

Legislative Assembly Select Committee on the Residential Tenancies Amendment (Rental Fairness) Bill 2023

Friday 2 June 2023

Responses to Questions taken on Notice by NSW Fair Trading representatives

Question

MS LEONG: If I can jump in with a couple of questions how about this process might work. Excuse me for the way I will do this. I will give you the questions because you might need to take some on notice because the time will be up and I won't be able to put them on notice later.

The first is in relation to the need to communicate within 24 hours, to all acceptable applicants, any higher offers of bid. We know now some people make offers and put in applications before they viewed a property. And that there could be up to 10, 20 people that put in applications. **How would landlords and property managers review all of those applications within the 24-hour period, to then determine who are the acceptable applicants, to then be able to go back and communicate with them that that higher offer has been made?**

The second one was in relation to an owner obliged. The owner would be obliged to advertise at a higher rate, if an offer had been made at a higher rate, basically taking the power away from the owner to determine what advertised rate they were putting forward. My understanding is under 22B, if a higher offer is made and they want to run an open inspection again, or for the first time, they would need to advertise it at the higher rate. They may not have had the open inspection yet. Someone may have put in an application with a higher offer before the open has happened. **Is the owner obliged to advertise it at that higher rate?**

The other one is in relation to the issue of **what protections are put in place to ensure that there are no dummy bids being made, and how and where you can point to in 22B that prevents the idea of dumber bids being made.**

And also the other question is in relation to the consultation, I totally appreciate your point and having done a lot of work in the tenancy space, no-one is agreeing to everything. I wonder, **prior to this Government being elected or following, have you heard from any stakeholders that are wanting to see this reform put in place? Has anyone communicated to you that they are supportive of 22B in its current form? And, in the consultation process, did anyone indicate that they are very keen to see 22B implemented?**

...

THE CHAIR: Can I clarify have they been answered or do we need to treat them as [questions] taken on notice, Ms Leong?

MS LEONG: ... I think it's probably up to those appearing before [us], if you feel like the responses have been provided addressing those questions, then I'm fine with that. If they feel like there's further clarity that can be provided in response to the questions, I am happy to leave them as the option to respond on notice if you want to. I didn't want to put them in a situation where there wasn't the time to answer fully. I leave that up to the witnesses to determine.

ANSWER

1. How would landlords and property managers review all of those applications within the 24-hour period, to then determine who are the acceptable applicants, to then be able to go back and communicate with them that that higher offer has been made?

- Under s 22B(4) an acceptable applicant is one with whom the owner would be willing to enter into a tenancy agreement.
- The Bill does not set out a prescriptive process for how landlords or their agents are to decide if an applicant is acceptable to them. This is because the rental negotiation process

is generally fast-moving and needs to be flexible, and because different landlords will have different ideas about the kind of assessment they would like undertaken.

- It is anticipated that a simple assessment will first be undertaken in order to create a shortlist of candidates who may be subject to more thorough assessment.
- It is also anticipated that not all rental applicants will submit an offer of rent higher than the advertised price.

2. My understanding is under 22B, if a higher offer is made and they want to run an open inspection again, or for the first time, they would need to advertise it at the higher rate. They may not have had the open inspection yet. Someone may have put in an application with a higher offer before the open has happened. Is the owner obliged to advertise it at that higher rate?

- The owner is obliged to take all reasonable steps to change the advertisement to the highest offer that has been received from an acceptable applicant, but only if the owner is considering that higher offer at the time that an open house inspection is being held.
- This only applies to an offer from an acceptable applicant so it will not apply to all offers that have been received.
- The aim of this requirement is to avoid misleading and wasting the time of tenancy applicants who attend an open house.

3. What protections are put in place to ensure that no dummy bids are made?

- The Bill requires agents and landlords to only notify of offers from acceptable applicants. This means that the applicant would have submitted a formal rent application and been assessed as suitable and the landlord would have agreed to this.
- Fair Trading would be able to review the application (or a record of the application), communications with the landlord and any file notes kept by the agent.
- Fair Trading could also contact the applicant to check if they had in fact submitted a higher offer.
- Real estate agents are bound by the rules of conduct in the Property and Stock Agents Regulation 2022, which include rules requiring agents to act with honesty and fairness as well not mislead or deceive parties in negotiations or a transaction.

4. Prior to this Government being elected or following, have you heard from any stakeholders that are wanting to see this reform put in place? Has anyone communicated to you that they are supportive of 22B in its current form? And, in the consultation process, did anyone indicate that they are very keen to see 22B implemented?

- Consumers have complained to Fair Trading about secret rent bidding and sought more transparency around the process.
- With transparency and information, consumers are able to make more informed decisions.
- Banning secret rent bidding to increase transparency for tenants during the rental application process was an election commitment of the NSW Government.
- The election commitment was made in response to stakeholder feedback.

