TENANTS' UNION OF NEW SOUTH WALES

Five Changes to Social Housing Law

In October 2015, NSW Parliament passed a law changing the rights and responsibilities of all social housing tenants in important ways.

FACS Housing will begin using these new rules against public housing tenants from 22 February 2016. Community housing providers will do the same to their tenants soon after.

Any tenants contacted by their landlord under the new laws should speak to their local Tenants' Advice and Advocacy Service for assistance as soon as possible. Find your local service at tenants.org.au/need-advice or see page over.

1. Strike notices

Social housing landlords can use a system of three 'strike' notices. These are letters issued by the landlord to the tenant when the landlord believes the tenant has breached the tenancy agreement, but the breach is not serious enough to terminate the agreement.

A strike notice is only an allegation against the tenant. But if a tenant has received two notices in a 12-month period, the landlord may seek termination of the tenancy from the Tribunal instead of issuing a third strike.

FACS Housing's policy is to issue strike notices against tenants for alleged antisocial behaviour (for example, hosting a loud party where bottles were thrown onto the street). But the new law allows social housing landlords to issue strike notices for any alleged breach.

Allegation letter

FACS Housing's policy is to first send the tenant a letter concerning the alleged breach. This letter describes the alleged conduct and provides the date it is said to have occurred. It invites the tenant to attend an interview to discuss the allegation. The tenant should attend this interview, or immediately contact FACS Housing if they are unable to attend at the nominated time. A tenant should take an advocate or support person to the interview.

The law does not require landlords to send an allegation letter, and community housing providers may choose not to.

Warning notice

If FACS Housing decides that the tenant has committed the breach, and the tenant has not received a strike notice in the previous 12 months, it will issue the tenant with a warning. This does not count as one of the strikes required to seek termination of the tenancy at the Tribunal.

The law does not require landlords to issue a warning notice, and community housing providers may choose not to.

Strike notice

If the landlord decides a tenant has committed a breach - and in the case of a FACS Housing tenancy, the tenant has already received a warning notice in the last 12 months – it may issue the tenant with a strike notice.

The letter must describe the conduct, provide the date it is said to have occurred, and explain why the landlord thinks this was a breach of the tenancy agreement. It must also allow the tenant to write to the landlord to dispute the strike notice and ask that it be withdrawn. Disputing a strike in this way is useful in any later termination proceedings (see 'Termination for three strikes').

Review of a strike notice

If a tenant has written to the landlord to dispute a strike notice, and the landlord has decided not to withdraw it, the tenant may ask for the strike to be reviewed by a separate panel. The landlord must allow the tenant at least 21 days from its decision not to withdraw the strike to ask for a review. The review panel can confirm a strike or require the landlord to withdraw it.

FACS Housing uses the Housing Appeals Committee as its review panel. Community housing providers are expected to do the same.

Termination for three strikes

If tenant has received two strike notices in the previous 12 months, the landlord may issue a notice of termination to the tenant instead of a third strike. This allows the landlord to apply to the Tribunal for orders terminating the tenancy for the three alleged breaches.

The Tribunal may not be able to consider all the evidence regarding strikes one and two when deciding whether to order termination. If the tenant did not write to the landlord to dispute strikes one and two, the Tribunal may be forced to accept that the breaches occurred.

2. Neighbourhood Impact Statements

Social housing landlords can provide a 'neighbourhood impact statement' to the Tribunal when seeking termination of a tenancy for breach of an obligation under the tenancy agreement. This is a summary of statements made by the tenant's neighbours about the effect the tenancy has had on them. The Tribunal must consider the contents of a statement when deciding whether to order termination, but does not have to agree with it.

A statement can only be provided after the Tribunal has found that a breach occurred. It cannot be provided as evidence of the breach.

Contributing to a Statement

Neighbours asked to contribute to a neighbourhood impact statement should be aware that the statement, and the Tribunal proceedings it is used in, may identify them as participants. Although the law requires the landlord and Tribunal to make efforts not to identify participants, it does not guarantee anonymity.

3. Mandatory Termination

When a social housing landlord applies to terminate a tenancy for some types of illegal use of the property, damage to the property, and injury to a neighbour or landlord's representative, the Tribunal is now required to order termination of the tenancy if it finds that the conduct occurred. There are limited exceptions for especially vulnerable tenants, and tenants with children who would face hardship if evicted.

These changes are highly complex. The consequences for affected tenants will vary greatly depending on the alleged conduct and the circumstances of the tenant and other residents.

4. Repairs Certificates

Social housing landlords can provide the Tribunal with a certificate of costs, when seeking reimbursement for repairs to damage to the property that the tenant caused (or allowed others to cause). The Tribunal must accept the certificate as proof of the reasonable cost of the repairs.

Previously, a tenant could accept responsibility for damaging their property, but argue that the landlord's costs were unreasonably high.

5. Landlord Repossession

When the Tribunal orders termination of a tenancy, it must order that the landlord is to take back possession of the property in 28 days or less (unless 'exceptional circumstances' apply). Previously, the Tribunal could order repossession at a later date

TENANTS' UNION OF NEW SOUTH WALES