

*tenant***NEWS**

NO. 40 OCTOBER 1990

DEEPAVALI EDITION



The Tenants Union of NSW represents tenants against unfair treatment by property owners and real estate agents.

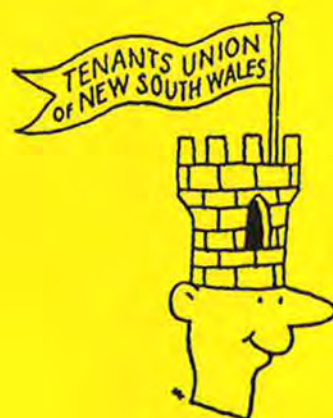
We help tenants to work together for decent affordable and secure housing by:

- * Resourcing tenants advice services
- * Lobbying Governments on tenancy issues.
- * Publicising tenants' problems and rights.

We believe that good quality housing is a basic human right... This means security of tenure, houses in good repair and protection against excessive rents for all.

Solidarity in numbers is the only way that our rights can be fought for and won.

Join the Tenants' Union, and help fight for tenants' rights in NSW.



TENANT NEWS is produced by the
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CONTENTS

TENANT NEWS OCTOBER 1990

Estate Agents Talk Up Rents	2
A Little Joke	3
A Thank You Letter	3
'A Change For The Better'- 2 Years On	4
Tenancy Advice Workshops	5
HITS Under a Future Labor Government	6
Video a Smash Hit	7
Water Rates Debacle	8
New Tenancy Service in Randwick	11
Tenants' Rights Manual Update	11
Government Still Considering Protected Tenants	12
Residential Tenancies Reporter	14
Annual Report	20
Video on Tenants' Rights	25

Cartoons by Katrina Shlunke reproduced with kind permission of the Tenants' Union of Victoria.

Editor's Note:

Deepavali is an important Hindu Festival which occurs at this time of the year. It is celebrated in a manner similar to Christmas.

THIS ISSUE PRODUCED BY

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ESTATE AGENTS: TALKING UP RENTS

Paul Mortimer

On Monday 28th May, the front-page headline of the Sydney Morning Herald was 'Sydney's Rents Set to Soar'.

The story was based on results of a 'survey', released by the Real Estate Institute of Australia.

This was a classic example of the Institute 'talking up' the market. By creating an expectation that rent will rise, a rise may actually take place. The Tenants' Union had to act quickly to counter this move.

The media fell for it hook line and sinker as usual: it makes a good story. Electronic media and newspapers gave it fairly wide coverage.

On the same day, the Tenants' Union contacted the main media and Faxed them a press release, giving the lie to what the Estate Agents were up to.

The Tenants' Union was so unkind as to point out that:

- Estate Agents benefit directly when rents increase, as they get a fixed percentage (usually 7%) of rents they manage.

- It was suspicious that they were reporting rent increases before they happened, and not after

- There was no clear indication from the market that rents were about to rise.

- The Real Estate Institute has a long history of 'talking up' the market.

When contacted by one journalist, the Institute's spokesperson had to admit that he knew no details of the 'survey' their report was supposed to be based on. How odd!

Radio and press gave pretty good coverage of the Tenants' Union's response. Telegraph: 'Rent talked up claim tenants', Herald: 'Marketing tactics'.

Next time, the media may take Real Estate Institute claims with a pinch of salt.



A LITTLE JOKE

Q: What's the difference between an unscrupulous Estate Agent and a rat?

A: You can become rather fond of a rat.

Warning: Do not tell this joke to your Real Estate Agent. They tend not to see the humour.



By Katrina Schindler

A THANK YOU LETTER

Dear Sue,

First of all I must ask you to forgive the terrible typing, and the many mistakes, my only excuse is that I was only ever a two finger typist, and now that the darned stroke has deprived me of most of the use of my right hand, it's more difficult than ever to send anyone a decent letter, any, it's a good excuse, is it not?

I have already told you the good news, that Marie and I have been given a Dept. of Housing unit at Harbord, but I felt that I simply had to put it in writing. If you wish you may publish it in the newsletter.

Only those who have faced the prospect of being without a roof to shelter under can know the terrible fear that can well up in a person, and then to discover that there are still a few people who are prepared to do everything in their power to help you. Well, that's something else, because I am well aware that without the assistance and advice that was given me by your office, I could not have handled the situation, and would not be in this unit today, and so, even though it really is inadequate, I want to say "THANK YOU" from both MARIE and MYSELF.

I guess that it is human nature to put something to the back of one's mind once things are O.K. which is a great pity, so am enclosing a small cheque, to renew my membership, with a little bit over as a contribution to the Union. Not as much as I would like to have sent, but I hope that you will understand.

Once again, many thanks, Sue,

Sincerely yours,
George Gibson.

"A Change for the Better"

- 2 Years On

The Liberals election platform for public housing tenants prior to March 1988 promised absolute security of tenure, fairly based rents, expanded tenant participation, upgraded and quicker maintenance and possible home ownership.

As well, a halving of the waiting list within 5 years.

What has NSW Inc "putting people first and managing better", achieved since the Greiner-Murray government gained office?

1. *No tenant evictions*
hardly true, with the sale of public housing stock, forced transfers, redevelopment and new tenancy laws, which allow the Department to evict for no reason
2. *Fairly based rents*
Yes, rent rebates remain, although shaky for a while. However, has anyone calculated the effects of increased NSW taxes and charges on fixed and low income public housing tenants?

3. *Guaranteed right to continue to live in your own home*
the introduction of forced transfers for alleged under-occupancy has totally undermined this promise.

4. *Home Purchase*
how many tenants have been able to buy their Housing Department home? Where is the reinvestment of money gained from such sales in new public housing?

5. *Expanded tenant participation*
where are the extra resources and where is the access for tenants to fundamentally have a say in their housing management?

6. *Upgraded and quicker local maintenance*
local tenant groups are still waiting.

The countdown to the next State election has already started. The Liberals' promises remain unfulfilled.

Public tenants could in many instances be forgiven for believing that they're really private tenants in 1990 NSW. And that waiting list. Well, it's a bit like the interest bill on the foreign debt - it doesn't get any smaller.

But in corporate NSW, the balance sheet will be right at the end of the day. Pity about the selling off of the assets - or the fobbing off of public tenants.



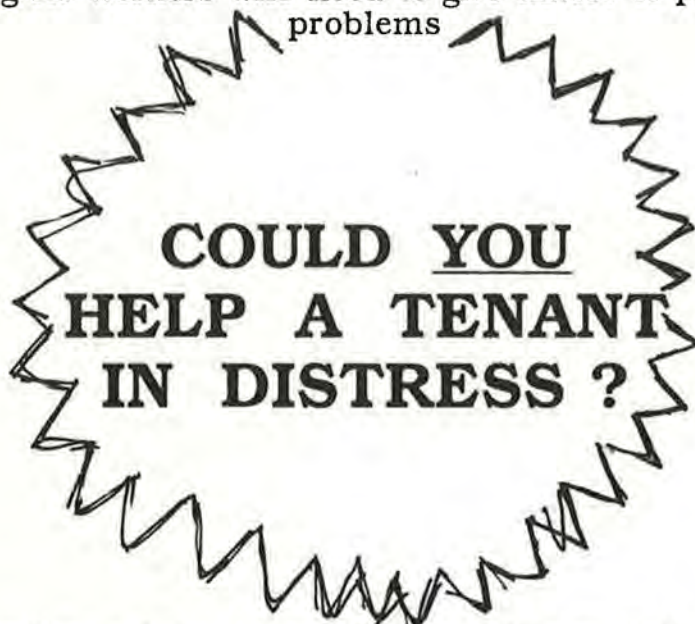
THE TENANTS' UNION OF NSW

Presents its November 1990 series of

TENANCY ADVICE WORKSHOPS

Intensive 1 - Day Workshops:

Essential training for workers who need to give advice to people with tenancy problems



Covers: Repairs, Evictions and Terminations, Residential Tenancies Tribunal, Bonds, Rents, Tenancy Agreements, Standard Forms, Privacy and Access, Costs and Charges, Where to get help, and much more.

COST: \$50 Community Organisations
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BOOKINGS: Taken on a first come, first serve basis
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Send to: Tenants' Union of NSW
68 Bettington Street
Millers Point 2000.

Tick workshop date:

November 14 _____
November 30 _____

NAME.....PHONE.....

ORGANISATION.....

ADDRESS.....POSTCODE.....

Cheque / Money Order enclosed for \$ _____
Please make cheques payable to Tenants' Union of NSW



J. WRIGHT

HAWKE'S DREAM

HITS UNDER A FUTURE LABOR GOVERNMENT

By Robert Mowbray

Ron Dyer, Shadow Minister for Housing has committed a future State Labor Government to re-funding a regional, state-wide network of community-based tenancy advice services.

He advises that such a network would be re-established as soon as administratively possible and following a process of consultation with groups such as the Tenants' Union of NSW.

Such a decision is consistent with the ALP State platform on the use of funds generated by the Rental Bond Board.

His announcement comes at the end of a long and hard campaign run by community housing groups, with the support of unions and church bodies which was unsuccessful in getting the State Liberal Government to reverse its decision to terminate the Housing Information and Tenancy Services (HITS) Program.

Mr. Dyer also advised that it would be his intention to reinstate funds to the Tenants' Union at a level comparable to that which prevailed prior to defunding, but that this would have to be subject to detailed discussion at the relevant time.

However, Mr. Dyer refused to commit a future State Labour Government to refunding other peak and regional housing groups, namely Shelter NSW and the Housing Information and Referral Service.

He stated that this would have to be discussed at the time a Labor Government returns to office and any decision would be in the context of the structure of such bodies, the services they provide, and the level of other services available at the time.

NEW VIDEO A SMASH HIT.

Paul Mortimer

The Tenants' Union recently pulled off a bit of a coup with a Promotion and Display of its new Tenancy Advice Video in 12 languages. (See Advert, this issue).

This video is the Migrant Community Education Kit, which has been so eagerly awaited.

The Promotion was organised with the Ethnic Communities Council (ECC), and held at the Ethnic Affairs Commission (EAC) on July 25.

It was an impressive display, with the twelve language videos being shown simultaneously on 12 mounted video screens. Thanks to the Department of Housing's Tenancy Service and Multicultural Unit for making these available on the day.

This meant that representatives from different communities could view the video in their language. Although it must be said that they couldn't all be turned up at once, or it would have been a bit chaotic.

About seventy people attended the Promotion, including several from different Ethnic Media organisations, who gave the video and Tenancy Issues some very good coverage in the Ethnic Press and Radio.

The video was publicly endorsed by Stepan Kerkyasharron (EAC Chairperson), Ross Tzannes (ECC Chairperson) and Bob Browne, the NSW Tenancy Commissioner.

Hopefully, the relevant organisations will heed their endorsement and purchase copies of the Kit, including the video.

All in all, this was a very positive exercise for the Tenants' Union, particularly in forming stronger links with various migrant organisations.



WATER BILLS DEBACLE

Sue Creek

Like many other bodies, the Sydney-Illawarra-Blue Mountains Water Board has recently moved to a 'user pays' system in an attempt to cut water consumption.

Under its new billing system introduced on 1 July 1990 the Board can now, for the first time, charge for all water used.

However, the way the changes have been implemented is cause for great concern.

Thousands of residential premises are not separately metered. Therefore, it is impossible to accurately calculate how much water is used by any one household.

In addition, tenants are being asked to pay for something which is not billed in their name unlike other 'user pays' services such as phone or electricity.

The new system has already resulted in many disputes between landlords and tenants, as well as between tenants and occupants of unmetered joint premises.

Moreover, moves to impose the additional costs associated with the new billing system onto tenants is most inequitable. Tenants have no capacity to write-off these costs, unlike landlords.

WATER BILLS

Water bills are raised against the property. This means that the bill is sent to the owner who is given 14 days to pay. The bill contains charges for water usage, service availability (sewerage and drainage), and the environmental levy.

Pre July 1, 1990

Under the previous arrangements, tenants could not be asked to pay for the service availability charge or the environmental levy and there was no charge (to landlords or tenants) for water usage within the 250 kl annual allowance.

The landlord was billed for any 'excess' water used above this level. However, the landlord could demand to be reimbursed for this by the tenant.

Where premises were not separately metered, landlords generally devised some arbitrary system to divide the 'excess' bill between individual premises.

If the landlord did not pay the bill, and the Water Board decided to cut-off the water, occupants were notified so they could take action. If the landlord did not pay when notified by the tenant, or the water was actually cut off, the tenant could :

THE LANDLORD VISITS again...



By Katrina Schlunke



- pay all or part of the bill (plus reconnection fees, if required) and get the money back from the landlord;
- pay the equivalent of their rent to the Water Board, instead of to the landlord. They then had to forward a copy of the Water Board's receipt to the landlord advising him/her of the action undertaken (also keeping a copy for themselves) so the landlord could not evict them for non-payment of rent; or
- apply to the Residential Tenancies Tribunal for an urgent hearing and ask for an order that the landlord pay the bill and arrange for the water to be reconnected.

Post July 1, 1990

Under bills sent out since 1st July 1990, the landlord is still responsible for the service availability charge and the environmental levy.

However, there is now a charge for *all* water used. Many landlords are demanding that tenants meet this cost. This amounts to a rent increase via the back door without the 60 day notice required by law.

Moreover, attempts by landlords to pass on this cost would seem to conflict with the Residential Tenancies Act.

According to Section 19 of this Act, tenants only have to pay for *excess* water unless the water charge "is calculated according to the metered amount of water consumed, and there is no minimum rate chargeable" (Regulations: Clause 24(b)).

However, it is feared that a Regulation currently being drafted by the Tenancy Commissioner will allow this cost to be passed on to tenants.

As the Water Board's new billing system has replaced the concepts of a 'water allowance' and 'excess' water with a quarterly 'meter-related charge' of \$10.30 and a charge for 'additional water usage', it would appear that tenants can no longer be charged for 'excess' water after July 1.

In addition, according to the Water Board, thousands of rented premises like flats, public housing dwellings and joint commercial/ residential buildings are not separately metered.

As it is impossible to calculate how much water is used by individual households which are in this situation, it would seem such tenants could not be liable for water charges.

Nonetheless, landlords will almost certainly devise some arbitrary system to levy tenants.

An additional problem is that the Water Board has said it has no intention of reading meters at the start and end of each tenancy. This will mean that there is no way of calculating how much water is used during individual tenancies.

Another area of concern is that landlords will get the rebate for any water saved, as accounts are directed to the property owner. This should be credited to the tenant if the aim is to encourage them to use less water, and as it is they who have achieved the 'saving'.

THE TENANTS' UNION'S POSITION

Unless these issues are satisfactorily addressed, the Tenants' Union strongly opposes any attempts to make tenants liable for these costs.

We argue that tenants should only be liable for water usage if:

- 60 days notice has been given that charges for water consumption are going to be levied, or a new Residential Tenancy Agreement has been commenced (after vacant possession) and the new Agreement has an additional term to this affect;
- premises are separately metered;
- meter readings are taken at the beginning and end of the tenancy;
- the landlord provides the tenant with copies of all water bills during the tenancy;
- credits for any water savings are passed on to the tenant; and
- dispute resolution mechanisms are in place.

Given the additional burden tenants will face if water consumption charges are allowed to be asked from them, we sincerely trust no consideration is being given to enabling the service availability charge and the environmental levy to be passed on to tenants as well.

TENANCY ADVICE

Remember, this information applies only to the Sydney-Illawarra-Blue Mountains Water Board region (although similar provisions have applied for some time in other parts of NSW

where a user pays system has been introduced and premises are separately metered - such as the Hunter).

The landlord has to pay the service availability charge and the environmental levy. If the landlord is asking the tenant to pay for water, the tenant should ask to see the bill.

If the bill was issued *before* 1 July, tenants only have to pay for excess water. If the bill was issued *after* 1 July 1990, tenants can be asked to pay the water usage component of the bill providing the premises are separately metered and no minimum rate applies.

Where premises are not separately metered, and the tenant disputes the amount the landlord is asking them to pay for water usage, they should lodge a complaint with the Tenancy Commissioner and ask him to help resolve the dispute

(The tenant may still have to pay the amount, but the Commissioner will at least be informed that tenants are not happy about this change which may help us in getting the policy changed!).

If the tenant is notified that the water is about to be cut off because the landlord has failed to pay the bill, they still have a right to pay their rent to the Water Board or to go to the Tribunal as outlined above.

For further information, contact the TENANTS' UNION HOTLINE on 251-6590.



RANDWICK INFORMATION & COMMUNITY CENTRE:

NEW TENANCY SERVICE

Randwick Information and Community Centre has been given a \$10,000 grant by Randwick Council to establish a Tenancy Advice Service for Randwick City.

While this is a "one-off" grant, it will go a long way towards establishing much needed tenancy resources in Randwick.

The aims of the project are to:-

- provide tenancy advice to local residents, emphasis being on private tenants.
- gather and distribute information on all tenancy issues.
- monitor and highlight private and public tenancy issues.
- provide tenancy information in various community languages.

Particular attention will be paid to the specific needs of aboriginal and non-English speaking background tenants.

Due to limited resources, this service will only be operating on Tuesdays.

All enquiries regarding this service should be directed to Susan Crane, 349-8200, 47 Green Street, Maroubra.

TENANTS' RIGHTS MANUAL BEING UPDATED

Robert Mowbray

The Law Foundation of NSW has made a grant available to the Tenants' Union of NSW to produce a new Tenants' Rights Manual.

The grant covers the employment of a consultant and costs relating to production, distribution and provision of an update.

On 23 July 1990 Ms Philipa Bellemore was employed as the consultant. She has been engaged for 16 weeks to mid-November 1990.

Philipa has been consulting tenancy and legal workers on the content and format of the manual. She has extensive experience in producing plain English publications.





GOVERNMENT STILL CONSIDERING PROTECTED TENANTS ISSUE

Colin Jones

The State Government has yet to decide the future of the Landlord and Tenant (Amendment) Act 1948, the legislation concerning protected tenants.

In October 1989 a registry was formulated and it was expected that all protected tenants would come forward and provide relevant details.

As the government has promised to relocate "eligible" tenants into public housing, the registry was to provide information on the incidence of protected tenancies. The response was appalling with less than 800 tenants registering prior to the deadline.

The Government is now intent on re-examining the list of register tenants. Tenants will be sent a questionnaire requesting details of their housing choices.

It is likely that many tenants will want to remain close to their current homes and this presents a real problem for the Government.

Most tenants live in areas of extreme housing demand (Sydney inner-metropolitan area) and the Department of Housing do not possess sufficient stocks of accommodation and the housing available is subject to slow vacancy rates.

The manual will provide invaluable help to tenants' groups, social welfare workers, etc who grappling with tenancy problems. It will contain information on how to handle specific tenancy problems, sample letters, how to complete an application form to the Residential Tenancies Tribunal, etc.

It is expected that the Manual will be available in December 1990 from the Tenants' Union, Pluto Press (a Commercial distributor) and good bookshops.

It is our opinion that there is no possibility at all of the Government adequately rehousing all of these people.

The government has openly admitted that it wants to rid New South Wales of such an "archaic and anomalous law". But it has maintained that every effort will be made to adequately rehouse all of those protected tenants who registered with the Department.

Commendable as such an approach may appear, their method of doing so and at the same time abolishing the existing legislation does not make any sense. They have only two alternatives:

Alternative One

The Government can abolish the "fair rents" and "security of tenure" provisions of the Act,

This action in effect, would render the legislation impotent. Tenants would immediately be subject to paying market values rents and could be evicted without cause. In such a situation tenants would be forced to consider any offer of public housing accommodation.

Alternative Two

The Government can systematically allocate suitable public housing to the registered protected tenants and leave the legislation to die a natural death.

This is the preferred option for the tenants however it is least desirable to the Government due to the many years it would take to rehouse all the tenants.

It is further complicated because protected tenants will have no real incentive to accept public housing, they can remain in their current homes subject to rent control.

There can be no other methods (or variations of the above methods). At some time the Minister for Housing will need to introduce legislative changes through Parliament, be it in two weeks or two years.

Neither of the two scenarios outlined above will allow the Government to relocate all tenants and abolish the legislation, as they have stated in their intent. Put simply, it can achieve only one of these objectives.

The fear is that once the Government realises this (and admits it) they will choose to abolish the legislation.

The Tenants' Union would like to see the Act phased out by natural attrition. The overwhelming majority of protected tenants are older people and they should be free to live out their remaining days with some peace of mind.

The past year has been a traumatic period for many due to the existence of the Government review and the general doubt surrounding the future of their homes.

There is also major concern for those tenants who did not register. The Minister for Housing has stated that he will proceed to look after those that have co-operated but he said, "the rest can fend for themselves"

A final decision will be made once the results of the latest survey of registered tenants has been analysed by the Department of Housing.



Residential Tenancies Reporter

Distributed by the Tenants
Legal Working Party.
PO Box 368 Darlinghurst 2010.

No 2. October 1990

This reporter has been established to :

- make accessible reported decisions of the Residential Tenancies Tribunal (RTT) ,
- report decisions of importance which have not been reported by the RTT ,
- provide commentary on decisions and performance of the RTT.

COMMENT :

Developments in section 58 - ' no grounds ' eviction .

The issue of ' no grounds ' eviction is an impasse between landlords and tenants and their advocates. It has symbolized the conflict between free market forces and government intervention .

The free marketeers wish to maintain their ' dominion ' over their asset so as to maximize profit . Interventionists say ' this asset has a human being in it ' who should have protection against the arbitrariness of the landlord and the market.

Given that the Residential Tenancies Act 1987 (the Act) provides for ' no grounds ' eviction , it is more useful to

look at developments in its interpretation rather than ask why it exists .

The first development relates to the interpretation of section 60 - termination of fixed term agreement without any ground. This provides for 14 days notice by either party on termination of a fixed term agreement.

It was thought in some quarters that the application of this section would be a rarity, as it should only apply where the tenancy agreement does not contain any holding over provisions. Agreements without holding over provisions are not common.

There have been matters where this section has been applied in spite of a holding- over clause in the agreement .

It does not make sense in fairness and equity that the notice to be given by a landlord before the expiry of a fixed term agreement should be 14 days but if given , say, one day into the holding over period that it be 60 days.

This has in part defeated the purpose of giving 60 days notice. The rationale was that a tenant facing eviction at any time for no reason will , unless shown otherwise , face greater hardship than a landlord given notice .

The second development is the use of section 58 to circumvent section 57 of the Act . As was the case under the Landlord and Tenant Act 1899 , many landlords and agents will opt for ' no grounds ' notice under section 58 in preference to

having to prove a breach under section 57.

If a landlord can wait , it is much easier to give a 60 day notice than to prove a breach (apart from rent arrears) . Also , if notice is given for no grounds, the tenant is denied a discretionary remedy available under section 65(2) (b) - that is , if the breach is rectified , then the termination order may not be made.

The only remedy available is to argue 'retaliatory eviction ' - section 65 (2) (a). This subsection is potentially a very powerful defence for tenants . So far , it appears that the Tribunal has been reluctant to apply these provisions.

In NSW , there is not much to deter landlords and their agents from giving 60 days notice.

In Victoria , landlords are required to give 6 months notice for termination without grounds. It was also part of the Victorian Labor Party platform at the last election that ' no grounds ' eviction be abolished.

Section 58 is also used by the Department of Housing for eviction of public housing tenants .

Recent matters before the RTT (also reported in this issue) have shown that the NSW Department of Housing is not afraid to use section 58 as the basis of eviction and as a means of avoiding being put to proof of a breach and the associated remedy this offers a tenant.

The security of tenure of public housing tenants has always been unclear. The recent decision of the Chairperson affirming the use of ' no grounds ' eviction by the

Department of Housing has shown that administrative law principles have no application in the RTT. Justification for this is that the Act does not make any specific provisions for the tenure of public housing tenants.

The Department claims that a public housing tenancy is a contract between the Department and a person and therefore not of the public domain. In their view, tenancy is not an activity subject to administrative law principles.

This issue needs to be resolved in the Supreme Court. Even if the Department's argument is successful, it is to deny developments in consumer contract law towards fair dealing and relief where unequal bargaining power creates unjust contracts.

Administrative law principles must apply to public housing tenants facing eviction.

INFORMATION.....

Residential Tenancies Act 1987 Review:

As promised at the time of proclamation, the Tenancy Commissioner is presently conducting a review of the operation of the Residential Tenancies Act 1987.

This review has taken the form of a consultative committee. Submissions to this committee were received from a variety of groups including the NSW Combined Legal Centres Group, the Tenancy Legal Working Party of the Tenants Union, the NSW Law Society, the Real Estate Institute of NSW, the Property Owners Association and the Tenancy Service of the Department of Housing.

The final report will be

submitted to Parliament as part of the Tenancy Commissioner's Annual Report.

Access to reported decisions

The Department of Housing Tenancy Service has copies of reported decisions of the Tribunal available for reading. These are indexed by legal issue, by applicant name and cases are filed in numerical order.

The more interesting of these decisions are summarized in the Residential Tenancies Update, the newsletter of the Department of Housing Tenancy Service.

Getting written decisions or information about a matter from the Registry

Tenancy workers do not have a right to get a copy of a decision of the RTT - the interested party must apply.

It may be useful to have a form letter ready which requests written reasons for an order under section 114 of the Residential Tenancies Act 1987 and have that sent care of yourself to the client.

Registry staff do not give any information about matters over the phone on the basis of confidentiality. However, if you are assisting the tenant and the Registry have the written authority appointing you as agent, or alternatively, a letter making you their legal representative, you may get some assistance.

Practice and Procedure Notes

The Chairperson has issued notes on the following issues:

1. Rights of landlords and tenants where there is a change in the original parties to a tenancy agreement - various sections
2. Observations on applications to set aside or vary orders - section 110
3. Locks and security devices - section 29
4. Reduction of rent where a reduction or withdrawal of services by the landlord section 25.

CASENOTES.....

What repairs can a public housing tenant expect ?

Issue : public housing repairs - \$5,000.00 limit on orders - Departmental funding and repairs

Matter: 90/0254

Decided : 17 May 1990

Tribunal Member: Mr Collins

Hearing Place: 301 George Street Sydney

Tenant had problems caused by major water penetration and dampness over three years. This was not disputed. Estimate of work required was \$20,000.00. A community legal centre solicitor was granted leave to represent and assist the tenant.

Landlord's representative said that the reason why repairs could not be done was because of funding - work could only be done in next financial year. The Department wished to set its own timetable for carrying out work.

Further, the work was over limit of Tribunal - \$ 5,000.00 - and this was acknowledged by the tenant's representative.

Regardless, the Chairperson found that the tenant's situation was unsatisfactory and the

waterproofing and other repairs as noted in the report should be undertaken as quickly as possible and not left to the uncertainties of future funding.

The Department was given two and a half months to commence works.

Can the Department of Housing evict without a reason ?

Issue: ' no grounds ' termination by Department of Housing - order to set aside - reheard by same member.
Matter: No 90 / 7125
Decided: 30 May 1990
Tribunal Member: Mr Keenan

Reheard : 24 August 1990
Tribunal Member: Mr Keenan
Hearing Place: 301 George Street Sydney

In January 1990 , the Department of Housing issued a ' no grounds ' notice of termination with 90 days notice.

The tenant attended the first hearing on 30 May 1990 at which the landlord alleged that the tenant was not living there on a full- time basis .

Tenant had language and medical problems at that hearing .

An order for termination was made and suspended for two months - until 31 July 1990. It was part of the order that the tenant had until 28 July 1990 to appeal this decision .

The tenant then with the assistance of a community legal centre lodged an application to set aside the earlier decision.

The basis of this application was that because of the language and

medical problems the tenant was not afforded a full opportunity to participate in the proceedings .

Further, that the tenant can and wants to remedy the cause of the ' no grounds ' termination The application was lodged on 17 July 1990 .

The Registrar granted the application and the matter was set for rehearing before the same Tribunal member on 14 August 1990 .

It was subsequently adjourned until 24 August 1990 because the interpreter did not appear.

At the hearing on 24 August 1990 , on hearing full details of the history of the tenants , the Tribunal Member set aside the order to vacate.

Section 110(3) :
' that such an application shall (as far as practicable) not be heard by the same person who made the original order '

Can the Department of Housing evict without a reason ?

Issue: ' no grounds ' termination by Department of Housing - grounds for adjournment - hardship
Matter : No 90/6962
Decided: 13 August 1990
Tribunal Member: Mr Collins
Hearing Place: 301 George Street, Sydney

Tenant is an invalid pensioner with wife and two teenage children.

He has had a long and ongoing dispute with Department of

Housing resulting from hot water system leaking into wall cavity and remaining undetected by Department of Housing employees, leading to excessive electricity bills over some years.

Department of Housing wished to renovate premises and wished to relocate tenant. Several offers had been made of alternative accommodation but these were found to be unsuitable by the tenants .

Tenant received a 60 day ' no grounds ' notice of termination dated 26 April 1990 . Tenant was by this time in rent arrears and the Department sought an order for possession, rent outstanding and an occupation fee.

The Department acknowledged that subject to payment of rent , other premises in the vicinity would be made available .

The Chairperson's view was that all that had to be shown was that adequate notice had been given and termination action commenced within time limits.

" It is simply a question of when the landlord is entitled to possession , not whether the tenant is entitled to remain as a tenant in possession..... If this was not so there would be created in a tenancy something which is not recognised by the RTT That is, that the tenant has some form of tenure which would otherwise be protected and needs protection .The R.T.T does not grant any tenure to a tenant " .

The Tribunal acknowledged that the tenants hardship was considerable but:

" The landlord is at common law entitled to possession and that is a matter of high importance when considering the question of hardship " .

The Tribunal also considered the question of renovation and the offer to temporarily house elsewhere and then rehouse in

the original premises once work was completed, provided rent and arrears were paid.

During the course of the Tribunal hearing, the tenant stated that he did not understand what was happening. He was offered the opportunity of seeking advice on the matter from the Department of Housing Tenancy Service. The tenant returned and on the Service's advice, asked that the matter be adjourned, as he wished to seek legal representation as he did not understand the full 'whak' of proceedings and was thus disadvantaged by not having any legal representation.

The Tribunal formed the view that no such disadvantage existed as he was coherent, answered the questions he was asked and presented a clear case of hardship.

The orders of the Tribunal were, in effect:

1. The tenancy be terminated
2. Possession to be given on 20 August 1990 and date of possession suspended to 17 September 1990 provided that:
 - i) tenant pays occupation fee weekly
 - ii) the tenant complies with tenancy agreement
3. The tenant pay the arrears (\$1338.00) forthwith.

Post script:

On 27 August 1990, with the assistance of a community legal centre, the tenant lodged an application under section 110 Residential Tenancies Act 1987 to set aside the order.

The basis of the application was denial of natural justice and application of administrative law principles, refusal of adjournment, denial of remedies by use of 'no grounds' eviction rather than breach, retaliatory eviction and estoppel.

Included in this was an application under section 99 to

change the existing order on the basis that hardship was not fully considered.

On 12 September 1990, over 2 weeks later and 5 days before the date of possession, the tenants received the decision of the Deputy Registrar of the Tribunal (dated 10 September 1990) which stated:

"At the hearing you would have been given every opportunity to put your side of the matter The matters raised in your application to set aside the orders made do not present as sufficient reason to set aside the order".

What is a boarder or lodger?

Issue: Definition of boarders and lodgers-section 6 (1); share housing -burden of proof
Matter: 90/532

Decided: 13 February 1990
Tribunal Member: Mr Byrnes
Location: 301 George Street, Sydney

The applicant sought three orders, the first of which was that the applicant be recognised as tenant of a room. (The other orders related to recovery of rental bond and rent paid in advance.)

The respondent signed a residential lease for a term of one year but within two months she wished to move out.

The applicant then moved into the respondent's bedroom and had the right to share the rest of the flat with other occupants. She paid the respondent an amount of money covering rental bond and three weeks rent in advance and received a receipt.

Although the respondent moved out, she maintained that she

retained control of the whole premises even though she did not live there.

The Tribunal found that the oral agreement of the parties at the time rental bond and rent were paid was to give the applicant exclusive possession of the bedroom she occupied.

The retention of the key to the whole of the premises by the respondent had no bearing on whether there is a lease or whether the tenant is a mere lodger.

A house rule that an occupant replace himself or herself was not of itself indicative one way or another of whether there was a lease or a lodgement agreement.

It was found that the respondent did not have nor did she retain the right of unrestricted access to the whole premises. The respondent did not exercise control over the premises through another member of the household, as she claimed, as there was no servant or agent relationship.

The fact that the owner did not consent to the sub-letting of the whole of the premises did not effect sub-letting of part of the premises.

The Tribunal found that the applicant was a tenant who was not a boarder or lodger. The Member argued that the burden of proving that the applicant was a lodger rested upon the respondent, with the standard of proof being the civil standard. He was not satisfied that the respondent had discharged her onus of proof.

Contributions:

If you know of an important decision of the RTT please let us know. Send all paperwork, reasons for decision and summary to PO Box 368 Darlinghurst.

What is a boarder or lodger ?

Issue: Definition of boarders and lodgers-Section 6 (1) Matters No :90/2546 and 90/2457

Heard: 6 April 1990

Tribunal member: Mr Broderick

Hearing place: 301 George Street

Two residents applied to the Tribunal for findings that they were tenants within the meaning of the Residential Tenancies Act 1987. This followed a rent increase which purported to take effect immediately and threatened eviction of the residents if they did not comply.

The Tribunal gave leave to a community legal centre solicitor to represent the applicants. The landlord was also represented.

The Tribunal member found:

1. That the fact that the premises were licensed as a boarding house by a local government authority is not a determination as to the legal status of the occupants.

2. The applicants had lived in the premises for some time. They were given keys to their own rooms and a vacuum cleaner was provided to the applicants to do the cleaning. Towels and sheets were provided which the applicants were to launder. There was a common kitchen, bathroom and laundry facilities and a common lounge room.

3. Other residents of the premises were known as "casuals" for whom linen was provided daily, whose rooms were serviced daily and whom were provided sachets of tea coffee and sugar.

4. In March 1990 the proprietors took over direct management of the property and instructed that all rooms including those of the applicants be entered and linen

provided.

5. The former manager of the premises had never carried out servicing of the applicants rooms or treated the permanent occupants in the same manner as the casuals or made it clear to the applicants that this was to be the arrangement.

The Tribunal member found that the applicants were tenants given the nature of the agreement and the terms of commencement of their occupancies.

The respondents were required to give 60 days notice of a rent increase and 60 days notice of termination if the provisions of section 58 were to be relied upon.

Cases cited in the judgment:

Veralla v Marsicovetere (1954) VLR 550
Ashland v Murphy Numbers 1 and 2 and Duke and Wynn 1989 All E.R. at 130

Standards of pest control

Issue : pest control standard - abatement of rent
Matter: No 90/3877
Member: Mr G Vardis

This matter was reported in the August 1990 issue of the Department of Housing Tenancy Service's Residential Tenancies Update.

Premises unfit to live in?

Issue : frustration (section 61) or breach (section 57)
Matter No : 90 /2135
Heard: 21 March 1990
Tribunal member: Mr Broderick
Hearing place: 301 George Street

This matter was reported in the August 1990 issue of the Department of Housing Tenancy Service's Residential Tenancies Update.

Further details on this matter:

The factual issue dealt with here was whether the overpowering smell of damp and potential mould damage to belongings (arising primarily from defective damp proofing) made the premises unfit to live in .

The facts led the Tribunal Member to say that the condition of the premises was severe enough to give notice for breach , but not so severe as to :

" render the premises wholly or partly uninhabitable within the legal meaning of that doctrine."

What is reasonable security ?

Issue: section 29 : locks / security - compensation for loss of property- time to pay
Matter: No. 90/6557
Hearing: 26 July 1990
Member: Mr Cochrane
Location: 301 George Street Sydney

Section 29 of the Residential Tenancies Act 1987 states that the landlord is to provide and maintain premises with reasonable security.

The case relates to problems faced by a share household in the inner- Sydney suburb of Stanmore. Before and after signing their latest agreement , household members notified the landlord in writing that the premises were not secure as side and rear doors could not be locked properly. In addition, the household was unable to get insurance because of the lack of deadlocks. In early July, the house was

The Tribunal decided that:

- Landlord had failed to ensure premises had reasonable security at the commencement of, or during the tenancy.
- Reasonable security in premises such as these, bearing in mind the evidence given about the high incidence of break and enters in the immediate neighbourhood , must, in this age, comprise of deadlocks on exterior doors and a secure form of window lock .

Orders made:

1. Landlord to compensate tenants for cost of the deadlocks.
2. Landlord to compensate for loss of stolen property.

How much notice do I have to give?

Issue: proper notice on
termination - bond jurisdiction
Matter: No 90/6899
Decided : 3 August 1990
Tribunal Member : unknown
Hearing Place: 301 George
Street Sydney

Tenants had a six month lease. They had given 21 days written notice to the landlord 's agent , prior to expiry of lease.

The agent had already released the bond, but was now claiming compensation for 21 days notice, alleging the tenant did not give

any notice , and compensation for damage to a door.

The tenant raised the fact that the bond had already been released, believing that they had waived their right to compensation and that the Tribunal no longer had jurisdiction.

The matter proceeded and the Tribunal found that on the facts, the tenants had given written notice, and that all that was required was 14 days notice, not 21 days notice, under the provisions of section 60(2) - termination of a fixed term agreement without any ground.

The tenant, after providing written evidence that the door damage was not as great as claimed, was ordered to pay a lesser amount.

Setting aside an order made in the absence of a party

Issue: termination - notice of hearing- application to set aside order

Matter: No 90/7588

Decided : 1 August 1990

Tribunal Member : unknown
Hearing Place: 301 George
Street Sydney

Tenant did not appear at the Tribunal hearing on 1 August 1990 (a Wednesday) as she claimed she did not receive notice of hearing until the day after the date of hearing .

The Tribunal Registry states it posted the notice of hearing by priority post on Wednesday 25 July 1990.

On receipt of the notice she contacted the Registry to find out what had happened . She found that a termination order had been granted with possession in 7 days.

On the following Monday, she attended the Registry and completed her application to set aside the decision with the assistance of counter staff.

She rang on the Wednesday 8 August 1990 and we are to understand that she was told that she would not be evicted before her application was reheard by the Tribunal.

Later on the same day she attended a community legal centre for advice. She was concerned that at that late stage she did not know the outcome of her application.

On the Thursday evening at 5.30 pm (the day before enforcement of the order) she was contacted by Registry staff and told her the application was unsuccessful and the original order stood .The tenant was to vacate the following day.

Post script

The matter was followed up with the Registry. The Registrar asserted that the tenant knew of the hearing as the agent had advised her on 31 July 1990 of the hearing and accordingly the application was refused on this basis. How they came to have this knowledge is uncertain.

Further the Registrar stated that the application, lodged 5 days after the order, had correctly been refused and :

"As a matter of courtesy to [the tenant], registry staff telephoned her to advise that her application had been refused . They are not required to do this and could have left it for a letter to be sent out. "

This was courteous but misses the point. If it had been granted, then the tenant would have already moved out, defeating the purpose of the application.

THE TENANTS' UNION OF NSW

ANNUAL REPORT

JAN - DEC 1989

INTRODUCTION

1989/90 has been a difficult year for the Tenants' Union.

The abolition of NSW Government controlled funding, (from tenants' monies held by the Rental Bond Board), to the network of local tenancy services, Shelter, Housing Information and Referral Service and the Tenants' Union on March 30 1989, heralded in the past 12 months.

This finally saw reformed but inadequate tenancy legislation introduced against a continuing background of economic restructuring, housing market chaos and government indifference.

With resources cut by over 70%, but community expectations increasing since the new legislation was introduced.

The Tenants' Union has managed to continue its excellent tradition of lobbying, service delivery and public information/education albeit in a leaner and strategically targeted manner.

To this end, the commitment and excellence of the staff, the contribution of Board members, other members and contract consultants over the last year cannot be acknowledged too highly.

THE YEAR IN REVIEW

(i) New Tenancy Legislation

The major event of the past 12 months for the Tenants' Union has been the introduction of new tenancy legislation in NSW from 30 October 1989.

Consistent lobbying of the Greiner Government and negotiations with opposition politicians, other interest groups and public campaigns watered down some of the worst aspects of the legislation prior to its introduction.

Its operation, through the Residential Tenancies Tribunal, and tenant experiences are being regularly monitored, along with advocacy before and preparation of tenant cases so as to gain evidence of the shortcomings of the legislation.

Tenants' Union participation, along with landlords and real estate organisations, in a review of the effects of the legislation's introduction is promised by Housing Minister, Joe Schipp.

However, the development of a successful political implementation of an equitable tenancy law reform agenda remains a high priority for the Tenants' Union, irrespective of the occupants or government benches in Macquarie Street.

(ii) Hotline Advice Services

The abolition of the Tenancy Advice and Housing Referral Service (T.A.H.R.S.) network across NSW has seen the effective reintroduction of a volunteer Tenancy Hotline service.

The service, utilising ten other community based organisation on a rostered telephone advice and advocacy system is assisting over 350 tenants each month.

The Tenants' Union provides training and follow up information and advice for the tenancy advisers and co-ordinates the collection of statistics from each service.





(iii) Resource/Information Production

During the past 12 months, a variety of accessible, affordable and easy to understand resources have been newly produced or updated.

This reflects the Tenants' Union's strong commitment to effective community education and public advocacy of tenant issues.

The resources are:-

- * "Your Rights as a Tenant" Booklet - completely updated following the introduction of the new legislation. It is available for \$5 (\$3 concession) or free to new members. 60 pages of practical information about rights, responsibilities and strategies for tenants.
- * Migrant Community Education Kit - consisting of a video and accompanying booklet, this Kit is specially designed for bi-lingual community, housing and other workers dealing with newly arrived migrant. It covers a range of issues concerning renting in Australia and the video is available in eleven community languages.
- * Brochure on "Major Changes to Tenancy Law in NSW" - has been distributed widely through trade unions, government agencies and community and housing organisations including via the Youth Accommodation Association to all youth housing venues in NSW.

Also, a pamphlet specifically designed for public housing tenants which explain the

implications of the legislation has been widely distributed, especially in the absence of any Department of Housing information for its tenants for some time after the introduction of the tenancy reform.

- * A Standard Form Tenancy Agreement has been produced based on the essentials required, as opposed to the form and content utilised by the Real Estate Institute of NSW.
- * The actual Residential Tenancies Act and accompanying regulations have been produced and made available. This is particularly important, for with the closure of the Government Printing Office, no copies of the Act and regulations are readily available.
- * "Tenant News" - the Union's quarterly newsletter which continues to keep T. U. members up to date on all tenancy development in NSW.,
- * Tenants Rights Manual - the primary source of information for tenancy advisers. Funding assistance is currently being sought to update the manual following the introduction of the legislation.
- * Young Renters' Education Kit - a draft of this resource has been prepared by a student on placement with the Union.
- * Tenancy Advice Training Manual - prepared by a training consultant, this manual has been utilised in the series of tenancy advice training workshops held since the introduction of the new legislation.

In addition to these resources, the Tenants' Union also produces stickers, T-Shirts and other pamphlets for general usage and sale to the public. A list of publications and prices is attached to this report for members' information.

(iv) Training

The Tenants' Union has continued its provision of training workshops for Hotline Advisers and interested individuals in a large range of community organisations and government agencies.

At the time of introduction of the new legislation, nine workshops involving approximately 120 participants were operated over a five week period.

Four further workshops are being conducted in March, April and May. Special congratulations are made to the Tenants' Union staff and training, Beth Jewell, for the quality and effectiveness of these workshops.

(v) Media and Lobbying

Within its severely contracted resources throughout the past 12 months, the Union has been able to successfully initiate and respond to tenancy and broader housing issues through media contact and political lobbying.

Regular participation in radio interview and talk-back programs and press articles has occurred throughout the year.

In late January 1990, the inaugural NSW Tenants Award was presented to the Prince Alfred Tenants Association to honour tenants who had successfully struggled over a long period to achieve victories in the face of great adversity.

In conjunction with other organisations, the Tenants' Union has also lobbied for urgent consideration of the neglected rights of boarders and lodgers, the continuation of protected tenancies, Federal privacy legislation and more recently in joining sister organisations in other States and Territories to review tenancy legislation across Australia and obtain appropriate Federal Government involvement in private tenancy.

(vi) General Community Education

On a regular basis throughout the past year, the Union has attended conferences, workshops, workplace staff meetings and other events to provide comprehensive information on tenancy and related housing matters.

There must be
some social justice around
here someplace



weight

A successful press conference at State Parliament House was held on 30 October 1989 to inform the public that major changes in their tenancy rights and obligations had occurred. Housing Minister, Joe Schipp, was forced to convene his own conference and subsequent media interview to defend his Act.

A survey of community organisations to assess the impact of the closure of the 22 local T.A.H.R.S on the workloads and the shortcomings of the Department of Housing Tenancy Service was conducted by a coalition of organisations including the Union in late 1989,

The release of the survey results created considerable media attention and provides a further compelling base for the need to refund specialist local community tenancy advice services.

3. RESOURCES AND RISKS

Paid staffing resources have been reduced by over 70% since 30 March 1989, with no comparable reduction in community expectations and client demand for our organisation's services.

Exceptionally long hours have been worked by our staff whilst voluntary input for Board members and others has significantly increased. Workplace stress on staff has frequently reached unacceptable levels. Staff excellence and commitment however, has never faltered.

The current staffing level is one full-time legal project officer, one part-time publication/training officer (21 hours/week) and a contracted typist/clerical assistance service. The immediate goal is to continue this level of staffing resources beyond 30 June 1990. For this to be achieved, new additional funding sources will have to be obtained by that date.

Our organisation's operating budget for the past 12 months has been approximately \$95,000. A policy of fee for services in training and realistic pricing levels for publications and other resources to achieve cost recovery beyond staff time in their preparation and distribution has been implemented.

The Legal Aid Commission has continued to provide funding assistance for the legal project officer's position and some association costs during the past 12 months. An application for a further 12 months assistance beyond June 30, 1990 is currently being considered.

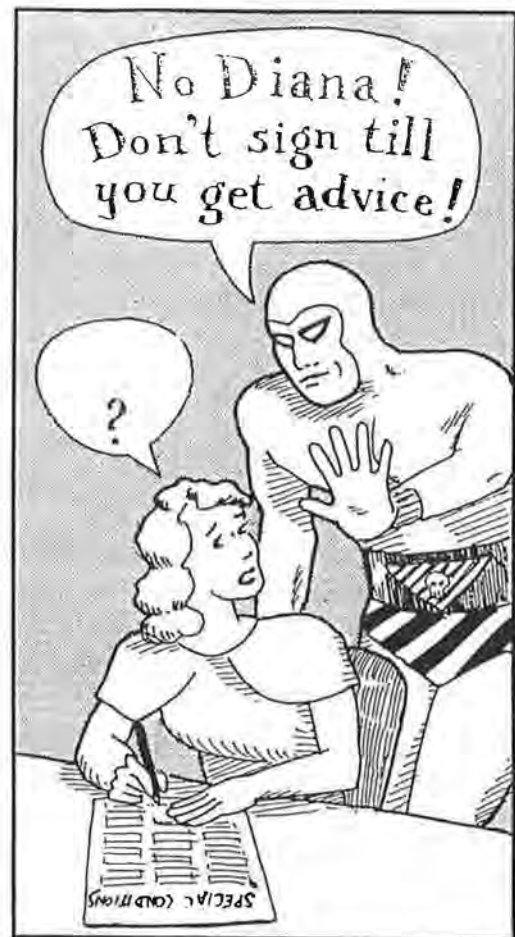
Assistance has been obtained from the Uniting Church Board of Social Responsibility in producing the updated "Your Rights as a Tenant" Booklet and is deeply appreciated.

Other funding assistance has been received from community organisations and local government for specific activities in the resources production and training areas.

Submissions for publications updates and translation are also being currently considered by the Law Foundation of NSW.

It is proposed to seek further assistance, most likely of a one-off project nature, from trade unions, foundations and some private sector organisations in the next two months. The incoming Board of Directors will have an urgent responsibility to successfully initiate and conclude fundraising efforts.

If these efforts are not fruitful, further scaling down of Tenants' Union activities is inevitable in the short-medium term.



It is extremely difficult to see further gains in productivity and efficiency at the current level of service our organisation provides. Accordingly, increased participation and effort from our members will also be a priority for the next 12 months.

4. THE 1990 AGENDA AND INTO THE FUTURE

In February 1990, Board and staff conducted a work planning and priorities exercise for the next six months period. Agreement was reached to focus on:

- (a) **tenancy advice service through the Hotline**
- (b) **key resource production]**
- (c) **limited numbers of training workshops**
- (d) **specific community education, media and lobbying tasks.**

In the past six months, increased collaboration with community legal centres has successfully led to an effective sharing of important tasks such as monitoring of the Residential Tenancies Tribunal decisions and client referral activities.

The establishment of a new Western Sydney Tenancy Service by the Uniting Church offers significant opportunities for effective co-operation in policy development and service delivery.

Emphasis is also being placed on further improving our networking with other community and housing agencies so as to consolidate political awareness and action around tenancy issues and expand the resource base for undertaking various tasks.

Campaigns based around local tenancy issues, particularly with neighbourhood tenancy groups continues to be a pressing need and will require much more involvement of our membership.

Opportunities for substantial reform of the new legislation and renewed NSW Government support for community based tenancy and housing services may well await the next election and/or a change of government.

The challenge will be to maintain the effectiveness of our organisation and its public profile during the next few years without losing sight of our objectives and losing our remaining resource base.

To the retiring members of the Board, our organisation expresses its thanks for the hard work, commitment and great effort.

To our staff during the past 12 months, Sue Creek, Peter Cronau, Sue Murray, Debby Michels, Jane Hearn, Peter Murray, Tracy Goulding and training consultant, Beth Jewell, the Tenants' Union expresses its admiration for excellent efforts. And to our new publications/training officer, Paul Mortimer, our organisation looks forward to fruitful times in the next few months.

To our members, it will be another difficult year. Let's work together to keep the Tenants' Union strong and improve the living situation of the State's tenants.



MIGRANT COMMUNITY EDUCATION KIT

Produced by the Tenants' Union of NSW

VIDEO ON TENANTS' RIGHTS IN 12 LANGUAGES

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Plus Supporting Notes and Standard Forms (English only)



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- * Ideal for workshops, information nights.

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TENANTS' UNION MEMBERSHIP (Application/Renewal Form)

Name _____

Address _____
Postcode _____

Telephone (h) _____ (wk) _____

First language _____

Ethnic Background _____

Occupation _____ Union _____

Please tick

* Is this a: New Membership? _____ Membership Renewal? _____

* Are you a: tenant? _____ squatter? _____ home owner? _____
other? (specify) _____

* Can you assist the Tenants' Union in any way? Yes _____ No _____
Details _____

Fees

Membership fees apply from January 1 to December 31 each year. New members joining after June 31 may pay half fees.

* Unwaged/pensioners/unemployed/student.....\$ 6.00
(1 share + \$5 annual service fee)

* Waged workers.....\$11.00
(1 share + \$10 annual service fee)

* Organisations.....\$45-\$105
(5 shares + annual service fee based on income)

* Donations.....\$ _____

I enclose\$ _____

This covers purchase of shares and service fees.

I declare that I am over 18 years of age.

Signature _____

Witness _____

Date _____

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