

Recommendations

Urgent reforms are required to end 'no grounds' evictions in NSW and provide greater protection for renters.

Renters on fixed term agreements and those in periodic tenancies must be provided the same protection against eviction without a valid reason. Reasonable grounds for termination should be based on the principle that the tenancy should not be terminated for 'no fault' unless the landlord genuinely no longer intends to rent the property in the private rental market.

Sections 84 and 85 of the Residential Tenancies Act should be removed and replaced with provisions allowing termination of the agreement for the following reasons:

1. The landlord or a member of their immediate family wants to move into the premises for a reasonable length of time,
2. The premises are to be extensively repaired and/or renovated such that the agreement cannot reasonably continue,
3. The property is to be put to a different use

Strong compliance and enforcement provisions are required to ensure the effectiveness of the reforms and deliver greater security for those who rent their home in NSW.

Background

'No grounds' termination provisions in NSW tenancy law

'No grounds' evictions in NSW refer to the practice of landlords evicting tenants without being required to provide a reason. The following provisions within the *Residential Tenancies Act 2010* (RTA or 'the Act') allow for evictions without a reason.

Section 84 End of residential tenancy agreement at end of fixed term tenancy

Section 85 Termination of periodic agreement—no grounds required to be given

Fair Trading's End of Tenancy Survey suggests just over 11% of all tenancies that end in NSW are as a result of a 'no grounds' eviction. We estimate close to 30,000 renters in NSW every year are likely to face a 'no grounds' eviction, but all tenancies are impacted by the provisions remaining in law.

Need for Urgent Implementation of Reform

'No-grounds' eviction significantly undermines the security and stability of tenancies, as well as renters' capacity to utilise other parts of the law as designed by government.

For those renters who are forced to move, eviction holds serious personal, social and financial costs. We estimate the basic costs of moving home is around \$4,000 for a

Ending 'no grounds' evictions in NSW

Tenants' Union of NSW Briefing on reform required, April 2023



renting household. In addition, renters may also have to pay higher rent in their next property. The social and emotional costs are also significant. They include the stress and anxiety of trying to find a new home, being forced to move away from work and family and other support systems, and children may have to change schools.

In the current housing crisis, we have observed a distressing relationship between increasing market rents, low vacancy rates and the use of 'no grounds' eviction. Since Covid we have seen the number of renters calling for advice about 'no grounds' evictions more than double. Prior to Covid, around 5% (1500 calls/year) of calls were related to 'no grounds' eviction. This rose sharply during covid and has continued at around 11% (3,800 calls/year). Many of those seeking advice report they believe their landlord has issued a 'no grounds' eviction to vacate the rental property and be able to take advantage of current market rents to re-let at a much higher rent. Tenant advocates report an increasing number of renters are being sent notification of a rent increase - sometimes the second within a year, unlawful for those in periodic tenancies - and informed they can leave or be issued with a 'no grounds' eviction if they wish to challenge or negotiate the amount of the increase. Urgent reform is required to provide greater protection for renters.

Ending 'no grounds' evictions during a periodic and fixed term agreements

Ensuring a fair outcome for renters requires ending 'no grounds' evictions for renters on both periodic and fixed-term leases (removing sections 84 and 85 of the Act). A majority of renters (71%) who currently receive a 'no grounds' eviction are on a 'fixed term' agreement. Around 29% of renters receiving 'no grounds' termination are on a periodic agreement or rolling lease.

At law, a tenancy agreement doesn't end because a fixed term agreement comes to an end. The agreement continues on, unless a party to the agreement seeks to end it and gives notice. In other Australian jurisdictions where the no grounds termination provision at the 'end of fixed term' agreements continues to be an approved reason for terminating a tenancy under the law, landlords have taken advantage of the failure to remove this 'no grounds' termination provision shifting renters onto rolling shorter fixed term tenancies to allow them to continue evicting for no reason.

In Queensland where reforms to tenancy law only removed 'no grounds' termination provisions for those in periodic agreements, the Queensland Residential Tenancies Authority (RTA) had observed it is becoming industry practice for property managers to issue a notice to leave 'without grounds' alongside the renewal of the lease. Renters in Queensland are also more likely to be on fixed terms and therefore receive no improvement in experience as a result of the reform.

Tasmania's *Residential Tenancy Act 1997* limited no grounds evictions to only at the end of fixed term agreements since commencement. This has meant the majority of Tasmanian renters are on 6 or 12 month fixed-term agreements. Tasmanian advocates

report renters in Tasmania continue to face the same challenges NSW renters currently experience. They hold back from requesting necessary repairs, or challenging unreasonable rent increases or unlawful access, as they continue to face the possibility of being met with a termination notice as soon as their fixed-term expires.

Renters on fixed term agreements must have the same protection against eviction without a valid reason.

Reform required

Replace 'no grounds' eviction with reasonable grounds for termination

Current 'no grounds' provisions in the *Residential Tenancies Act 2012* and other NSW tenancy law must be replaced with reasonable grounds requiring landlords provide a valid reason for terminating a tenancy.

Reasonable grounds for termination should be based on the principle that the tenancy should not be terminated unless the renter has breached the agreement or the landlord no longer intends to rent the property in the private rental market.

Removing 'no grounds' provisions: Sections 84 and 85 of the Act must be removed to ensure renters at the end of fixed term and during periodic tenancies can no longer be evicted for 'no grounds' (no reason).

Additional grounds: Sections 84 and 85 of the Act should be replaced with provisions allowing termination of the agreement for the following reasons:

4. The landlord or a member of their immediate family wants to move into the premises for a reasonable length of time,
5. The premises are to be extensively repaired and/or renovated such that the agreement cannot reasonably continue,
6. The property is to be put to a different use

Other grounds, such as breach of agreement, uninhabitability or social housing specific grounds, are not impacted by these proposed reforms.

Terms to be defined: In drafting the grounds suggested above attention should be given to the definition of terms, including family, renovation, 'different use' and to the appropriate minimum length of time the property will be used for any new purpose.

Notice periods: Appropriate notice periods for each of the new additional grounds must be determined in the Act.

Compliance and enforcement provisions

To ensure the effectiveness of the reforms, it is important to have strong compliance and enforcement provisions. It has been important in other jurisdictions to ensure there is a jeopardy for falsely relying on 'reasonable grounds' terms. Where a landlord has falsely relied on one of the above grounds to terminate a tenancy, there should be penalties. Applying a prohibition against the landlord re-letting the property for a length of time where 'no fault' termination provisions are used could also be considered.

At a minimum we recommend:

- If the landlord has been intentionally misleading, the landlord should pay a fine (penalty) and compensate the renter for any reasonable moving costs.
- Alternatively, if the landlord's circumstances have simply changed, the landlord should pay any moving costs associated for the evicted renting household.

Retaliatory Evictions

Consideration of reforms to retaliatory evictions should also be considered as part of this reform because of the potential for misuse. In brief we recommend that the legislation should removing the Tribunal's discretion where retaliatory action is found; that the onus of proof should shift from the tenant; that a preclusion period for another notice be considered; and a broadening of the factors the Tribunal can consider.