

Media Release

Contact: **Immacolata Bollella**
Phone: (08) 8204 9512



Government of South Australia

Office of Consumer and
Business Affairs

Education and
Information Services

Level 1
Chesser House
91-97 Grenfell Street
Adelaide SA 5000

GPO Box 1719
Adelaide SA 5001
DX 225

Tel 08 8204 9516
Fax 08 8204 9509

www.ocba.sa.gov.au

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Serious breach finds landlord in Court

A landlord who decided not to pay a tenant's bond money to the Commissioner for Consumer Affairs, as required by law, has been convicted and fined.

In a clear indication of the seriousness of the landlord's action, the Adelaide Magistrates Court today convicted Bouaye Pty Ltd ("the company") of 1 count of contracting to avoid the *Residential Tenancies Act 1995* (the Act) and fined it \$4000.

The Office of Consumer and Business Affairs (OCBA) had alleged that the company's actions had breached the Act, which was specifically intended to protect the rights of both landlords and tenants.

In sentencing Bouaye Pty Ltd, Deputy Chief Magistrate Dr Cannon stated that the actions appeared to be a deliberate attempt to evade the requirement that bonds be lodged with the Commissioner. He emphasised that lodging bonds was a "very sensible requirement" introduced many years ago to overcome the unfortunate position of bonds being held by landlords and causing difficulties for tenants in obtaining repayments. Now, bonds are held by the Commissioner as an independent third party, so that they can be paid out properly upon disputes being resolved by the Tribunal.

Commissioner for Consumer Affairs, Mark Bodycoat said, "This is a very pleasing and timely result. This conduct, avoiding a requirement of the Act as it did, is one of the more serious breaches of the Act".

"It is clear that the company should have been aware of its responsibilities about the security bond".

Bond money is placed in trust with the Commissioner for Consumer Affairs until the tenancy has ended. The Commissioner holds it in the Residential Tenancies Fund. It can only be released with the agreement of the parties or in accordance with an order of the Residential Tenancies Tribunal.

"Landlords and agents need to remember that the money is not theirs. There are strict rules that apply to ensure that any refunds go to the people who are lawfully entitled to them."

This legal requirement also protects landlords in circumstances where they have a legitimate right to some or all of the bond for expenses incurred as the result of a tenancy.

Mr Bodycoat said "This case should act as a warning to all landlords, agents and tenants. OCBA regards breaches of this nature very seriously and will continue to monitor the activities of all parties to residential tenancy agreements and will take the appropriate action should a breach be detected".

For more information about renting or being a landlord contact the Residential Tenancies section of OCBA on 8204 9544 or 131 882 for country callers. Or visit the website at www.ocba.sa.gov.au.