

Marginal renting reform: campaign update

Marginal renters are those excluded from mainstream residential tenancies legislation, and they are often disadvantaged in other ways.

In November 2010, we held a 'Marginal Rental Roundtable' attended by community and government representatives. (Boarding house owners sent their apologies and we met with them separately.)

Before the roundtable, the NSW Government announced:

- an expanded Boarding House Financial Assistance Program – to provide grants for construction of new boarding houses or additional rooms
- the culmination of 'targeted consultations' by an interdepartmental committee on boarding on reform options.

In March 2011, we launched a final policy paper, 'Reforming



Hallway © Michael Coghlan (flickr.com/mikecogh)

marginal renting', based on a draft discussed at the roundtable. The paper is supported by 28 NGOs. We circulated it to parties contesting the state election.

We have also participated in consultations on boarding house reforms conducted on behalf of NSW Ageing, Disability and Home Care and commented on the Environmental Planning and Assessment Amendment (Boarding Houses) Bill.

For more about marginal renters, the campaign and to download the paper 'Reforming marginal renting', see www.tenants.org.au/publish/marginal-renters.

Ombudsman: conditions in licenced residential centres still wanting

The NSW Ombudsman has published *yet another* report on licenced residential centres for people with disability (LRCs) and their regulator, NSW Ageing, Disability and Home Care.

Read it, and be appalled, both at what it shows of life – and death – in LRCs, and at a decade of government inaction in the face of desperate need for reform.

Download the report from www.ombo.nsw.gov.au/show.asp?id=667

Legal information kit for boarders and lodgers

Inner Sydney Tenants' Advice & Advocacy Service has published *The Boarders and Lodgers Legal Information Kit*.

The kit shows just how unrealistic it is for boarders and lodgers to access the legal system at the moment, and highlights the importance of law reform for marginal renters.

Download the kit from the Redfern Legal Centre website at www.rlc.org.au.

Minister undertakes to review parks law and establish register

We recently met with Minister for Fair Trading, The Hon. Anthony Roberts MP, and asked him to tell us about his first impressions and plans under his portfolio.

My first few months as Minister for Fair Trading have been an invigorating and challenging experience, tempered by the significant responsibilities that come with the territory.

The Fair Trading portfolio covers a wide range of important services that people need to access on a regular basis. It was clear to me from day one that as Minister for Fair Trading there is the potential to make a tangible difference to the lives of people in New South Wales.

In recent months I have met with a wide range of consumer and industry organisations, including the Park and

Village Service, the Affiliated Residential Park Residents Association and of course the Tenants' Union.

My first meeting with the Tenants' Union was very informative and gave me an excellent insight into the major issues and concerns for tenants. The [tenants] advocacy and advice services are particularly important.

The NSW Liberals and Nationals Government has already got projects up and running to honour our commitments in a number of key policy areas.

Within the portfolio of Fair Trading, work on establishing a register of residential parks is well advanced. The register will, for the first time, provide accurate information about the location of parks in New South Wales and the number of people living in them.

To further strengthen regulation of residential parks, the initial stages of the Residential Parks Act review is underway and the residential parks register will ensure that park owners, managers and residents will have the opportunity to have their say during the review.

In addition, an expert committee has been established to develop standard retirement village contract terms – this was an election commitment of the NSW Liberals and Nationals Government.

To give some perspective to residential tenancy in New South Wales, the Rental Bond Board reported that in June 2011 it held more than 660,000 rental bonds. Given that most of these bonds would be for households of more than one person, that makes for a staggering number of residential tenants. This again underlines the importance of the work of the Tenants' Union and NSW Fair Trading.

I am acutely aware of concerns about the rights of boarders and lodgers. There is no question that boarding houses fill a demand for affordable accommodation and provide much needed housing for many vulnerable people. It



Half of the trailer park in Oxford © Billy V (flickr.com/billyv)

Reader survey results

Thank you for your responses to our *Tenant News* survey. The survey showed that:

- 98 percent of respondents found the writing style and language used to be appropriate
- 92 percent liked the size and shape
- 92 percent liked the design, colours and photographs
- 98 percent found the text size easy to read
- 66 percent were happy with the current publication frequency and level of detail.

Practical advice for tenants was rated the number one topic (of interest to 78 percent of



Interview © Jarret Callahan
(flickr.com/jabzg)

readers) followed by law reform and legislative changes (73 percent) and policy developments in social housing (70 percent). We will continue to include these in future issues.

is perfectly reasonable that boarding house residents should be able to expect accommodation that is safe, clean and secure.

The Government wants to provide greater security and protection to boarding house residents, whilst ensuring the viability of boarding house operators. This is a complex issue that cuts across a number of areas of policy responsibility, including housing, planning, fair trading and disability services. To better examine these matters, the Government has asked an interdepartmental committee to assess and advance the many issues relating to boarding houses from a whole-of-government perspective.

Safety of rental accommodation is another key issue for tenants. We would have all heard reports of young children falling out of windows and being gravely or even fatally injured. Westmead Children's Hospital has recently released a

report on strategies to prevent children falling from buildings. The report places a strong emphasis on improving education

Boarding house residents should be able to expect accommodation that is safe, clean and secure.

and community awareness, and its recommendations are being examined by the government.

Fair Trading is currently working with the Department of Health to develop education strategies to raise awareness of this issue. Fair Trading's role will focus on educating property agents, landlords, tenants and body corporates. I have also asked my Property Services Advisory Council to examine the report's recommendations and provide me with advice on how best to get the message across to the community.

The Tenants' Union has also highlighted other areas of concern with the residential tenancy laws, and our discussion on these matters continues. I have directed NSW Fair Trading to monitor the impact of the new residential tenancy laws that commenced earlier this year. I have also asked the Property Services Advisory Council to actively monitor the new laws, report on any problems and to propose options to address them.

This means I will have a 360-degree view of the residential tenancy industry in New South Wales. This broad spectrum overview will be used to refine and enhance, as necessary, the existing regulatory framework for residential tenancies.

I will continue to look to tenants, landlords and the Tenants' Union for ongoing advice and feedback on the whole gamut of residential tenancy matters in the coming months and years. 🏠

Share housing in the brave new world: a case study

Sandra Ward, Mid Coast Tenants Advice & Advocacy Service, and Ned Cutcher, TU Policy Officer

Four tenants entered into a residential tenancy agreement for a fixed term of six months. The terms of this tenancy were governed by the *Residential Tenancies Act 1987*, which included scant provision for share-house tenancies.

After the fixed term ended, three tenants moved out and only one of the original four remained. Legally, the three who had moved out might be held responsible for the actions of their former housemate, and anyone else who moved in after them.

Three new occupants moved in to replace them. When one of these occupants moved out, those remaining asked the landlord's real estate agent to provide them with a new tenancy agreement, to put the tenancy in their names. Under the *Residential Tenancies Act 1987*, that would have been tricky without the cooperation of the landlord and the four original tenants. As it was, they were given a termination notice requiring them to vacate the house.

The tenant and two of the other occupants moved out, but one did not. He claimed



Scrambled eggs © Fredrik Wass (bisonblog.se)

to be a sub-tenant of the four original tenants, and asserted that the termination notices did not apply to him. He believed that his rent was payable to the head-tenants and not to the landlord, with whom he had no contract.

He remained in occupation even after his housemates had cleaned and vacated the rest of the house, handed their keys over to the agent and stopped paying rent. On account of his continued occupation, the agent contended that the tenancy agreement had not been terminated.

Here was a situation where several people with vastly differing interests found themselves involved in a tenancy dispute. Four co-tenants, three of whom had

long since moved away; three new occupants whose obligations to others would depend on whether they were co-tenants, sub-tenants or lodgers; and a landlord who had stopped receiving rent.

Resolving a dispute like this would be tricky at the best of times, but the introduction of new renting laws mid-way through the process made it a minefield. On 31 January 2011, the *Residential Tenancies Act 1987* was repealed and the *Residential Tenancies Act 2010* commenced. As the law governing residential tenancies in New South Wales passed from one piece of legislation to another, many actions and remedies available under a tenancy agreement changed. In particular, new provisions existed for share-house occupants.

Under the old Act

Co-tenants had no easy way to end their liabilities when moving out of a share house. Arguably, a new tenancy could be created with each change in personnel – as long as the landlord and any remaining co-tenants were fully aware of, and accepted, the change. The options were:

- an assignment, wherein the departing tenant gave their interest in the tenancy to someone else but retained their liability
- a sub-let, where the departing tenant retained their own interest in the tenancy and gave a new, separate interest to someone else (they retained their liability as a tenant and created a new liability as a head-tenant).

The old Act did not deal with the various legal relationships and interests that a share house could create. Crucially, it provided no clear way to resolve a situation where a sub-tenant remained after the head-tenant terminated their own tenancy.

Under the new Act

Co-tenants can more easily transfer their interest to another person or create a sub-tenancy agreement. Importantly, co-tenants can end their liabilities to each other and landlord by

TIPS: Transfer of tenancies and sub-letting

Get the landlord's consent With written consent a tenant can:

- transfer their tenancy under a residential tenancy agreement to another person, or
- sub-let the premises (or part) to another person.

The landlord must not unreasonably withhold consent:

- where a tenant proposes to transfer and one of the original tenants will remain as a tenant
- where a tenant proposes to sub-let and they will

remain in occupation of the premises.

When sub-letting, have a written agreement This is in the interest of both head-tenants and sub-tenants because:

- the rules are clear – residential tenancies legislation will apply
- the Consumer, Trader and Tenancy Tribunal is available to resolve disputes.

Further information Tenants Rights Factsheet 18: *Transfer and sub-letting* and your local Tenants Advice and Advocacy Service.

giving a termination notice and moving out.

Where a transfer or sub-let does not happen, it will be hard to argue that a new tenancy is created when someone new moves in – an occupant is not covered by the Act unless they have been given a transfer or a written sub-tenancy agreement. However, the Consumer, Trader and Tenancy Tribunal could recognise such an occupant as a tenant if they moved in to replace one of the original tenants.

Once the tenancy has been terminated, the landlord can give a notice to vacate to those occupants who are not tenants. However, it can be tricky to define the moment at which a share-house tenancy is lawfully terminated

– particularly when all the occupants don't leave at once.

Was the case resolved?

The nature of the solution would depend on the legal status of each of the parties involved. While some useful changes have been made to the law regarding share-house tenancies, one still can't unscramble an egg. The *Residential Tenancies Act 2010* provided these share-house occupants and their landlord with many new options. However, without any agreement (or decision by the tribunal) as to who was and was not a tenant, finding a solution was difficult. In the end, they mostly agreed to disagree.

The landlord was allowed to keep the bond and the occupant who claimed to be a sub-tenant agreed to pay an additional amount to cover rent arrears (nearly \$2,000) in weekly instalments. ■

For more about share-house tenancies under the *Residential Tenancies Act 2010*, visit our blog, *The Brown Couch* at <http://tunswblog.blogspot.com> under the label **Share housing**.

Renters can save power with free help



Off switch © Kyle Slattery
(kyleslattery.com)

More than 40,000 pensioners and families on a low income have taken up a free home power assessment and savings kit as part of the NSW Government Home Power Savings Program.

Expected savings are around \$9.2 million off household bills and 42,800 tonnes of carbon pollution a year.

The program is open to NSW residents with a Centrelink Pensioner Concession, Low Income Health Care, Veterans' Affairs Pensioner

Concession or Repatriation Health card. People registered with an energy utility hardship program and social housing tenants are eligible.

Households that join get a free:

- home power assessment by an energy expert who will show how much appliances cost to run and how to make the biggest savings
- power savings kit installed by the energy expert – worth around \$200 – containing a stand-by saver power board, energy-efficient light globes, draught proofing and more
- personal power savings action plan listing free and low-cost ways to save power, money and cut carbon pollution.

If you are eligible, call 1300 662 416 to book an assessment. Visit www.savepower.nsw.gov.au/freehelp for more information.

Just started renting – and landlord is selling

Q We moved into our place in February. We have a one-year lease. The agent just gave us notice that the place is up for sale in two weeks and open for buyers to see it. We were not told about this when we signed the lease. We would rather leave than put up with the interruptions. Can we get out of the lease? Will it cost us money?

A Check the documents you were given by the landlord's agent before you signed the tenancy agreement (lease). Consider what the landlord or agent said before you entered the agreement. If there was no mention of a proposal to sell the premises, then you can end the tenancy. To do so, give the agent a written termination notice of 14 days (in person or if you mail it, allow four working days for delivery). Then give possession of the premises

to the agent according to the notice. This way, you can end the tenancy without having to pay the landlord compensation for breaking the fixed term.

This is new in NSW tenancy law (since 31 January 2011). There has already been a relevant decision by the Consumer, Trader and Tenancy Tribunal. In *Kutzner v Kamp* (RT 11/2167) the landlord was denied compensation for the tenants ending the tenancy before the end of the fixed term. The tenants' situation was like yours.

The tribunal said that it did not matter that:

- the landlord did not propose to sell and disclose this before forming the agreement
- the tenancy started before new tenancy law required a landlord to disclose a proposed sale.

Grant Arbuthnot, Principal Solicitor

More on this topic on our blog, *The Brown Couch*, under the label **Landlord selling**.



For sale © Ian Mutton (flickr.com/imutton)

Park residents: The importance of wills and usefulness of enduring power of attorney

Paul Smyth
Residential Parks Legal Officer

A will is a written statement of the way in which you (the 'testator') wish to have your property distributed after your death. This includes homes in residential parks. The person or persons to whom you leave your property are your 'beneficiaries'. To be valid, a will must comply with the formalities set out in the Succession Act 2006.

Who can make a will? Should I make one?

Any person over the age of 18 who has the legal capacity can make a will. You should make one if you are concerned about who will receive your assets after you die. It is important to make a will if you have a family or other dependents. Sometimes wills are challenged because the testator did not have sufficient capacity or understanding at the time to make one.

You can make one yourself using one of the kits commonly available. However, get legal advice if you are unsure about how to draft it. You can also have a will drawn up at no charge by the NSW Trustee and Guardian.

If I don't make a will?

You are deemed to have died 'intestate' and your estate is distributed according to

the rules on intestacy. That is, your estate and assets are distributed to your next of kin according to a chain of inheritance set out in the *Succession Act*. If you have no living relatives in the relevant categories, your estate will then pass into ownership of the state of New South Wales.

If I want to change my will?

You can destroy it by tearing it up and then make a new one, or you can have a document drawn up (a 'codicil') that sets out changes to the existing will.

What about my pets?

In your will, you can provide a legacy to a friend or relative with a non-binding request that they look after your pets. You also have the option of a 'legacy program' with the NSW Animal Welfare League or RSPCA NSW. Some prefer to have their pets euthanased. You can direct your executor to arrange for this.

Should I consider enduring power of attorney?

A general power of attorney ceases to have effect after a person loses their mental capacity to make financial and other decisions. However, there is another option. An enduring power of attorney continues to have effect even after you lose mental capacity. A power of attorney is a legal document through which you (the 'principal') can appoint a person (the 'attorney') to make decisions about your property or financial affairs and to sign documents on your behalf.

On an enduring power of attorney form it is important to note that there is a witness certificate (required under the *Powers of Attorney Act 2003*).

In most cases, the enduring power of attorney must be registered with Land & Property Information (www.lpi.nsw.gov.au). Registration incurs a fee. ■



1999, cat on my lap, Wijdenes © tuuur (flickr.com/tuur)

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 ABN 88 984 223 164)

I apply for membership of the Tenants' Union of NSW Cooperative Limited as:

- ☐ individual tenant ☐ individual (non-tenant)
☐ tenant organisation ☐ organisation (non-tenant)

Name

Address

Suburb

State

Postcode

Phone

Email

Fees (GST included)

Annual fee covers 1 January–31 December

- individual low wage / pension / benefit \$ 8.00
- individual waged worker \$16.00
- organisation \$32.00

Payment

Membership fee \$

Donation \$

TOTAL \$

Signed

Date

Please return with a cheque or money order made out to:

Tenants' Union of NSW
Reply Paid 85479, Surry Hills NSW 2010

Tenants NSW online
www.tenants.org.au

- Find your local Tenants Advice and Advocacy Service.
- Read and download Tenants Rights Factsheets and sample letters on common tenancy issues.
- Keep informed about the work of the TU.

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 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

<i>Aboriginal services</i>	
Greater Sydney	9569 0222
Western NSW	1800 810 233
Southern NSW	1800 672 185 4472 9363
Northern NSW	1800 248 913 6643 4426
<i>Older persons (statewide)</i>	1800 131 310 9566 1120



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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. It applies to people who live in, or

are affected by, the law as it applies in New South Wales, Australia.

Tenants' Union of NSW

- A community legal centre specialising in NSW residential tenancies law.

- Peak resourcing body for the NSW Tenants Advice and Advocacy Program.

Address:

Suite 201, 55 Holt St
Surry Hills NSW 2010

Phone: 02 8117 3700

Fax: 02 8117 3777

Email: tunsw@clc.net.au