for improvements in property standards and inspections. She also made recommendations for improvements in property managers' training and agents' practices. A full list of the Coroner's recommendations at Appendix 1.

The third largest category of comments involved rent arrears. Tenants commented about the circumstances that led to actual arrears, the main one (in five instances) was loss of work leading to being unable to afford the rent. One tenant reported their own mistake in rent payment which led to a QCAT hearing but was resolved with an order for a rent arrears payment plan to be drawn up. A couple of other tenants reported disputes arising with the lessor about alleged arrears. Both cases resulted in disputes that required resolution by the Tribunal, where determination was made against the agent, finding the agent at fault of rent miscalculation.

Two tenants found themselves in situations where the mortgagee was repossessing the property due to default by lessor. In addition to those households, other tenants found themselves receiving a Notice to Leave because the new owners wanted to move in. Whilst tenants who had taken up the tenancy on the basis of a long-term rental found they were unable to leave (under the terms of the fixed term agreement) once they discovered that the security of a long-term rental was threatened by the property being placed on the market (with the real possibility of the owner wanting to move in or to place another tenant, of their choice, in the property).

There were several reported occurrences of tenants feeling forced to sign a new lease months prior to the end of the current lease. This became a problem for people who wanted to move, were waiting for work elsewhere or wanted to have the option of moving following the expiration of the current lease. The following case study reveals the experience of an elderly tenant who reported feeling coerced to sign a new lease under threat of eviction.

Case Study III – Agents’ practice of compelling tenants into signing new leases under threat of eviction.

The tenant is 79 years old and is living alone in a flat in Eagleby where he has lived for 12 years. The block of units is degrading. The tenant (along with other tenants on the site) thinks the flats are marked for redevelopment as the owner is currently building new units next door. The owner was not doing maintenance on the flats (including plumbing, water in the shower is pooling, and rusting gutters where vegetation is growing).

The tenant reluctantly signed another lease for 6 months following the agent telling him that if he did not sign a lease he would be given a Notice to Leave without ground with just two months notice. The tenant asked for a periodic lease as this would have provided him with flexibility to relocate should he find a suitable and affordable property. However, he felt coerced by the agent to sign the fixed term lease even though he had been told by the owner previously that he did not have a fixed term agreement.

The tenant felt threatened and upset by the real estate agent's coercive behaviour. He wants to move because he knows that even if he was offered a place in the new development the rent would be much higher than he can afford on his pension. He said, "I couldn't find a way out of the problem. I wanted to move but I haven't found another suitable property. But the agent keeps tying me up in six-month leases. I haven't got the money to cover double rent whilst the current lease expires. I'm on a pension and my options are limited because I can't pay \$300 a week rent."

The tenant felt to be in a no win situation. Since he has signed a 6 month lease he will not be able to leave and if he did find a new property tomorrow, the agent would have trouble re-letting the current property because no maintenance was being done and the tenant would be stuck with break lease costs.

The tenant thought his situation, of being forced to stay in the property, had been created by the agent coercing him to signing a new lease under threat of eviction rather than being allowed a periodic agreement where he would be better off as he could give two weeks Notice of Intention to Leave at a time that suited him, following locating a new home.

The agent's practice of using their authority to compel or coerce tenants to signing new leases under threat of eviction is commonly reported. Greater flexibility around notice periods (especially at the end of the lease) would be significant in terms of facilitating people to establish a new tenancy without incurring break lease costs.

One issue that is highlighted in this case study is the apparent power imbalance between the lessor and tenant. Changes to agency practices over the last 15 years have meant most tenants are required to remain on fixed term contracts. The motivation is unclear, but whatever it is, there seems to be an additional incentive to keep tenants in fixed term agreements. In these circumstances, tenants are faced with balancing the costs and merits of the new property. If they find a property early in the (two month) notice period then they will be up for rent to the end of current lease. Many report living in fear that another suitable property will not be found nearer to the lease expiry date. If they choose to wait, they may end up holding over in the property, which can lead to long term impacts on their future rental prospects and tenant database listing.

Several tenants also made specific comments about being bewildered and confused with regards to receiving a Notice to Leave when they did not think the property was going out of the rental pool. These were all cases where Notices to Leave without ground were issued (in this research 40 per cent of participants received a Notice to Leave without ground).

The following table is a summary of the issues giving rise to the eviction situation as gathered from an open ended question. It presents a categorisation of the issues (total of 58 reported) and the number of times they were reported by tenants.

Issue	Occurrences of reporting
Dispute with REA ... about <ul style="list-style-type: none"> • rent paid/due • use of land on rural property • definition of 'reasonably clean' in Act • improper billing for water • entry by lessor • terms and conditions of tenancy • intimidation by lessor or agent • interference with quiet enjoyment by lessor 	20
Requests for repairs and maintenance outstanding	10
Rent arrears (not directly relating to loss of work/income)	7
Loss of income (resulting in an inability to pay rent)	4
Feeling forced to sign a new lease by agent/lessor	3
Being issued with a Notice to Leave for no reason known leaving tenant bewildered and confused	3
Property uninhabitable due to structural damage and illegal use as residential living	2
Lease due but tenant (in student accommodation) unaware because away at time	2
Being accused of disturbance – noise and neighbourhood issues	2
Tenancy data base (TICA) listing leading tenant to be forced into marginal housing with lesser security and poor amenity	2
Alleged unapproved occupant	2
Owner wanted to move into the home	1

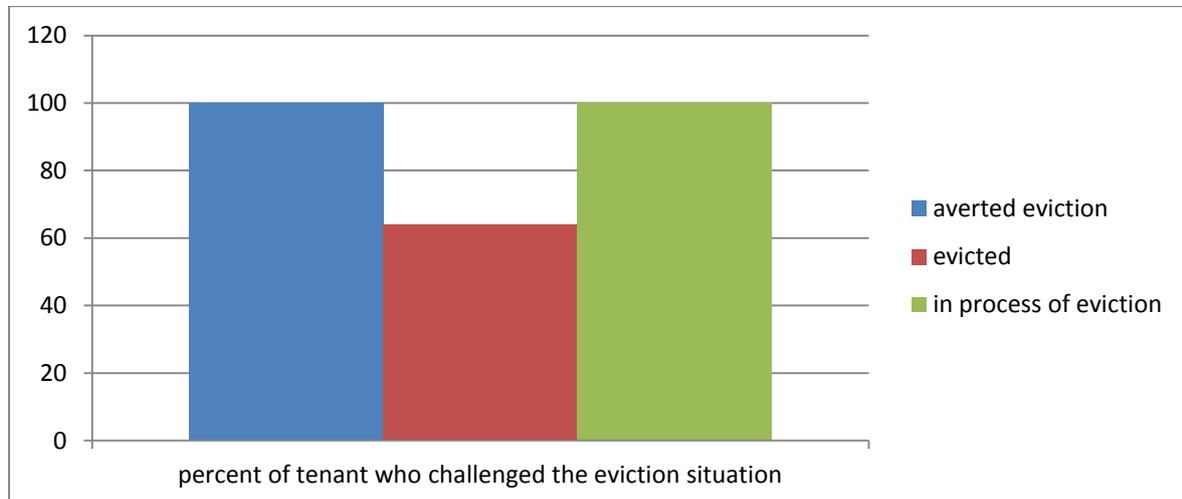
The above table highlights the prevalence of disputes with the lessor and the prevalence of unfulfilled requests for repairs and maintenance that featured in these eviction situations.

Challenging the eviction situation

As all tenants had contacted the Tenants' Union for advice about issues associated with the eviction situation, their reasons for contact included clarifying their rights, the legality of the notices or lessors' actions and support to mount a challenge. Approximately 84 per cent said they had challenged the situation. All tenants who managed to avert eviction said that they had challenged the situation. Nearly 90 per cent of the tenants, who were still in the process of being evicted, were challenging the situation at the time of interview. A fewer number of those tenants who were

evicted at the time of interview (9 of 14 evicted tenants comprising approximately 64 percent) had challenged the situation.

Figure 21: Tenants who challenged the eviction situation compared with tenants' eviction status at the time of interview



The most common action of the tenants, who reported disputing the situation, was to challenge a managing agent. Six (17 per cent) went to the Tribunal with their challenge (that is, made a formal challenge) whilst three tenants (eight per cent) requested payment plans to support them to rectify rent arrears to avoid eviction. Many accessed the dispute resolution procedures through the Residential Tenancies Authority. Others sought assistance from the Tenants' Union to support them to mount their challenge. Only one tenant reported taking the dispute to QCAT to argue retaliatory eviction (on the basis that the tenant had argued with the agent about the tidiness of a carport - the meaning of keeping the property clean in the Act - prior to receiving a Notice to Leave).

A significant number, 17 per cent of tenants, felt powerless to act to change their situation and did not challenge the eviction. Some of these tenants commented about their feelings of powerlessness (even if there were grounds for challenge) and are as follows:

- "I wrote to the real estate agent requesting a time extension to establish a payment plan but the agent did not respond. I did not follow up as I felt it was hopeless."
- "I felt he (the lessor) had all the power. When I could not negotiate more time to move (with the agent directly) I contacted the Tenants' Union and they helped me to prepare a request for conciliation (through RTA) to have more time - another week and quiet enjoyment of my property. No three-way conciliation was offered (by RTA)." (Note: The dispute was then dropped by tenant.)
- "I felt too intimidated to challenge the real estate agent."
- "I want to keep in the lessors good books because I might need references (for the next property). I called the Tenants' Union about my rights because I was terrified I would have to leave within 24 hours, as dictated by the lessor."
- "(After receiving the Notice to Leave) I just focused on trying to get another property. I didn't call the Tenants' Union until I was getting desperate to find a house after I found out I was receiving bad references (on my rental application) from the agent."

- "I asked the property manager for a copy of the bill (water bill). The request was ignored. I haven't pursued a Form 16 (Request for Conciliation) for fear of retaliation (by agent)."

The following case study provides an example of a tenant who challenged the agent about alleged rent arrears and then lived in fear of being evicted without reason or ground as a consequence of challenging the authority of the agent.

Case Study IV - Dispute with the lessor – alleged rent arrears, although the agent did not provide a copy of rent ledger within 7 days.

The tenant is a middle aged man living with his partner and children in North Queensland. At the time of interview, the tenant was living in a unit for six months, rented through an agent on a fixed term agreement.

The tenant had received a Notice to Leave on the grounds of rent arrears.

In May 2011, the real estate agent alleged that the tenant was in arrears and issued a Notice to Remedy. The tenant's records indicated that he was not in arrears and attempted to contest the discrepancy with the agent and asked to be sent a copy of the rent ledger. The rent ledger was not provided to the tenant by the agent. The agent ceased to respond to the tenant's telephone calls to resolve the issue.

The tenant also made repeated requests, to no effect, to have repairs and maintenance done to the kitchen.

The tenant contacted the Tenants' Union and proceeded to make an application to the RTA for dispute resolution. The agent's rent ledger was found to be incorrect. The Notice to Leave was overturned and the agent was ordered to correct the rent ledger.

The tenant now fears being evicted under the Notice to Leave without ground provision in retaliation for challenging the agent in the Tribunal. The tenant is extremely concerned about the costs of another move, he said, "Every time you have to move it sets you back ... removalists, utilities connections, bond, and rent in advance - you need \$4000 to move." He also mentioned the issue of notice periods noting that they were too short to support moving to an appropriate new property.

The tenant asserted that the whole issue could have been averted were he provided with the rent ledger earlier.

Under law the agent should have sent a copy of the rent ledger within 7 days following tenant request, or as a minimum sent the rent ledger with a Notice to Remedy for rent arrears. This case is potentially an example of retaliatory eviction - as the rent issue had occurred early in the tenancy but the agent did not raise the issue until some months later, when the tenant insisted that the lessor address outstanding kitchen repairs.

Any discussion about the reluctance and capacity of tenants to challenge eviction situations needs to be considered within the context of the ultimate power in the Act's provision for no fault evictions, at the end of lease, gives the lessor. As one tenant issued with a Notice to Leave without ground two months before the end of lease said, "I called the Tenants' Union to check the (legality of the) notice I'd been given so I knew that I couldn't challenge it."

3. Preparing to move from the eviction dwelling

Not all tenants in the research group were preparing to move at the time of interview. 27 of the 43 participants (63 per cent) in the research study were either already evicted or resigned to the eviction (but still in the process) at the time of interview. Those tenants, who were preparing to move or had already moved, responded to the questions in this part of the study.

Whilst eviction is a forced move, against the wishes of the tenant, sometimes it is the tenant who takes the initiative to move prior to the actual eviction. Tenants may feel forced to move due to changes in the condition of the tenancy or property (e.g. the property has gone on the market undermining security of tenure; the property is not being repaired and posing risks to the tenant's household). Nearly 50 per cent of the 27 respondents to this section said that it was the lessor's decision for them to move, whilst 22 per cent said it was their own decision in response to not being able to enforce their rights. Another 28 per cent of respondents identified that the decision had been made by a party other than themselves or the lessor (that is, mortgagees of rental property, council or others).

At the time of interview, 24 tenants had reached the point where they recognised that they had to move. The other nine were still disputing the situation, negotiating to stay, trying to resolve the issues or negotiating rent arrears payment plans.

Nearly 60 per cent of these tenants decided to move when the lessor gave a Notice to Leave whilst approximately 17 per cent had issued the lessor with a Notice to Leave. In addition, 25 per cent of the households decided to leave when they received notices from a solicitor or council or verbal notice from the lessor.

In preparing to move, many tenants (approximately 25 per cent) reported doing everything they could to avoid long term impacts, in particular, bad references from the agent or a tenancy database listing. The following comments reveal the attitudes of tenants trying to prevent potential bad references that would negatively impact on their short, medium and long term rental prospects.

- "Because I was anticipating bond issues, I gave 2 weeks' notice, I cleaned thoroughly – (I) got all (my) bond back."
- Another tenant being evicted, in a Mortgagee in Possession case, reported going into credit card debt to ensure he would not be in arrears when leaving the property. He said, "I didn't want the debt sitting there and (I) was fearful (if he was listed on TICA) that it would impact my rental application (on a new property)."

Only two tenants reported foregoing paying their rent (on the eviction property) in order to secure a new property. One of those tenants said, "(I) haven't been able to pay rent on current place as I just had to pay \$900 on Bond and rent at a new place. Now I will have (rent arrears) debt."

Another tenant reported that in preparing to move, all her decisions were motivated by trying to guard against being given bad references by her managing agent. However, she was very disappointed when, due to the financial strain of moving, she had to rely on the Bond to cover carpet cleaning and pest control. She said "That will mean she (the agent) will now tick the box that says ... 'didn't get the Bond back' – (it) could affect (my) rental prospects... (I am) not sure yet.

Hopefully, (I) will be able to afford to catch up rent on my current (eviction) place as well as pay rent on my new place."

Four tenants (in cases of no grounds terminations at the end of the lease) reported overstaying the lease on the property as they had nowhere to move to. A considerable number of these were households with children who could find nowhere to move to. They explained:

- "I couldn't move out on time - as I couldn't find a new property."
- "I applied to QCAT for (hearing on the grounds of) retaliatory eviction and (if successful) it may extend (the) tenancy; It is not clear that we're moving yet. I am looking for a six month extension."

Another young woman found she had nowhere to go with a critically ill child, and had little support to recover the situation or make an orderly move to another property. Her case is discussed below.

Case Study V - Rent arrears leading to homelessness

The tenant is a young woman from New Zealand living with her husband in Brisbane. She had lived in the property for just under 12 months. She was working at home duties and her partner was working full-time up until he lost his job (held for seven years) . Following her husband's loss of work they lived off their savings for two months and gradually fell into rent arrears.

At the time when the tenancy situation became untenable the tenant was seven months pregnant. The baby was diagnosed with a heart condition which required urgent surgery following birth.

Previous to the move to the eviction dwelling, the family had been living in another property for 11 months and had only moved because the owners were selling the property. Her relationship with the previous lessor and agent was so positive that the owners had assisted them to move.

The tenant received four Notices to Remedy for rent arrears between December and May 2011. She also received a Notice to Leave in May. At that stage, the family had nowhere to go and wrote to the agent requesting a payment plan (to restore arrears) and an extension of time to find a new property. The agent did not respond to the tenant's requests. The tenant borrowed money from family and friends but it was not enough to keep the tenancy. The tenant felt utterly powerless to influence or change the situation. The agent provided prospective agents with bad references on the tenant's rental applications and also threatened them with the tenancy database listing, effectively preventing their rehousing.

Soon after the tenant delivered the baby she moved out of the property and stayed with her parents until she went into hospital with the baby to have the heart operation. Her partner was left couch surfing at friends' places. Post successful surgery, the hospital social workers told her that the child could not be discharged from hospital without a stable home - in which case the child will be placed under 'child protection' by Child Safety. Finally, after much searching and support from social workers and other agencies, the tenant and her family moved into temporary supported accommodation.

The most significant impact that tenant identified, apart from becoming homeless, was the added stress of eviction at a time of significant distress, she said, "There was just too much pressure with the child's surgery, and our housing crisis as well as our financial crisis. I became depressed."

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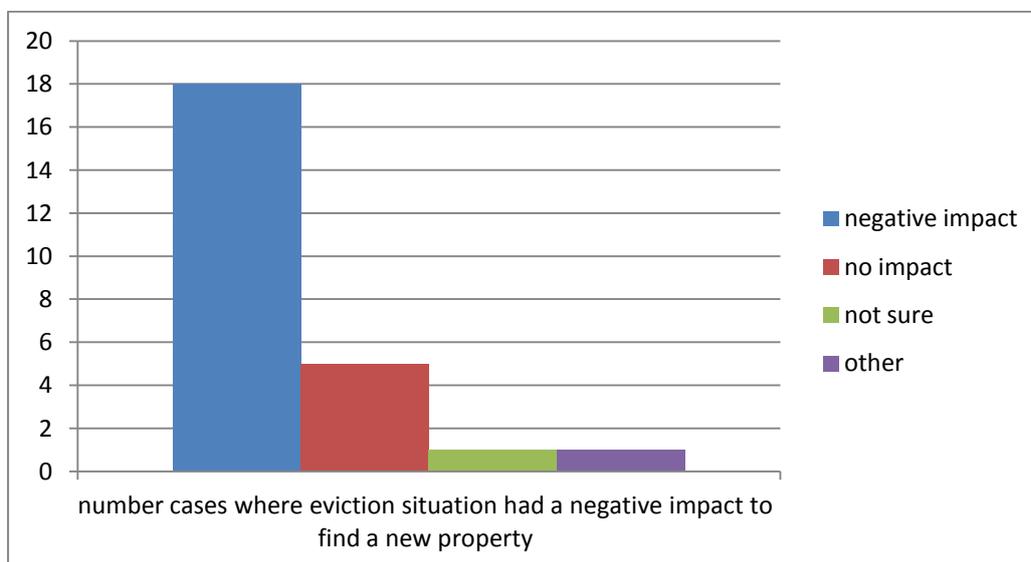
The rent arrears situation could have been avoided had the tenant been able to access financial relief and establish a payment plan to address arrears. Earlier assistance from a homelessness prevention program may have helped support the family through the financial crisis. The tenant also felt that better communication from the real estate agent would have lessened the stress impacts on their household.

Looking for a new place to live

When tenants were searching for a new property, the majority contacted real estate agents directly or online. Just over a third of the tenants contacted the Department of Housing or other social or community housing organisations for accommodation. A few tenants reported contacting support services, such as, supported housing organisations, Centacare, or a hospital social worker. Over a quarter of the tenants used informal methods, such as, noticeboards or contacting self managing owners. In cases where tenants had either a tenancy data base listing or were receiving bad references from the managing agent, which was preventing them accessing housing, tenants reported seeking accommodation through self-managing lessors, informal networks such as enlisting the help of friends and family to find a new property.

Over 70 per cent of respondents who were looking for a new property felt that the eviction situation had had a negative impact on their ability to find a new place to live as shown in the figure below.

Figure 21: The impact of an eviction situation on finding a new property



Many tenants, even those who were being evicted without ground, reported that their biggest issue in securing a new property was agents giving them bad references. These were mostly verbal bad references given when another agent was assessing their rental application on a new property to relocate to. The comments below provide an insight into the impacts of bad references from agents on tenants looking for a new home.

- “Yes (the bad verbal references did have a negative impact). Now we are only in temporary accommodation (following eviction)... the bad references and threatened TICA listing from the real estate agent has had a negative impact.” (A case of dispute over vital repairs not being attended to over a six month period. Tenant given Notice to Leave without ground)
- “The real estate agent was giving (us) bad references. I had rejections (on my applications for rental properties) straight off.” (A case of dispute over repairs. Tenant given Notice to Leave without ground)
- “(We received) bad references from our real estate agent due to damage caused by a "break in" (police reported and attended) which the agent blamed on us ... as well as our rent arrears (having a negative impact on finding a new property)”. (A case where the tenant had also had rent arrears)
- “We could not get a rental in that community (tenant had made 10 applications to every other agent in town) ... as the real estate agent was giving us bad references.” (A case of dispute over alleged arrears where the Tribunal found in favour of tenant)

Even though most tenants in this research had received a Notice to Leave without ground, approximately 60 per cent said that the eviction situation still had a negative impact of their ability to find a new property – even though ostensibly there was no reason stated in the Notice to Leave.

For those renters who were also subjected to continual bad references, the two months notice period was taken up with making application after application for a new property, often without success. Tenants’ comments below explain the way they managed to finally deal with continual bad references that were preventing them from accessing a new home.

- “I used references from my previous tenancy because I had a printout of a rent ledger and their (previous agent’s) details.”
- “I only found a new house after two months of searching. Eventually I found out (after many knock backs) that the real estate agent was giving us bad references. Finally, after much frustration, I got told by Residential Tenancy Authority advisor not to put the real estate agent's name on (rental) applications... so we were told to lie about our address! We put down our previous address and agent. After that, we started get offers from agents!”

The following case study exemplifies the impact of bad references on finding a new property following a Notice to Leave without ground, issued after a battle with a lessor over repairs.

Case Study VI - Repairs dispute followed by a Notice to Leave without ground

The tenant is a single parent with four children (eldest is 14 years old) living in Nambour for the past six months after moving from Brisbane following a marriage breakdown. Her income base is child-support supplemented by a government payment. She had intended to stay in the property indefinitely.

A number of repairs issues had been outstanding from the start of the tenancy. The tenant raised these issues often but had never issued a Notice to Remedy to the lessor for fear she may be evicted, for pressing the owner on repairs.

An incident occurred when her child accidentally smashed one pane of a glass sliding door. She made an arrangement with the owner to pay the insurance excess. The owner then pursued her for replacement of the other door panel to safety glass. She refused to pay this extra cost. She was issued with a Notice to Leave without ground.

The tenant was in the position of having to quickly find a new place to live. She was in financial stress as she needed to pay bond and rent in advance on a new property (she feared that the bond would not be returned).

The tenant's applications for a new property were badly hampered by the agent giving bad references to prospective agents. The tenant said, "(the agent) giving bad references was making it impossible for us to get another property. The agent could have said, 'the tenant's rent payment record is pretty good', or she could have said, 'the owner of the property is pretty hard to get on with regarding repairs'. But she didn't say that, she just gave me bad references."

Following so many knock backs on her rental application the tenant finally found a property (with less amenity and higher rent) that was large enough for her family. However, the property was a distance from town where the family felt much worse off in terms of transport and school accessibility.

The eviction situation could have been averted if the repairs were attended to on the property in the first place and if the lessor did not seek to extract an unreasonable amount of compensation from the tenant for the window replacement.

The tenant was very distressed about the disruption the eviction had on the children, in particular, her 14-year old daughter who was stressed by the diminished access to her regular school and social activities.

This was a potentially a case of retaliatory eviction in response to the tenant asking for outstanding repairs to be done and disputing the lessor, about his request for compensation for damages. Also, it is important to note the agent's role in giving bad references made a big impact on preventing the family from rehousing successfully.

In addition to receiving bad references on new rental applications, the time frame to find in new property also presented a major concern for some households, as the following comments demonstrate:

- "I am so busy with work and Uni and mothering it's hard to find the time to find a new property." (Young woman who is a single parent working and studying who was evicted following a Council order on property as an illegal dwelling)

- "The time frame is too short ... having to do it by myself is running my health down again."
(Single parent with four children)
- "No time to get the right property for us. This change in circumstances when I'm busy at work – and pressure to make a decision in a hurry and I haven't got the capacity to plan." (Couple with two children)
- "The time frame is impossible."

Tenants reported that a forced move does not allow time for planning and saving money to fund the move. The costs associated with moving put severe financial strains on most of the households in this study. Many tenants commented that they could not afford to pay the rent on their current property until the end of the lease, as well as, find money for a bond and rent in advance on the new property. The financial challenges created another set of negative impacts. These will be discussed later in the chapter.

Apart from those tenants who had received a Notice to Leave without ground, 90 per cent of the people who had received another form of notification (including being threatened with or receiving a verbal Notice to Leave, notices for unremedied breaches, news of Mortgagee in Possession and notifications of uninhabitable property) said that the eviction situation had made it difficult to find a new home.

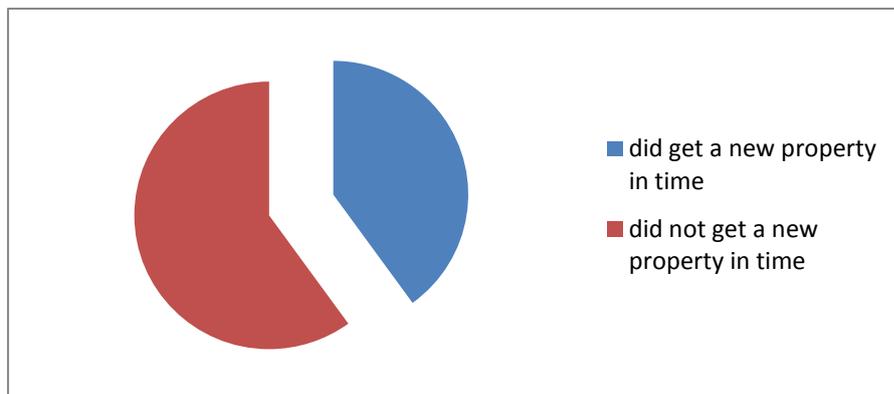
In the incidences where tenants said there was no negative impact from the eviction situation, those tenants reported that the agents were supportive in finding them a property. This was so in the cases of the Mortgagee in Possession situations, and in the case of the property owner, who had decided to move back into the home, was reasonable about the transition process and timeframes. One tenant reported the agent supporting their case for continuation, following an incident where the owner had entered the property without notice and found the premises untidy, leading to a Notice to Leave without ground after five years of renting. Another tenant reported using references and rent ledger from a previous tenancy to mitigate the negative impacts she feared from the current agent, following a dispute about the agent's non-compliant water billing practice.

The remaining six tenants, who had received a Notice to Leave without ground, were not looking for a property, at this stage, because they were still in negotiation with the lessor, in conciliation with RTA.

4. Moving out of eviction property

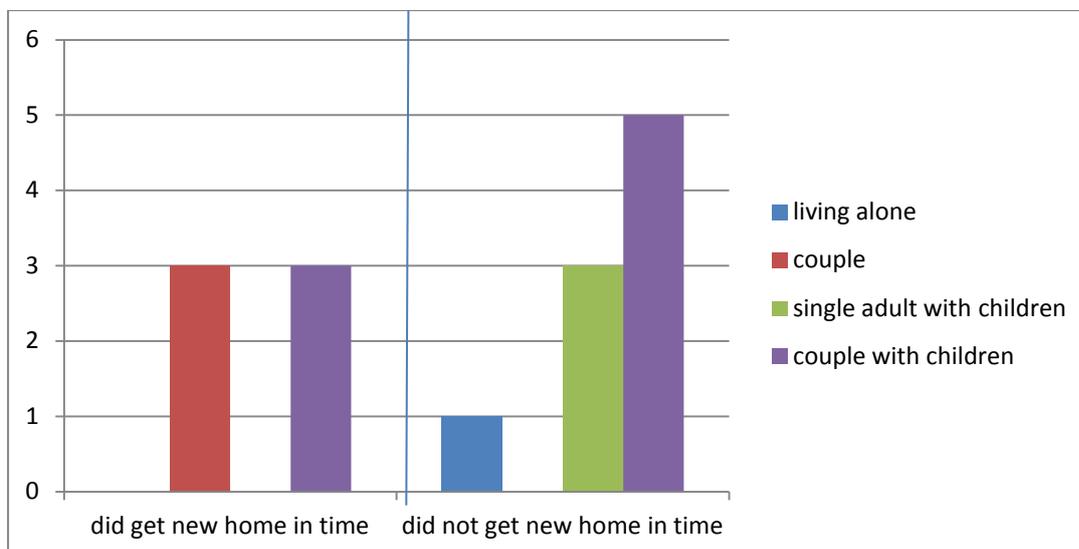
In the cases of the tenants who had already moved, at the time of the interview, 60 per cent said that they did not get a new home in time, that is, before they had to move out of the eviction dwelling.

Figure 22: Securing a new property in time before you had to move



The majority of households who did not get a new home before they were evicted were with households with children.

Figure 23: Composition of households who did and did not get a new home in time

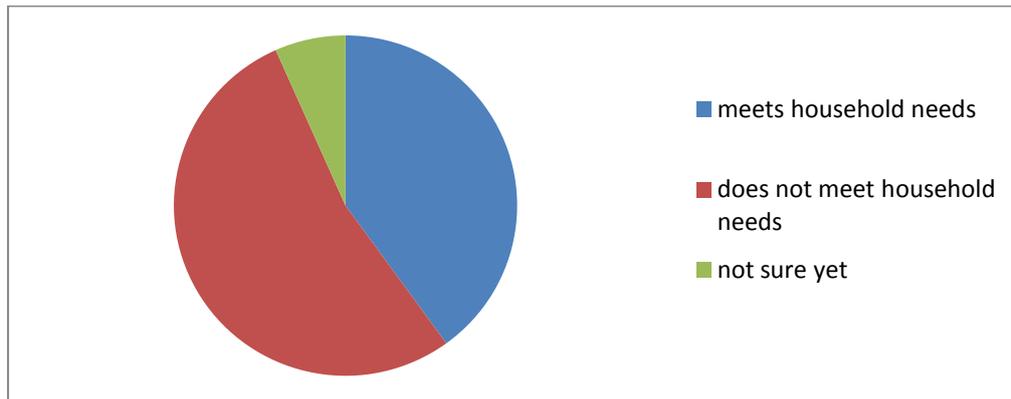


Two of the three Aboriginal and Torres Strait Islander families (who had moved at the time of the interview) did not get a new home in time. The other family moved in to an unaffordable rental property (whilst waiting for social housing) from which they were expecting to be evicted. This was due to what they saw as inevitable rent arrears resulting from unaffordability. Half of the overseas born tenants did not get a new home in time. This family, who moved into an unaffordable rental property, whilst waiting for social housing, reported that they did so to keep the family together. They were fearful of being separated from each other as this had happened in the past.

Over half of households had moved temporarily. Three of those households moved into emergency housing whilst another three households moved in with family members. In one of these situations a woman with young child was forced to move from share housing back into her ex-partners home where he was residing with his new partner.

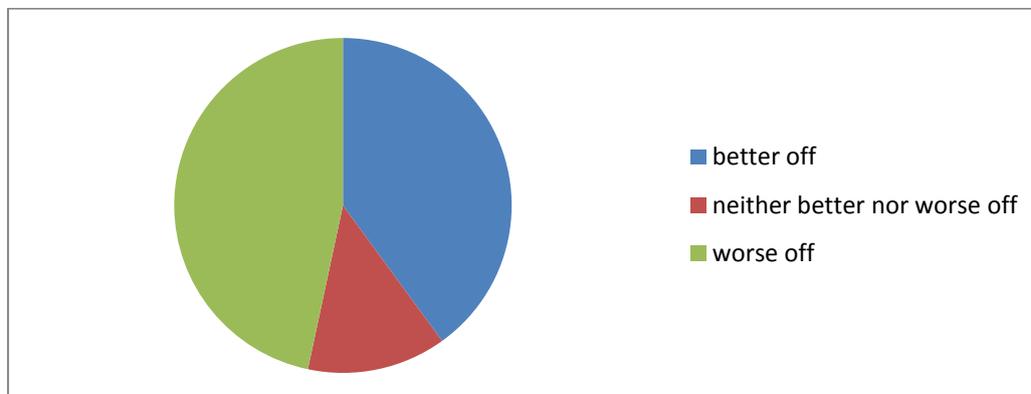
Over half of the evicted tenants, who had already moved out the eviction property at the time of interview, said that their new home did not meet their needs.

Figure 24: New property meeting household needs



Just over half the evicted tenants who had already moved to new premises felt they were worse off since the eviction.

Figure 25: Households better or worse after moving



One tenant who felt she was much worse off said, "I am bewildered by the whole process and am worried about TICA (tenancy database listing)." Another tenant who couldn't find any accommodation, in his long term community, due to bad references said, "(I) ended up getting desperate and took a property in another town. Now we are 20 minutes from (my) parents which is too far to support my mother (who is ill)". Another tenant, who was in receipt of sickness benefits and his wife, a disability pensioner, commented on the financial burden of moving, "(I have) no way of getting back to that (previous stable financial) position." Many of the tenants also commented on the higher rent of the new property and the strain of the cost associated with the move.

A couple of tenants that said they were neither better nor worse off following the move from the eviction dwelling. One tenant said, "(I am) still waiting for Department of Housing - priority housing

and getting further in debt," Another tenant commented that, "The place I was in was 'hell on earth', so it's better to be away from it, but this is not permanent and it's expensive".

Several tenants commented that they were better off following the move. One tenant commented, "We are better off because it's a better location and a better house. However, we were worse off because of the financial strain." Another tenant felt that their household was better off following the move said, "It's compact but okay. It's close to shops services and the hospital ... all in walking distance." Another tenant commented about how the new property was cheaper to rent and that the house and facilities were better.

Of the 15 households who had already moved at the time of the interview, most (60 per cent) received assistance to move from family and friends. Only five households reported that they had received financial assistance, the sources being charities, money gifts from family, loans from family or loans from Centrelink.

Tenants were also asked to identify the challenges or barriers they faced in finding a new home. Most tenants raised the issue of the costs associated with raising the money to move (bond, rent to the end of lease on current property, rent in advance for new property, bond cleaning and utility connections and removal costs). Nearly half the tenants reiterated the barriers created by bad references from the managing agent of the eviction property. Other challenges and barriers identified included the short timeframe to find a new home, personal or family needs and issues arising at the time of the eviction and lack of housing, including social housing options. Several tenants or members of their household were experiencing health issues that were exacerbated or complicated by the eviction.

Tenants identified the people, including friends and family and organisations, including social services such as St Vincent de Paul, hospital social workers, supported accommodation organisations, family service organisations, Centrelink and Centacare as having provided assistance to deal with the barriers and challenges to finding a new home. Over a third of the tenants identified the support of tenant advice services (TUQ and TAAS) in dealing with the barriers they were facing.

Some tenants (60 per cent of those who had relocated) identified assistance they wanted or needed but did not receive to address housing need and the financial strain they were facing as a result of the eviction. The types of assistance included accessing housing that they could afford, Department of Housing – social housing as a priority or being housed and allowed to continue to pay their existing Department of Housing debt, or emergency housing (in cases where they could not get a new home in time). A single parent with four children said she needed practical help to get the cleaning done, whilst another tenant wanted support to successfully claim back the bond on the eviction property.

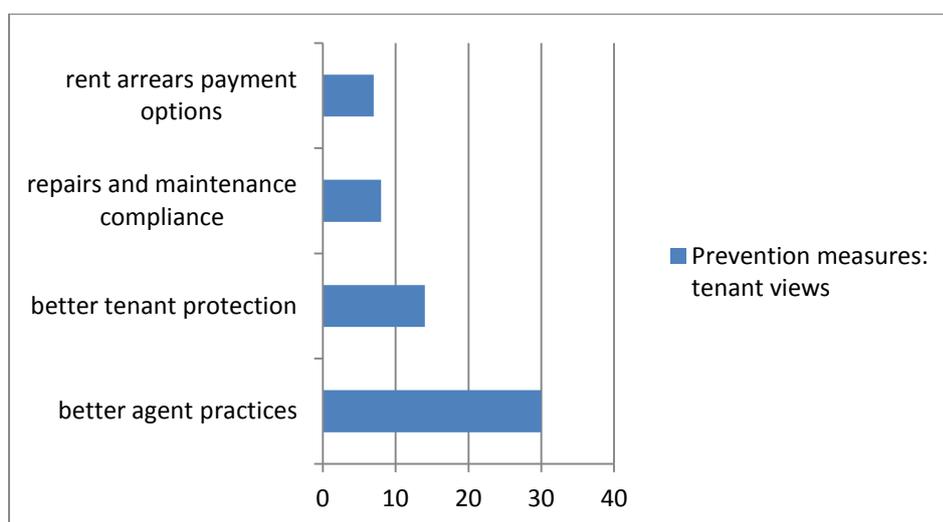
5. Overall reflections on the eviction experience

Both tenants and Tenants' Union staff were asked, at the end of the interview, to reflect on what could have been different to prevent each eviction situation.

Tenant perspectives on what could have prevented the eviction

Tenants identified nine categories of circumstances or measures that could have prevented the situation. The top five factors were: the practices of real estate agents; better tenant protection; lessor compliance (under the Act) with requirements for repairs and maintenance; and better options for rent payment and addressing arrears.

Figure 26: Preventing the eviction – tenant perspectives



Several tenants also identified removing the provision, under the Act, for Notices to Leave without ground. One tenant who had their tenancy terminated (i.e. evicted) for no stated reason commented as follows, “the lessor or owners should have to have grounds for evicting tenants.” Another said, “(the lessor) shouldn't be able to give 'without ground notices', a reason should be given.” Given the high number of tenants, in this study, who were evicted on ‘no ground’, had the question of removing the provision for no ground evictions been put directly to tenants, these types of comments would have likely been more numerous.

Legal provisions for no fault / no grounds terminations can result in evictions in all manner of circumstances, many of which appear in this study, to be unreasonable and avoidable. As was frequently reported by tenants in this study, the ‘no ground’ termination provision has other (perhaps unintended) flow on effects for tenants. Living in fear of being eviction can act as a barrier to tenants pursuing their rights, most especially in terms of requesting vital repairs and maintenance and questioning or challenging the lessor. The risks associated with lessors not making property repairs and maintenance, in a timely manner, can be high, as seen in the recent tragic death of baby Diefenbach (Office of State Coroner 2012).

The other factors tenants identified that could have prevented their eviction included:

- More availability and access to government and community service assistance to address affordability and rent arrears
- Not having to sign a new lease, far in advance (two months) of end of current lease
- If the tenant or their partner had not lost work or income

- If the property had been in better condition (or in two cases of uninhabitable/illegal dwellings).

Other factors and measures to prevent eviction reported less frequently included: tenants having better skills to manage money and household responsibilities; better communication from mortgagees with tenants in cases of mortgagee in possession evictions; and if the tenancy had been managed by a professional/licensed agent.

Some tenants commented about a range of other remedies that would have prevented their eviction, including better tenant protection under tenancy law, in regard to: evictions without ground; better protection for boarders (boarding houses as well as student accommodation); and the need for longer notice periods, between issuing Notice to Remedy Breach (for rent arrears breach) and the Notice to Leave, to allow more scope for repayment of arrears to prevent eviction.

Practices of agents

There were many comments concerning the practices of agents and their role in evictions or rather their role in preventing of evictions. Most properties were managed by professional agents (reflecting the general trend across the state where around 80% of rental properties are managed by agents) and most tenants in this research reported that their tenancy began with a good relationship with the agent/lessor which deteriorated as issues arose and were unresolved. Some of the issues surrounding the eviction were outside the power of agents to influence. However, a significant number of the issues concerned property management practices, which tenants saw could have been prevented by better agent practices.

The following comments from tenants provide some insight into the range of reported negative experiences with lessors/agents:

- One tenant who could not find anywhere to move to said that the crisis, following the Notice to Leave without ground, could have been prevented if the "...agent do not give bad references when there are few houses to rent."
- "The real estate agent said she was coming around because she was concerned about damage (to the property) ... but she didn't inspect the property, she gave me a Notice to Leave on the spot."
- "If the agent didn't breach me unlawfully ... I was too fearful of being evicted in retaliation (for exercising my rights), so I couldn't take this matter to QCAT."
- "If I was given the rent ledger earlier (prior to Notice to Remedy for rent arrears). There is a provision for the real estate agent to issue rent ledger when requested."
- "If (on-site) manager (of student accommodation where tenant and family of four had been living for over 6 months) did not illegally enter property and turn off the power.... The Police are powerless to stop the lessor from entering their property or turning off the power."

One tenant said that whilst the Act allows lessors to evict for no reason the law works against the tenant through the eviction process (even if it was a no fault eviction) or to find a new property. She said, "(if I had been given) another week or two time extension, on my lease, to find another property (following bad references from agent), I wouldn't have had to move into expensive temporary accommodation."

Other tenants commented on the seeming lack of consequences for agents that are acting unlawfully. In the research, several cases involved unlawful practices, for example:

- Water charges taken out of rent
- Not supplying rent ledger within 7 days of written request
- Entering the property without notice
- Turning the power off to tenant's property
- Letting illegal dwellings

There were other cases where the agent was allegedly not acting professionally, or within their Code of Conduct. In several cases tenants reported receiving bad references, even when they had a good rent record, indicating that there was some subjective information being provided by agent which resulted in preventing the tenant from being successful on new rental applications. Another issue, commonly reported by tenants, was agents not returning calls within reasonable timeframes or at all. Some examples of their comments follow:

- "There needs to be more control over what Real Estate Agents can say in references ... giving bad references and making it impossible to get another property. They made it very difficult for me. Where they could have said, ... 'the tenants rent ledgers were not so bad and the property owner is hard to get on with repairs'" (explaining the problems between the owner and tenant about who would pay for the glass for the other door that had to be upgraded to meet building standard following tenant's son breaking one side and paying for half the cost of replacement)".
- "If agent was professional and truthful about rent ... and didn't give bad references on our application for new property. An agent on a power trip can do what he wants."
- "It would have been good if agent talked to us (about their issue)... definitely better communication with agent! The agent was making me look bad ... threatening court etc. when all the time she was breaking the law - taking water money from rent (payments)."
- "If agent had sent water rates notice - stating the correct period, I would have just paid it ... a simple phone call ... and providing a copy of the water bill."

Another tenant commented that agents should be careful not to rent lessors' properties that are illegal or sub-standard, she said, "If the owner did not rent me a substandard property. Also if the agent had made sure the mould issues were fixed, we wouldn't have had as many health problems. The agent wasn't responsible or professional. Agents should make sure there are no legal impediments to leasing. "(In this case the building did not comply with council planning.)

The need for more time to restore rent arrears

Two tenants talked about how their loss of work lead to their eviction for rent arrears, as follows:

- "If I didn't lose work (we would not have been evicted). There should be more lee-way in times of hardship ... there wasn't even seven days lee-way to pay the rent."
- "The eviction could have been prevented if I didn't lose work and my income. Also if I had a better credit rating to cover down time between jobs. If you have paid two weeks rent in advance, there needs to be more leniencies to catch up arrears. Maybe, also government assistance and a rent payment system to relieve arrears could have helped."

Another tenant talked about the importance of being able to access an extension, in order to amend rent arrears and avoid eviction. He said, "Better communication from the agent (and) an extension to pay arrears and a payment plan (and) maybe financial relief to help pay arrears (could have prevented eviction)."

The following case study provides an example of how having the opportunity to rectify arrears can save the tenancy and prevent homelessness.

Case Study VII - Rent arrears and a near escape from homelessness

The tenant is a young single parent with an infant daughter living in the unit in Logan. She fell into rent arrears due to limited income, a difficult rent payment process, her lack of life skills and lack of knowledge of her rights as a tenant.

There had been repairs issues for over a year including a leaking tap, an electrical problem and a broken dryer.

The tenant received a notice of hearing for WOP. At QCAT she received advice from a tenant advisory worker from the Tenants' Union. It was found that the agent had not followed the correct process for giving notices as prescribed in the Act. As a result, in the Tribunal the tenant was awarded more time to pay her arrears but was warned that if there was a second breach she would get a WOP.

The tenants said that the situation could have been prevented if she had paid rent on time and directly into the agents account (rather than the method she was asked to use by the agent). She also identified that she needed better skills to manage her money and her household. The tenant has linked with a community youth services organisation for financial counselling and also a homelessness support and prevention program.

The tenant said, "I was pretty scared that we (my baby daughter and I) were going to be homeless and had visions of us living in the gutter. When the agent said we were going to be evicted and that I'd be going to the Tribunal and should be prepared to leave the next day, I was terrified."

In this case the tenant, having had repeated rent arrears breaches, may have not been so lucky had the agent followed the legal process. The agent's mistake gave the tenant the opportunity to rectify the arrears on a payment plan and avert eviction.

The tenant could have sought tenancy advice earlier to potentially negotiate more time to pay her rent arrears, depending on the leniency of the referee in the Tribunal.

Repairs and maintenance not done by lessor

Commonly, there was a connection, reported by tenants, between their requests for repairs and maintenance and eviction. Issues regarding tenants' ability to have repairs and maintenance requests attended to also feature commonly in tenants' comments about what may have prevented the eviction. The following provides some examples:

- "If the lessor did repairs and maintenance within a reasonable period - not four or five months after the complaint, (the eviction issue would not have happened)."
- "If owner did not rent me a substandard property."
- "If agent made sure the mould issues were fixed."

- “If the organisation did regular housing inspections we would have never got to this stage. More regular communication and rapport with tenants. The (non-government) housing organisation needs to be more accountable.”

New leases issued two months prior to end of lease accompanied by a Notice to Leave

Since the introduction of changes to the Act (2008), to provide longer notice periods for tenants at the end of the tenancy, many agents have taken up the practice of issuing a Notice to Leave two months prior to the end of lease along with an offer of a new lease on the property, sometimes accompanied by a Notice to Leave. Many tenants found this practice intimidating and felt like they were being coerced into signing a new lease on threat of eviction. The following comments are an example of the range of views expressed by tenants with regard to this practice, that appears to have contributed to unnecessary evictions.

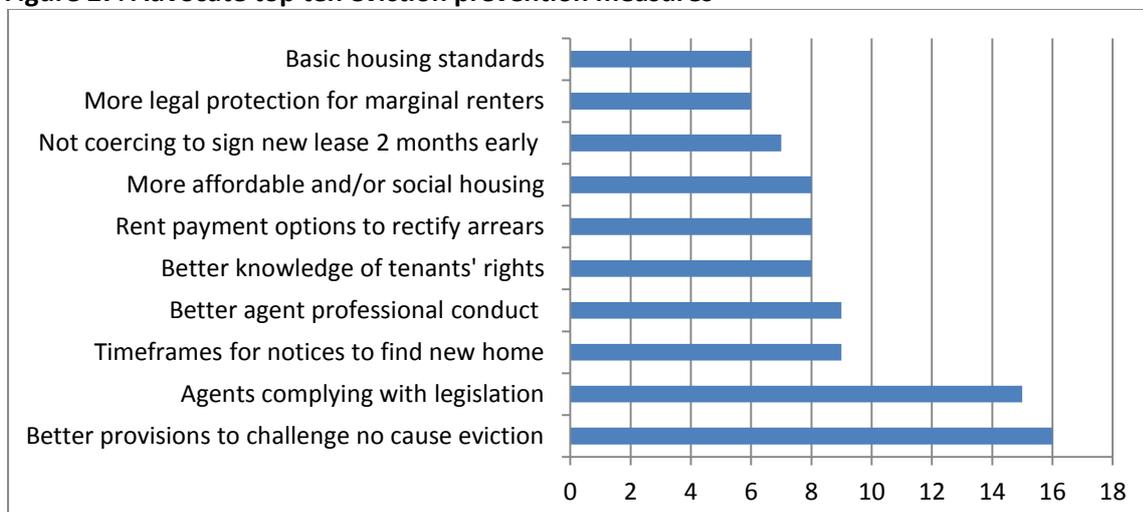
- “I think tenants should only have to sign one fixed term lease and then go onto periodic (agreement). There's no point in them signing (a new) lease I was told (by owner) I didn't have to sign a lease.” (in case where tenant felt coerced into signing the new agreement)
- “if the real estate agent did not forcing tenants to sign a new lease two months ahead of the end of the current lease.”
- “I would like to continue as a periodic tenant - gives us more lee-way to sell (caravan) and leave the caravan park. On a fixed term agreement I have to stay or pay break lease charges and rent until end of lease.”

Overall, and in addition to the suggestion of removing the provision for no fault evictions, tenants identified a number of eviction prevention measures. Many of these do not require legislative change but improvement in lessor’s and agents taking responsibility for the repairs and maintenance of their properties and property management practices.

Tenant advocate perspectives on causes and prevention

Tenant advocates noted 125 separate causative and preventative factors in 43 eviction cases. The top ten, most commonly reported factors were the limitations of the legislation, the practices of agents and lessors and the state of the housing market as shown in the figure below.

Figure 27: Advocate top ten eviction prevention measures



The following table summarises the causes of the eviction in the cases discussed in this research, as identified by advocates (post interview), as well as their opinions on factors or measures that could have prevented the eviction or threat thereof.

	Causes of the evictions	Factors that would have prevented the evictions
Grounds for eviction	Lessors and agents using Notice to Leave without ground provisions to mask a retaliatory eviction, following an issue with tenant, thus preventing tenant from exercising their rights or to penalise tenant for exercising their rights, such as, pursuing outstanding repairs and maintenance).	The lack of effectiveness of the current retaliatory eviction clauses in the Act are limited, since without ground evictions are lawful, and a lessor or agent need only issue Notice to Leave without giving a reason. Better provision in legislation for tenants to challenge Notice to Leave with ground on the basis of retaliation. Or ... Removal of the eviction without ground provisions in the legislation and insertion of comprehensive list of reasonable grounds so without grounds are no longer needed.
Compliance with legislation	Agents and lessors not complying with legislation (reported in 16 of the 43 cases), including giving incorrect notices, interfering with tenant's 'quiet enjoyment', threatening tenants and incorrect billing for water usage	More enforcement and greater penalties for lessors and their agents who do not comply with legislation.
Time to find new property	Tenants were unable to find a new property in time to prevent excessive financial hardship, disruption to households and in some cases homelessness.	Longer timeframes for notices and more flexibility to allow time for a tenant to find a suitable property - a new home, following termination, in particular, when the tenancy has been terminated for no reason or fault of the tenant. If tenants could end a lease without penalty if the property is put on market by giving a certain notice period (e.g. 2 weeks to 1 month), at any point of the tenancy agreement
Professional conduct of agents	Poor professional conduct on the part of lessors and agents, including intimidation and giving bad references thus preventing tenants from accessing new housing, using the Act's Notice to Leave without ground provision as a mask for retaliation. Negative verbal references given by agents about tenants were problematic, even when the tenant had a good rent record. Tenants do not know what is said about them or whether it is accurate. It often takes them sometime to discover that this is preventing them from securing a new home.	Better adherence to REIQ Code of Conduct by lessors and agents. Promoting certification and training to ensure professional management practices. Greater professional responsibility taken in providing references about tenants to prospective lessors and agents thus providing greater transparency around referencing from agents, in particular.

	Causes of the evictions	Factors that would have prevented the evictions
Knowing and exercising rights	<p>Tenants had inadequate knowledge of their rights under the Act and did not access advice early enough or were reluctant to exercise their rights by making a challenge.</p> <p>Another factor that needs to be taken into consideration is the number of times tenants did not pursue their rights (given the without ground eviction provision) is the pervasive threat of being evicted, which can effectively undermine a tenant's willingness to pursue their tenancy rights, due to their concerns over losing their tenancy and home.</p>	<p>If tenants had accessed timely legal advice enabling a dispute or challenge to be made.</p> <p>In these cases having better knowledge of your rights will not change this situation.</p> <p>If tenants were not fearful of retaliation for exercising their rights.</p>
Rectify rent arrears	<p>Rent arrears that could not be rectified within period of notice.</p>	<p>Better options to prevent households being evicted for rent arrears, that is, being readily able to apply to the Tribunal for an extension to pay rent arrears and to establish a rent payment plan.</p> <p>Something similar to NSW where the tenant can 'pay to stay' - if rent arrears are fully paid up any time before a Warrant of Possession is executed, the tenant gets to stay. This benefits both tenant and lessor.</p>
More housing	<p>Tenants being unable to afford the rent due to loss of work and income or inability to access social housing within a reasonable timeframe to prevent eviction.</p>	<p>More social housing so that people who are in desperate need of social housing can access housing on a priority basis.</p> <p>More affordable housing to give tenants more choice of rental properties and prevent tenants from entering into unaffordable or sub-standard rental properties.</p>
Pressure to sign a new lease 2 months prior to expiry of current lease	<p>Agents' coercing tenants to sign a new lease two months prior to the end of current lease, under threat of eviction.</p> <p>This practice prevents a tenant from accessing new housing due to being locked into a lease and the financial imposts of break lease penalties (e.g. rent to end of lease, advertising and re-letting fees).</p>	<p>Not issuing the new lease with a Notice to Leave two months before end of current lease.</p> <p>Greater flexibility with timeframes for notices. One option, to increase flexibility, would be to prevent the issuing of any Notice to Leave to not more than one month prior to the end of lease (with one month of the notice period being outside the lease expiry date). This would limit the tenant's liability (break lease penalties).</p>

	Causes of the evictions	Factors that would have prevented the evictions
Marginal renters protections	Tenants are unable to afford or access (e.g. due to tenancy database listing) mainstream housing are forced into marginal tenancies where they have fewer protections under the Act and are more vulnerable to abuses by unscrupulous lessors, agents or on-site managers. (Two cases -share house and marginal dwelling under lessor's house where no tenancy agreement were in place).	More legal protection for marginal renters to better protect people who are forced into share housing, granny flats, poorly managed student accommodation due to lack of affordable housing options. If a tenancy agreement was in place the tenants would have had more legal recourse even in marginal tenancies.
Housing standards	Disputes between lessors/agents and tenants over repairs and maintenance leading to evictions, sometimes executed under the Act's no ground eviction provision.	Establish basic housing standards to make clear provisions that ensure there are express housing standards that lessors must comply with. This would prevent many of the disputes between lessors and tenants over repairs and maintenance.
Property on market - break lease	Tenant losing the security of a (promised) long term rental when house is put to market.	If tenants could negotiate to break a lease if the property is put on market by giving a certain notice period (e.g. 2 weeks to 1 month) without penalty at any point of the tenancy agreement.
Mortgagee in Possession	The impact of tenants of mortgagees being outside tenancy law in cases of mortgagee in possession. Lack of possibility for tenant to negotiate timeframes for moving when eviction is due to a mortgage default.	The mortgagee should stand in the position of the lessor if the agreement is for less than one year.
Administrative appeals processes	Social and affordable housing management practices (including non-government providers and private agents) that are not sector defined 'best practice'. Lack of professional management in one non-government social housing provider e.g. tenant said, "If the organisation did regular housing inspections we would have never got to this stage... (we need) ... more regular communication and rapport with managers."	If affordable housing providers (including REA's) complied with best housing management practices to sustain tenancies An external complaints and appeals process in community / indigenous housing sectors to ensure non-government social housing organisations are accountable.
Definitions	Lack of clear definition, that is, open to interpretation, of 'keeping the rental premises in clean condition.	Removal of the subjective term 'clean' from the Act and insertion of 'requirement to keep the premises in a manner not giving rise to damage or health or safety concerns'.

It is interesting and important to note that over half of the potential remedies to the eviction situations reported in this research do not involve limitations of the tenancy legislation. These include matters of non-compliance of lessors and agents with legislation, poor professional practice,

lack of basic housing standards, and knowledge of tenancy rights. These are all non legislative issues that could be dealt with via compliance, policy and practice responses.

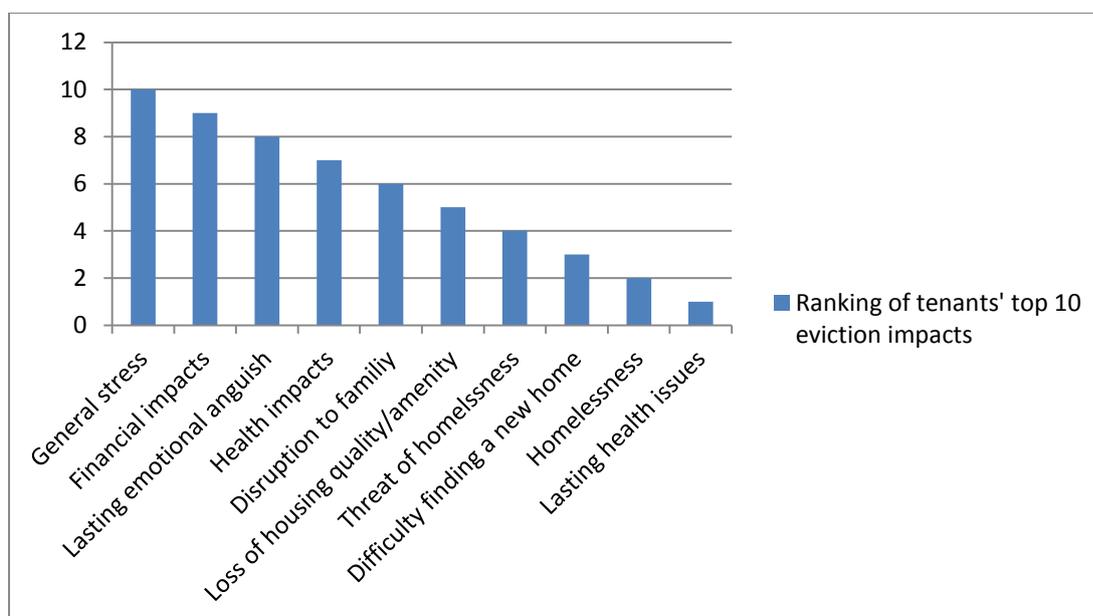
However, it is important to note again, that the legal provision for lessors to terminate tenancies, or evict tenants at will, using the Notice to Leave without ground provision, contributes significantly to creating the conditions under which tenants are avoidably evicted.

The impacts of eviction on tenants' households

Tenants identified a range of significant impacts on themselves and their households. In broad terms, they can be categorised into five key impact areas including, significant stress, financial, loss of housing amenity, homelessness and difficulty finding a new property. Significant impacts are summarised as follows:

- Stress due to eviction
 - emotional impacts arising from disputes with lessors and perceived poor treatment
 - general stress as a result of being forced to move within a limited timeframe thus creating a major strain (often financial crisis).
 - Stress leading to health impacts including exacerbation of existing medical conditions and stress reactions requiring new medical intervention
 - stress on relationships and disruption to family
- Financial strain/crisis due to eviction
- Loss of housing quality and amenities due to the eviction
- Homelessness or the threat/fear of becoming homeless due to eviction
- Difficulty finding new housing due to eviction

Figure 28: Significant impacts on tenant households



Excessive stress

Nearly all the tenants in the study reported the eviction experience as being stressful, creating varying levels of emotional stress and mental anguish. One tenant commented, "It's so hard to find

a new home. It's like a cattle call as a prospective tenant (referring to the herding of and competition with other prospective tenants to secure a property)." Moreover, nearly half of the tenants reported some level of significant emotional impact from what they experienced as poor treatment by the real estate agent, as noted in the comments below:

- "I felt threatened and upset by the agent - I have had respect for the law all my life and when someone (agent) treats me like this, at my age (79 years), it really upsets me."
- "The agent's intimidation and threats have really undermined my self esteem and feelings of self worth."
- "The dispute with the unscrupulous property manager and having to move has been very stressful and disruptive."
- Lessor intimidation and physical assault of an elderly man.
- "(I experienced) unnecessary grief (caused by unprofessional agent) ... the notices were incorrect ... then we had to do all the work to investigate the matter and dispute it ... just because of the agent's reaction to being called on his mistake with notices."
- "The frustration of not being taken serious – having our requests for repairs and maintenance not taken seriously (and) that we won't get our bond back when we do leave. We are fearful of signing the new lease (that has been presented two months ahead of end date on current lease) – before all repairs and maintenance are completed (as agreed at RTA Conciliation. We are fearful that they will not been done and we will be stuck in another six month lease (in sub-standard property)."
- "I felt the stress of being part of an ongoing dispute (about rent receipts) with the lessor."
- "The treatment of tenants is sub standard. Even though the agent has been professional (we have had a relationship of mutual respect), at the end of the day I still do not get my phone calls returned promptly. I expect that from any business! In my life, I am both an owner and lessor, I get treated very differently – much better, by the agent that manages the property I own and rent out than I do as a tenant."

In other cases, compounding stresses caused by the eviction situation led to health impacts. This was especially the case for older tenants (there were 14 retired tenants in the sample). One elderly tenant, who was evicted from a granny flat twice in a year by the same lessor, reflected on the emotional and mental anguish, loss of health and capacity he was experiencing, as follows, "I was intimidated (by lessor of granny flat) and then physically assaulted (by lessor's son) when I couldn't move out on the due date. I had nowhere to go to... I am now in supported accommodation, but only for three months. My health was not good and this has made it worse... it's all I can focus on now... I'm not sure where I will live after here."

Disruption to families and households

The eviction situations added stress to many household relationships and disruption to family was commonly reported as indicated by the following reflections from tenants.

- "You don't know if you are 'coming or going' in these eviction situations."
- "I've moved three times in one year."
- "I wanted the flexibility to move elsewhere when my current lease expired as my son is going to Armidale (at the end of school year) and we have no reason to stay in Hervey Bay. Now my family will probably be tied up in Hervey Bay because we will have to sign another

fixed-term lease on a new property.” (A case of a mortgagee in possession eviction leading to major disruption to family at a very bad time with the tenant’s imminent heart operation and son finishing Grade 12).

- “I was literally in tears all the time. It was in 24/7 stress not knowing what would become of the family. My family has no friends or family locally, my husband is away trying to get work. I have farmed out the two teenage boys to appease the agent and keep the tenancy. (following neighbourhood complaints dealt with a threatened Notice to Leave).”
- “(My) kids get stressed because they think we are getting evicted from our home.”
- “Not good for my kids - five moves in five years is very disruptive to my family and resettling over and over is hard for them. These rural properties keep getting sold beneath us.”

Financial imposts

The financial costs of eviction were almost universally reported. An unplanned and forced move can send some households over the coping threshold and into homelessness, debt or penury. The costs created by the eviction included money to fund a new bond (ahead of return of current bond), rent up to the end of lease on current property, rent in advance for new property, removal costs (removalists, truck hire, packaging), cleaning costs and utility connections (energy supplier, phone /internet) . Other costs for families included additional food and meal costs (due to disrupted routines). The following comments by tenants (and case study below) provide further insight into the major costs associated with these forced moves:

- “It’s huge, removalists, utility connections (Electricity - \$185, phone/internet \$600), rent in advance...”
- “Every week is a major financial trauma.”
- “We couldn’t keep up with rent and debts (e.g. car repayments). We also have incurred debts from family/friends (who had loaned us money for rent along the way).”
- “I had to take a loan to afford to move.”
- “It’s \$1950 for the new Bond, \$720 plus \$360 for cross over period rent and still waiting for the bond to come back from this property and another \$500 for cleaning.”

The following case study provides an example of the long term financial impacts and major disruption to one young family where the eviction, executed with a Notice to Leave no ground, two months ahead of the end of her current lease (the tenant was verbally told the tenancy was being terminated due to the owner wanting to move into the property).

Case Study VIII – Notice to Leave without ground and break lease costs

The tenant is a young woman in her late twenties living with her partner and children in Brisbane suburb. Both she and her partner are working. The family were forced to move because the owner wanted to move into the property.

She was given a Notice to Leave without ground but was told, verbally, it was because the owner wanted to move in.

As an ex-property manager, the tenant was aware of how difficult it was to secure an appropriate property, at an affordable price. When she found a suitable property, within two weeks of being given a Notice to Leave, she felt she had to take it. She then tried to negotiate to break the current lease. She also tried to negotiate to delay the move into the new property. Neither agent would be flexible.

This tenant would not pursue any potential challenges to the situation for fear of retribution by agent. For example, she could have pressed the agent to try to negotiate to move into the new property and to establish a payment plan on the current property to pay the debt off more slowly. She was fearful of retaliation if she did not co-operate with the agents - being given bad references on future rental applications or even a tenancy database listing. The tenants said, "I couldn't challenge the situation because real estate agents scare a lot of people and I don't want bad references, because that would affect my future rental options."

The impact of this eviction - to facilitate the owners to move back into the property - raises the issue of the notice periods at the end of lease as well as agents' practice (issues of inflexibility in notice periods, intimidation and providing bad verbal references to prospective agents). As an alternative, the agent could have waited to give the Notice to Leave closer to the end of the fixed term, so that the tenant was able to give two weeks' notice (of intention to leave) following the transition to a periodic agreement.

This situation has resulted in excessive hardship for the family. The tenant had to pay rent on two properties for a period of six weeks. The tenant has been forced to use her 'wedding kitty' to fund the move. The couple's wedding, planned for September 2012, will now be delayed for a couple of years.

This case demonstrates the challenges for tenants in asserting their tenancy rights when there are so few social and affordable housing options and the power balance between lessor and tenant is so clearly in favour of the lessor. The financial hardship and significant impacts on the tenant's household and relationship could have been prevented if the lessor/ agent was open to negotiation, for example, options to pay all lease break fees over a longer period of time (under a payment plan) or more being flexible in arrangements to take up the tenancy on the new property.

Loss of housing quality

Loss of housing quality and/or amenity as a result of having to move (often in a hurry due to timeframes) was reported by nearly one quarter of the tenants. Some examples of typical tenant reflections as follows.

- “We’re now in a worse location, higher transport costs to schools (4 children), shops, children’s friends and activities.”
- We are (now) in a ...“poorer quality property – repairs and maintenance are not getting done and now this property has gone on the market!”

Fear of becoming homeless

Many tenants were fearful of becoming homeless. The following comments provide some insight into tenants’ experiences of the threat of homelessness:

- “The threat of homelessness was creating panic for me as I need to have an accessible property, because as I age (currently 65 years) my condition degenerates and there are very few (accessible) properties available.”
- “I had visions of living in the gutter with my little girl. I was pretty scared we were going to be homeless. When (the agent) said we were going to be evicted, I thought I’d be going to the Tribunal (for a WOP) and be expected to leave next day.”
- “I was fearful of ending up homeless while I was looking after my wife, 4 children and mother-in-law (following a bad reference campaign by agent in small community. The agent had been found to be at fault of rent miscalculation in the Tribunal. The tenant’s family, including sick mother-in-law, had to move to another town).”

Homelessness

For some households the eviction situation actually did lead to their worst nightmare ... they became homeless. One young family was in very drastic circumstances with a critically ill child until they finally secured emergency housing, the tenant reflected, “We became homeless – we are now in short term supported accommodation, whilst we settle with the baby after its operation, and get back on our feet.”(3)

Difficulty finding a new home to rent

Another factor for tenants was the difficulty they experienced in finding new housing. It is widely acknowledged that affordable housing is in short supply in just about all locations in Queensland. The following excerpts from tenant interviews provide a cross section of the types of difficulties and circumstances that tenants experienced in finding a new home.

- “It took eight weeks to find a new house ... getting continual bad references but not knowing because the Real Estate Agent (we were trying to rent a new property from) didn’t tell us the (current) agent was bad mouthing us.”(1)
- “I couldn’t find a way out of the problem. I want to move but I haven’t found another suitable property. But the Real Estate Agent keeps tying me up in 6 month leases. I haven’t got the money to cover double rent whilst (this) lease expires. I’m on a pension. My options are limited because I can’t pay \$300 per week. But the government doesn’t seem to worry about us older people and our lack of options!”(4)

- “When you have a TICA listing you don’t have many choices.”(6)

The tenants in the study were all impacted in a negative way by the eviction. Ironically, it seems that many of the evictions could have been avoided had issues been resolved through the process provided by the law. However, the impacts of eviction will be ongoing for many tenants, the degree of impact depending on age and health, financial position, family and friends support or ongoing support services now required as a result of the eviction.

CONCLUSIONS AND LAW REFORM AND POLICY IMPLICATIONS

This research, albeit limited in the size of the sample, has highlighted some areas where tenancy law reform, tenancy related policy reform, improvements in agents' practices and compliance with the law as well as tenants' access to timely tenant advice and support could have been prevented evictions lessening the burden of cost to tenants, government and the community.

An essential finding of this report is that households from all manner of socio-economic and familial circumstances face evictions, most commonly, for reasons which are not breaches of tenancy law.

Disputes with lessors or agents about a range of issues, such as, the tenant wanting repairs to be carried out, requests for tenants to do, or cease doing certain things which extend beyond their obligations or another assertion of the tenant's rights, have a relatively high likelihood of tenants being forced to move at a later date.

Whilst some tenants are evicted for breaches of tenancy law, such as the failure to pay rent, these are less frequent than circumstances of no breach by the tenant. Whilst eviction may not always be avoidable, there are some circumstances where better outcomes may be achievable for both tenants and lessors and as such, legislative changes are proposed.

Unnecessary churn costs are the result of these avoidable evictions for renting households, government and the community - economically, socially and emotionally, with the greatest effect being on those on low incomes.

The following recommendations aim to avoid the unnecessary churn by separating out what might be considered reasonable ground for evictions from others which are unreasonable or avoidable.

A Terminations

A-1 Evictions

Without grounds notices to leave

Most of the tenants who participated in this research were evicted on a notice to leave without grounds. The tenants were not at fault. The ability to force tenants out of their home when there is no default is costly to these tenants and society more broadly. These types of evictions without sufficient or reasonable grounds should be prevented whenever possible.

Recommendation 1

Tenancies should only be terminated against tenant's wishes where:

- There are *grounds* as prescribed by residential tenancies legislation;
- When appropriate notice is given; and,
- In the case of a dispute, a Tribunal or Court determines that in all the circumstances of the case it is appropriate to end the tenancy. It should not fall to the tenant to apply to the Tribunal to stop a termination from proceeding.

Lessors should only be allowed to give notices of termination on specified reasonable grounds.

These grounds should be:

- *Serious or persistent breach* – including failure to pay rent.
- *Frustration* – that is, the premises are uninhabitable e.g. premises made unfit to live in due to a natural disaster.
- *Sale of premises* – the contract of sale requires vacant possession. Landlords should not be allowed to give notice on this ground during the fixed term of a tenancy.
- *Landlord requires the premises for their own housing, or an immediate family member's housing* – landlords should not be allowed to give notice on this ground during the fixed term of a tenancy.
- *Demolition, approved change of use or major renovation* – landlords should not be allowed to give notice on this ground during the fixed term of a tenancy.
- *Tenant has ceased to be employed by the landlord* – where the tenancy arose out of a contract of employment between the landlord and the tenant, and the landlord needs the premises to house another employee. Landlords should not be allowed to give notice on this ground during the fixed term of a tenancy.
- *Tenant no longer eligible for housing assistance* - for example, where a tenancy is offered by a community housing provider under a youth accommodation scheme.

Notice Periods

More than half of the participating tenant households (60 percent) who were evicted without grounds were unable to move to a new home within the prescribed time, even though they received 2 months' notice. This was a result of a mixture of not being able to afford to move early if they found suitable premises but were still tied into a fixed term lease, as well as, not being able to find the right property and move all their goods in time. These issues were highlighted in case studies III and IV.

Recommendation 2

When tenants are being evicted for reasons other than a breach of agreement, at least two months' notice must be required by law to be provided in notice to the tenant.

A-2 Marginal Tenures

The lack of legal protection for renters in marginal tenancies including boarding houses, boarding arrangements with owners of houses who live on site and share houses is problematic. In Queensland better protection of renters in these tenures will be achieved by the following:

Recommendation 3

Remove the ability to evict immediately for untested allegations of serious breach (s370 RTRAA). Eviction should only occur after an order from a tenancy Tribunal.

Recommendation 4

Remove the ability for service providers and their helpers to self-evict residents of rooming accommodation who do not leave at the end of a notice to leave (s375 RTRAA). Currently this is allowed in rooming accommodation, whatever the grounds the notice has been provided for.

Recommendation 5

Tenancy law should be reviewed to provide appropriate coverage for boarders and lodgers who are effectively without any accessible rights. Changes could be modelled on the Australian Capital Territory or New South Wales occupancy agreements which provide a set of principles to be addressed in a mandatory written agreement and access to dispute resolution through the tenancy Tribunal.

A-3 Tenant Ending the Agreement

Sale of premises

When the premises is put on the market for sale, the tenant is subject to a intrusion on their quiet enjoyment and receive no reduction of rent or other compensation. Additionally, tenants often report difficulty in having repair issues attended to. If tenants were in a stronger position to negotiate reasonable outcomes these issues could be mitigated.

Recommendation 6

If a lessor puts the premises on the market, a tenant should be able to end an agreement with a prescribed notice period (2 weeks) rather than endure the intrusions on their quiet enjoyment, whether they are on a fixed term tenancy agreement or otherwise.

Alternatively, tenancy law should set out clearly the maximum entries allowed unless a written negotiated agreement is in place with the tenants.

A-4 Mortgagor Defaults

Prevent evictions by mortgagees at foreclosure

Tenants who receive a notice that a mortgagee is in (legal) possession of the premises usually have no prior warning of the arising issue. For a mortgagee to have the legal right to possession, allowing them to take steps to gain physical possession from a tenanted property, two things must be in play. A default must have occurred under the terms of the mortgage (which the tenant is not privy to) resulting in the right to legal possession, and, there must have been a failure on the part of the lessor to gain the consent of the mortgagee to the tenancy.

More often than not, consent has not been sought for the tenancy, an issue compounded by the narrow view taken by lenders of what constitutes consent (usually consent to the agreement a tenant is currently housed under).

Once obtaining a legal right to possession, mortgagees usually seek vacant possession of the premises from the tenant as soon as they can. Despite the fact that Queensland tenancy agreements are commonly six months long, sometimes 12, this reflects a desire to maximise the number and type of potential purchasers if the premises are unoccupied.

Moves precipitated by a mortgagee in possession cause particular difficulties for tenants because of their unexpected nature. Whilst tenants may be entitled to compensation from the lessor if the

agreement is fixed term, this will often not eventuate because of the financial circumstances of the lessor.

Recommendation 7

Mortgagees should assume the responsibilities of the lessor once they have obtained an outright possession order in regard to the mortgage contract. As such, they should only be able to evict tenants for just causes, as outlined in the section above, or while the legal provision for without ground terminations remains, at the expiration of the term of the tenancy. The mortgagee should have no right to instruct or direct the tenant in any way until they obtain an order for possession or sale regarding the property title.

B Repairs Maintenance and Standard of Premises

Housing standards or some third party process of inspection

The lack of housing standards leading to disputes about maintenance and repairs between lessors and tenants is a common issue and was widely reported by tenants. In many circumstances these disputes then later lead to without ground eviction.

However, laws and regulations governing building, housing standards and safety are the province of a number of government agencies, for example , State Development, Infrastructure and Planning, Department of Housing and Public Works, Building Services Authority and local government.

Following from the tragic death of an infant in a rental property, this issue was also the subject of several recommendations from the Queensland Coroner's court in September 2012. These recommendations are worthy of consideration as they attempt to provide tenants and prospective tenants with clear information and transparency, about the state of the property, and a log of requests for repairs and maintenance.

The Tenants' Union of Queensland endorses the following recommendations from the Queensland Coroner (Office of The State Coroner 2012). Whilst numbered differently in this report they reflect recommendations number 4, 5, 6, 10 and 11 in that order.

Recommendation 8

That the Department responsible for administering the Property Agents and Motor Dealers Act 2000 and the Residential Tenancies and Rooming Accommodation Act 2008 amend the relevant legislation to introduce a system of mandatory inspections by an independent licensed builder of the structural integrity of a residential rental property with a deck, veranda or balcony that is greater than 10 years old immediately prior to the property being placed on the rental market and thereafter at a minimum three year interval during its continued use as a rental property.

Recommendation 9

That the Department responsible for administering the Property Agents and Motor Dealers Act 2000 and the Residential Tenancies and Rooming Accommodation Act 2008 amend the relevant legislation to:

(a) require the lessor or the lessor's agent to maintain a register of all maintenance or repairs requested by a tenant or identified by the agent during a tenancy and the lessor's instructions in respect of each maintenance or repair item; and

(b) enable a prospective or current tenant, on request to the lessor or the lessor's agent, to inspect and take a copy of any of the following documents relating to a residential rental property that they propose to rent or are currently renting:

(i) a mandatory inspection report, as proposed above;

(ii) any building, pest or termite inspection report commissioned by or on behalf of the lessor;

(iii) any building, pest or termite inspection report commissioned by another person and in the possession of the lessor or the lessor's agent i.e. pre-purchase inspection reports provided to the lessor or the lessor's agent;

(iv) a prior entry or exit condition report;

(v) a routine inspection report; and

(vi) the maintenance register for a previous or current tenancy.

Recommendation 10

That the Department (responsible for administering the Property Agents and Motor Dealers Act 2000) amend the Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2011 to deal specifically with the letting agent's responsibilities in relation to reading building, pest or termite inspection reports commissioned on behalf of the lessor and communicating the inspection outcomes and recommendations to the lessor for further written instructions, if required, particularly having regard to the circumstances of Isabella's death.

Recommendation 11

That the Department responsible for administering the Property Agents and Motor Dealers Act 2000 and the Residential Tenancies and Rooming Accommodation Act 2008 amend the relevant legislation to require Real Estate agencies to adopt a uniform and clear system of recording complaints received by the real estate agent from the tenant, passing those complaints on in the same terms to the landlord and making it clear that instructions are being sought by a certain date that approval is either given for those repairs and conducted or that the landlord will attend to those issues within a specified period; and that feedback be provided to the tenant as to the result of the complaint.

Recommendation 12

That the Department responsible for administering the Property Agents and Motor Dealers Act 2000 and the Residential Tenancies and Rooming Accommodation Act 2008 amend the relevant legislation to require tenanted properties be subject to a mandatory building and pest inspection before a property is rented and at subsequent regular intervals.

In addition to the above, and in some aspects, as an alternative, the following regulatory system could be implemented to ensure standards are met in rental properties.

Recommendation 13

Introduce a system similar to the Housing Improvement Act 1940 (South Australia) as amended (Housing Improvement {Standards}) Regulations 2007) which allows for investigations to be carried out into rental housing conditions. When premises are deemed to be sub-standard according to the requirements, and a request for rectification not carried out in the required timeframe, the enforcement body may impose rent control until compliance is reached. Standards cover; toilet, bathroom and kitchen; water supply and sewerage and miscellaneous issues.

Tenants' responsibilities

Under the Queensland RTRRA, tenants have a responsibility to keep the premises 'reasonably clean'. This term is highly subjective. It is unlikely that tenancy laws were designed to comment on lifestyle choices but rather introduced as a mechanism to, in part, protect the lessor's asset. The use of this term leads to disputes about its interpretation as was raised by some tenants in this research.

Tenants' responsibilities should be described in the following manner.

Recommendation 14

That legislation be amended to remove reference to the tenant's responsibility to keep the premises reasonably clean to be replaced by the following term: 'the tenant must have regard for matters of health and safety in the manner they keep the premises, having regard to their condition at the start of the tenancy'.

C Rent Payment Issues

Create provisions for payment of rent arrears to sustain tenancies

Where a tenant is able to catch up the rent during the time the agent or lessor is seeking eviction for arrears, the best outcome for both parties is full rectification of the breach. The benefit to tenants of having the opportunity to catch up on rent arrears was demonstrated in Case Study VII. This benefit also extends to the community, through averting the flow-on costs to government of people becoming homeless.

Recommendation 15

Where a lessor commences termination proceedings on grounds of rent arrears, and the tenant pays rent arrears in full, the proceedings should end. Any notice to leave, or termination order, or unexecuted warrant of possession should have no effect.

Where the tenant and lessor enter into a plan for the repayment of the arrears, the proceedings should be suspended for such time as the tenant complies with the plan. After being suspended for three months, the proceedings should end and any notice, order or unexecuted warrant, cease to have effect. Where the tenant fails to comply with the plan, the proceedings may continue from the point at which they were suspended.

Rent payment records

Disputes about whether rent has been paid, and if not, how much is outstanding, form the basis for many problems that could have been prevented. Additionally, Tribunals rely heavily on the rent records of real estate agents and lessors. This issue was raised often by tenants in this research and is specifically highlighted in Case Study IV.

Recommendation 16

The lessor or their agent should be required to provide copies of the rent payment record every three months.

Recommendation 17

Rent payment records should be required to be kept by lessors or their agent despite the method of rent payment. S(88)(7) of the Queensland RTRAA should be amended to reflect these changes.

Rent arrears assistance with payment

Many households, who experienced difficulties paying rent, thought they would have been able to maintain rent payments if they had access to some timely financial support.

Recommendation 18

That eligibility for the Queensland Rental Grants program is expanded to include a wider range of clients and provide eligibility during term of tenancy agreements, in order to sustain the tenancy.

D Compliance

D-1 Enforcement

The research highlighted several cases involving unlawful practices including water charges taken out of rent, turning the power off to tenant's property and letting illegal dwellings.

Affected tenants were concerned however that lessors and agents suffered no adverse consequences for non-compliance with tenancy law. On the other hand, in the worst instances, tenants had to move out in order to have the situation rectified even though they were not in breach.

The Tenants' Union of Queensland has also had limited success in getting the Office of Fair Trading to follow up complaints of agents' behaviour when it appears to contradict legislation administered by them.

Recommendation 19

That both the Office of Fair Trading and the Residential Tenancies Authority Compliance Unit take more of an active role in following up complaints regarding non-compliance by real estate agents, property managers and, where relevant, lessors.

D-2 Practises of agents

Transparency

Tenants are usually required to provide references from previous agents and lessors. Many tenants reported becoming aware of a being given a poor reference after having numerous knock backs on prospective properties. These tenants may have a good rental record but a dispute (whether or not the tenant was right) has led to termination of the tenancy and a poor verbal references. This lack of transparency created enormous problems for tenants in this research, as well as for tenants accessing tenant advice services.

Additionally, tenants report threats of residential tenancy database listings, Tribunal action etc. being used as a means to get tenants to comply with the agent or lessor's wishes.

Whilst this is an important area for reform, particularly the issue of transparency in references, it is hard to know how to address these issues. More consideration is required. In order to achieve this, the following recommendations are made.

Recommendation 20

That the Office of Fair Trading undertakes a review of the obligations set out in both the Property Agents and Motor Dealer Act and the Code of Conduct for real estate agents and property managers in the residential rental market. This review should identify how the issue of professional behaviours and transparency when providing references may be dealt with more adequately to protect tenants.

Recommendation 21

That the Office of Fair Trading when undertaking the review noted above, investigate the introduction of 'on the spot' fines for non-compliant behaviour in residential tenancy management.

Recommendation 22

That the Residential Tenancies Authority undertakes a review of their processes for legislative compliance with a view to strengthening enforcement activities.

Agreements and 're-let fees'

Current real estate industry practice requires retaining tenants on fixed term agreements. Previously, tenants signed one fixed term agreement which, if successful, was rolled over onto a periodic agreement, continuing until one party or the other ended the agreement. This is reflected in section 82 of the Act.

The current practice of retaining tenants on fixed term agreements appears to favour real estate agents (as opposed to lessors). Agents seek a 're-let fee' from the lessor via the tenant if the tenant needs to end the agreement at a time other than the end date of the agreement.

Agents usually attempt to get the tenant to pay one week's rent as a re-let fee regardless of whether the tenant has lived in the premises for several fixed term agreements. Arguably the tenant is not responsible for the re-let fee if they have lived there for some time and has saved the lessor this cost. Even when a tenant leaves during an agreement, they are merely bringing forward the costs of the re-let fee which the lessor would otherwise pay.

It is not uncommon for agents to seek payment of the re-let fee from a tenant before they will take action to find another tenant whilst leaving other 'reasonable re-letting' costs to be paid later.

The requirement by many agents for tenants to remain in the premises on back to back fixed term agreements creates problems for those who want to move but have limited resources to do so. This practice prevents a tenant from accessing new housing due to being locked into a lease and the financial imposts of break lease penalties (e.g. rent to end of lease, advertising and re-letting fees).

Recommendation 23

That claims made against tenants for agents' fees for reletting the premises be unlawful under the Residential Tenancies and Rooming Accommodation Act after a tenant has resided for more than 12 months in the tenancy.

Recommendation 24

Tenancy law should be explicit in that a tenant is not required to sign subsequent fixed term agreement to remain in the premises after the end of the fixed term.

E Access to advocates

Many tenants identified the need for clear, accurate tenancy law advice at the early stages of the issue arising. This provided the best chance of resolving the matter between the tenant and lessor in a mutually beneficial way. Access to independent tenant advice services made the difference between being housed and evicted and helped sustain some of these tenancies in the research.

Recommendation 25

That funding for frontline, specialist, and independent tenant advisory services be expanded into new areas of the state.

REFERENCES

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Appendix 1:

Findings of the inquest into the death of Isabella Wren Diefenbach

Excerpt: Office of The State Coroner (2012) Findings of Inquest, Inquest into the death of Isabella Wren Diefenbach, Coroners Court, Rockhampton. FILE NO: 2010/1790. pages 58-61. Accessed 10 October 2012 at http://www.courts.qld.gov.au/__data/assets/pdf_file/0019/163027/cif-diefenbach-iw-20120919.pdf

Coronial Comment

333. Section 46(1) of the Coroners Act 2003 empowers the coroner to comment, whenever appropriate, on anything connected with Isabella's death that relates to public health and safety or the administration of justice or ways to prevent deaths from happening in similar circumstances in the future. Recent Queensland authority supports a broader than direct connection between any matter on which comment is made and the death under investigation.

334. There is a sufficient connection between Isabella's death and the broader policy issues of the obligations of tenants, lessors and their agents in respect of the maintenance of residential rental properties. There are a range of issues arising from the evidence relevant to section 46.

COMMENT / RECOMMENDATIONS

I make the following recommendations:

1. That Office of Fair Trading and relevant residential rental industry stakeholders (including REIQ) review the current property management training program with a view to incorporating a component that provides property managers with an appropriate level of guidance about how to conduct a satisfactory inspection of decks, verandahs and stairs for property management purposes. This review should be undertaken with advice and input from entities including the Building Services Authority and Timber Queensland Ltd. The review should also consider a revision of the training about what constitutes an emergency repair, with a view to identifying potential structural compromise due to the effects of wood rot and termite activity as clearly falling into this category of repair.
2. That Office of Fair Trading and relevant residential rental industry stakeholders conduct an awareness campaign across the industry about the agreed minimum standards of inspection of decks, verandahs and stairs for property management purposes and the need to actively consider potential structural compromise due to the effects of wood rot and termite activity as an emergency repair issue.
3. That the Department responsible for administering the Building Act 1975 review the guideline (Department of Local Government and Planning (DLGP) Use, Inspection and Maintenance of decks, balconies and windows (Sept 2010) with a view to incorporating guidance about the inspection of

decking boards for signs of deterioration that may compromise their structural integrity. This review should be informed with advice and input from entities including the Building Services Authority and Timber Queensland Ltd. Further that the reviewed guideline be brought to the attention of the building and real estate industries, local government authorities and, through them, landlords.

4. That the Department responsible for administering the Property Agents and Motor Dealers Act 2000 and the Residential Tenancies and Rooming Accommodation Act 2008 amend the relevant legislation to introduce a system of mandatory inspections by an independent licensed builder of the structural integrity of a residential rental property with a deck, verandah or balcony that is greater than 10 years old immediately prior to the property being placed on the rental market and thereafter at a minimum three year interval during its continued use as a rental property.

5. That the Department responsible for administering the Property Agents and Motor Dealers Act 2000 and the Residential Tenancies and Rooming Accommodation Act 2008 amend the relevant legislation to:

(a) require the lessor or the lessor's agent to maintain a register of all maintenance or repairs requested by a tenant or identified by the agent during a tenancy and the lessor's instructions in respect of each maintenance or repair item; and

(b) enable a prospective or current tenant, on request to the lessor or the lessor's agent, to inspect and take a copy of any of the following documents relating to a residential rental property that they propose to rent or are currently renting:

(i) a mandatory inspection report, as proposed above;

(ii) any building, pest or termite inspection report commissioned by or on behalf of the lessor;

(iii) any building, pest or termite inspection report commissioned by another person and in the possession of the lessor or the lessor's agent i.e. pre-purchase inspection reports provided to the lessor or the lessor's agent;

(iv) a prior entry or exit condition report;

(v) a routine inspection report; and

(vi) the maintenance register for a previous or current tenancy.

6. That the Department (responsible for administering the Property Agents and Motor Dealers Act 2000) amend the Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2011 to deal specifically with the letting agent's responsibilities in relation to reading building, pest or termite inspection reports commissioned on behalf of the lessor and communicating the inspection outcomes and recommendations to the lessor for further written instructions, if required, particularly having regard to the circumstances of Isabella's death.

7. That the Office of Fair Trading, REIQ, RTA and relevant industry stakeholders continue their efforts to reinforce the importance of regularly and properly maintaining residential rental properties. This requires commitment from:

- (a) tenants to promptly report and document emerging maintenance and repair issues;
- (b) letting agents to comply with their obligation to promptly report those issues to, and seek instructions from, the lessor; and
- (c) lessors to diligently consider those issues and respond promptly and appropriately to them, preferably with the assistance of licensed contractors.

8. That consideration be given by the Office of Fair Trading to implementing a requirement that real estate agents become members of a peak body or association which is charged with the responsibility of providing guidelines, a uniform code of practice and the provision of continuing professional development to its members, including the issues raised as a result of this tragedy.

9. That REIQ and other training bodies in the Industry highlight with real estate agents the importance of maintaining open contact with landlords and provide training on problem solving strategies in this regard.

10. That the Department responsible for administering the Property Agents and Motor Dealers Act 2000 and the Residential Tenancies and Rooming Accommodation Act 2008 amend the relevant legislation to require Real Estate agencies to adopt a uniform and clear system of recording complaints received by the real estate agent from the tenant, passing those complaints on in the same terms to the landlord and making it clear that instructions are being sought by a certain date that approval is either given for those repairs and conducted or that the landlord will attend to those issues within a specified period; and that feedback be provided to the tenant as to the result of the complaint.

11. That the Department responsible for administering the Property Agents and Motor Dealers Act 2000 and the Residential Tenancies and Rooming Accommodation Act 2008 amend the relevant legislation to require tenanted properties be subject to a mandatory building and pest inspection before a property is rented and at subsequent regular intervals.

12. That the authority responsible for Australian Standards design an Australian Standard to establish how deck inspections should be conducted if it is considered that AS1720.1 Timber Structure Part 1 Design Methods and AS 16894 Residential Timber Framed Construction do not provide sufficient guidance in this area.

13. That O'Reilly's Real Estate adjust their practices to ensure that termite and building inspection reports or reports of experts in respect of potential or actual safety matters relating to the property are read by the property manager and brought to the attention of the landlord in a timely fashion.

A M Hennessy

Coroner

19 September 2012