

Agents asking too much: tenants can negotiate rents

According to recent media reports, rents in Sydney (and across New South Wales) continue to rise.

Tenants' Union Senior Policy Officer, Chris Martin, looked closely at the media claims. He found that real estate agents are advertising properties at rents that far exceed the rents actually being paid under new tenancies.

There are a few ways of measuring rents out there. These include:

- 'asking rents' – the rents that real estate agents ask for in their advertisements for properties to let. These are reported by Australian Property Monitors and get a bit of coverage in the press
- 'new agreement rents' – the rents paid by tenants at the start of a new tenancy. These are reported by Housing NSW in its *Rent and Sales Report* using data from bonds lodged with the Rental Bond Board
- 'established rents' – the rents paid by tenants in established tenancies. These are reported



Real estate agents: Hopelessly optimistic or perhaps hopelessly greedy?

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in the Census, and we can work out how much they have increased between censuses by using the rents index in the Consumer Price Index reports.

Reports of these measures over 18 months show that in Sydney, 'asking rents' are higher than 'new agreement rents', which are higher than 'established rents'.

In other words, landlords overall actually get significantly less for their properties than what their agents advertise. In fact, on

average, their houses get about \$50 less and their flats get about \$45 less.

Perhaps landlords and agents are just hopelessly optimistic. Or perhaps many of them are hopelessly greedy.

The lesson for tenants is not to be afraid of trying to negotiate the rent down. That might seem difficult in a tight rental market, but many agents and landlords are shooting for rents that are far in excess of what the market can bear. ■

Visit the Tenants' Union blog, *The Brown Couch*, for commentary on the latest news in tenancy and housing: www.tunswblog.blogspot.com

Your right to peace, comfort and privacy

Samantha Fradd
Residential Parks Legal Officer

The Tenants' Union has been hearing recently about residential parks where park owners or park managers are harassing or bullying residents. They are not allowed to do this, and residents can apply to the Consumer, Trader and Tenancy Tribunal (CTTT) to stop it.

What is "peace, comfort and privacy"?

The *Residential Parks Act 1998* (NSW) sets out the rights and responsibilities of residents and park owners in residential parks.

Section 20(1)(b) of the Act provides that it is a term of every residential tenancy agreement that: "the park owner or the park manager must not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of the resident in using the residential premises."

This is a term of oral residential tenancy agreements.

It is also a term of written residential tenancy agreements. This term should be at clause 10.2 of the agreement (if it is for a tenancy of three years or less).

The words "peace, comfort and privacy" are not defined in the *Residential Parks Act*. The *Oxford English Dictionary* defines them as follows:

- peace: "Freedom from disturbance or perturbation, especially as a condition of an individual; quiet, tranquillity"
- comfort: "Pleasure; enjoyment; gladness"
- privacy: "The state or condition of being withdrawn from the society of others or from public attention; freedom from disturbance or intrusion; seclusion".

So a resident is entitled by law to all of these things during the term of their agreement.

What is "reasonable" peace, comfort and privacy will depend

on the circumstances in each case.

What is a breach of peace, comfort and privacy?

The CTTT has previously found that it is, or could be, a breach of a resident's right to peace, comfort and privacy if a park owner or manager:

- physically assaults a resident and their guest on the resident's site
- swears at and threatens a resident
- humiliates a resident in front of visitors and other residents
- harasses a resident
- identifies residents by name and site number on a notice-board as residents who have applied to the CTTT



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- takes action to dissuade a resident from making or continuing an application to the CTTT
- fails to provide adequate waste disposal in the park.

What can a resident do about harassment or bullying?

If a resident believes that a park owner or park manager is harassing or bullying them, then they should write to the park owner or park manager and ask that it stops.

If the harassment or bullying does not stop, then a resident can

apply to the CTTT claiming that a park owner or park manager is breaching their residential tenancy agreement by interfering with their peace, comfort and privacy. A resident needs to apply to the CTTT no later than 30 days after becoming aware of the breach

The CTTT can order the park owner or manager to stop breaching the agreement and can order that the park owner or park manager pay compensation to the resident.

Section 20(2) of the *Residential Parks Act* provides that a park owner or a park manager under a residential tenancy agreement must not interfere with a resident's

peace, comfort and privacy, and if they do, they can be prosecuted and fined a maximum of \$1,100.

The CTTT can refer the park owner or park manager to the Office of Fair Trading for investigation and possible prosecution for this offence. ■

Contact your local **Tenants Advice and Advocacy Service (see back page) for:**

- a sample letter you can use
- help in making an application to the CTTT
- further information and advice about breaches of peace, comfort and privacy.

PUBLIC HOUSING

Who is the face of public housing?

Jen Rignold

Who is the face of public housing? Is it the dole bludger, the drug addict, the violent husband?

Or is it the face of the elderly gentleman whose face was badly beaten, bruised and swollen as was shown recently on a Sydney current affairs television show?

I say *no!* As do many others.

Yes, violence does happen, and there are drug users, drug dealers and the unemployed.

The media latches onto sensationalism and ignores the greater majority who live in public housing. Yes, these stories of violence and drugs do need to be reported but within the correct context. These stories should *never* be used to label all that live in public housing. The truth is, all the problems the media reports also happen in private housing.

The face of public housing is all the people who check on their neighbours, who volunteer in any way in and for their communities, who smile and say hello to a new neighbour, who participate

in neighbourhood watch, who offer a helping hand to someone in need. These people are never seen on the news. But they are known to their neighbours and their communities.

People such as the octogenarian from Macquarie Fields who sadly passed away last year after over 70 years of volunteering. She spoke up for people's rights and provided food, clothing and toys to families in need.

There are many other amazing people who are organising festivals, listening to someone

in need or coming together to support a particular cause.

A lady in Claymore helped her neighbours fight for their rights and seek help from the appropriate organisations. Her health has suffered in her fight for equality and respect but in the truest spirit of being Australian, she is still in there supporting her community.

Other Claymore tenants came together based on a specific need in their community and they now have a volunteer-run laundromat and coffee shop.

Airds has its share of amazing people who support their community. They forged positive working relationships with Housing NSW, the local council, Work Ventures and other organisations to provide a centre



Is the true face of public housing presented on TV current affairs shows?

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for training and employment, a market garden and many other opportunities needed by their estate. They are now tackling the challenges of many other issues such as transport, health, and good food.

Tenants in Minto came together to support each other when the then Housing Minister, Andrew

Refshaugie, announced the demolition of their community. They organised regular meetings that still happen today and their focus is tenants' rights, safety, equality and respect.

All these people can be found among the many tenants of public housing across the country. These are the face of public housing. ■

ABORIGINAL HOUSING

Aboriginal self-determination: there go the goalposts

Carl Freer
Aboriginal Legal Officer

The Indigenous Affairs Minister, Jenny Macklin, recently announced that Aboriginal communities must lease their land to the government for at least 40 years if they are to receive new money for social housing.

The scope of this policy is not yet clear, but these requirements have

been announced in the same context as funding for remote communities in New South Wales and other states and territories.

These measures represent further moves by government to take management of local communities out of Aboriginal

hands. The allocation of funds is itself uncontroversial, but the requirements attached to the funding need justification.

The two key issues

In Aboriginal affairs, most attention is directed to policy

- If Aboriginal communities want new money for housing, they will have to lease their land to the federal government for at least 40 years.
- Communities would lose some control over their land.
- Instead of taking over, the government should work harder with Aboriginal communities to improve how they manage land.

concerning Aboriginal welfare. Aboriginal welfare is about issues like health, education and housing. However, another separate concern for Aboriginal people is self-determination. Self-determination is about the ability of Aboriginal communities to make decisions for themselves, including decisions about how to manage their own resources.

Both self-determination and welfare have long term importance for Aboriginal people. The announcement by Ms Macklin is an effort to improve the welfare of Aboriginal people through new housing. But, if Aboriginal communities want new money for housing, they will have to give control of land and some kinds of decision-making to the government. That is, if they want new housing, Aboriginal communities must give up much of their current right to self-determination.

Self-determination today

Local Aboriginal land councils and the state Aboriginal land council are the main kind of Aboriginal self-determination in New South Wales. There are many local Aboriginal land councils in New South Wales. They are managed by a local board and many decisions are made by a vote of the local membership made up of local Aboriginal people. The state Aboriginal land council oversees and assists these local councils, and also implements a statewide plan for management of Aboriginal land.

Ms Macklin's proposal appears to come from government concern

that Aboriginal management of Aboriginal communities has failed. It is widely acknowledged – both within and outside of Aboriginal communities – that local Aboriginal land councils have sometimes failed to do what is best for their communities. Local boards often lack the expertise to manage their communities effectively and sometimes members do not vote in the best interest of their communities.

Because of these problems, some believe that Aboriginal self-determination at a local level is one of the causes of unsatisfactory outcomes for Aboriginal welfare. Cynical politics aside, the Northern Territory intervention was also based on the belief that self-determination and Aboriginal welfare may not be aims that can be pursued together. The recently announced federal funding requirements are more of the same with a softer touch.

Fix the system

Yet, history shows that mainstream management of Aboriginal affairs has often been disastrous for the welfare of Aboriginal people. Government must have a role to play, but a

government takeover is not the kind of fix that is needed. Indeed, if self-determination has its own value, the removal of control defeats one of the recognised objectives in Aboriginal affairs.

A better approach would be to improve the land council system. The NSW Government and Aboriginal communities have already taken important steps in that direction.

In 2006, the NSW Parliament passed extensive amendments to the *Aboriginal Land Rights Act 1983*. Those amendments strengthened oversight of land councils and set out clear and precise requirements about the management of land councils across the state. In response, Aboriginal organisations have worked to improve management.

Only a few land councils have been successful so far, but many are moving in the right direction. Aboriginal communities and the government should together pursue the reforms with urgency and vigour.

It is for this reason that the federal government funding requirements are premature, or are simply misguided. If land and housing are



Self-determination: there go the goalposts...

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taken out of local hands there will be little else to manage and the momentum for reform will be lost.

Ms Macklin says that government control of Aboriginal land is needed to protect government investment in the area. A better way would be simply to follow the "Objectives, outcomes and agreed reforms" outlined in the *National Partnership Agreement on the Nation Building and Jobs Plan*.

That agreement sets out several reforms for the public housing sector, including "independent prudential supervision to protect public investment" and "improved tenancy management and maintenance benchmarks". Why are measures of this kind suitable for the community at large, but not Aboriginal communities?

Government also tried to pre-empt critics by pointing out that ownership stays with land councils – the government only wants a lease over the land. But ownership without control is like breakfast without the Weet Bix: its defining feature has been removed.

Aboriginal communities have been told that private property rights are an excellent and valuable achievement, essential to the advancement of their communities. The same people now hollow out whatever ownership Aboriginal people thought they had of their lands. Aboriginal people are left to wonder yet again when the goalposts will stop moving. ■

BOARDERS AND LODGERS

A law unto themselves

Robert Mowbray
Older Persons Tenants Service

A number of boarding house residents have contacted Older Persons Tenants Service with threats of being locked out of their homes.

They all were victims of landlords who are a law unto themselves and, it appears, chamber registrars (previously chamber magistrates) and police officers who are ignorant of the laws as they relate to boarding houses. Indeed, in one case a police officer has exposed himself to a hefty fine and jail term for his role in a lock-out.

Section 6(2) of the *Residential Tenancies Act 1987* ('RTA') does not exclude from that Act premises that are a boarding house. Section 6(1)(d) of the RTA excludes "a residential tenancy

agreement where the tenant is a boarder or a lodger."

Residents of boarding houses may be:

1. tenants who are covered by the the RTA
2. tenants who are boarders or lodgers and therefore not covered by the RTA, or
3. residents who are covered by the *Landlord and Tenant (Amendment) Act 1948* ('LTAA').

In the case of the first class of residents set out above, it is an offence under section 72 (1) and (2) of the RTA for anyone to seek to recover possession of premises without an order of a court or the Consumer, Trader and Tenancy Tribunal. Under section 125, there is a penalty of up to \$22,000 for a breach of this provision.



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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

In the case of the third class of residents, it is an offence under section 62 of the LTAA to lock out a resident subject to this Act. Under section 95, there are penalties of up to \$1,100 (for a body corporate) and \$550 or imprisonment up to six months, or both (for any other person).

In the case of the second class of residents, the advice given may be correct in relation to not requiring court or tribunal orders. However, *whether a resident belongs to this class is properly decided by a court or tribunal.*

Older Persons Tenants Service took up this issue with both the Attorney-General's Department and the Commissioner of Police. As a result, all court staff and police officers throughout New South Wales have been sent directives not to become involved in disputes in boarding houses and to refer landlords for proper advice.

However, a bad April Fool's joke lingers on. When introducing the *Residential Tenancies Act* into Parliament on 1 April 1987, the then Minister for Consumer Affairs stated that urgent consideration would be given to the position of boarders and lodgers in an early review of the legislation.

Well, over 22 years later nothing has changed. Although groups like the Tenants' Union continue to lobby on the issue, proposing an 'occupancy agreement' as the basis for law reform. But are the polities listening? In the meanwhile, landlords will continue to act as a law unto themselves ... but hopefully no longer abetted by court officers and police! ■

This is an abridged version of an article appearing in the March 2009 issue of the Shelter NSW newsletter Around the House.

Further information

Older Persons Tenants Service

- phone 9566 1120
- free call 1800 13 13 10
- www.cpsa.org.au/OPTS/O_Home.html

For more about the Tenants' Unions policy work in this area, see www.tenants.org.au/publish/boarders-lodgers

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	1800 131 310	9566 1120
Park and Village Service	1800 177 688	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.



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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.

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