TENANTNEWS
Newsletter of the Tenants' Union of NSW ■ Number 90 October 2009

Rosemeadow "riot": innocent mothers punished

Ken Beilby
Litigation Solicitor

NSW Housing Minister, David Borger, called it a "riot" as did the *Sydney Morning Herald* and *The Australian*. Other news outlets, such as Ninemsn and the *Brisbane Times*, preferred "brawl".

Whatever you call the incidents culminating in an altercation in Macbeth Way, Rosemeadow on 5–6 January 2009, the question is: Should the mothers of those involved lose their housing over it?

Many of those involved in the altercation were the sons of Housing NSW tenants – single mothers living in the area.

While these women were not involved in the altercation themselves, Housing NSW has issued them notices of termination and applied to have their tenancies terminated by the Consumer, Trader and Tenancy Tribunal (CTTT).

The Tenants' Union (TU) believes that there is not sufficient connection between the tenants and the actions of those involved to warrant termination of their tenancies.

It is a term of every residential tenancy agreement, including social housing agreements, that the tenant is responsible for the actions of any person they allow onto the premises while that person is on the premises.

This means that if a visitor or anyone else living there does anything while on the premises that would breach the tenancy agreement, it is as if the tenant themselves had done it. The tenant can be issued a notice of termination for that action.

In this instance, the action complained of was an 'affray', which is the crime that everyone directly involved in the fighting has been charged with.

'Affray' has a specific legal meaning. Put simply, it is two or more people involved in action that would cause fear in another.

The altercation in January fits within the definition of 'affray', for which each person charged will

face the criminal justice system. This is not in dispute. What is disputed is the legal liability of the mothers of the young men in relation to tenancy law.

There have been no allegations that the actions Housing NSW complains of occurred on residential premises. Housing NSW accepts that all the incidents occurred in the street, away from the residential premises.

Despite this, Housing NSW is seeking to make all the tenants responsible for the actions of those who visit and live in their premises, irrespective of how far away from the premises the actions took place.

The TU believes that, as the alleged actions did not occur on the residential premises, the tenants are not liable for these actions, even though the persons involved are their sons.

Contrary to what Housing NSW appears to believe, there is no basis in law for a parent to be liable for the actions of their children – unless the parent directly instructs the child to perform an action. In this case, most of the tenants first found out about the incident the next morning when the police arrived.

The basis for the notices of termination is that the tenants, through their son's conduct, caused or permitted a nuisance and caused or permitted interference with their neighbours' peace, comfort and privacy.

Using the same rationale as that of Housing NSW, a tenant would also be liable for the actions of her son (who visits or lives at her premises) if he fights with the tenant's neighbour while the two are both in Queensland.

Some would argue that this is simply paternalism, with Housing NSW seeking to not only enforce social control over its tenants, but also to hold social housing tenants to a higher standard of conduct than other NSW tenants.

Certainly, it is contrary to the *Residential Tenancies Act 1987*, which makes it clear that tenants are only liable for the actions of another while that person is on the residential premises.

Minister Borger has said that any evicted families would be given help to enter the private rental market, where they would have to tough it out, and that they would not be eligible for public housing in other locations.

This is a harsh stance, given that most of those facing eviction are single mothers on low incomes with other dependent children to support.

As the alleged actions did not occur on the residential premises, the tenants are not liable for these actions, even though the persons involved are their sons.

The TU is assisting nine tenants to defend their tenancies through the CTTT. While the notices of termination were issued in January this year, these matters are yet to be decided. ■

References:

'Rosemeadow a failure: minister', *Sydney Morning Herald*, 13 January 2009

'Rosemeadow residents fear local violence', Ninemsn, 13 January 2009

Housing stimulus: who stands to gain?

Ned Cutcher
Policy Officer

In the last budget, the NSW Government announced record expenditure on social housing, due to some substantial funding through the Federal Government's 'Nation Building and Jobs Plan' stimulus package.

The vast majority of this money was set aside for the construction of new homes, but a considerable amount was also put towards the increase – in fact the almost doubling – of the social housing 'asset management' budget. This coincided with recent changes to Housing NSW's maintenance regime.

Since October 2008, tenants of Housing NSW have been unable to request repairs through their local Housing offices. Instead, they have to call a special phone number (1300 HOUSING) to place an order for repair on a 'maintenance hotline'. At the same time, Housing NSW embarked upon a massive undertaking to clear its maintenance backlog.

It was hoped that greater attention to routine maintenance and proactive repairs would result in fewer calls to the maintenance hotline. So, armed with a handful of contractors and a long list of jobs to do, Housing NSW set the wheels in motion.

However, feedback from Tenants Advice and Advocacy Services suggests that there are some problems with the way this work is being rolled out. This illustrates that the needs of tenants may not have been 'front of mind'. Calls to the maintenance hotline are often not answered.

"Did you know that we are open 24 hours a day, 7 days a week? If your call isn't urgent, you may like to call us back later..." says the recorded message on the end of the line.

With the injection of a lot of new money into the maintenance budget, it might have made sense to increase the hotline's capacity so that more calls could be answered and more repair orders logged.

But rather than taking the opportunity for better meeting the needs of its tenants, the government's stimulus money is in fact aimed at providing the construction sector with job opportunities until the economic downturn subsides.

Housing NSW has a lot of old houses that could use a bit of a 'once over', and there are many people who'll benefit from this kind of work in the long run.

Getting unoccupied houses back into circulation to take pressure off

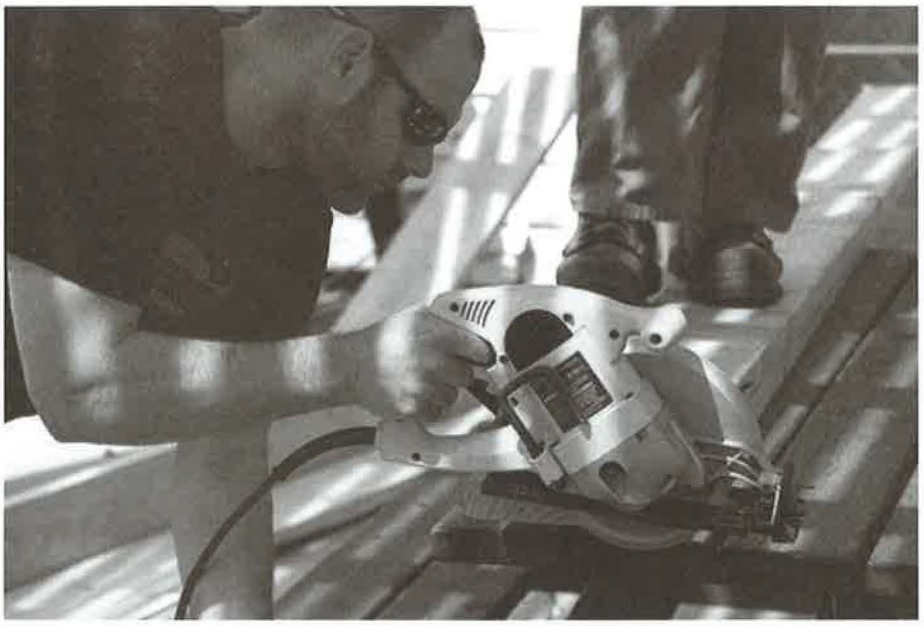

Photo: Dagny Gromer (www.dagnygromer.com). Used under a Creative Commons licence

waiting lists makes perfect sense. Bringing currently occupied housing up to an acceptable standard of repair is an absolute must.

Across New South Wales there are numerous examples of houses undergoing 'planned works'. Some tenants go without water for the day as the kitchen is upgraded, others are moved into alternative accommodation while more serious repairs are seen to.

But there's no easy fix when the job goes wrong. How disappointing it must be to try the tap in your newly renovated kitchen, only to have it come apart in your hand.

Pity the poor tenant who has to call the maintenance hotline for repairs following 'planned works' – because when one places that call it seems that 'asset management' and 'tenancy management' are not considered part of the same process.

While our construction industry is admirably supported, it seems that tenants of public housing continue to be somewhat short-changed.

As the recorded voice says on the end of the line – "Our staff are helping other customers right now, but we'll be with you shortly..." ■

RESIDENTIAL PARKS

Park lockouts are illegal

Samantha Fradd
Residential Parks Legal Officer

A park owner can't just lock a resident who lives in the park out of their dwelling, even if the park owner owns the dwelling.

They can't do it just because the fixed term of a resident's residential tenancy agreement has ended. They can't do it just because a resident is behind in their rent.

They can't do it just because they have told the resident to leave and the resident is still there. They can't do it even if they have given a notice of termination to the resident and the date on that notice has passed.

It is illegal to lock a resident out of their dwelling without an order of the Consumer, Trader and Tenancy Tribunal (CTTT). A park owner who does so can be prosecuted and fined up to $22,000, and may have to pay significant compensation to the resident.

This issue was dealt with in the CTTT in the decision of *McDonald v Woronora Caravan Park* (Residential Parks) [2009] NSWCTTT 62 (20 February 2009). See the case study, opposite.

(To read this decision, see the AustLII website at www.austlii.edu.au.)

The usual process to evict a resident

The usual process is that a park owner has to serve a valid notice of termination on a resident. That notice has to specify the day on which vacant possession of the premises is to be given.

Photo: Ned Cutcher

If the resident is still in possession of the premises once that day has passed, then the park owner has to apply to the CTTT within 30 days asking for orders terminating the tenancy agreement and giving possession of the premises to the park owner.

The CTTT will hear the evidence and submissions of the park owner and the resident and will then decide whether to make those orders.

If the CTTT does make orders terminating the tenancy agreement and giving vacant possession to the park owner, a park owner still can't just lock a resident out. The park owner has to wait until the resident has not complied with the orders of the CTTT – that is, until after the day for vacant possession to be given in the order has passed and the resident in still in possession of the premises.

A park owner can apply to the CTTT for a warrant for possession once the day for vacant possession to be given has passed. However, a park owner can't execute that warrant themselves. That is, they can't just give the resident the warrant and make them leave the site.

The only person who can execute a warrant is a sheriff's officer or a police officer assisting that sheriff's officer.

Even if the park owner owns the dwelling and the resident is renting both the dwelling and the site, the resident can't be locked out of the dwelling unless the park owner has followed the proper process.

McDonald v Woronara Caravan Park

Mr McDonald was a resident of Woronora Caravan Park in Southern Sydney and had been renting a park-owned cabin and the site since about mid-2007.

In October 2008, there was an argument between Mr McDonald and the park owner, the park manager and the park maintenance man. Later that day, Mr McDonald was given a notice of termination that stated his tenancy agreement was ending the next day.

Mr McDonald went to work the next morning. At about mid-morning, another resident in the park phoned him to say that the park manager and the park maintenance man were putting his belongings into the back of a ute.

When Mr McDonald returned to the park, the locks had been changed on the cabin and his belongings had all been removed either into the ute or into a shed in the park. Mr McDonald slept in his car that night and since then had been living with his parents.

He was able to get some of his belongings from the ute and the rest of his belongings from the shed in the park after a Tribunal order.

Mr McDonald made an application to the CTTT for compensation because the park owner had breached the term of his tenancy agreement that gave him the right to quiet enjoyment of the cabin and the site.

The park owner argued that Mr McDonald was a tourist and was not covered by the *Residential Parks Act 1998* (NSW).

The CTTT rejected the park owner's argument and found that Mr McDonald lived in the park as his principal place of residence and was covered by the Act.

The CTTT found that the park owner had breached Mr McDonald's right to quiet enjoyment of the premises by not following the required steps before evicting Mr McDonald from the park.

The CTTT ordered the park owner to pay to Mr McDonald an amount of $2,000. This was for economic loss and for non-economic loss, being the stress and anxiety suffered by Mr McDonald as a result of the breach of his tenancy agreement and the deliberate decision by the park owner to ignore the provisions of the *Residential Parks Act 1998*.

The CTTT also referred the matter to the Director-General of the Department of Commerce for investigation. The outcome of that investigation is not known.

If you have been illegally locked out or threatened with lockout by a park owner:

- get immediate advice from your local Tenancy Advice and Advocacy Service (see back page), or
- call the Office of Fair Trading on 133 220.

Mortgagees taking possession: new rules

Grant Arbuthnot
Principal Legal Officer

Very often, a landlord will have borrowed money to buy the premises they rent out. To secure the loan, lenders demand the giving of a mortgage.

A mortgage is a security that gives the lender the right to take possession of the premises and sell them to satisfy the debt, if it is not paid properly by the borrower.

If the premises are not given to the lender on demand, the Supreme Court can make orders that the lender be given possession.

When such orders are made, a tenancy of the premises ends by operation of section 53 of *Residential Tenancies Act 1987*.

Until that time, it is not safe for a tenant to give possession to the lender. This is because this will end the tenancy by abandonment and means that the tenant can be liable to pay compensation to the landlord for any loss suffered due to the ending of the tenancy.

Since the turn of the century, the Tenants' Union has experienced a tenfold increase in enquiries from tenants in receipt of demands for possession from lenders holding a mortgage over the premises.

We have in that time urged the Office of Fair Trading to improve the position of tenants suffering such demands, uncertainty and eviction. We are pleased that the NSW Government has made this change. ■

For further information on these and other tenancy issues see the websites Tenants NSW (**www.tenants.org.au**) and Office of Fair Trading (**www.fairtrading.nsw.gov.au**).

If you receive a demand for possession from a lender, contact you local Tenants Advice and Advocacy Service for advice particular to your circumstances.

How the rules have changed

Before 19 June 2009

Once the lender had the court order for possession, the time for the tenant to vacate the premises was determined by the kindness of the lender and the timing of the work of the Sheriff (who does the evictions).

This was an unsatisfactory situation because of its uncertainty for tenants.

After 19 June 2009

The lender, having the court order for possession, must give the tenant 30 days notice in writing before sending the Sheriff. With the requirement of 30 days notice come some other measures:

- The 30-day notice period is rent-free.
- The tenant may leave before the 30 days ends.
- Access to the premises to show prospective purchasers requires the tenant's agreement as to date and time.
- The lender can endorse a rental bond claim form.

It is still possible for the tenant:

- to claim compensation of the landlord for breach of the tenant's quiet enjoyment (taking or threatening the tenant's possession or tenure of the premises)
- to negotiate with the lender the timing of giving of possession.

These changes have been effected by amendment to the *Residential Tenancies Act 1987*. They are welcome changes.

PROFILE

A new approach to squalor

Through its Severe Domestic Squalor Program and advisory service, Catholic Community Services (CCS) has been supporting people who live in squalor and investigating further ways to best support them.

People who live in squalor come from all backgrounds and are of all ages. They can reside in their own homes, rental accommodation or public housing.

They may have a mental illness, memory loss or confusion associated with dementia or a disability. They may live alone or with someone who, through their own ill-health or disability, requires support to maintain a clean and safe environment. They are often among the most marginalised and disadvantaged.

Recognising the need to provide comprehensive support for people living in squalor and others affected by it, in 2008 the NSW Government through the Department of Ageing, Disability and Home Care provided CCS with funding to develop, implement and evaluate a service model for squalor.

A service model was developed after researching best practice nationally and internationally.

The level of demand for the service since it started 12 months ago has been overwhelming, with over 225 referrals and 206 assessments.

In addition, over 740 practitioners have attended training and information sessions on squalor resulting in increased awareness and opportunities for early intervention. Further sessions are planned each month.

The project is in the demonstration phase. Clients in 19 local government areas have been directly supported. However, with the advisory service, a much broader client base has supported, with calls coming in from all over Sydney.

Referrers range from those affected by squalor to neighbours, aged-care services, councils, and health and housing providers.

Organisations in other states have contacted CCS for support in developing effective service models for clients living in severe domestic squalor, including those hoarding. ■

Service model core elements

- an advisory service – a 1800 phone number as a single point of access for advice
- early identification – training for community service providers
- comprehensive assessment to ensure any intervention is sustainable
- case coordination leading to a collaborative response from all community agencies
- squalor clean-up
- ongoing support

Photo: Catholic Community Services

CCS is hosting the **National Squalor Conference: Pathway through the Maze** in Sydney, 5–6 November 2009. For more information see **www.nationalsqualorconference.com.au** or call the Squalor Hotline.

Contact the **Squalor Hotline** on **1800 225 474**.

CONTACTS

NSW Tenants Advice and Advocacy Services

Inner Sydney		9698 5975
Inner Western Sydney		9559 2899
Southern Sydney		9787 4679
South Western Sydney	1800 631 993	4628 1678
Eastern Sydney		9386 9147
Western Sydney		8833 0911
Northern Sydney		9884 9605
North Western Sydney	1800 625 956	9413 2677
Blue Mountains	1300 363 967	
Central Coast		4353 5515
Hunter	1800 654 504	4969 7666
Illawarra and 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	
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 Monday–Friday 9:30am–1:00pm and 2:00pm–5:00pm	1800 251 101	

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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Disclaimer: Legal information in this newsletter: is intended as guide to the law and should not be used as a substitute for legal advice; applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia.

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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