

Justice Award for tenant advocate and educator

Ruth Simon de Costa, Tenants' Union Board member and Co-ordinator of Dtarawarra Aboriginal Resource Unit, has been awarded the NSW Law and Justice Foundation's 2008 Aboriginal Justice Award.

Ruth was recognised for her advocacy and community legal education for Aboriginal tenants and tenancy organisations.

On presenting the award, Barry Collier, Parliamentary Secretary Assisting the Attorney General, said of Ruth:

"She was described by one of her referees as 'an absolute gem' for the depth of service she provides to the Aboriginal tenancy organisations in New South Wales which includes training, capacity building of tenancy advocates and of tenants themselves, submissions, policy development, and this year, the establishment of an Aboriginal consultation committee with the Consumer, Trader and Tenancy Tribunal."

Ruth feels very honoured to receive the award. She acknowledged the support and



Ruth (centre), with her colleague Cheryl Corbett, accepting the award from Barry Collier MP

work of her colleague Cheryl Corbett, the Aboriginal tenancy services and the Tenants' Union.

"I've seen many changes to Aboriginal society throughout my career – particularly the increase of Aboriginal people accessing various levels of education and the increase of Aboriginal people in professional areas including law," Ruth said.

"However, social issues such as housing, home ownership, employment and deaths in custody

are still some of the many areas that need attention and resolution."

The Aboriginal Justice Award is supported by the NSW Attorney General's Department. It is presented to an Aboriginal individual or a group of individuals who has demonstrated outstanding commitment to improving access to justice for Aboriginal people in New South Wales. This may have been demonstrated in a range of activities over an extended period or in a single significant activity.

Rent reforms make many worse off

Kevin Fox
South West (NSW) Tenants Advice and Advocacy Service

With much attention given in the media recently to the financial difficulties faced by pensioners and low-income households, imagine the shock some of these people must have felt when they discovered they would have less in their pockets.

Community housing is provided by local community-based organisations to enable people to access affordable rental accommodation. The NSW Government's Planning for the Future strategy aims to grow the community housing sector and includes rent reforms that will affect tenants.

The changes from a tenant's point of view relate to an increase in their subsidised rent charges and, in turn, a reduction in their disposable income.

For those eligible, subsidised rent is calculated as a percentage of the household's income. Previously, Commonwealth Rent Assistance (CRA – a supplement paid to low-income households through Centrelink) was included in the household's income and thus only a portion (usually 25 percent) became payable as

subsidised rent. From July 2008, CRA is considered to be a rent supplement and the whole of a household's CRA entitlement will be payable as rent.

Additionally, the percentage of Family Tax Benefit used to calculate rent will increase from 11 to 15 percent.

For a single aged pensioner in a community housing unit, this has typically meant an increase in subsidised rent from \$140 to \$240 per fortnight and an additional loss of approximately \$30 per fortnight from CRA that was previously part of their expendable income. Although the increase will largely be met by the increased CRA, households will generally have less money to spend each week and extra reporting responsibilities.

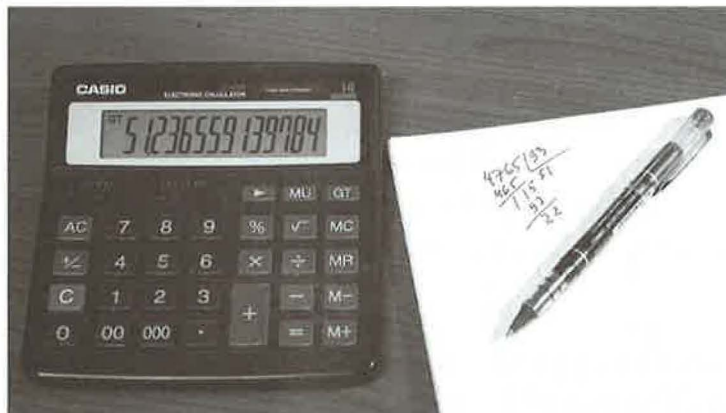
The reforms have placed a burden on tenants and caused some confusion and hardship, especially for those unable to understand

the complex calculations or manage the paperwork required to ensure they receive their full entitlement to CRA.

According to Office of Community Housing policy, the implementation of the reforms is to be phased in so that no individual household will be more than \$10 per week worse off after housing costs in any one year. However, in one community, although information sessions were held by the community housing provider, many tenants did not fully understand the impact the rent reforms would have on their household until their rent review was completed.

Tenants' concerns have included:

- The first Centrelink payment of increased CRA happens a fortnight after the rent is increased (i.e. rent is paid in advance, whereas CRA is paid retrospectively) leading to immediate rent arrears or a



It is worth checking that rent subsidy calculations are right
(Photo: Leonid Mamchenkov – flickr.com/mamchenkov)

lower Centrelink payment for that fortnight.

- Some households were more than \$10 per week worse off.
- Most tenants have signed an authority to allow their community housing provider to communicate income and CRA details directly with Centrelink, however for those tenants who have chosen to manage their own reporting, there is increased responsibility and complexity.
- Rent will now be calculated on the basis of the household's entitlement to CRA, so it is important that tenants check that this is correct and being paid to them. Even if a tenant

decides not to apply for CRA their rent will still be determined on their eligibility.

Since first becoming aware of problems with the implementation of the reforms, one regional Tenants Advice and Advocacy Service has worked with both tenants and the local community housing provider to minimise the distress and hardship to tenants.

The service has provided individual advice, tenant information sessions and advocacy for tenants. The Tenants' Union has also been monitoring tenant enquiries about this issue and maintains communication with the Office of Community Housing. ■

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Find out as much as possible about the reforms and how they will affect your household:

- Follow the links to the Office of Community Housing homepage at www.housing.nsw.gov.au.
- Contact your community housing provider about how it is implementing the reforms and its internal complaints and review procedures.
- Contact your local Tenants Advice and Advocacy Service.

The reform policy allows community housing providers to be flexible in the way they implement reforms to minimise hardship – so tell your housing provider your concerns.

Miscalculations can happen and you can appeal against undue hardship

During a meeting held to better inform tenants affected by the reforms, a tenant advocate became aware that some of those present were very distressed by the discussion.

At the end of the meeting the advocate had individual confidential interviews with those tenants. One sole parent who was working part-time and receiving a part Centrelink benefit could not see how she could afford the new rent. From the letters she received it appeared that she would be about \$70 a fortnight worse off.

The advocate took details of the tenant's situation and with her permission contacted her community housing provider.

While the tenant's rent review had been completed accurately, the second phase that limits the impact on the household to a maximum of \$10 per week had not been done.

The housing manager immediately corrected the rent calculation and sent a letter that day to confirm the correct amount. The tenant was greatly relieved.

For other tenants affected by the first fortnight's lowered Centrelink payment, the tenant advocate helped to negotiate for the initial rent increase to be paid off at a more manageable \$10 per fortnight to reduce their hardship.

Moveable dwellings must follow local laws

Samantha Fradd
Residential Parks Legal Officer

Does a resident's moveable dwelling have to comply with local government laws?

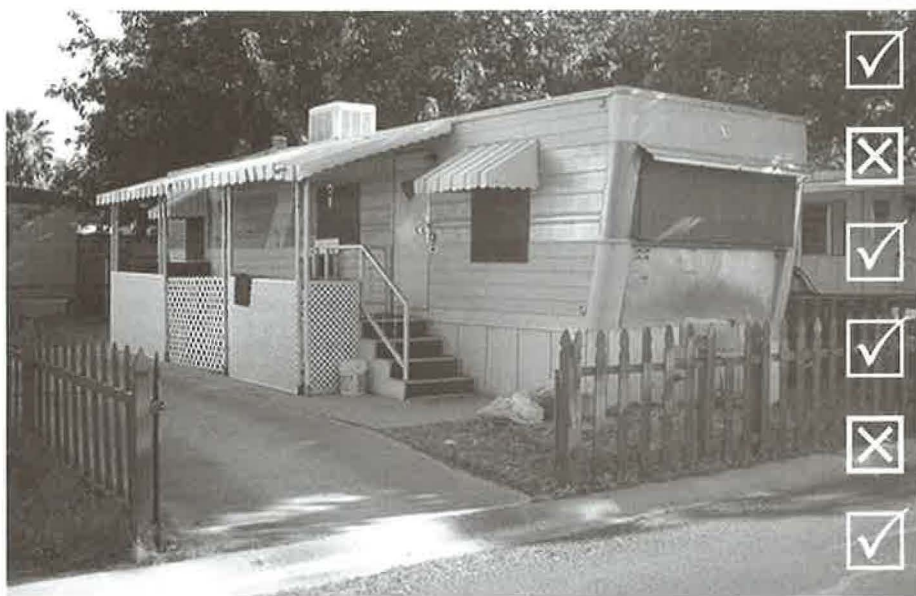
The short answer is yes!

The Tenants' Union has been giving lots of advice in the last little while about whether a resident's moveable dwelling has to comply with the local government laws and if so, what those laws require.

It is a standard term in a residential tenancy agreement under the *Residential Parks Act 1998* (NSW) that where a resident owns a moveable dwelling, they agree that their dwelling complies with any requirements set out in the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* (NSW).

Those requirements include things like how far the dwelling is from the road, how much of the site can be covered by the dwelling, and whether the resident needs a certificate from a practising structural engineer or a compliance plate for the dwelling.

There are different requirements in the regulations for different types of moveable dwellings. The



*Moveable dwellings have to comply with local government laws
(Photo: Roadsidepictures – flickr.com/roadsidepictures)*

requirements for manufactured homes are different from those for caravans and annexes. The requirements for caravans are different from those for annexes. Just because a resident needs a compliance plate for their rigid annexe does not mean that they also need a compliance plate for their caravan.


The requirements in the regulations have changed over time. This does not mean that a resident has to keep spending money to change their dwelling to meet the changed requirements. Fortunately, there are special parts of the law that say that if a moveable dwelling complied with the regulations as they

- Moveable dwellings have to meet the requirements of local government laws.
- There are different requirements for different types of moveable dwelling.
- Dwellings must comply with what the requirements were at the time the dwelling was installed.
- When a dwelling does not meet the requirements this is a *breach*. A park owner or local council can ask a resident to fix a breach.
- If a resident does not fix a breach, a park owner can apply to the Consumer, Tenancy and Trader Tribunal for orders that the resident fix the breach.

were at the time it was installed on the site, then the dwelling is taken to continue to comply with the regulations, even if the requirements of the regulations have changed.

If a resident's moveable dwelling does not comply with the regulations as they were at the time it was installed (this is a *breach*), a park owner may ask the resident to fix the breach. If a resident does not, the park owner may apply to the Consumer,

Trader and Tenancy Tribunal for orders that the resident fix the breach. A park owner applying to the tribunal has to prove that the resident is breaching the requirement and has to specify which requirement the resident is breaching.

The local council may contact a resident directly and ask them to fix a breach. If the resident does not fix the breach, the council may make an order requiring the resident to do so. 

Contact your local Tenants Advice and Advocacy Service for advice about:

- what to do if a park owner or local council asks you to do something to your moveable dwelling to make it comply with local government laws
- what the local government laws say about your kind of dwelling.

See back page for phone numbers.

Selling your moveable dwelling on-site: update

The Tenants' Union was recently involved in two successful community education sessions at Ballina and Tweed Heads in the Northern Rivers area.

These sessions were organised by the Older Persons' Legal and Education Program and run jointly with the Northern Rivers Tenants Advice and Advocacy Service.

The sessions covered:

- buying and selling a dwelling in a park, including what kind of enquiries a buyer needs to make

- what sort of information a park owner needs to give to a buyer
- what a resident can do when they are selling their dwelling.

The sessions were very well attended – over 65 people attended in Ballina and over 120 in Tweed Heads.

This is clearly a topic of particular concern in the Northern Rivers area, and one that will continue to excite interest in the future.

You can appeal decisions made by a housing provider

Stacey Broadbent
Greater Sydney Aboriginal
Tenants Service

Aboriginal and Torres Strait Islander people can appeal many of the decisions made by social housing providers.

Appeals can be made by a person already renting from a social housing provider (a tenant) or by a person applying for social housing (an applicant).

Social housing providers include the Aboriginal Housing Office, Housing NSW (Department of Housing) and community housing organisations.

There are two levels of appeal:

1. an in-house appeal – an internal review by the social housing provider
2. an appeal to the Housing Appeals Committee.

In the in-house appeal, an independent officer looks at the decision and checks that the housing provider has properly applied its policies. The officer may interview the person making the appeal. They will then offer a new decision that overturns the

original decision or they will stick with the original decision.

If the tenant or applicant is unhappy with the outcome of the in-house appeal, they can appeal to the Housing Appeals Committee.

The committee is independent from social housing providers and has the power to review decisions and make recommendations to social housing providers to review their decisions.

Some of the kinds of decisions the committee can review include:

- eligibility for public or community housing

- eligibility for priority housing listing
- offers of housing
- eligibility for type of Rentstart assistance
- rent subsidy calculation or cancellation
- transfer, succession of tenancy or mutual exchange.

For Aboriginal or Torres Strait Islander tenants or applicants, the committee will provide an Aboriginal member on its panel, have an informal meeting and encourage advocates and support workers to come to the meeting. ■



Aboriginal and Torres Strait Islander applicants may be shut out from community housing (Photo: Leo Reynolds – flickr.com/lwr)

Making an appeal: contacts and further information

Contact your local **Aboriginal Tenants Advice Service** for more information about:

- how to make an appeal
- what kinds of decisions you can appeal.

Your local service can also help you to make an appeal if you are not sure what to do.

See back page for phone numbers for the Aboriginal Tenants Advice Services.

Contact details for the **Housing Appeals Committee** are:

- phone 02 9715 7955
- free call 1800 629 794
- www.hac.nsw.gov.au.

The effect of provider policies on Aboriginal and Torres Strait Islander tenants

During the past three months, Aboriginal and Torres Strait Islander tenants have been expressing their concerns about policy decisions by social housing providers.

Some decisions have seen people suspended from the priority housing register, their rental subsidies changed and people being allocated inappropriate properties.

Many Aboriginal and Torres Strait Islander tenants are at a huge disadvantage as they do not appear to fit with the criteria in the policies that providers use to make their decisions.

For example, at the Greater Sydney Aboriginal Tenants Service we have seen an influx of tenants who have been denied access to priority housing as they do not appear to meet the criteria of the specific Housing NSW policy 'ALL0040A Priority Housing'.

In fact, many Aboriginal tenants do fulfil the criteria but are often not approved as they have not provided enough evidence or the 'right' kind of evidence as given in the policy.

Another issue affecting Aboriginal and Torres Strait Islander people is the 'points system' that many community

housing providers use to assess new applicants.

Under a points system, an applicant given a number of points toward their application for having conditions such as a mental illness or being in an at-risk situation. Applications without enough points are not assessed and automatically knocked back.

Furthermore, policies are open to interpretation. A tenant may interpret a policy to mean one thing whereas a worker for a housing provider may have the opposite view of what the policy means.

- Applicants for social housing and tenants of social housing can appeal the decisions made by a social housing provider.
- Social housing providers include Aboriginal Housing Office, Housing NSW, and community housing organisations.
- Social housing providers have policies that they use to make decisions about things like who can get priority housing or how rent subsidies are worked out.
- There are two levels of appeal: (1) internal review by the housing provider, and (2) review by the Housing Appeals Committee.

Don't take my home!

Our last issue discussed the redevelopment of public housing estates and relocation of tenants. Here, **Jen Rignold** talks about the effects of stress on tenants having to leave their homes and suggests where to find help.

Our first thoughts when we are faced with having to move are usually "I can't afford to move! Where do I go? What will my neighbours be like? Will I have to change jobs? Will the kids have to change schools?" and the like.

"This is my home. Why are you taking it from me?"
– public housing tenant

Let's face it: leaving home is stressful – whether you are leaving your family, your community or the house that radiates memories from everywhere.

So how do you take all those memories, and the security of having made it your own and transfer it to somewhere new? How do you leave behind the people and the things that make up your life?

Some tenants have few problems with moving but for others it can create unbearable stresses. It can create a sense of loss, unfamiliarity and anxiety. Fears can surface isolating people from those they were close to, which can lead to loneliness.



(Photo: Elke Sisco – flickr.com/elkit)

Existing physical and mental health problems can worsen, anger can surface, the use of drugs and alcohol can increase. A tenant may feel like a second-class person and that their landlord is heartless.

These things can surface at the time a tenant is told they have to move or over the course of many months. They may be obvious or kept hidden.

Although very little has been done to properly document these stresses and their consequences, many tenants are starting to talk to people they trust and the stories across the different estates are very similar. These are our neighbours, our families, and our friends. It may even be us.

Community organisations such as St Vincent de Paul, Burnside

and local churches can be approached for help, which can include financial and counselling services.

Other people to talk to are the family doctor and even workers at Housing NSW.

"It's money, money, money. They [Housing NSW] don't care about us."
– tenant being relocated

I live in a public housing community undergoing change and I have many ties to other communities suffering the same stresses. I see and hear directly from those personally affected and through talking to others it is obvious that these stresses are very real.

And I too feel these same stresses. ■

Debts and rental bonds

Grant Arbuthnot
Principal Legal Officer



Q We are having a bond dispute and something in the agent's approach to it is not quite right.

Our fixed term (one year) expired last year. Our rent of \$300 per week was paid by automatic direct debit at the rate of \$1304 per calendar month.

To end the tenancy we gave 21 days notice of termination and a week later the automatic direct debit was made. This meant that when we moved out the agent had an overpayment of rent of \$704.

The agent says that there was \$695 worth of damage to the house plus a water bill of \$54. They are taking all the overpaid rent and claiming \$45 of our \$1200 bond.

This means that we have to pay a \$33 application fee to the Consumer, Trader and Tenancy Tribunal to dispute \$45 and we cannot challenge the damage that the agent says we have already paid for.

We are happy to pay the water bill, but the damage claim looks like a trick. What can we do?



(Photo: siansparkle - flickr.com/siansparkle)



A Complain to the Office of Fair Trading about the conduct of the agent.

Apply to the Consumer, Trader and Tenancy Tribunal for your bond and an order for the rest of the money. Do this immediately.

At the tribunal hearing, explain the situation to the Tribunal Member and ask that the agent be required to prove all the claims and not conceal their substance by taking the overpaid rent.

Distinct legal issues

Ordinarily, if you owe money, the person you owe may apply your payments to the debt as they see fit.

But, in your case there are three legal problems to the agent taking this approach:

- First, the damage amount is not a debt, it is a claim for compensation for alleged breach of contract.
- Second, section 28 of the *Landlord and Tenant (Rental Bonds) Act 1977* says that money paid as rent in advance must be applied to the rent account or returned to the tenant.
- And third, the rental bond is money paid as a security for performance of the tenancy agreement, and it may not exceed the amount of the first four weeks rent. There is already a maximum allowable bond; no other money can be used as security.

Tribunal power

The Consumer, Trader and Tenancy Tribunal does not have
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Promoting affordable housing is a key factor

Magnus Hammar
Secretary General, International
Union of Tenants

Increasing house prices, rents and cost of living in general make life hard to live for many city residents.

Residential rents in Mumbai, India increased by 21 percent from May 2007 to May 2008 and Beijing rents rose by 18 percent in 2007. At the same time house prices rose by almost 50 percent in Sofia, Bulgaria, by 33 percent in Poland and 11 percent in Sweden.

The biggest rental increases in Europe occurred in Moscow, up by 29 percent. Hong Kong has had rent increases of 22 percent the same year and has the world's priciest apartment rents, with the lease for a three-bedroom unit costing more than US\$9,700 on average a month.

London rents were at their highest for 10 years in December 2007 reported a city estate agent. Key public sector workers are being frozen out of the housing market in two-thirds of the towns and cities of Britain after prices doubled in five years. The Halifax bank found the asking price for a house in 339 of 519 towns surveyed was unaffordable for police officers, ambulance staff,

firemen, nurses and teachers. In 2001, the figure was 124.

The rent-to-buy scheme introduced in England in 2006 is not always working as intended. Nurses in one London development found their rent is rising this year by almost 5.5 percent as it is tied to the Retail Prices Index. By contrast, their salaries are now pegged to a lower inflationary measure and will only go up by 1.9 percent.

Ninety-three percent of Sydney's key workers have been priced out of the city shows a report this year. The findings also show housing prices have risen by two-thirds across Australia since 2002. The average income has increased by less than half that amount over the same time.

Many major cities around the world report having difficulties in recruiting key workers such as school teachers, firemen,

police, nurses, etc. because of unaffordable housing costs. Even the market has reacted to this intolerable situation, as a lack of housing leads to a slowdown in the economy.

Several cities are developing schemes for new affordable housing particularly aimed at workers in the public and service sectors. But the construction is slow and the flats are too few. It is not enough with a few hundred here and another hundred there – or even 5,000 new affordable flats as planned in Copenhagen. Hundreds of thousands of people are waiting for affordable and decent housing, where the job opportunities are. They are tired of getting up by four or five in the morning to make it to work!

Build affordable housing now, and think big! ■

*Reprinted from Global Tenant,
September 2008 issue*



*Apartment
building,
Mumbai
(Photo: Dey
Alexander
– deyalalexander.
com.au)*

continued from page 9

a clear power to order repayment of overpaid rent unless it was caused by an invalid notice of rent increase.

However, the tribunal can order payment of money as compensation for breach of the tenancy agreement, or as an 'ancillary order' (supporting the main order).

The tribunal may order the overpaid rent be 'set off' against any proven amount owed.

You may suggest to the Tribunal Member that an order for payment of money can be ancillary to a bond order if a bond order alone will not do justice between the parties in what is properly a bond dispute.

Alternatively, you may suggest to the member that the landlord/agent has breached the agreement and your loss should be ordered as compensation.

The breach you may allege is of an implied term in every contract that *each contract party shall do all things reasonably possible to afford the other party the benefit of the contract.*

Contacts and further information

- Contact your local Tenants Advice and Advocacy Service to discuss how to defend the agent's claims (see back page or www.tenants.org.au for contact details, or call the Tenants Hotline on 1800 251 101).
- Read Tenants Rights Factsheets 11: *Consumer, Trader and Tenancy Tribunal* and 03: *Bond* (see www.tenants.org.au or contact your local service).
- Read the *Tenants Rights Manual* chapters on these subjects (available in the Legal Tool Kit collection at your local library).
- To complain about the agent, write to:
Office of Fair Trading
PO Box 972
Parramatta NSW 2124
(phone 02 9895 0297 or 1800 625 963).

JOIN THE TENANTS' UNION

Support us in our work for safe, secure and affordable rental housing for people in New South Wales

Membership application (tax invoice)

I would like to apply for membership of the Tenants' Union of NSW Co-operative Limited (ABN 88 984 223 164)

First name _____

Last name _____

Position _____

Organisation _____

Postal address _____

Suburb _____

State _____

Postcode _____

E-mail _____

Phone (W) _____

Phone (H) _____

Membership type:

- ☐ tenant ☐ tenant organisation
☐ non-tenant ☐ non-tenant organisation
☐ other (please specify): _____

Fees: (all include GST) • unwaged \$8.00
• waged \$16.00 • organisation \$32.00

Annual fee runs 1 January–31 December.

New members can pay half fees after 30 June.

First membership fee covers cost of share.

Payment: Please find enclosed cheque/money order to the Tenants' Union of NSW for:

Membership \$ _____

Donation \$ _____

Total \$ _____

I am over 18 years of age. I support the objectives of the Tenants' Union of NSW.

Signed _____

Date _____

Return with payment to Tenants' Union of NSW
1 Buckingham St, Surry Hills NSW 2010

CONTACTS

NSW Tenants Advice and Advocacy Services



Inner Sydney		9698 5975
Inner Western Sydney		9559 2899
Southern Sydney		9787 4679
South West Sydney	1800 631 993	4628 1678
Eastern Suburbs		9386 9147
Western Sydney	1800 625 956	9413 2677
Northern Sydney		9884 9605
Central Coast		4353 5515
Hunter	1800 654 504	4969 7666
Illawarra/South Coast	1800 807 225	4274 3475
Mid North Coast	1800 777 722	6583 9866
Northern Rivers	1800 649 135	6621 1022
North Western NSW	1800 836 268	6772 4698
South Western NSW	1800 642 609	

Specialist services

Older Persons Tenants' Service	9566 1120
Park and Village Service	9566 1010

Aboriginal services

Greater Sydney	1800 772 721	9282 6727
Western NSW	1800 810 233	
Southern NSW	1800 672 185	4472 9363
Northern NSW	1800 248 913	6643 4426

Tenants Hotline 1800 251 101
Monday–Friday 9:30am–1:00pm and 2:00pm–5:00pm

Tenants NSW online: www.tenants.org.au

- View and print factsheets and sample letters.
- Keep informed about tenancy issues and the TU's work.
- Find your local Tenants Advice and Advocacy Service.



Tenant News

ISSN-1030-1054

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Views expressed by contributors are not necessarily those held by the Tenants' Union.

Coordination/layout: Luke O'Connell

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About the Tenants' Union of NSW

The Tenants' Union of NSW (TU) is a specialist community legal centre that has been active in promoting the rights of over 1.5 million tenants in New South Wales since 1976.

The TU is also the peak resourcing body for the Tenants Advice and Advocacy Program in NSW.

Vision: A society in which people in New South Wales are able to access safe, secure and affordable rental housing.

Mission: The TU seeks to promote a secure, affordable and appropriate housing environment by representing the interests of all tenants and other renters in New South Wales and by working towards just and sustainable solutions to housing problems.

We do this by:

- providing legal services to economically and socially disadvantaged tenants including Aboriginal tenants, social housing tenants, park residents and older tenants
- conducting strategic litigation to advance the interests of tenants
- providing information and advice to all tenants on their legal rights and obligations and in particular to tenants who are economically and socially disadvantaged
- supporting advice and advocacy services for tenants
- conducting research about the rental market and problems faced by tenants in particular tenants who are economically and socially disadvantaged
- advocating for affordable, appropriate and secure housing for all people including people who are economically and socially disadvantaged.

Tenants' Union of NSW Co-operative Ltd

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