



**THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA**

Project No 41

Tenancy Bonds

WORKING PAPER

JUNE 1974

INTRODUCTION

The Law Reform Commission has been asked to inquire into the law and practice relating to tenancy bonds between landlord and tenant.

The Commission having completed its first consideration of the matter now issues this working paper. The paper does not necessarily represent the final views of the Commission.

Comments and criticisms on the paper are invited and should be submitted to the Commission by 30 August 1974.

Copies of the paper are being sent to the

Chief Justice and Judges of the Supreme Court
Judges of the District Court
Law Society of W.A.
Magistrates' Institute
Law School of the University of W.A.
Solicitor General
Under Secretary for Law
Land Agents Supervisory Committee
Commissioner of Titles
Commissioner of Police
Real Estate Institute of W.A.

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TERMS OF REFERENCE

1. "To inquire into the law and practice relating to bonds between landlord and tenant."

THE LAW AND PRACTICE IN WESTERN AUSTRALIA

2. It is common in this State for a landlord to require a tenant to pay to the landlord or his agent a sum of money known as a tenancy bond (sometimes also known as an indemnity bond or security deposit) prior to or at the time of the commencement of the tenancy. The bond money is usually held either by the landlord or his agent until the termination of the tenancy, when it is repayable to the tenant after deducting any expenses incurred or damages suffered by the landlord as a result of any breach of the agreement by the tenant; for example, arrears of rent or costs of repairs to the premises for damage caused by the tenant, or costs of cleaning the premises after the tenant has vacated them.

3. It is not possible to assess the exact extent to which tenancy bonds are used in this State. The 1971 Commonwealth Census disclosed that, for that year there were 62,525 dwellings in this State which were occupied by tenants of private landlords, and 23,874 dwellings in this State which were occupied by tenants of government authorities.

Surveys undertaken by the Council of Social Services of W.A. (Inc.), the State Housing Commission, the Real Estate Institute of W.A. and this Commission have indicated that most private landlords require tenancy bonds for dwellings, the amount of the bond generally being between two and four times the amount of the weekly rent. Tenancy bonds are also sometimes required for leases of non-residential premises.

The State Housing Commission normally obtains a tenancy bond of \$10 for each residential premises it rents.

The Commission understands that the amount of bond money held by or on behalf of private landlords at anyone time in this State is at least three million dollars.

4. Inquiries made by the Commission indicate that disputes are common between landlords and tenants over tenancy bonds, particularly in the case of residential tenancies.

Many complaints have been received by the Consumer Protection Bureau, the Land Agents Supervisory Committee of W.A., the Citizens Advice Bureau of W.A. (Inc.) and other bodies. The matters most frequently in dispute appear to be -

- (a) whether the premises were left in a clean condition and in good repair;
- (b) (b)

amount of money involved is usually small. Some tenants may be of lim

Victorian *Landlord & Tenant Act 1958*, s.77, although limited to assignments and transfers of leases and consents to subleases;

South Australian *Landlord & Tenant (Control of Rents) Act 1942*, s.100. This act appears to be of limited application;

South Australian *Housing Improvement Act 1940*, s.59(2), although limited to substandard houses;

Tasmanian *Substandard Housing Control Act 1973*, s.13:

Australian Capital Territory *Landlord and Tenant Ordinance 1949*, s.36:

Northern Territory *Landlord and Tenant (Control of Rents) Ordinance 1949*, s.36

It is not clear whether these provisions have the effect of prohibiting the payment of bond money for premises to which the legislation applies. It is noted that the Northern Territory Ordinance has an additional provision expressly prohibiting any payment for a bond or agreement whereby any person pays or agrees to pay any sum of money as evidence of that person's agreement to forbear from any act, deed or conduct (s.36(1)(b)(iii), added by the *Landlord and Tenant (Control of Rents) Ordinance 1970*, No. 14).

13. Apart from the legislation mentioned in the preceding paragraph, there are no statutory provisions in any Australian jurisdiction controlling or prohibiting the use of tenancy bonds. However a Landlord and Tenant (Security Deposits) Bill has been recently introduced into the Victorian Parliament by a private member. The Commission understands that the bill contains provisions dealing with security deposits on similar lines to the Ontario *Landlord and Tenant Act 1970* (see Appendix IV below, but with the additional provision that the person holding the security deposit is deemed to act as a trustee of it.

14. In most Australian jurisdictions, disputes as to tenancy bonds must be litigated in the civil courts in the normal way.

represented but no costs can be awarded and there are no court fees except upon the execution of judgement of the court.

In Both Queensland and Victoria, legislation establishing small claims tribunals have been passed to enable disputes involving the provision by traders for goods and services to consumers where the amount involved does not exceed \$450 (in Queensland) and \$500 (in Victoria) to be dealt with informally and cheaply (Queensland *Small Claims Tribunals Act 1973*, Victorian *Small Claims Tribunals Act 1973*). Decisions of the tribunals are final. It is not clear whether these tribunals have jurisdiction to deal with disputes as to tenancy bonds, although the Commission understands that the Queensland Tribunal has made orders concerning the repayment of tenancy bond money.

Other jurisdictions

15. The position in New Zealand, England, South Africa, Eire, Canada and in some States of the United States of America are set out in Appendix IV below. The Commission wishes to acknowledge the assistance it has received from the Law Reform Commission of British Columbia in its report on *Landlord & Tenant Relationships : Residential Tenancies* (Project No. 12, 1973) in preparing this comparative survey of other jurisdictions.

RECENT PROPOSALS FOR REFORM IN WESTERN AUSTRALIA AND ELSEWHERE

16. (a) **Western Australia**

A number of proposals for reform of the law with respect to tenancy bonds have been made to the Government in recent years. The proposals of the Legal Committee of the State Parliamentary Labor Party, the Council of Social Services of W.A. (Inc.), the Land Agents Supervisory Committee of W.A., a State Housing Commission study committee, a sub-committee of the Consumer Affairs Council, the Australian Labor Party and the interim report to the Commonwealth Commissioner for Law and Poverty are discussed in Appendix II to this paper.

(b) *Elsewhere*

Proposals for reform made in the U.S.A. and Canada are discussed in Appendix III below.

DISCUSSION

(a) *Should the use of tenancy bonds be prohibited*

17. In support of the proposition that the use of tenancy bonds should be prohibited, it is clear that in some cases, the amount of the bond money, when added to other capital sums that a prospective tenant may have to find in advance, such as rent in advance, letting fees, stamp duty, costs of preparing the tenancy agreement, State Electricity Commission deposit and telephone rent, can impose a considerable financial burden on him.

In any event it has been suggested that tenancy bonds serve little practical purpose, because of the practice of many tenants ceasing to pay the rent before the end of the tenancy. It has also been suggested that the need for tenancy bonds can largely be avoided by efficient property management.

On the other hand, it can be argued that the use of tenancy bonds is a proper method of protecting landlords against loss or damage due to the acts or defaults of bad tenants. It can also serve as an effective method of adjusting State Electricity Commission and other accounts payable by the tenant at the end of a tenancy where the account has not at that time been received. If the use of tenancy bonds was prohibited, then unless other charges by landlords were controlled by legislation, landlords might impose additional obligations on tenants, such as higher rents or letting fees and premiums.

18. The Commission is at this stage opposed to a statutory prohibition on the use of tenancy bonds, but would welcome comment.

At the same time, the Commission does not at this stage favour the proposal of the Council of Social Service of W.A. (Inc.) and a subcommittee of the Consumer Affairs Council (see Appendix II below) that the payment of a bond should be mandatory in all cases.

The Commission thinks that the landlord should be free to let his premises without having to insist that the tenant enter into a bond.

(b) *Should the use of tenancy bonds be controlled by legislation*

19. If the use of tenancy bonds is to be permitted, it is necessary to determine whether legislation should be enacted to ensure that the use of tenancy bonds is fair to both landlord and tenant.

The number of complaints received by various authorities (see paragraph 4 above and Appendix I below), particularly from tenants of residential premises, is evidence that in some cases the use of tenancy bonds has not been fair. The principal criticisms of the present practice appear to be based on allegations that

However it could be argued that such a formula may not always be fair due to variations in the nature and conditions of different premises. For example, a higher bond may be justified for a lease of an expensively furnished flat, where the risk of damage is proportionately greater than the increased rent.

21. It has been proposed by the Council of Social Service of W.A. (Inc.) and the Consumer Affairs Council sub-committee that a statutory minimum be imposed on the amount of tenancy bonds, for the reasons given in Appendix II below, but the Commission does not at this stage favour this proposal,

(ii) Who is to hold the bond money

22. As an alternative to a landlord holding bond money on his own account, or his agent holding the bond money on his behalf, legislation could be enacted which would require -

- (a) The landlord or his agent to act as a trustee for the tenant and to place the bond money in a separate trust account to be held pending the determination of the tenant's obligations. This is the case in some Canadian Provinces and States of the U.S.A. (see Appendix IV below).

However, such a requirement may give rise to problems of enforcement. It may be necessary to prescribe criminal penalties for any breach.

- (b) The agent collecting the bond money to act as a stakeholder.

However, not all landlords engage agents and there may be objections to a requirement that they should in all cases be required to do so.

- (c) The Landlord or his agent to pay the bond money to some independent officer called a "rentalsman" whenever a dispute arose, as in Manitoba, Canada (see Appendix IV below).

- (d) That all landlords and their agents pay the bond money to some government department or statutory authority within a limited time after its receipt, as has been proposed by a number of organisations in this State (see Appendix II below). This proposal is discussed further in paragraphs 35-38 below.

(iii) Interest on the bond money

23. It would be possible to enact legislation requiring landlords to pay to tenants interest at the rate of, say, 6% per annum on the bond money, as has been done in a number of Canadian provinces (see Appendix IV below), or alternatively, at the rate of interest paid on savings bank accounts, as in South Africa (see Appendix IV below). Such interest could, unless otherwise agreed, be paid at the end of the tenancy and until then could be compounded annually, or alternatively could be paid annually with an adjusted payment at the end of the tenancy. As has been observed, the agents of some W.A. landlords already pay tenants interest on bond money that is invested by the agents (see paragraph 8 above).

However such legislation would conflict with the various proposals discussed in paragraphs 35-38 below (and see Appendix II below), whereby interest on all tenancy bonds would be applied firstly in payment of the administration costs of the proposed schemes.

(iv) The matters for which bond money may be applied

24. Legislation could be enacted which restricts the application of bond money to the following matters -

- (a) arrears of rent only, as is the case in the Canadian provinces of Ontario, Yukon and British Columbia and as has been suggested in New Brunswick (see Appendices III & IV below);
- (b) those matters that are expressly set out in the legislation, as has been suggested by the Land Agents Supervisory Committee (see Appendix II below). This could either be subject to any agreement of the parties to the contrary, or alternatively could be binding on the parties irrespective of any agreement to the contrary.

A possible list of such matters could include -

- (i) wilful or negligent damage to the premises or any lack of cleanliness of the premises caused by the tenant or his family, servants, agents, or visitors, possibly with the exception of fair wear and tear;
 - (ii) arrears of rent;
 - (iii) outstanding rates, taxes and other assessments and charges for which the tenant is liable;
- (c) any loss or damage suffered by the landlord for which the tenant is liable and for which the tenancy agreement specifically provides that the tenancy agreement specifically provides that the bond money may be applied in payment, as appears to be the intention of the New Zealand legislation (see Appendix IV below).

25. The Commission does not at this stage favour a restriction on the application of bond money to arrears of rent only, as suggested in subparagraph (a) of the preceding paragraph.

However in so far as there may be doubts as to the extent of the obligations of tenants at general law in the absence of express provision in any written agreement (see paragraph 26 below), the suggestion in subparagraph (b) of the preceding paragraph that overriding legislation be enacted would have the merit of removing those doubts with respect to the application of bond money.

26. At general law there is an implied condition that a tenant shall use the premises in a tenant-like manner, and shall not commit voluntary waste, but he is not obliged to "keep the premises wind and water tight", nor to repair damage caused by fair wear and tear where it is only a weekly tenancy (*Warren v. Keen* (1954) Q.B. 15). However the obligations attaching to tenancies which are more substantial than weekly tenancies may be more onerous. Where there is an express covenant to repair, a tenant may be liable for fair wear and tear unless it is expressly excluded (*Clowes v. Bentley Proprietary Limited* [1970] W.A.R. 24).

the requirement, and/or to require the completion of the certificate by the landlord as a prerequisite to the retention of all or any part of the bond money.

In any event, a certificate at the end of the tenancy may not be necessary if the landlord was required to give particulars of the reasons for any deduction from the bond money to the tenant within a specified time (see subparagraph (b) above) and if there was a suitable court or tribunal to deal quickly with any disputes that arose (see paragraphs 29-32 below).

(v) The method of dealing with disputes

29. One method of dealing with disputes as to the repayment of bond money could be to streamline the local court procedure such as has been done in the Australian Capital Territory and in England (see paragraph 14 above and Appendix IV below).

30. Alternatively it would be possible to establish a small claims tribunal, the jurisdiction of which would include disputes between landlords and tenants as to tenancy bonds where the claim does not exceed a specified amount (see paragraph 14 above). Such a tribunal may be able to deal with disputes faster than the ordinary civil courts and with less regard to legal technicalities. As it would act informally and as the cost to complainants would be small, this may encourage landlords and tenants with valid claims to seek relief through it, thereby providing a means of solving many tenancy bond disputes.

The establishment of a small claims tribunal with jurisdiction in tenancy matters has been advocated by the study committee of the State Housing Commission (see Appendix II below). It has also been proposed in the Liberal Party Policy Statement for 1974-1977 under the heading "Guarding Civil Liberties".

If such a tribunal is established, and if it is given jurisdiction in disputes relating to tenancy bonds, then the Commission suggests that specific legislation on the subject of tenancy bonds be deferred until the experience of the small claims tribunal in this regard has been assessed.

31. It has been submitted by the Council of Social Service of W.A. (Inc.) and subsequently supported by the Land Agents Supervisory Committee that another method of

adjudicating on landlord and tenant disputes would be to expand the jurisdiction of the latter body to include this function (see Appendix II below).

However the Land Agents Supervisory Committee is at present only concerned with land agents and not with landlords, and has only limited functions in adjudicating upon disputes. For these reasons the Commission is of the opinion that it would be inappropriate for this Committee to deal with disputes as to tenancy bonds.

32. Another alternative method would be to establish the separate statutory position as a "rentalsman", either in the terms of the Manitoba legislation (see Appendix IV below) or as suggested by the subcommittee of the Consumer Affairs Council (see Appendix II below). If this method was adopted, the Commission considers that the "rentalsman" should be legally qualified.

33. In vesting some existing statutory authority such as the Land Agents Supervisory Committee with jurisdiction in such disputes or in creating the post of "rentalsman", it would be necessary to determine whether the function should be -

- (a) to mediate in disputes in an attempt to get the parties to settle; or
- (b) to adjudicate or arbitrate, either compulsorily (as suggested by the Consumer Affairs Council sub-committee, see Appendix II below) or at the request of the parties.

It would also be necessary to decide whether there should be an appeal to a court, either generally or upon a matter of law only.

34. In some Canadian provinces, a prerequisite to the retention of all or part of the bond money by a landlord is, in the absence of the tenant's written agreement, the obtaining of a court order (see Appendix IV below). The Commission does not at this stage favour such a provision.

35. The proposal made by the Council of Social Services of W.A. (Inc.) and the subcommittee of the Consumer Affairs Council that all tenancy bond money should be paid to

40. In any legislation, it would be necessary to determine whether covenants for the repayment of bond money should run with the land, that is, whether purchasers of premises subject to continuing tenancies should assume responsibility for the performance of such covenants (see paragraph 10 above). If it is decided that such covenants should run with the land then it may be desirable to require landlords disposing of premises to pay bond money to the purchasers with notice to the tenants, or to pay it to the tenants, as in some States of the U.S.A. (see Appendix IV below).

41. It would also be necessary in any legislation to include transitional provisions with respect to bond money already held at the time the legislation came into force.

CONCLUSION

42. The Commission would welcome comments on any of the following matters as well as any other matters coming within the terms of reference -

(A) Should the use of tenancy bonds be prohibited by legislation? (see paragraphs 17 & 18 above). If not, then

(B) Should the use of tenancy bonds be controlled by legislation? (see paragraph 19 above). If so, then

(i) Should there be a statutory maximum and/or minimum on the amount of a tenancy bond, and if so, how should the amount or amounts be calculated? (see paragraphs 20-21 above);

(ii) Who should hold bond money, and in what capacity should it be held? (see paragraphs 22 -240 -21 TD 46.25 0 a0.246 Tc 0 T? (sees8following 114i3es8f

- (v) Should a landlord be required -
 - (a) to notify a tenant of his rights to repayment of bond money? (see paragraph 28(a) above);
 - (b) to deliver to the tenant full details in writing of any proposed deduction from the bond money? (see paragraph 28(b) above);
 - (c) To arrange the completion, both at the beginning and at the end of a tenancy, of a certificate as to the condition of the premises? (see paragraph 28(c) above);

- (vi) Should disputes as to the repayment of bond money be dealt with -
 - (a) by the local court;
 - (b) by a small claims tribunal;
 - (c) by expanding the jurisdiction of the Land Agents Supervisory Committee; or
 - (d) by establishing the position of "rentals man" either in the terms of the Manitoba legislation, or as suggested by the Consumer Affairs Council subcommittee? (see paragraphs 29-32 and Appendices II & IV below);

- (vii) If the Land Agents Supervisory Committee or a "rentalsman" is to have jurisdiction in such disputes, what should be the functions of that Committee or "rentalsman" and should there be a right of appeal? (see paragraph 33 above);

- (viii) Should the landlord be required to take action within a limited time before he can retain all or any part of the bond money without the tenant's written consent? (see paragraph 34 above);
- (ix) Should it be a requirement that all tenancy bond money be paid to an administering authority within a limited time after receipt, the interest to be used to pay administration expenses? (see paragraphs 35-38 above);
- (x) Should legislation be limited to residential tenancies only, or should it include other types of tenancies? (see paragraph 39 above);
- (xi) Should covenants for the repayment of bond money run with the land? (see paragraph 40 above);
- (xii) What transitional provisions are necessary for bond money held at the commencement of any legislation? (see paragraph 41 above).

APPENDIX 1 – Working Paper

GENERAL INFORMATION OBTAINED BY THE COMMISSION ON THE USE OF TENANCY BONDS IN W.A.

Land Agents Supervisory Committee of W.A.

The Commission made a survey of all complaints received by the Land Agents Supervisory Committee for 1972 and 1973 which related to tenancy bonds. The following summarises the information obtained -

	Number of complaints	
	1972	1973
Complaints made by tenants	18	17
Complaints made by landlords	<u>2</u>	<u>3</u>
	<u>20</u>	<u>20</u>
Complaints against agent		

Consumer Protection Bureau

The Commission made enquiries at the Consumer Protection Bureau about the number of complaints received in respect of tenancy bonds. The Bureau said that from July 1973 to February 1974, it had received 92 complaints in landlord and tenant matters. The Bureau did not keep separate figures of the number of these complaints that related to tenancy bonds, but it estimated that about 80% of them would be so related. The majority of the complaints were against landlords who did not engage agents. The most common causes of complaint related to cleaning charges, allegations of damage to the premises, claims as to rental arrears and refusals to return bond money without giving any reason.

Citizens Advice Bureau

The Citizens Advice Bureau told the Commission that over a three month period in 1973, it had conducted twenty one interviews with respect to tenancy bonds and had received ninety five inquiries about the same matter.

In the great majority of cases, the complaint was that the tenant could not get all or part of his bond money refunded. The reason given by the landlord was usually that the premises were left damaged or unclean. In some cases the cause of the complaint was that the bond money had been retained without the landlord giving any reason. In a few cases it was alleged that the landlord had refused to refund the bond until the premises were re-let.

Most complaints were against landlords who did not engage agents and against land agents who were not members of the Real Estate Institute of Western Australia.

The Real Estate Institute of Western Australia

In 1973 the Institute carried out a survey of its members on a number of matters including problems associated with tenancy bonds. The following is an extract from the Institute's report -

"BONDS

The usual amount charged as security deposit ranged from \$40.00 (or approximately two times the weekly rent) to \$100.00 (or approximately four times the weekly rent).

The minimum bond required was nil. The maximum bond required was \$1000.00 on a fully furnished, exclusive home.

An average of all suggested minimum rates produced a figure of \$51.70. An average of all suggested maximum rates produced a figure of \$151.40. It was recognised, however, that the value of furnishings in any flat or house could cover a very wide range, and therefore to set a maximum bond was very difficult, if not impossible.

Twenty per cent of the agents would, under special circumstances, allow tenants to pay the bond on terms. However, where terms were available, the tenant's character and reliability were unquestionable.

Seven of the agents were investing bond money on behalf of the tenant in special accounts with building societies or other financial institutions, and found that tenants were more cooperative and satisfied with the agent's services, knowing that they could receive full bond plus interest upon the termination of tenancy.

In almost all cases a full bond was returned to the tenant upon vacation. Where this was not possible, specific reasons were stated for a bond retention. They are as follows:

- | | |
|--------------|--------------------|
| Repairs | Telephone |
| Cleaning | Missing chattels |
| Rent arrears | Garden maintenance |
| Gas | Stamp duty |
| Electricity | Excess Water." |

for residential premises, the average bond being about \$60. Where an agent was involved, the bond money was usually held in trust or invested to earn interest. The percentage of tenancies where there was a dispute as to the return of the bond money was small, although in many cases part of the bond money was appropriated in payment of State Electricity Commission and other accounts.

Council of Social Service of W.A. (Inc.)

The Council conducted a survey of landlord and tenant problems prior to the preparation of its report in 1971 (see Appendix II below). Details of this survey can be obtained from the office of the Commission.

APPENDIX II – Working Paper

PROPOSALS FOR REFORM IN WESTERN AUSTRALIA

State Parliamentary Labor Party

1. In 1971, the Legal Committee of the State Parliamentary Labor Party recommended to the State Government that legislation be enacted to create a landlord and tenant bond fund. It proposed that all bond money be paid into this fund, with, penalties in default, and that the fund be administered either by the Land Agents Supervisory Committee, the State Housing commission or some similar authority. The fund would be invested to pay all administration costs. The authority would adjudicate on any disputes that arose.

Council of Social Service of W.A. (Inc.)

2. In the same year, the Council of Social Service of W.A. (Inc.) released for public comment a report on tenant landlord relations. The report advocated legislation under which -

- (a) A solicitor and valuer would be added to the membership of the Land Agents Supervisory Committee.
- (b) All bond money would be paid to that Committee and be invested to pay administration costs.
- (c) A mandatory tenancy bond equal in amount to a minimum of three weeks rent would be paid by every tenant to his landlord or his agent before the commencement of the tenancy and be lodged with the Land Agents Supervisory Committee within seven days of the commencement of the tenancy.

The Commission understands that this proposal would require a bond to be paid irrespective of whether the parties desired otherwise. The reasons given in support of this proposal are that it would -

- (i) protect the landlord, particularly since there can be delay in obtaining an order for recovery of possession of premises pursuant to Part IV of the *Local Courts Act 1904* and since most household insurance policies do not cover loss or damage due to malicious acts or theft by tenants; and
 - (ii) ensure that all landlords and tenants contribute to the cost of administering the tenancy bond fund by using the interest on the fund to defray administration costs (see also paragraphs 4 & 5 of this Appendix below).
- (d) A "Certificate of Condition of Rental Premises" would be completed and signed by both parties or their agents at the commencement of the tenancy and lodged with the Committee.
- (e) At the end of the tenancy the original certificate would be used to record details as to the condition of the premises at that time.
- (f) The valuer on the Committee would then arbitrate on any disputes that arose and his decision would be final.
- (g) The State Electricity Commission would install separate electricity and gas meters to all individual units of accommodation, to avoid arguments as to apportionment - see paragraph 4(f) of the working paper above. (It is not clear from the proposal whether the costs of installation were to be paid by the State Electricity Commission or the landlord).

Land Agents Supervisory Committee

3. Also in 1971, the Attorney General asked the Land Agents Supervisory Committee for its views on the subject of tenancy bond. The Committee, in reply, in the main supported the recommendations outlined in the preceding paragraph and also suggested as a stop gap measure that -

- (a) the legislation be limited to residential tenancies;
- (b) the collection of tenancy bond money be prohibited unless a condition report is completed and signed by the parties within a period of three days after the tenant occupies the premises;
- (c) the distribution of tenancy bond money be prohibited unless a similar condition report is completed and signed by the parties within a period of three days before and after the end of the end of the tenancy;
- (d) charges against the bond money be limited to -
 - (i) damage to premises other than fair wear and tear;
 - (ii) arrears of rent;
 - (iii) outstanding charges for electricity, gas, rates, taxes and excess water for which the tenant is liable;
- (e) where deductions from the bond money are proposed, the condition report should disclose the reason for the deductions and the landlord should, at the time the report is prepared, direct the attention of the tenant to this disclosure;
- (f) the tenant should receive a copy of each condition report.

State Housing Commission

4. The Attorney General also asked for the views of the State Housing Commission on the subject of tenancy bonds. Accordingly in 1973 a study committee of that Commission produced a report which was sent to the Attorney General. The report expressed caution about implementing the recommendations of the Council of Social Service of W.A. (Inc.), because of the study committee's inability to obtain reliable evidence about the number of cases of misappropriation of bond money presently occurring, but suggested that if the Council's recommendations were adopted the State Housing Commission would be best equipped to administer the scheme.

As alternative schemes, the State Housing Commission report suggested -

- (a) the establishment of a post of arbitrator with functions similar to those of the "rentalsman" in Manitoba, Canada (see Appendix IV below);
- (b) the establishment of a small class court to adjudicate on disputes as to tenancy bonds; or
- (c) the enactment of a requirement that all private landlords be registered and come under the supervisory control of the Land Agents Supervisory Committee or other authority.

Of these alternatives, the report favoured the establishment of a small claims court.

Consumer Affairs Council

5. In 1973, a subcommittee of Consumer Affairs Council, after holding meetings with interested groups, circulated amongst them proposals for a new Landlord - Tenant Act which in part dealt with tenancy bonds. The proposals with respect to tenancy bonds were basically the same as those contained in the legislation in Manitoba, Canada (see Appendix IV below) with the following variations -

- (a) Tenancy bonds would be required from all tenants of an amount equal to between two and four weeks rent.
- (b) All bond money would be paid to the "rentalsman" at the commencement of the tenancy instead of at the time any dispute arose.
- (c) Interest on bond money would be used to pay for the costs of administering the scheme instead of being paid to the tenant.
- (d) Where a dispute arose as to the return of bond money, the parties would be obliged to accept the "rentalsman" as arbitrator and his decision would be final. If the arbitration was not completed within 30 days, the landlord would be

required to initiate court action within a further ten days after receiving notification from the "rentalsman" of the failure to complete the arbitration, otherwise the bond money must be returned to the tenant.

APPENDIX III - Working Paper

PROPOSALS FOR REFORM IN OTHER JURISDICTIONS

1. The U.S.A. National Conference of Commissioners on Uniform State Laws in 1972, recommended the enactment of a uniform residential landlord and tenant Act, a summary of which is contained in Appendix IV below.

The Commission is not aware whether any State has adopted this Act.

2. The Law Reform Division of the Department of Justice New Brunswick, in a 1973 working report on landlord and tenant law, has suggested the enactment of legislation with respect to residential tenancies to provide that -

- (a) security deposits be limited to the equivalent of the rent ,for a one week or one month rent period;
- (b) deposits be held against non-payment of rent only;
- (c) interest at a fixed rate on deposits be paid to the tenant annually unless he otherwise agrees. The report suggested a fair rate in the circumstances was 6% per annum.
- (d) deposits be held in a separate trust account and be repaid with interest within 15 days after the termination of the tenancy; and
- (e) covenants for the repayment of deposits run with the land.

3. The Law Reform Commission of British Columbia in its 1973 report on *Landlord and Tenant Relationships : Residential Tenancies* (Project No. 12) considered there were shortcomings in the present law. In particular it suggested that the statutory requirement under which landlords could not retain any part of the security deposit without a court action (see Appendix IV below) was not being complied with by many landlords, and thus tenants were forced to take court action for recovery. On the other hand, some landlords were repaying the

deposit in full rather than going to the trouble of taking court action even when there was some justification for retention. The Commission recommended that all deposits be paid to a "rentalsman", who would hold them as trustee, but using the interest thereon for administration costs. The onus would then be upon the landlord to seek payment of all or part of the deposit within 15 days after the termination of the tenancy, otherwise it would be repaid to the tenant. If the landlord did make a claim, then the rentalsman would determine the matter.

The report also advocated that a maximum rent deposit equal in amount to the first month's rent and a separate maximum damage deposit equal in amount to one half of the first month's rent be permitted.

- (iii) The landlord has made it known to the tenant in writing that, except to the extent that the landlord so suffers loss or damage, the tenant will be entitled to have that sum refunded to him in full when he vacates the premises." (s.21).

England

The *Rent Act 1968*, which imposes rent control for certain types of residential premises, prohibits any payment of any premium or the making of any loan as a condition of the grant, renewal or continuance of any tenancy to which the Act applies (s.85 and see ss. 86, 87, 90 & 91). Premiums are defined as including "any fine or other like sum and any other pecuniary consideration in addition to rent" (s.92). It would appear that a returnable deposit paid by a tenant to a landlord is a premium and is within the prohibition even if interest on it is payable to the tenant (*Macdonald v. Laing* (1954) S.L.T. (Sherriff's Court) 77, and also the decision of the Southampton City Magistrate's Court in *Southampton City Council v. Silk Estates (Developments) Ltd.* (1967) 203 Estates Gazette 727).

The view has also been expressed that it is unlawful for a landlord to require a tenant to deposit a sum with an independent stakeholder as security for any default by the tenant in his obligations (see (1968) 118 New L.J. 4).

The fact that an unlawful premium is required or paid probably does not render the tenancy invalid (

Should the lessor and lessee fail to agree on the amount of the damage or on the cost of replacement of lost keys, the lessor must forthwith submit an application to the rent board for the determination of the lessee's liability. The rent board's determination is final (s.25(2) proviso (c)).

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If the rent board is of the opinion that the lessor has unreasonably failed, after demand, to

Security deposits to be held in trust

In the provinces of Alberta, Prince Edward Island and Saskatchewan, the legislation expressly provides that the landlord or his agent is to hold the security deposit in trust for the tenant, subject to the Act. The provinces of Newfoundland and Nova Scotia merely specify that the security deposit is to be held in trust by the landlord.

CANADA

For the sake of compactness the following abbreviations have been used: l-landlord; t-tenant t.a.-tenancy agreement

Province	Maximum Amount	Interest	Return of Deposit	Allowable Uses for Deposit	Landlord's Procedure to Retain Part of the Deposit for Allowable Use	Tenant's Procedure to Complain of Landlord's Retention	Penalty for Contravention of Act	Special Provisions	Comp81
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		return of deposit			rentalsman, who tries to get an agreement; rentalsman can act as arbitrator if parties consent; if so, his decision is final; if no agreement within 30 days, rentalsman notifies l. and t.; l must bring action within 10 days or t. gets whole deposit.	
Newfoundland ¹⁰	½ month's rent	6%/yr	Within 10 days of termination unless there is a complaint	Damage that is t.'s responsibility	Consent of t. in writing; or complain to Court within 15 days of termination; give notice to t. 5 days before complaint made	Complaint to Magistrate <small>7100.1574 Tw 3le5.25 TD () 02208 T 0 -11.25 TDae2e3</small>
Northwest Territories ¹¹	½ month's rent	4%/yr paid with return of deposit	Within 10 days of delivery of possession	Anything in t.a.	As in Alberta	
Nova Scotia ¹²	½ month's rent	As in Newfoundland	As in Newfoundland	As in Newfoundland	As in Newfoundland if deposit more than \$100; to Residential Tenancies Board if under \$100	
Ontario ¹³	As in B.C. with no local option previous deposits other than for rent	6%/yr paid annually 6%/yr	As in B.C.	Last month's rent Anything in t.a.	As in B.C.; apply to Judge of County or District Court	

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Price Edward Island ¹⁴	1 month's rent	As in Alberta	Within 10 days of deliver of possession	Anything in t.a.	As in Alberta		
Saskatchewan ¹⁵	lesser of ½ month's rent and \$75	5%/yr or rate fixed by Lieutenant-Governor-in-Council paid as it reaches \$10	Within 10 days of termination of tenancy		Serve notice of claim on t. within 5 days of termination of tenancy or service of notice to quit; if t. does not consent within 5 days, l. delivers deposit and all information to Rental Board within another 5 days and applies to Judge for a hearing appointment; l. serves copy of appointment on Board and t.; gets Court order and delivers to Board and t. and Board pays money according to order	If l. fails to apply to Judge or to serve notice of appointment, his claim is barred.	New landlord is subject to the Act for trusj 0 Tw ent, New nsferi20os11685714 w ResidTj iw (Tena cies)
Yukon ¹⁶	As in Ontario	5%/yr paid annually or within 15 days of termination		Last month's rent			landl78s
	Previous deposits other than for rent	5%/yr		Anything in t.a.	As in B.C.		201701254ss, Tcd200

UNITED STATES

Place	Definition of Security Deposit	Maximum Amount	Interest	Nature and Handling of Deposit	Disposition on Termination of Tenancy	Disposition on Termination of Landlord's Interest	Penalty for Contravention of Act	Special Provisions
California ¹	Any payment or deposit of money the primary function of which is to secure the performance of a rental agreement or any part, including an advance payment of rent, made to secure the execution of a rental agreement (does not include advance payment unless primary purpose is security)			Nothing in Act (cases not sure if trust or pledge)	Claim reasonable amount for any purpose for which payment was made (rent, repair, cleaning); return remainder within 2 weeks	l. or agent shall, within reasonable time, transfer deposits for l.'s successor and notify t. (transferee then has all rights and obligation of a l.); or return to t.	Bad faith retention – damages less than \$200 plus actual damage to t.	t. has highest claim on deposit other than a trustee in bankruptcy.
Colorado ²	Any advance or deposit of money, the purpose of which is to secure the performance of a rental agreement				Return to t. within 1 month, l. can extend to 60 days by agreement; retain for non-payment of rent, abandonment, non-payment of utility charge, repair work beyond normal wear and tear, cleaning contracts of t.'s; send statement and balance to t. within 1 month; if no written statement within that time, l. forfeits rights to withhold or to sue t. for damages to premises (no counter claim)	As in California, but applies to anyone who holds deposit.	Wilful retention in violation of Act; l. liable for three times amount wrongfully withheld and costs; t. has obligation to give notice to l. if intend to file legal proceedings at least 7 days before;	Sections are to be "liberally construed to get the intent for proper administration of security deposits and to protect the interests of landlords and

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Place	Definition of Security Deposit	Maximum Amount	Interest	Nature and Handling of Deposit	Disposition on Termination of Tenancy	Disposition on Termination of Landlord's Interest	Penalty for Contravention of Act	Special Provisions
Florida ⁵	Money deposited advanced by t. on a contract as security for the performance of the contract (does not include advance payment of rent)		5%/yr; not required if held in trust and not commingled; if such funds are deposited, t. gets minimum of 75% of interest on account	Held in trust by l.; no commingling with other funds of l. or l. shall post surety bond with Clerk of Circuit Court in total amount of security deposit of \$50,000, whichever is less; the bond is conditional on the faithful compliance by l. with the provisions of Act and shall run to the state for the benefit of any t. injured by l.'s violation	15 days after t. vacates for termination of lease or for other reasons to return deposit and interest or give t. a notice of intent to impose a claim; if t. does not request within 15 days, l. may deduct claim and remit balance to t.			
Hawaii ⁶	Money deposited by t. with l. to reimburse t.'s default for failure to pay rent, return keys, clean units; compensate for damage caused by t. who wrongfully quits			Can commingle funds	Notify in writing at end of t.a. (unless t. has wrongfully quit) and gives grounds for retention and evidence of costs; deposit to be returned or notice given within 14 days of termination; if no notice in time, l. must return all; if t. quits wrongfully, l. can keep all (presumed if away 30 days without	l.'s successor bound by Act; l. remains liable for security deposit as well		

Illinois⁷ Deposit to secure
payment of rent or
compensation for
damage

Louisiana⁸ Any advance of
deposit of money
furnished by t. to l. to
secure performance
of any part of a
written or oral t.a.

Maryland⁹ Any payment of
money, 6

Massachusetts
10

Minnesota ¹¹

<p>New Jersey ¹³</p>	<p>Money or other security deposit or advanced on an agreement as security for performance or to be applied to pay on agreement when due (includes advance rent ¹⁴)</p>	<p>1½ month's rent</p>	<p>Bank interest minus 1% for l. for administration; credited towards payment of rent due on renewal or anniversary of lease</p>	<p>Money and interest remain property of t.; trustee; no commingling with funds of l.; must deposit in bank or savings association in interest – bearing account; notify t. of bank and total amount of account; all such deposits may be in one account</p>	<p>condition by t.; l. must prove actual damage Within 30 days of expiration, give t. the amount and interest; charges expended in accordance with the terms of the agreement in an itemized deduction.</p>	<p>Within 5 days, l. shall (a) transfer deposit and interest (net) to transferee and notify t.; (b) return amount (net) to t.; (c) retain amount and notify t. of transfer and the fact that the former l. has the deposit; if (a) or (b), l. is no longer liable</p>	<p>If t. wins an action for return, gets two times amount withheld plus costs; anyone who consents to or is a party to an unlawful diversion of a trust fund is subject to a fine of minimum of \$200 and (or) 30 days' maximum imprisonment</p>	<p>Claim in Small Claims or County District Court if less than \$500; t can enforce trust or file criminal complaint for diversion; no right to have deposit applied for default in rent; if l. bankrupt because a statutory trust, cannot waive, must be more than two units for act to apply</p>
<p>New York ¹⁵</p>	<p>As in New Jersey</p>			<p>As in New Jersey except no duty to deposit in bank if l. has less than 6 units</p>		<p>As in New Jersey</p>	<p>Failure to comply is a misdemeanour</p>	<p>Cannot waive</p>
<p>Model Residential Landlord Tenant Code ¹⁶</p>	<p>All funds paid for the purpose of securing performance of lease agreement</p>			<p>Held and administered for benefit of t.; quasi-trust; cannot be reached</p>	<p>Claims funds reasonably necessary to give relief for non-payment of rent; damage that is t.'s responsibility; tenant</p>	<p>t.'s claim is greater than any creditor including a trustee in</p>	<p>Misdemeanour penalty; t. gets one half of penalty</p>	

<p>Uniform Code 17</p>		<p>1 month's rent</p>
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<p>Not required</p>	<p>by creditors, but can be commingled</p>	<p>absence, misuse, abandonment (this is maximum, can agree on less); l. must remit within 2 weeks of time rental agreement would have terminated had all the parties performed perfectly; exception if l. in process of repair; can wait until cost is ascertained</p> <p>Must give notice to keep for accrued rent or actual damage within 14 days of termination and delivery of possession and demand by t.</p>	<p>bankruptcy; successor not liable if l. absconds; l. must transfer deposit or return to t. to remove his liability and give rights and obligations to transferee or remove them all</p> <p>holder bound; t.'s interest is greater than other creditors</p>	<p>If not returned in time t. gets two times amount plus costs and amount due</p>
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