

AUSTRALIAN CAPITAL TERRITORY RESIDENTIAL TENANCIES TRIBUNAL

CITATION: Eirlys Josephine CHESSA & Matteo CHESSA –v- Commissioner
for Social Housing in the ACT [2008] ACTRTT (8)

RT 935 of 2008

Catchwords: Rent increases; comparative market rents; one landlord owns all
comparators

Tribunal: A. Anforth, Member

Date: 17 February 2009

**AUSTRALIAN CAPITAL TERRITORY
RESIDENTIAL TENANCIES TRIBUNAL**

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EIRLYS JOSEPHINE CHESSA and MATTEO CHESSA
(Applicant/Tenants)

AND:

COMMISSIONER FOR SOCIAL HOUSING IN THE ACT
(Respondent/Landlord)

DECISION

The rent increase is disallowed.

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A. Anforth - Member
17th February 2009

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RESIDENTIAL TENANCIES TRIBUNAL**

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EIRLYS JOSEPHINE CHESSA and MATTEO CHESSA
(Applicant/Tenants)

AND:

COMMISSIONER FOR SOCIAL HOUSING IN THE ACT
(Respondent/Landlord)

REASONS FOR DECISION

1. This matter concerns a rent increase at a tenancy at The Causeway, Kingston in the ACT. The premises is a three bedroom stand alone house.
2. The tenancy commenced on 25 January 2005 at a rent of \$260.00pw; in November 2006 the rent was increased to \$300.00pw; in November 2007 the rent was increased to \$315.00pw.
3. The landlord has now served notice dated 3 September 2008 on the tenants advising a rent increase to \$360.00pw as from 30 November 2008. Following an internal review by the landlord the rent increase was reduced to \$340.00pw.
4. The tenants applied to the Tribunal on 28 November 2008 for an order that the rent increase to \$340.00pw is excessive. Annexed to the application was the following statement from the tenants:

1. Please identify the Issues In Dispute, for example, payment of rental arrears or that the lessor/grantor fix a broken heater.

Housing Market Rent Increase amount to \$340.00, reviewed but still unjustified and unacceptable on the grounds that painting is due since moving in (2005); that there is no car accommodation; that the condition of the carpets at entry was unhealthy and that we had to change the floor covering ourselves; and that the level of amenity of this area - already low and subject to the stigma of "slum" status - has actually progressively diminished over the last four years even though nearby land values have gone through the roof. The sense of insecurity and consequent stress of living here has also increased, as have health problems, due to the constant noise, traffic and dust from the construction site.

2. Please state the nature of relief you seek, (what sort of order you want the tribunal to make), for example, an order that the tenant/occupant pay rental arrears or the lessor/grantor fix the broken heater.

- a. that the rent remain at \$315 per week; or
- b. that rent be increased to no more than \$320 per week ONLY IF AND ONCE OUR HOUSE IS PAINTED (as promised - see attached letter).
- c. I would agree to the \$340 only IF THERE WERE AT LEAST A CARPORT, (\$20x52weeks=\$1040 -close to the cost of a basic carport).
- d. Finally, if at all possible, that all other rents in the Causeway area be adjusted accordingly.

Please note that since this area is to be demolished soon and it is unlikely ACT Housing will build us a carport or allow us to build one which would remain their property when we vacate the premises, option (a) and (b) above appear to be the only realistic relief available.

3. Please give a brief history of the dispute. (why you are making the application). If you are claiming money please show calculations and total amount claimed.

We have been asking for floors to be changed and walls and doors to be repaired and painted since we moved in (Jan 2005). In August 2005 we were authorised to make these improvements at our expense, which we proceeded to do, at least in part.

We did not dispute our first market rent increase in 2006 (from \$260.00 to \$300.00 per week) because at the time we were on rebated rent and we did not fully understand the implications of the increase itself. In actual fact, the \$40.00 increase (15%) was well over the maximum amount (June 2006 CPI index for residential rent was 2.9% so the maximum allowable increase would have been 3.48%). This failure to act is common to many public housing tenants, as the text of the annual letter is misleading. *

When rent was increased by another 14% to \$320.00 last year, I appealed against the decision on various grounds (copies of letter and supporting documentation attached). I was only successful in having it reduced by \$5.00. The CPI index for that year was 5.4, so the rent increase should have been no more than 6.48%. Although I would have wished to pursue the matter with the Tribunal, the time given by the letter was insufficient. Even this year, upon receiving the letter with the result of the review, I only had 10 working days available in which to lodge my appeal to the Tribunal.

This year I again disputed the standard market increase, following the proposal to increase the rent to \$360.00 per week, on similar and additional grounds (attached documentation includes calculations). Although ACT Housing have now reviewed the rent increase to \$340 per week, I still do not believe this reflects the reality of the situation. I believe the latest valuation still does not consider the depreciation of rents IN THIS PARTICULAR STREET and in the one behind it (Spinifex St), due to progressively diminished amenity, less availability of public transport and loss of community services. It also does not consider the stigma attached to living in this area, which is obvious to us every day, in the discrimination we experience when we try to socialise, apply for jobs, go to the doctor or other offices, sell or trade in a vehicle or other items. *

We now understand that ACT Housing increases market rent on all properties every year, based on an independent valuation of market rents in the area. However, the rents are often increased more than the allowed %20 of the increase in the CPI for residential rent (as stated in the Residential Tenancies Act 1997), even when there has been little or no maintenance work done or other improvements to the property. Since excessive rent increases have to be justified by the lessor, ACT Housing itself has been at fault in respect of the majority of its tenants for several years. While amenity is an important factor in estimating private rentals, it does not appear to be considered in public housing rentals.

When we first moved here in January 2005, we were told we could finally settle down since we would have security of tenure. Having been homeless for over a year, this was good news. The only noticeable construction work was near Wentworth Avenue and Printers Way and our street was quiet, with no trucks or earth moving equipment visible. Only a couple of months later, we were informed that the whole area would be demolished and redeveloped over an indefinite period of time (5 to 10 years). Demolition crews and construction workers and their equipment took over the area within another few weeks, and dust and rubbish started blowing over into our gardens. We still are no closer to knowing what will become of us and when. This is unsettling and profoundly stressful for the entire community.

Considering the experience of living in this area for almost four years, we are now in the position to state that IF, at the time of being offered the property, we had known more about the reputation and standards of living associated with this area (The Causeway) AND had not been homeless and fairly desperate to move out of supported accommodation, we probably would NOT have accepted the property. On the other hand we were told if we did not accept this place we would then be forced to accept the next or forgo the right to a property altogether and start the whole application process again. The consequent state of mind at the time also accounts for us accepting a house with no car accommodation, cracked driveway and surrounding pavements, broken fences and roof, dirty carpets and floors, holes in walls and urgently due for repainting, inside and out.

Finally, if we consider all the allowable increases according to Residential Tenancies Act and the CPI index for residential rent since our starting rent of \$260.00 in 2005-2006 (that is 3.48% for 2006, 6.48% for 2007 and 8.84% for 2008), the current rent should not be more than \$312 per week.

DOCUMENTS ATTACHED:

Date*	Document
24.09.2007	DHCS letter - Review of Public Housing Rents 2007
0 [^] .10.2007	Tenants' application for review of decision, with accompanying documentation
12.10.2007	DHCS letter acknowledging application and advising of review process
13.12.2007	DHCS letter advising outcome of review of decision
July 2008	Letter from Spotless announcing intention to paint premises
03.09.2008	DHCS letter - Review of Public Housing Rents 2008
15.09.2008	Tenants' application for review of decision - form only
30.09.2008	DHCS Property inspection report
10.11.2008	DHCS letter advising outcome of review of decision.

* date on actual document. Letters may actually arrive up to 10 days later than date of signature.

DOCUMENTS REQUESTED FROM ACT HOUSING AND TO BE ATTACHED TO THIS APPLICATION WHEN SUPPLIED:

- transcript of internal reviews 2007 and 2008
- results of all independent valuations on the property since Jan 2007
- evidence with date carpets cleaned prior to entry
- evidence with date of painting walls
- evidence with date of laying original carpet and any changes of carpet

5. On 14 January 2009 the Commissioner filed her submissions which read as follows:

1. The applicants commenced their tenancy with Housing ACT on 25 January 2005. A copy of the said Residential Tenancy Agreement is annexed hereto and marked with the letter "A".
2. On 03 September 2008 the respondents sent a letter to the applicants informing them that the market rent was to increase on 30 November 2008 from \$630.00 per fortnight to \$720.00 per fortnight. (\$315.00 per week to \$360.00 per week an increase of 14.28%) A copy of the said letter is annexed hereto and marked with the letter "B".
3. On 10 November 2008 the respondents wrote to the applicants informing them that, following an independent valuation of the property, the proposed rent increase would be reduced to \$340.00 per week. (7.93%) A copy of the said letter is annexed hereto and marked with the letter "C".
4. The respondents would observe that the adjusted rent increase from \$315.00 per week to \$340.00 per week is within the criteria for non excessive rent increases set out in S68 (2) (a) of the Residential tenancies Act 1997.

68 Guideline for orders

- (1) The tribunal must allow a rental rate increase that is in accordance with the standard residential tenancy terms unless the increase is excessive.
- (2) For subsection (1)—
 - (a) unless the tenant satisfies the tribunal otherwise, a rental rate increase is not excessive if it is less than 20% greater than any increase in the index number over the period since the last rental rate increase or since the beginning of the lease (whichever is later)
5. From the commencement of their tenancy 25 January 2005 until March 2008 the applicants enjoyed a rebated rent making this rent increase the first that has affected the applicants.

6. The property was fully painted internally in September 1999 and is scheduled to be repainted in the 2008/2009 tax year. The laundry was repainted in January 2005. Screen prints are annexed hereto and marked with the letter "D & E".

7. The property was fully carpeted and vinyl laid in August 1999 and steam cleaned throughout in January 2005. Screen prints are annexed hereto and marked with the letter "F & G".

8. The ingoing property condition report signed by the applicants 27 January 2005 details the internal paint as fair wear and tear in the lounge, hall and dining areas, clean but marked in the bedrooms and good in the remaining rooms. The floor coverings are listed as clean with marks or good. The applicants in the annexure to the property condition report have stated that the carpets are "very worn". A copy of the property condition report and annexure is annexed hereto and marked with the letter "H".

9. The property has never had a car port or garage.

10. The independent valuation dated 30 September 2008 is based upon the property as is without improvement. A copy of the independent valuation is annexed hereto and marked with the letter "I".

11. A list of the properties available for rent in the Kingston area on Allhomes dated 30 December 2008 is annexed hereto and marked with the letter "J".

12. For the reasons above and the comparison of market rents included in the independent valuation dated 30 September 2008, the Respondents believe that the proposed rental increase is not excessive and should be allowed.

6. The matter was listed before the Tribunal on 19 January 2009. Both tenants appeared in person and Mr Adkins appeared for the Commissioner.
7. The tenants tendered a submission together with a range of attached documents. The submission read:

The comments in the Submission prepared by the Respondent have been noted. However, the Applicants consider most of these comments to be irrelevant, dismissive and in some cases even offensive, not appearing to have considered the applicants' statements in the "history of the dispute" and documentation attached to the original Application.

We would like to highlight the fact that we, a family of 2 working adults and 3 children, became Housing tenants after having been homeless and moving between temporary accommodation and various refuges for almost two years. During our tenancy we never asked for unemployment benefits, since our work hours and pay were always fluctuating. We strive to improve our situation and are proud of being able to finally afford market rent. Yet, as mentioned in both applications, we constantly have to fight against the stigma of living in the Causeway, a planet apart from nearby Kingston, and market rent should be adjusted to reflect this.

Applicant's comments on Submission dated 30/12/08 prepared by Respondent:

Point 4: No mention is made of PRIOR rent increases, all of which were found to be excessive by the Applicants, regardless of whether an "application to review decision" was made at the time (please refer to original documentation).

Point 5: This comment is to be considered irrelevant, misleading and offensive, as it implies that Housing tenants are in a rut and expected to remain so, or that BECAUSE they are - or have been - on rebated rent, they should not be attempting to dispute market rent increases even though entitled to do so by law. We did not "enjoy" rebated rent, we felt somehow humiliated by the fact we needed it. That is why we are proud now to pay full market rent, but a **just** amount, reflecting the reality of the location. The comment also implies that the increased cost of living in the ACT has not affected us. If anything it affects us more, once added to market rent: passing the "income barrier" results in an immediate and an extremely steep increase in all everyday expenses. The fact that rent is rebated has nothing to do with the *appropriateness* of the market rent increase.

Points 6-8: The property to date **has NOT been repainted**. We consider the internal repainting and our substitution of the flooring to be **essential repairs for health reasons**, not improvements. We maintain market rent should be paid only AFTER painting has been completed. Condition of external paint was not mentioned. Our additional comments on the state of the carpet outside the bathroom (evidence cleaning prior to entry had been inadequate) were also not mentioned. On these grounds alone, the increases of 2006, 2007 and 2008 are ALL excessive.

Point 9: Is to be considered in our favour, since **most comparable properties have some form of car accommodation**. The statement is also incorrect and misleading, in that there is physical and anecdotal evidence that the previous tenant had built not only a garage but a carport and a pergola, and was asked to remove them before vacating this property. Storage space is inadequate, both inside and out: the shed is minimal and there are **no built-in wardrobes in the bedrooms**, also present in most comparable properties (please refer also to the attached documentation).

Point 11: The list supplied is dismissive, **irrelevant** (apartments and units) and **incomplete** (no property details, i.e. n. of bathrooms, type of heating/air con, BIRs, car accommodation, state of repair and recent improvements). **It is insulting to us, as we do not have the option to rent privately** due to our current status. It proves only that there are NO comparable properties nearby.

By definition, as cited in the attached letter from Housing dated 1 August 2008, "the market rent for a Housing ACT property is based on the rent likely to be paid for an **equivalent** property in the private rental market in a **similar location**, and of similar **size and amenity**".

In fact, this whole suburb is marked for demolition/redevelopment under the East Lake Renewal Project, therefore condemned. The area is apparently still zoned as temporary accommodation, and the houses are little more than kit homes ("govies") notably of less value in real estate terms. None of the properties have car accommodation. **The state of repair of the adjoining properties** (n. 10 and 14) is now worse than when we first arrived and further depreciates the one we occupy. Here is a vacant lot on our street an n.4, from a house that burnt down in October 2007. This also **has not been at all considered** by the independent valuers, whereas on the private market, "street appeal" can carry up to 50% of the value of a property.

It is scarcely believable that ACT Housing (and therefore the ACT Government) could be so out of touch with reality as to assume that this area is comparable to any other in Kingston. To do so is an insult to the intelligence of its own tenants and of the entire community.

Amenity here is IN NO WAY comparable to that offered in areas where private rent is available. For four years we have lived in front of a morgue, a power station and a permanent building site, breathing the dust from mounds of dirt higher than our houses which according to a Canberra Times article some time ago were even been found to contain traces of heavy metal. Rubbish from the site blows into our gardens and along the road, giving it an unkempt look. Maintenance of nature strips, pavements and the public land section of driveways is kept to a bare minimum. Not far behind us we have the sewage treatment works and old toxic waste dump sites. Our access to the pleasanter areas around the lake was barred by fences, and footpaths to Wentworth Avenue were only recently completed and opened. The street lighting is for the new development only, and finishes halfway down Dawes Street, leaving us in the dark to walk home from the Wentworth Avenue bus stops in winter.

When we arrived in January 2005 we had a bus service which took us to Deakin and the Hospitals in 20 minutes, a preschool and a public phone two blocks away, and a library within walking distance. All four are now gone. Even the Legislative Assembly stated (15/03/07) that ACTION had given insufficient explanation for why the 84, considered an "essential route", had been cut. **In short, since moving in, we pay more money for fewer services in an area whose image is getting worse not better. We feel that \$320 a week is a fair amount until the next rent review.**

List of attached documentation

(including documents released by Housing ACT, as announced in original application)

- ACT Housing letter explaining market rent reviews, 01/08/08
- ACT Housing letter in response to request for release of documentation, 02/12/08
- independent valuation of property, 29/10/2007, supplied by Housing ACT
- transcript of market rent review summaries (2007 - 2008), supplied by Housing ACT

- extract from ACT Legislative Assembly Standing Committee on Planning and the Environment Report 29, 2007 "ACTION Buses and the Sustainable Transport Plan"
- extract from public opinion website RIOT ACT, describing the Causeway
- list of comparative private rent prices in Canberra/Queanbeyan area (web sources)
- Canberra Times article and public comments "Causeway being left to wither", 17/07/2008

Documentation announced by Applicants, attached to ACT Housing Submission:

- evidence, with dates, of laying of original carpet and carpet cleaning prior to entry
 - evidence, with dates, of full and/or partial indoor paintwork completed
 - independent valuation of property, 2008.
8. At the hearing the tenants developed their concerns about the lack of maintenance of their house, the range of improvement that they had themselves made to the house and the general lack of amenity of the Causeway area.
 9. The tenants said that they had laid new floors in the house except in the kitchen; painted several rooms, installed new handles in the kitchen and showerhead in the shower; built a brick retaining wall at the rear of the house and created a garden.
 10. The tenants pointed out that within the Causeway area there were 50 houses of which 45 were owned by the Commissioner. Of the five privately owned houses only one is rented at \$400.00 pw. There was no evidence concerning the standard of this particular house.
 11. The tenants asserted that the Commissioner had plans to demolish their house and other houses in the Causeway area. Mr Adkins denied any knowledge of such a plan.
 12. The tenants asserted that the Causeway area had been neglected by the ACT government and was now badly run down. They pointed to a deterioration in the roads, loss of street lighting and a reduction of bus services.
 13. The tenants invited the Tribunal to view their house and the Causeway area. The hearing was adjourned to 30 January 2009 for a view.
 14. At the view both tenants were present as was Mr Adkins for the Commissioner with the relevant housing officer from the Commissioner's office. The Tribunal first viewed the inside of the house, then the yard and then drove around the Causeway area.
 15. There is no question but that the house is in a poor state of repair. The tenants' own work in laying new floors and painting most of the interior of the house was noted. The tenants showed the Tribunal and Mr Adkins the various items in the house that they asserted required maintenance.
 16. The yard was rough with building rubble left from previous works carried out by the Commissioner presumably prior to 1995. The housing officer undertook to remove this material.
 17. The tenants asserted that some of this building material contained asbestos and produced a report by Asbestos Consultants & Removalist dated 19 January 09

which stated that asbestos concentrations existed in the building rubble and in the back yard.

18. The Tribunal noted the poor state of maintenance of the adjacent yards and the housing officer said that he would have tradesmen attend to the rubbish and piles of rotting matter in the adjacent yard.
19. The general area was severely affected by the developments going on in Kingston. The roads had not been maintained and suffered from pot holes. There was no landscaping. The Tribunal noted the extent of the walk to the bus stops and the tenants' assertion that the street lighting for that journey was not operative.
20. The tenants complained of the truck traffic from the adjacent development and the unattractive appearance of the development. The Tribunal had no difficult understanding this complaint although there was little truck activity at the time of the view.
21. The Commissioner advised that the house is due for painting inside and outside in the 2008/2009 financial year but could not be more precise. It has been 10 years since the last painting was done by the Commissioner.

The legislation:

22. The relevant provisions are found in sections 67-70 *Residential Tenancies Act 1997* which reads as follows:

67 Orders

The tribunal may make the following orders in relation to an application for review of a rental rate increase:

- (a) an order allowing the increase applied for or the other increase that the tribunal considers just;
- (b) an order disallowing the increase;
- (c) an order disallowing part of the increase.

68 Guideline for orders

(1) The tribunal must allow a rental rate increase that is in accordance with the standard residential tenancy terms unless the increase is excessive.

(2) For subsection (1)—

- (a) unless the tenant satisfies the tribunal otherwise, a rental rate increase is not excessive if it is less than 20% greater than any increase in the index number over the period since the last rental rate increase or since the beginning of the lease (whichever is later); and
- (b) unless the lessor satisfies the tribunal otherwise, a rental rate increase is excessive if it is more than 20% greater than any increase in the index number over the period since the last rental rate increase or since the beginning of the lease (whichever is later).

(3) If a tenant or lessor proposes that a rental rate increase is or is not excessive, the tribunal, in considering whether it is satisfied about the proposal, must consider the following matters:

- (a) the rental rate before the proposed increase;
- (b) if the lessor previously increased the rental rate while the relevant tenant was tenant—
 - (i) the amount of the last increase before the proposed increase; and
 - (ii) the period since that increase;
- (c) outgoings or costs of the lessor in relation to the premises;
- (d) services provided by the lessor to the tenant;
- (e) the value of fixtures and goods supplied by the lessor as part of the tenancy;

- (f) the state of repair of the premises;
- (g) rental rates for comparable premises;
- (h) the value of any work performed or improvements carried out by the tenant with the lessor's consent;
- (i) any other matter the tribunal considers relevant.

(4) If the tribunal considers a proposed rental rate increase is excessive but a lesser increase would not be, it may disallow so much of the increase as is excessive.

(5) In subsection (2):

index number means the rents component of the housing group of the Consumer Price Index for Canberra published from time to time by the Australian statistician.

69 Effect of orders

(1) If the tribunal makes an order under section 67 (a) or (c), the rental rate increase takes effect from the date when the proposed increase would, apart from section 66, have taken place.

(2) The tribunal may, on application, grant a tenant time to pay rent owed because of the operation of subsection (1).

(3) If—

- (a) the tribunal makes an order mentioned in section 67 (b) or (c); and
 - (b) despite section 66, the tenant has paid the lessor the full amount of the rental rate increase proposed by the lessor;
- the tribunal may order the lessor to pay to the tenant the difference between the amount the tenant paid to the lessor and the amount that was payable.

70 Further increases

If a proposed rental rate increase has been reviewed by the tribunal, any further purported increase in the rental rate for a period of 12 months after the day the proposed increase was to take effect is void.

23. The tenants referred to the role of the 20% increase on the Housing CPI in section 68(2) on several occasions. The Tribunal explained that this figure is only relevant to determining where the onus of proof lies in establishing the excessiveness of the rent increase (*Commissioner for Housing v Key* [2004] ACTCA 17). In the present case because the proposed rent increase did not exceed this threshold, the Tenant bears the evidential onus.
24. The Tribunal is required to consider the matters listed in section 68(3)(a)-(i). The tenants raised considerations (a)-(b) in their submission that the rent increases imposed on them over the years since becoming tenants in the premises were burdensome and not consistent with the run down nature of the neighbourhood. If viewed only as a percentage rate of increase in rent then the relevant historical increases imposed on the tenants are consistent with the general trend in the ACT rental market.
25. However the tenants case is essentially that the poor state of maintenance of their house, their own improvements to the property and the general deterioration in the Causeway neighbourhood make it unfair to simply apply historical market trends.
26. The tenants real concerns appear to be directed to the considerations in paragraphs (f),(g) and (h) of section 68(3).

27. In terms of consideration (f), the Tribunal has no difficulties in finding as a fact that the premises were not properly maintained by the Commissioner and were in a general poor state of repair. The only maintenance of any significance since the commencement of the tenancy in 2005 is that carried out by the tenants themselves which is a relevant consideration under paragraph (h).
28. Paragraph (g) raises the issues of the rents for comparative premises. The valuation relied upon by the Commissioner relied upon units in new developments in Kingston. Even the most casual inspection of the areas demonstrates the inappropriateness of any such comparison. In fairness to Mr Adkins he did not press those comparisons.
29. In the Causeway area itself 45 of the 50 houses were owned by the Commissioner and tenanted. They were all on essentially the same rent depending on the number of bedrooms ranging from \$320 per week to \$390 per week.
30. Whilst these houses are obviously the most comparative for present purposes, there is an obvious problem with relying upon them for the purposes of the present application. In any situation where the same landlord owns essentially the whole of the relevant housing stock there is no true competition for rents. The landlord is free to charge whatever rent the landlord chooses. In the present case the Commissioner could for example raise the rents on some premises and then rely upon those rent increases to support a rent increase on other premises in the same housing stock. This leap frogging process could be repeated over and over with the outcome that the rents may bear little relationship to the external market.
31. It might be thought that the weakness in the above argument is that the tenants involved in the first round of rent increases would oppose those increases and thereby thwart any future leap frogging. But most of the Commissioner's tenants in the Causeway would be on rebated rent and so an increase in the market rent would not directly affect them. Tenants in this position are unlikely to spend the time and effort required to oppose a rent increase. Once a good number of such rent increases have occurred these increases may then form the basis for dragging up the rents of those tenants who are not on rebates and who may oppose the rent increase.
32. In any event the Tribunal is not convinced that recourse to the existing government rents in the Causeway is a good guide to whether any particular rent increase is excessive or not. Each case must be determined on its own facts having regard to the considerations in paragraph 68(3) and it is most unlikely that each of the Commissioner's tenancies in the Causeway satisfies these criteria in approximately the same way.
33. Further, the presently constituted Tribunal does not accept that the Commissioner has a legal or social duty to engage in rent increases to the maximum extent that comparisons with the private market will bear. The reasons for this conclusion are set out in *Atherton v Commissioner for Housing* [2007] ACTRTT 20; *Donohue v Havelock Housing Association* [2007] ACTRTT 1; and in *Davy v NSW Land and Housing Corporation* 2007 NSWCTTT 25.

34. The Tribunal accepts as a fact that:

- (a) the Applicants' premises is in a poor state of repair
- (b) the Applicants have invested substantial time and money into improvements
- (c) the neighbourhood is run down
- (d) the road, street lighting and bus services are poor relative to other suburbs in Canberra
- (e) the adjacent development causes noise and dust pollution.

35. The Tribunal is satisfied that the proposed rent increase is excessive. Whether any increase is justified in the light to the substantial historical increases to date is doubtful. If the 20% increase on the housing CPI were applied then the rent increase would be of the order of \$30.00 per week. But there is no obvious rationale for applying this percentage increase.

36. The rent increase is disallowed and the rent is therefore to remain at \$315pw.

A. Anforth
17th February 2009