

### **Question on Notice – Public hearing Monday 7 March 2016:**

**CHAIR:** As a whole, it is more stuff that we have to look at. At the moment, they will take a credit card number, and—I am just thinking aloud—if there has been damage you do not talk to the person, you would take the money. Then the argument starts. The owner or the company will just draw upon the credit card. Everybody has to produce one of them these days. Dealing with cash has pretty well gone. If there has been damage the owner takes the money out of someone's bank account, whether or not they caused the damage. There is no tribunal to go to in order to have the money returned or where you can argue the facts.

**Mr LONSDALE:** We will take that question on notice but we cannot provide a response at this point.

### **Answer to Question on Notice received from Mr Iain Lonsdale:**

In the initial reply to the question regarding bonding it was suggested that the existing scheme operating under the *Residential Tenancies Act 2010* and *Residential Tenancies Act Regulation 2010* might be a suitable option. I referred to the “Residential Tenancy Tribunal” in my earlier answer, which is of course now termed the ‘NSW Civil and Administrative Tribunal (NCAT)’.

This scheme was established to ensure that a tenant who does not follow the tenancy agreement is, to a limited degree, accountable for any damage caused to the property. It is not a compulsory requirement. The bond, when taken, is deposited with NSW Fair Trading.

Whether this or a like scheme would be appropriate depends on the scope of recourse it would seek to address. For example, if the bond was taken for security against property damage it would be suitable however, if it was security for some other non-quantifiable matter, such as; noise, poor behaviour or the like, it would not be a suitable scheme for addressing those matters, except in so far as covering the cost or part thereof of any related pecuniary penalty.

From a councils perspective we are not so concerned with damage to the property; councils don't currently and should not regulate that arena; for tenant / landlord relations the reward vs risk lies with the property owner, and as discussed can be offset by the current bonding scheme.

As a council our concern falls to the external impact of short-term holiday usage on the amenity of the local area. If anti-social behaviour occurs to the detriment of neighbours this is not likely to be addressed by monetary relief, but cessation of the use in perpetuity or removal of the offending occupant. It may also be ameliorated by good management practice, which may take the form of a threat where a bond is taken and capable of being withheld for poor behaviour.

The problem with this scenario is: a) not knowing who will be taking action against the occupant's conduct, b) what thresholds are deemed appropriate to rescind the lawful use of the premises, and c) in the case of the bond, whether it is ‘just’ or ‘fair’ to allow the managing agent / property owner to benefit financially from the poor conduct of those who they are charged with managing by retaining their bond.

It is unlikely that any forfeited bond could be legally passed on to the local council; quintessentially it would be a pecuniary penalty or ‘fine’, it would need to be authorised under the procedures set out under the *Local Government Act 1993* and adopted in a schedule of ‘fees and charges’, or by some other Act / regulation.

I think there is a clear pattern emerging in that a 'bond' while useful from a property owners perspective, for minimising their financial risks, is inappropriate or ineffective for addressing those aspects of the short-term holiday letting that impact upon the public directly. In this latter case it is only the cessation of the offending behaviour or cessation of use altogether that can restore neighbour / neighbourhood amenity. Compensation to neighbours is not within the remit of local councils and withholding a bond by the property owner or agent will only serve to undermine better / more stringent management practice being pursued regarding occupant conduct. There must be consequences directly arising from the property agent / owner's management conduct.

In summary:

- Bonds are not likely to benefit the communities that are impacted by this form of land –use directly, rather indirectly.
- Property damage is a risk associated with the leasing of the property and is a matter between landlord and tenant not the local council. In this scenario the relationship would be no different to one between a hotel operator and their guest.
- Managing poor behaviour associated with the use of premises should be a matter for the property agent / owner, and should attract a penalty for poor performance leading to or failing to address a public nuisance.
- Fines should apply to property agents / owners who do not act appropriately on poor behaviour complaints.
- Fines / enforcement procedures must be appropriately legislated.

In this scenario, by way of example, the property agent takes a bond; if property damage occurs or the agent is fined the bond or part thereof is withheld. The bond cannot be withheld by the property agent merely because of poor occupant behaviour – it must be linked to and commensurate with the fine issued. In this scenario those causing the nuisance and those charged with occupant compliance are held accountable for their action, or lack thereof.

If the property agent elects not to take a bond, they are liable for any costs arising.