

## No more paying rent for two premises

Luke O'Connell  
Publications Officer

**Many tenants will no longer pay rent for two premises when they have to move. When a landlord gives a tenant a termination notice during a periodic tenancy agreement, the tenant can:**

- move out at any time before the date in the notice, then
- stop paying rent at once.

**These are new provisions in residential tenancies law. The following shows one tenant's experience in using them.**

Kerry was renting a house under a periodic tenancy agreement through a real estate agent. He received a rent-increase notice from the agent – the rent was to go

up by \$100 a week. He tried negotiating with the agent for a smaller increase and wrote back suggesting \$50 a week.

The agent did not respond to Kerry's offer. Instead, she sent him a termination notice that gave him 90 days to leave. It seemed that the landlord was determined to have the full rent increase.

### What the law says

Section 110 of the *Residential Tenancies Act 2010* says:

"A tenant who is given a termination notice by the landlord ... may give vacant possession of the residential premises at any time before the termination date.

... the tenant is not liable to pay any rent for any period after the tenant gives vacant possession of the residential premises and before the termination date."

Giving "vacant possession" means moving out and taking all your belongings from the premises. Handing back the keys signifies that you have returned possession of the premises to the landlord or agent.

Kerry was happy to move. He began looking for another place to rent straightaway. Within a few weeks of getting the termination notice, he had found a new home.

He was very well organised. He signed a tenancy agreement for the new premises on the same day he moved out of the old premises. While the removalists were at work, he was cleaning.

Just before 5:00pm on the day he was moving, he attended the real estate agency with a friend. He returned the keys and gave the agent:

- a photocopy of the keys – as proof of their return
- a letter – saying that the rent was paid up and that he



From the heart smiling is an art © Doddamalluraprameya (flickr.com/jalapo)



had moved out that day in accordance with the law.

The agent was surprised by Kerry's actions. She incorrectly claimed that:

- Kerry had to give the agency notice that he was leaving
- the tenancy would not end unless Kerry signed a blank bond refund claim form.

Kerry refused to sign the form. He asked the agent to sign a photocopy of the letter and the 'receipt' for the keys. He had his friend witness the copies and he kept them for his records.

He later claimed all of the bond money. The landlord made no claim on the bond and so it was refunded to Kerry in full.

### **Kerry's tips**

"Clean the premises and leave nothing behind. Take photos of the premises as you left them."

"Hand in a letter and a photocopy of the keys. Keep your own copies of these."

"Do not sign blank bond claim form. Otherwise, the landlord can make a claim on your bond without you agreeing."

## **Public housing estate redevelopments: How can tenants be informed and consulted?**

*Reprinted from Shelter NSW*

**In a democratic society, an important principle is that people are able to participate in major decisions that affect their lives. Housing NSW has programs to regenerate public housing sites. Some of these plans mean that tenants will have to move and communities will be broken up.**



? © Shanonala (flickr.com/shanonala)

Tenants should be able to participate in decision-making around these changes. Moving from your home is a major life stress. In an ethical and compassionate society strategies need to be in place to mitigate this trauma.

The following strategies can make a difference in fostering meaningful participation and decreasing the trauma and social disruption:

- opportunities are created for tenants to participate in the decision-making *from the beginning*
- opportunities are created for the community to come together and be informed and consulted
- clear timelines are provided for when tenants are likely to be affected
- the reasons for the development are clearly explained in a way that does not denigrate either the estate or the residents
- the reasons for the redevelopment should include a statement setting out all the social and economic costs and benefits
- clear, timely, ongoing communication tailored to all the language and cultural groups affected
- clear, fair and consistent policies on what people are entitled to when they move
- ongoing support for community activities after redevelopment.



## Questions that public housing tenants and advocates could ask

It is a good idea to ask for responses in writing. It usually reduces misunderstandings.

### **Why is this happening?**

- What are the reasons for the redevelopment?
- Has there been a social impact study? If so, what does it tell us?
- What are the social and economic costs and benefits for the community?

### **How will people find out about what is happening?**

Will Housing NSW use a variety of ways to explain what is happening on the estate in order to reach a broad range of tenants, including Aboriginal tenants, tenants whose first language is not English and tenants with disabilities? Will strategies include:

- informal gatherings like barbecues?
- public meetings with interpreters?
- surveys and one-to-one interviews using interpreters when needed?
- newsletters in community languages?
- a simple one-stop-place where tenants can make enquiries?

### **Will there be opportunities to participate in decision-making?**

(a) *For the community as a whole:*

Will there be an ongoing accessible forum or reference group where tenant representatives, service providers and local community representatives meet regularly with the department to consult about the redevelopment?

(b) *For tenants on the estate:*

- Will there be formal consultative arrangements for tenants? If so what form will they take?
- Will adequate support including administrative support and a private

meeting place be given to tenant groups? Will affected tenants be able to get training on how to work with the department's planning processes?

- Will tenants' representatives be able to state their views directly to the senior management of Housing NSW?

Will the tenants' views actually influence what happens with the redevelopment? Will explanations be given to tenants about which of their suggestions were accepted, which were not, and why?

- Will tenants have access to independent advice and advocacy about the broad policies of redevelopment and the plans and processes?

Will other forms of support from independent organisations be available? Will Housing NSW fund a community-based tenant advocate to provide independent advice and advocacy on individual tenancy matters?

### **In the event that tenants are asked to move:**

- Will tenants be rehoused in an area of their choosing?
- Will tenants have associated costs such as utility connections paid upfront?
- Will improvements undertaken by tenants be recognised and compensation negotiated?
- Will tenants retain their tenancy status under any new agreement? Will additional occupants in the present housing be recognised and housed in the new tenancy?
- Will neighbours, who chose to, be relocated in close proximity, so that they can continue their long-term connections and mutual support?

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- Will the relocation process be sensitive to family connections and support?
- Will culturally-appropriate support will be provided to tenants facing grief at the loss of their homes?
- Will trained resettlement officers assist in resolving problems that arise from relocation?

Tenants might be fearful of being settled in a neighbourhood where they are not wanted and are isolated from friends and support. Have departmental officers the flexibility to find creative ways of dealing with this in consultation with the tenants themselves?

- Will agreements with tenants be in writing?

***Will there be events that tenants might want to help Housing NSW organise that would bring the community together in a time of change?***

These could be:

- planning for community events which celebrate the life of the community and recognise the importance of its history
- celebrating and documenting the life of different people in the community such as elders, parents and children.

***And what about the department's staff?***

- Do all departmental officers have an understanding of the impact of decisions on the community?
- Can they relate in an appropriate and sensitive manner to tenants?
- Have they access to cultural awareness training?
- Will there be staff from appropriate cultural backgrounds on the local Housing NSW team?
- Do Housing NSW staff have access to support and debriefing in this stressful situation?

## TENANCY Q&A

### Landlord adding solar cells: How to share in the benefits



Solar panels © Chandra Marsono (flickr.com/handramarsono)

**Q** *My landlord wants to put solar cells on the roof of the house and share the benefit with us. Can this work? Are there any tenancy law problems with this idea?*

**A** It has less problems than if you want to pay for solar cells and put them on the house you rent. It can work, but tenancy law will narrow the ways it can be done and create some problems.

You cannot lawfully make an arrangement under which you pay the landlord money other than rent, bond or prescribed charges. Prescribed charges are found in the *Residential Tenancies Regulation 2010*. Proceeds of the sale of electricity is not mentioned in the Regulation.

So, the electricity account for the premises will have to be in the name of the landlord. This will allow benefit to flow from the landlord to you. It will also mean that the landlord will be able to charge you for the electricity you use in the premises. The premises must be individually metered for electricity.

If you make such an arrangement, its terms should be in writing and very clear. They should require the landlord to give you copies



of all the relevant documents about electricity billing and sale. It would also be good to include a means of settling disputes before anyone takes legal action (e.g. mediation at a Community Justice Centre).

Before entering such an arrangement, you should get advice on its particular terms from a Tenants Advice and Advocacy Service (TAAS) and/or a Community Legal Centre.

The landlord cannot fit solar cells to the premises without your consent. This is due to the access rules in your residential tenancy agreement (lease). Such work is not listed as a purpose for which the landlord can have access without your consent. It is not, for example, repair or inspection.

If you find that the landlord is pressing you to enter an arrangement that you are unsure about, contact your local TAAS. The landlord's conduct may be a breach of your peace, comfort and privacy.

*Grant Arbuthnot,  
Principal Legal Officer*



Birds on the hedge © Alexandre Dulaunoy (foo.be)

## Fixing the system – one question at a time



Too many hammers © Velo Steve (flickr.com/juniorvelo)

*Ned Cutcher, Policy Officer*

**There can sometimes be a difference between what a policy is intended to achieve, and what actually happens on the ground. A good example can be found in the repair and maintenance of rental properties.**

For over twenty years, it has been government policy in New South Wales to require landlords to provide their properties for rent in a state fit for habitation, and to keep them maintained in a reasonable state of repair. This is currently reflected in the *Residential Tenancies Act 2010*.

Despite this, one of the most common complaints of NSW tenants is that it can be difficult to get repairs done (the statewide network of Tenants Advice and Advocacy Services takes between 6,000

and 7,000 calls about repairs each year).

That is not to say that landlords always avoid their repair obligations. But even with the best of intentions, the policy does not uniformly achieve its objective. (Thankfully another policy – that of dispute resolution through the Consumer, Trader and Tenancy Tribunal – means that the objective is not thwarted in its entirety... Well, at least not in every case.)

A key strength of Tenants Advice and Advocacy Services is our ability to identify and monitor practice that does not properly align with an established policy.

We do this by talking to tenants – or, more specifically, by answering questions about tenants' rights and providing advice on how best to resolve



tenancy disputes. This provides us with a formidable insight into how well renting laws, and the policies on

We're well placed to see how trends affect tenants and, because we are uniquely focused on residential tenancy

key stakeholder in matters concerning residential tenancies in New South Wales. The Tenants' Union is

***By contacting your local Tenants' Advice and Advocacy Service with a question about your tenancy, you're also helping to fix the system.***

which they are based, are working.

As a statewide network, we can observe the proliferation of trends in tenancy management practices throughout the state, because we get a clear picture of the types of situations tenants are faced with on a daily basis.

law and practice in New South Wales, we're also well qualified to comment. We are able to speak with our collective observations in mind.

On the strength of this, the network's primary resourcing body – the Tenants' Union of NSW – is recognised by the NSW Government as a

frequently invited to share its perspectives through regular meetings with government departments such as NSW Fair Trading, Housing NSW and other relevant bodies.

When all of this comes together, we can affect systemic change. Below is an example of how it can work.

**Some time ago, Housing NSW changed the way it processes requests for repairs.**

**It moved from a system where organising repairs was part of the role of a client service officer, to one where it is solely the responsibility of an asset management team. The change has had an unforeseen result.**

When a tenant takes Housing NSW to the tribunal, a client service officer turns up to respond – not an asset manager, even if the application concerns repairs. They might enter into an agreement with the tenant (consent orders) about how and when repairs will be done, but they have no control over the asset management team.

Asset management teams have, in many cases, taken their "scheduled work" plans to override tribunal order, and declined to conduct repairs as per such orders. This is clearly wrong, but it has been a regular occurrence.

Housing NSW has failed to comply with numerous repair orders. In some cases, tenants have obtained compensation once these matters have gone back to the tribunal for alternative remedies.

Tenant advocates first spotted the issue through conversations with tenants in the



© Velo Steve  
(flickr.com/juniorvelo)

Greater Sydney area, but it soon became apparent that this is a statewide problem.

The Tenants' Union raised the matter with Housing NSW as soon as we had the evidence to demonstrate both the nature and the extent of the problem – evidence from the Tenants Advice and Advocacy Services (TAAS), who gave it with the permission of their clients.

Housing NSW agreed that the issue was of concern, and undertook to look into it.

Now, it has taken some time, but we understand that Housing NSW has recently restructured its internal processes to ensure client service officers and asset managers communicate better about requests for repairs.

The proof, of course, will be in the pudding – and we'll be relying again on our conversations with tenants to see if this works. Because that's the key thing in all of this: by contacting your local TAAS with a question about your tenancy, you're also helping to fix the system.



# THE YEAR IN REVIEW

It's been a huge year for the Tenants' Union of NSW. Here are some of the highlights.

## **Commencement of the Residential Tenancies Act 2010 – 31 January**

In the lead-up to this momentous occasion, we spent a great deal of time rewriting the Tenants Rights Factsheets and workshopping the new law with Tenants Advice and Advocacy Services across New South Wales.

Since the Act's commencement we have been actively monitoring its use – through supporting the casework of the Tenants Advice and Advocacy Services, engaging in strategic litigation, and reviewing decisions of the Consumer, Trader and Tenancy Tribunal and appeals to the District Court.

## **Campaign for marginal rental sector reform – launched March**

The TU has long advocated for reform of the marginal rental sector – because some people who rent their homes still have no protections under the *Residential Tenancies Act 2010*. These includes residents in boarding houses, many forms of student accommodation, and some types of accommodation in residential parks.

Just before the NSW state election in March, we released our four-point plan for reform of the sector. Since its release, we have continued to advocate for our plan.

### **See also**

**Tenants NSW website:** [www.tenants.org.au](http://www.tenants.org.au)

- > Tenants Rights Factsheets
- > Policy and law reform
  - > Marginal renters
  - > Social housing ... Aboriginal community housing

**The Brown Couch blog:** [tunswblog.blogspot.com](http://tunswblog.blogspot.com)

- > Residential Tenancies Act 2010
- > Marginal renters
- > Tax
- > Aboriginal housing



Make your own planner © Avital Gertner (creativityprompt.com)

We recently contributed to the NSW Legislative Assembly Social Policy Committee's Inquiry into International Student Accommodation in New South Wales.

## **Federal Government's tax forum – October**

Affordable rents are possible – but to achieve this the tax system needs fixing.

We watched the Federal Governments' tax forum with interest. We've written extensively on tax reform over many years. We believe that similar views to ours were prominently shared at the forum, and we will continue to advocate for sensible tax reform to promote housing affordability.

## **Engaging with the Aboriginal housing sector**

During the last couple of years, we have stepped up our engagement with the Aboriginal housing sector. This continued throughout 2011.

The impetus for this was the roll-out of a new "Build and Grow" strategy for Aboriginal housing, changes to the *Aboriginal Land Rights Act 1983* and some new definitions in the *Residential Tenancies Act 2010*.



# 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

## Payment method: Please tick

- ☐ Enclosed cheque or money order made out to Tenants' Union of NSW

- ☐ Deposit into our bank account:

Account name Tenants' Union of NSW  
BSB 062-004 Account No. 802624

For online deposits, please give the reference "MEM" plus your surname

## Please return this completed form to:

Tenants' Union of NSW  
Reply Paid 85479, 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 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

### Aboriginal services

Greater Sydney 9569 0222

Western NSW 1800 810 233

Southern NSW 1800 672 185 4472 9363

Northern NSW 1800 248 913 6643 4426

Older persons (statewide) 1800 131 310 9566 1120



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## 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.

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