



Reasonable grounds for termination: better security for tenants

A priority for law reform

Notices of termination without grounds allow a few unscrupulous landlords to behave unfairly, and make all tenants feel less secure. Notices of termination should be given on reasonable grounds only.

Most tenancy agreements in New South Wales begin with a fixed term of six or 12 months, and then become continuing agreements. Under the current law, tenants on continuing agreements can be given 60 days notice of termination, without grounds. The prospect of a 'without grounds' notice makes tenants' housing unnecessarily insecure.

There are many reasons why a landlord might want to end a tenancy. Some reasons are fair: for example, the tenant is in breach, or the landlord wants to move in, or the premises are to be sold or renovated.

However, some reasons for termination are not fair, such as retaliation or discrimination. Notices of termination without grounds give cover to terminations motivated by these unfair reasons.

The law should be reformed to remove notices of termination without grounds and instead provide a comprehensive list of reasonable grounds for termination.

Most landlords operate fairly and seek termination only where there is a sound reason for it. These landlords would suffer no disadvantage from reasonable grounds for termination. And all tenants would enjoy greater peace of mind.

The Tenants' Union of NSW

The Tenants' Union of NSW (TU) is the State's peak non-government organisation for tenants.

Established in 1976, the TU works to improve tenants' housing through tenancy law reform and information for tenants about their rights. The TU is presently a specialist Community Legal Centre with its own legal practice in residential tenancy law. The TU also provides training, legal back-up and other resources to services under the Tenants Advice and Advocacy Program (TAAP).

Tenants Advice and Advocacy Services

Tenants Advice and Advocacy Services are local services funded under the TAAP to provide information, advice and advocacy to tenants throughout NSW. There are presently 14 Tenants Advice and Advocacy Services, each of which serves tenants of private rental and social housing, park residents and boarders and lodgers. There are also four specialist services for Aboriginal tenants, and specialist services for older tenants and park residents.

Tenants Advice and Advocacy Services assist almost 30 000 persons each year.

Are long-term fixed term tenancies the answer to insecure tenure?

Some people suggest that tenants' security could be improved by landlords and tenants signing long-term fixed term tenancy agreements.

The TU believes that this is not realistic in the current rental market.

The TU expects that few landlords would be interested in entering into long-term fixed term agreements. About 70 per cent of landlords own only one rental property. Few of them would be interested in tying up their sole property in a long-term fixed term tenancy agreement.

The TU also expects that few tenants would be interested. When they enter into a tenancy, tenants generally do not know what quality of service they will receive from the landlord. Few would risk a long-term fixed term.

The TU believes that the underlying structure of the rental market would have to change substantially before long-term fixed term agreements to become widely accepted.

By contrast, law reform for 'reasonable grounds' terminations can be implemented now. 'Reasonable grounds' terminations neither require nor entail substantial change to the structure of the rental market.

Reasonable grounds for termination

The Residential Tenancies Act 1987 already provides landlords with a number of grounds for termination that are fair and reasonable. These are:

- Breach (including where rent is unpaid for 14 days) – 14 days notice
- Frustration (premises uninhabitable) – 2 days notice
- Sale of premises (contract requires vacant possession) – 30 days notice*

*cannot be given during fixed term

In reforming the Act, these existing grounds should be retained, and the following just grounds added:

- Landlord requires the premises for their own housing or to house a family member – 4 months notice*
- Premises to be demolished – 4 months notice*
- Premises to be changed to a non-residential use – 4 months notice*
- Premises to be substantially renovated such that vacant possession is required – 4 months notice*

*cannot be given during fixed term

The present role of the Consumer, Trader and Tenancy Tribunal should be retained. This means that where a tenant does not move out by the date given in a notice of termination, the landlord may apply to the Consumer, Trader and Tenancy Tribunal for an order terminating the tenancy. The Tribunal considers whether the grounds for termination are proven, and other circumstances of the case, and makes an order accordingly.

For further information, contact:

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