

11 August 2023

Residential Tenancies
Policy & Strategy, NSW Fair Trading
Better Regulation Division
Department of Customer Service
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150

By email: residentialtenancy@customerservice.nsw.gov.au

Dear Policy Managers,

Improving NSW rental laws consultation

1. Women's Legal Service NSW (**WLS NSW**) thanks the Department of Customer Service for the opportunity to comment on the consultation paper about improving NSW rental laws.
2. WLS NSW is a specialist accredited women-led community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social, and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights, and access to justice.

Recommendations

3. We commend the NSW Government's commitment to making renting in NSW fairer. It is our hope that reforming NSW rental laws will also strengthen protections for renters who are victim-survivors of domestic and family violence.
4. We endorse the recommendations made by the Tenants' Union of NSW in full, and particularly their recommendation to remove 'no grounds' terminations. We will limit our comments in this submission to issues particularly relevant to renters who are victim-survivors of domestic and family violence.
5. In addition to the recommendations made by the Tenants' Union of NSW, we further recommend:
 - 5.1 Being a victim-survivor of gender-based violence be included as a protected attribute in the *Anti-Discrimination Act 1977*; and
 - 5.2 Any new portable bond scheme should allow a former co-tenant to transfer their portion of the bond to a new rental property.

A new model for keeping pets

6. It is crucial to the safety and wellbeing of adult victim-survivors of domestic and family violence, their children, and their pets, that tenancy laws be changed to make it easier for tenants to keep pets.
7. Domestic Violence NSW's July 2020 survey of domestic and family violence and community workers found that 48% of respondents stated that clients have delayed leaving a perpetrator by more than a year due to fear or threat of an animal being harmed.¹ 42% of respondents said that victim-survivors had delayed leaving a perpetrator for more than a year due to barriers accessing support related to their animals.² "Lack of animal-friendly rental accommodation" was the most significant barrier to accessing support identified by respondents for clients with animals experiencing domestic and family violence and abuse with 93% of respondents identifying this barrier.³ "Lack of animal-friendly emergency and crisis accommodation" and "Lack of animal-friendly transitional and long-term accommodation" followed at 92% and 85%, respectively.⁴
8. Living with animals has a significant positive impact on people living with mental health illness, including Post-Traumatic Stress Disorder.⁵ Research has shown that people who have experienced domestic and family violence and abuse who now live with an animal report less psychological distress and higher social support than participants who had experienced violence and abuse and did not have pets, and that victim-survivors have described the relationship they have with their animals as an important remaining positive relationship in their lives after leaving violence.⁶
9. It is crucial to the safety and wellbeing of adult victim-survivors of domestic and family violence, their children, and their pets, that tenancy laws be changed to make it easier for tenants to keep pets.
10. For these reasons and the reasons outlined in the Tenants' Union of NSW submission we endorse the recommendations made by the Tenants' Union of NSW outlined below.

Recommendations

We support the following recommendations made by the Tenants' Union of NSW:

Landlords and agents should be restrained from asking about pet ownership when renters are applying for a property by prohibiting them from requesting this information in the *Residential Tenancies Act 2010* and from taking the status of pet ownership into consideration when determining a rental application.

14 days is a reasonable amount of time for a landlord to consider and respond to a renter's request to keep a pet.

Where a landlord is seeking an order to refuse a request for a pet, they should be required to do this

¹ Dam, M, and McCaskill, C. (2020), *Animals and people experiencing domestic and family violence: how their safety and wellbeing are interconnected*, Domestic Violence NSW, Sydney, (DV NSW Report) p 43, 106

² Ibid, p 42

³ Ibid, p 45

⁴ Ibid

⁵ Brooks, H.L., Rushton, K., Lovell, K. *et al.* (2018) The power of support from companion animals for people living with mental health problems: a systematic review and narrative synthesis of the evidence. *BMC Psychiatry* **18**, 31; Roxanne D. Hawkins, Emma L. Hawkins & Liesbeth Tip (2021) "I Can't Give Up When I Have Them to Care for": People's Experiences of Pets and Their Mental Health, *Anthrozoös*, 34:4, 543-562.

⁶ DVNSW Report (2020), Note 1.

within 14 days from the date on which the renter made a written request.

Should a landlord wish to deny permission for a renter to keep a pet, the onus should be on the landlord to obtain a Tribunal order allowing them to refuse consent.

The Tribunal should consider the welfare of the animal as the primary consideration when determining whether it is reasonable to refuse a request for a pet at the property. They should be guided by relevant animal welfare guidelines and/or other companion animals' regulations.

The Tribunal should not be able to give the landlord the ongoing right to say no to animals at the property.

Continue to prohibit landlords and their agents from requesting pet bonds.

Renters' personal information

11. We support the limiting of the information that applicants can be asked for in a tenancy application and use of a standard tenancy application form that limits the information that can be collected from applicants, because we believe it will reduce discrimination against victim-survivors of domestic and family violence.
12. WLS NSW, the Tenants' Union of NSW, and Domestic Violence NSW created and promoted a survey to collect information from tenants who had ended their tenancy using a domestic violence termination notice (**DVTN**), and anyone who supported someone who did this. The survey sought information about how the domestic violence provisions in the RTA were working (**the survey**). The survey opened 31 October 2022 and closed on 16 November 2022.
13. The survey asked people for any other comments they had. One of the survey respondents said:

"Some real estates are less inclined to rent to women if they are aware there has been any DV – Start safely can now be a disincentive."
14. We are also aware of some cases of applicants being asked whether an apprehended domestic violence order has ever been made for their protection.
15. It is important to prevent landlords and their agents from discriminating against victim-survivors of gender-based violence. One way to do this would be to include being a victim-survivor of gender-based violence as a protected attribute in the *Anti-Discrimination Act 1977*.

Recommendations

We support the following recommendations made by the Tenants' Union of NSW:

A standard rental application form should be prescribed.

Limits should be placed on the types of additional information and number of pieces of information that can be requested for specific categories of information, for example, information relating to proof of identity, ability to pay agreed rent and suitability.

Renters, not the landlord or their agent, must be able to choose which types of information they will provide for each category for which information can be requested.

In relation to the collection and retention of a renter's information:

- Landlords and agents should securely store a successful applicants' contact information needed for their ongoing relationship and destroy all other information within two months of entering into the residential tenancy agreement. The tenant should be provided with copies of any information held about them;
- Landlords and agents should destroy all information they hold in relation to an unsuccessful applicant once they enter into a residential tenancy agreement unless the unsuccessful tenant gives explicit and withdrawable consent for the retention of information in response to a plain language explanation of this use for a specific time frame of no more than six months or as directed by the person. At the end of the relevant time frame, information must be destroyed, or consent renewed;
- Third parties should destroy information upon completion of the application unless the person gives explicit and withdrawable consent for the retention of information in response to a plain language explanation of this use for a specific time frame of no more than six months or as directed by the person. At the end of the relevant time frame, information must be destroyed, or consent renewed;
- Renters should be given access to personal information, including specifying this be free, reasonably accessible, and clear timeframes for response.

Work to create a pathway for automated decision-making that can test technology before widespread adoption.

Prohibit further use of automated decision-making including elements such as 'scores' that may influence decision-making until appropriate structures are put in place.

We further recommend:

Being a victim-survivor of gender-based violence be included as a protected attribute in the *Anti-Discrimination Act 1977*.

Portable bonds scheme

16. We support the implementation of a new portable bond scheme that allows renters to transfer their bond from their former rental property to their new rental property. When designing a new portable bond scheme, a former co-tenant should be able to transfer their portion of the bond to their new rental property.
17. Currently a former co-tenant must try to recover their portion of the bond from the remaining co-tenant/s. This is not a viable option for victim-survivors of domestic and family violence.
18. The survey referred to above asked, "Did the victim-survivor of domestic violence contribute to the bond?". 70 people responded to this question. 79% (55) of survey respondents answered yes.
19. The survey asked, "Did the victim-survivor of domestic violence try to recover their portion of the bond from the domestic violence perpetrator?" 60 people answered this question. 30% (18) of the survey respondents answered yes and 50% (30) said no.
20. The survey asked, "Describe any difficulties there was in recovering the victim's portion of the bond." Below is a sample of responses we received:

- *“Any process available to attempt to recover the bond was uncertain and would involve further interaction with the perpetrator.”*
- *“The victim wasn’t able to obtain any of the bond, due to the POI [perpetrator] being incarcerated.”*
- *“The tenant wrote to the co-tenant to request her share of the bond back. That request was not complied with. The tenant did not feel safe in applying to NCAT to get an order her part of the bond be returned to her.”*
- *“Due to the victim’s fear for her safety, she could not approach her ex-partner for the portion of the bond.”*
- *“Their portion of the bond was not refunded as the perpetrator was in the house and they were not able to prove that half of the bond was paid by the victim because they were in a relationship at the time and one person paid the full amount.”*
- *“Wasn’t even considered as an option.”*

21. The survey asked those who said that the tenant did not attempt to recover the bond to explain why they did not do this. Below is a sample of responses we received:

- *“Fear of the perpetrator co-tenant”*
- *“Fear, did not want to face the perpetrator in NCAT”*
- *“She went into hiding”*
- *“Fear of violence escalating”*
- *“Victim intimidated by the perpetrator and the real estate and in housing crisis with children”*
- *“Fear”*
- *“It was easier to leave it”*
- *“Risk”*
- *“Safety issues”*
- *“In fear of the perp”*
- *“It was thought that it would cause further problems to the client and that it wasn’t worth it.”*
- *“She chose not to so the perpetrator had less to come at her about”*
- *“Did not want to have any further contact with the perp”*
- *“Too hard”*
- *“Not wanting to anger the perp, client too overwhelmed”*

22. It is very concerning that 50% of survey respondents said the former tenant did not even attempt to try to recover their portion of the bond.
23. Difficulty recovering their portion of the bond may be a barrier to victim-survivors of domestic and family violence leaving violent relationships and finding new and safe accommodation.
24. Allowing a former co-tenant to transfer their portion of the bond to a new rental property will make it easier for victim-survivors of domestic and family violence to leave violent relationships and improve their safety and the safety of their children as well as reduce homelessness for women and children escaping violence where a transfer of bond is possible.

Recommendations

We support the following recommendations made by the Tenants' Union of NSW:

Renters should be provided a minimum of 14 days to top up the bond if there is a difference between the bond required at a new property and the bond refunded from their old property.

The renter should not be barred from the portable bond scheme in the future due to a previous default.

A failure to top up the bond should not be a ground for terminating the tenancy.

Appropriate hardship support should be made available for those renters struggling to pay the difference because there are experiencing financial hardship.

We further recommend:

Any new portable bond scheme should allow a former co-tenant to transfer their portion of the bond to a new rental property.

Yours faithfully,

Women's Legal Service NSW

Philippa Davis
Principal Solicitor