

18 August 2023

Proper Officer  
Department of Customer Service  
Real Estate and Housing Policy Team  
Email only: residentialtenancy@customerservice.nsw.gov.au



Dear Proper Officer,

**Submission on Consultation Paper  
Improving NSW rental laws consultation (2023)**

Kingsford Legal Centre (KLC) welcomes the opportunity to make this submission on the Consultation Paper: Improving NSW Rental Laws (July 2023) (**the Consultation Paper**).

We consent to this submission being published. For all case studies in this submission, names and identifying information have been changed to protect confidentiality.

**About Kingsford Legal Centre**

KLC is a community legal centre. We provide free legal advice, casework, and community legal education to our local community and across NSW. In the 2022–23 financial year, we gave 173 advices in relation to housing issues and undertook more intensive assistance in 53 other matters.

We provide legal help to people who live in all types of housing. Approximately 16% of our clients in 2022–2023 lived in social housing. We have significant experience in providing legal help to people who rent in the private market or are in marginal housing, as well as people who are homeless.

KLC also has a specialist Employment Rights Legal Service (ERLS)<sup>1</sup> and Sexual Harassment Legal Service Clinic (SHLS). These clinics provide free legal help and assistance to people experiencing social and economic disadvantage and barriers to justice. KLC is part of the UNSW Sydney Faculty of Law & Justice and provides clinical legal education.

**Overview**

Housing is a human right.<sup>2</sup> However renting in New South Wales (NSW) is precarious and insecure for many tenants, with inadequate protections against no-grounds evictions and extreme rent increases. Landlords can issue blanket bans on owning pets, and often require significant amounts of personal information from tenants as part of the rental application process. For far too long the balance has been wrong in housing regulation and there has been insufficient legal protection for renters in NSW. Tenants do not get many benefits such as basic security of tenure and the right to have a pet that most people would expect are part of Australian life.

It is in this context that we welcome the Government's long overdue review of tenancy laws which provides an important opportunity to discuss how we can make renting fairer for people in NSW. This submission draws on KLC's experience providing tenancy advice to people living in south-east Sydney. We also draw on what our community has told us. To prepare for this submission, we also spoke with international students (a cohort which is particularly vulnerable to exploitation in the rental market) about their experiences of renting in Sydney.

We would like to thank the Tenants' Union of NSW and Choice, whose work we have relied on the preparation of this submission.

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<sup>1</sup> ERLS is a collaborative partnership between KLC, Inner City Legal Centre and Redfern Legal Centre.

<sup>2</sup> *International Covenant on Economic, Social and Cultural Rights*, art 11.

## **Recommendations:**

### **Recommendation 1: Remove 'no grounds' terminations for both periodic and fixed term leases**

Landlords should need to provide a valid reason to end both periodic and fixed term leases.

Renting in NSW is precarious and an insecure form of housing. Renters in Australia are at the lower end of protections of security of tenure internationally,<sup>3</sup> which is unacceptable in such an affluent nation. Following reforms in the Australian Capital Territory, Victoria, Queensland, and Tasmania, NSW renters are now also falling behind other states and territories. This lack of legal reform impacts people's lives in real and distressing ways and has flow-on effects for the economy and communities.

In our tenancy work, we frequently encounter clients who are distressed at the prospect of needing to find a new home after being given a no grounds termination. The distress of our clients has only increased as the Sydney rental market has tightened in the years after the COVID crisis.

Our experience working with clients is backed up by medical research. Australian research has shown that security of tenure has an impact on tenants' mental health. More stable tenancies (especially those over six years) are associated with improved mental health and reduced psychological distress.<sup>4</sup>

#### **Marta's story**

Marta\* is a single mother of two children and lives in an apartment in our local area. Marta had tried to secure longer leases but her landlord would only offer her six-month leases. After a series of short-term leases, Marta was given a no grounds termination notice to vacate the premises.

Marta could not find accommodation at a price she could afford within the notice period. Marta also could not afford to pay double rent to secure an apartment prior to the end of her lease date.

Marta and her two children have moved in with Marta's sister, who lives in a two-bedroom apartment. Her housing is overcrowded and inappropriate. She is now part of 'hidden' homelessness in NSW.

*\*Client's name and some details changed to protect confidentiality*

For tenants like Marta, instability in rental tenure creates housing instability and financial insecurity. Families in the private rental market often face difficulties in planning their lives due to the uncertainty of their housing tenure. Likewise, the costs of moving frequently places further financial pressures on families and puts them at greater risk of homelessness. There are longer term impacts for children around school attendance and connection to communities.

The ability to issue 'no grounds' notices creates an unwelcome balance of power in tenancies, where tenants do not feel they can assert basic rights. KLC, along with many other housing and advocacy groups, see clients that have that 'no grounds' termination notices which are issued in response to tenants asserting their rights to repairs. While retaliatory evictions are prohibited by the *Residential Tenancies Act 2010 (RTA)*, it is very difficult to establish the basis for an eviction when landlords are not required to give reasons. 'No-ground terminations' stop tenants effectively exercising their rights to repair which leads to tenants putting up with breaches of the agreement. This is a very perverse but real impact.

Given the importance of stable housing as the building block of our lives which unlocks meaningful participation in employment, education and our communities, landlords should be required to give

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<sup>3</sup> Kath Hulse and Vivienne Milligan, "Secure Occupancy: A New Framework for Analysing Security in Rental Housing" (2014) 29(5) *Housing Studies* 638, 650.

<sup>4</sup> Ang Li, Emma Baker, Rebecca Bentley, "Understanding the Mental Health Effects of Instability in the Private Rental Sector: a Longitudinal Analysis of National Cohort" (2022) 296 *Social Science & Medicine*, 1, 6.

reasons when ending a fixed-term lease, as well as when ending periodic leases. In fixed term tenancies the ability to terminate a lease at the end of the term without any reason creates limited certainty for renters, especially when fixed term agreements can be for as little as six months. As with tenants on periodic leases, 'no grounds' evictions at the end of fixed term agreements skew the balance of legal power too far in the landlord's favour and have a chilling effect in relation to tenants asserting their rights.

The Queensland experience further demonstrates the risks of retaining no grounds evictions for fixed term leases. Following the introduction of tenancy reforms in Queensland in 2022 (where no grounds evictions were banned for periodic leases but allowed for fixed term leases), the head of the Real Estate Institute of Queensland recommended that landlords issue tenants with a notice to leave when offering a new fixed term lease, as a way of preventing leases from rolling over into periodic leases.<sup>5</sup> This only created further uncertainty for renters.

The allowable reasons for evicting a tenant should be limited and enforceable. Like the Tenants' Union of NSW,<sup>6</sup> we suggest that 'the property is being prepared for sale'<sup>7</sup> should not be an acceptable reason to evict a tenant. Where the property is being purchased by a person to live in themselves, a landlord would be able to evict on the basis that 'the landlord or a member of their immediate family will move in' or on the existing ground of a property sale that requires vacant possession. Evidence should be required from landlords if they use one of the allowable grounds, for example, a signed contract for renovations. If a landlord (or a member of their family) intends to move in, there should be temporary bans on leasing out the property. This could be similar to the Queensland model canvassed in the Consultation Paper.<sup>8</sup>

If evictions at the end of the fixed term without a reason are retained for fixed-term leases, tenants should be able to leave without penalty as soon as they receive a termination notice. Currently, many of our clients are trapped in fixed-term tenancies until the lease end date because they cannot afford to pay double rent (see the case study of Marta, above). This significantly increases our clients' stress as they come to the end of their tenancy agreement and prevents them from moving to longer and more secure housing options.

## **Recommendation 2: Tenants should be able to have pets in almost all rental properties**

The law should not, as a general rule, allow landlords to completely ban tenants from owning pets. Pets are important within people's lives and tenants should not be treated differently in this regard. As noted in the Consultation Paper, "pets are a part of Australian life and bring important benefits like companionship and improved mental and physical health".<sup>9</sup> A pet is often part of a person's family, or in some cases, the only family a person has. As with the loss of a human family member, the loss of a pet can be traumatic.

People with pets already face additional barriers in finding a suitable home for themselves and their (human and non-human) families. Blanket bans on pets worsen this problem by unnecessarily excluding people with pets from otherwise suitable homes and can cause greater dumping and abandonment of pets when housing cannot be secured. This is completely unnecessary, cruel and preventable. It also does not reflect current community standards.

We agree with the Tenants' Union of NSW that landlords should go to the Tribunal to refuse a tenant's request for pet. Landlords should also not be permitted to ask prospective tenants whether they have a pet. This better reflects community standards and normalises having a pet – which better reflects

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<sup>5</sup> Joe Hinchliffe, "Queensland Real Estate Body Tells Landlords How to Skirt New No-grounds Eviction Laws" *The Guardian* (online, 5 August 2022) <<https://www.proquest.com/blogs-podcasts-websites/queensland-real-estate-body-tells-landlordshow/docview/2698977623/se-2?accountid=12763>>.

<sup>6</sup> 'Improving NSW renting laws – survey guide', *Tenants' Union of New South Wales* (Web Page) <<https://www.tenants.org.au/tu/survey-guide>>.

<sup>7</sup> Department of Customer Service, *Improving NSW Rental Laws* (Consultation Paper, July 2023) 5.

<sup>8</sup> Ibid 6.

<sup>9</sup> Ibid 7.

community attitudes. If a landlord has particular reasons or a rationale, they should be required to provide justification at the Tribunal for authorisation of the refusal. A lease should not simply be refused on this basis.

Blanket bans on pets have had hugely negative impacts on our clients who experience mental and physical health challenges. It has undoubtedly led to discrimination as understood under the law. As part of our discrimination law practice, we frequently assist clients who have been discriminated against based on their disability, including due to having an assistance animal. While it is against the law for a person to be discriminated against for having an assistance animal under section 9 of the *Disability Discrimination Act 1992*, this continues to be an area of issue. The way in which pets are currently dealt with signals that people that need pets may be putting their housing at risk and adds to levels of anxiety and stress. This seems completely disproportionate for something homeowners get to experience. It's time to stop treating renters as second-class citizens when it comes to their pets.

#### **Mirena's story**

Mirena\* came to Kingsford Legal Centre at one of our community outreaches. Mirena's GP had recommended that Mirena get a dog to help manage her anxiety. Mirena had been looking at training up a dog through a disability services organisation. We advised Mirena that while she would be protected from adverse action by her landlord once the dog had been trained or accredited, the law did not clearly protect her during the period the dog was in training. Mirena could however ask her landlord for permission to keep a pet.

Mirena ultimately decided to not ask her landlord for permission to keep a pet. She was coming up to the end of a fixed term tenancy and was concerned her landlord might not renew her lease. Managing this increased her anxiety.

*\*Client's name and some details changed to protect confidentiality*

#### **Hugo's story**

Hugo\*, a pensioner with several physical and psychological disabilities, came to KLC for assistance after his owners corporation had issued him with a notice to remove his assistance animal, Patch, a Jack Russell.

Hugo got Patch after his doctor recommended that he have an assistance animal to assist him with everyday living. Hugo had Patch as a puppy and was in the process of having him trained through an accredited assistance animal training organisation. As Patch was still in training, he had not yet completed his training or received any certification. Despite providing evidence from Hugo's doctor about the need for Patch, evidence from the training organisation that Patch was completing the program, as well as evidence Patch had been registered as an assistance animal with the local council, the owners corporation refused to agree to let Patch stay. KLC assisted Hugo to make a disability discrimination complaint to the Australian Human Rights Commission (**AHRC**) and assisted him throughout the complaints process. This process took many months and was very stressful and upsetting for Hugo as he was also living alongside members of the owners corporation throughout this time. Eventually, and before the complaint was resolved, Hugo moved out of the premises and withdrew his complaint due to the distress that it was causing him.

*\*Client's name and some details changed to protect confidentiality*

As Hugo's case study shows, even when people have a valid therapeutic reason for a pet the process is complex and arduous. Having a presumption that pets are acceptable in rental accommodation would help all renters – whether the pet is a legally recognised assistance animal or just a pet that provides mental health benefits.

Mirena and Hugo's stories demonstrate some of the challenges faced by people with disabilities who are trying to rent with pets. While recent reforms to strata legislation<sup>10</sup> would now assist Hugo, Mirena was unable to access a support animal.

**Recommendation 3: The collection of personal information should be limited to specified categories and uses, and data retention laws should be strengthened**

Landlords generally ask potential tenants to hand over significant personal information to secure a rental property. Tenants do this because of the high demand for rental accommodation and their desperation to secure a property. This reflects many 'unfair contracts' where the information is not able to be freely agreed or given as the tenant has little free choice in the matter. In our experience tenants that do not provide this information are not considered for properties.

This is backed up by Choice's 2023 report on RentTech,<sup>11</sup> which described the data security, cost and discrimination concerns of tenants, who often feel as though they have no choice but to use third-party rental platforms. Choice's research found that "41% of renters were pressured to use a third-party platform by their agent or landlord", that "60% of renters were uncomfortable with the amount and type of information collected", and that 25% of people of renters surveyed had paid for a tenancy check.<sup>12</sup> During our own consultations on renting on NSW, international students also expressed concerns about discrimination and data privacy. One participant discussed his concerns with being asked for his nationality (whether on an app or as part of a traditional application process) and the risk of discrimination.

Data collection should be limited to specific categories and for specific purposes. Renters should be able to opt-out of using invasive third-party applications.<sup>13</sup> In any rental application process, landlords should not be allowed to ask tenants for information that could be used to unlawfully discriminate against them<sup>14</sup> (such as their age or nationality). We would support the Consultation Paper's approach of limiting the collection of information to specified categories.<sup>15</sup> In our experience, clients are more likely to enforce their rights when the applicable legislation clearly states what is permitted (and not permitted) rather than more generally framed tests like those that limit data collection to that which is 'reasonably necessary'. We would, however, suggest that landlords should be able to collect only one document from each of the 'ability to pay rent' and 'suitability' categories.

Once information is collected, strict data control measures should be put in place to govern how tenants' data is used (in line with, for example, current Victorian legislation)<sup>16</sup> and how long data is stored for.

In the event of breaches by landlords, real estate agents, and RentTech companies, tenants should be able to easily enforce their rights through the NSW Civil and Administrative Tribunal (**NCAT**).

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<sup>10</sup> *Strata Schemes Management Act 2015* s 137B.

<sup>11</sup> Choice, *At What Cost? The Price Renters Pay to Use RentTech* (Report, April 2023) <<https://www.choice.com.au/consumer-advocacy/policy/policy-submissions/2023/april/renttech-report>>.

<sup>12</sup> *Ibid* 5.

<sup>13</sup> Tenants' Union of New South Wales, above n 6.

<sup>14</sup> *Ibid*.

<sup>15</sup> Department of Customer Service, above n 7, 10-11.

<sup>16</sup> See Victoria: *Residential Tenancies Act 1997* (Vic), s 30B. Referred to by Department of Customer Service, above n 7, 12.

#### **Recommendation 4: The Government should introduce a portable bond scheme**

A portable bond scheme would assist most renters to manage costs when transitioning between rental properties. This is a long overdue and sensible reform. In the event that a tenant needs to 'top up' the bond amount, KLC supports the Tenants' Union's recommendation that tenants should have a minimum of 14 days to pay, with 30 days offering more flexibility to tenants.<sup>17</sup>

For many of our clients, a more serious concern is the frequency with which bonds are not being formally lodged. The Government should consider ways to improve landlords' compliance with the obligation to lodge rental bonds with Fair Trading. This could include audits and prosecutions.

##### **Tobias' story**

Tobias\* is an international student who rented an apartment in Sydney. Alongside a standard residential tenancy agreement, Tobias' landlord annexed a list of 'rules' about how Tobias used the apartment (including onerous restrictions on his visitors and cooking). Tobias paid his rent and bond in cash. The bond was not lodged with Fair Trading.

When Tobias moved out, the landlord refused to give Tobias back his bond, despite there having been no damage to the property. With advice from KLC, Tobias filed an application at NCAT and was able to negotiate to receive his bond back.

*\*Client's name and some details changed to protect confidentiality*

Tobias' case is not unusual. In many of the tenancy disputes that we see, particularly those involving international students, unscrupulous landlords tend to not lodge the bond with Fair Trading. This can make it difficult for tenants to assert their rights at the end of a lease.

#### **Recommendation 5: Renters should be better protected from excessive rent increases**

The Consultation Paper outlines a proposal for providing more information to renters to know if their rent increase is 'excessive'. While more information might be helpful for renters, it may have limited effect in a rising rental market. Many of our clients are facing rent increases which, while steep, are in line with market conditions.

##### **Rita's story**

Rita\* is a mother of one young child. At the end of her fixed-term tenancy, the landlord increased the rent by almost 30%. This was in line with advertised rents for similar apartments in her complex. Rita had to move out.

It has been difficult for Rita to find accommodation within her budget. She is not eligible for public housing.

*\*Client's name and some details changed to protect confidentiality*

KLC agrees with the recommendation of the Tenants' Union that the onus should be on landlords to demonstrate that a rent increase is not excessive if a rent increase is above a reasonable metric (like the Consumer Price Index).<sup>18</sup> The RTA should be amended to clarify that large increases on the previous rent (like in Rita's case), should be a factor the Tribunal considers when determining whether rent is 'excessive'.<sup>19</sup>

<sup>17</sup> Tenants' Union of New South Wales, above n 6.

<sup>18</sup> Ibid.

<sup>19</sup> Residential Tenancies Act 2010 (NSW) s 44(5).



## Recommendation 6: The Government should invest in social housing

The Government should urgently invest in social and affordable housing. We support the recommendations of NCOSS, Shelter NSW, Community Housing Industry Association NSW, Homelessness NSW and the Tenants' Union of NSW that the NSW Government must urgently invest in affordable housing and increase the maintenance of current housing.<sup>20</sup> A significant and sustained increase in social housing would have a greater impact on rental affordability than improved data about rent increases.

There has been very little increase to public and affordable housing in KLC's catchment in the Bayside and Randwick Council areas. There are more than 1000 people on the waiting list for social housing in the eastern suburbs alone. The expected waiting time is 5–10 years for a studio or one-bedroom property and 10+ years for properties with 2 or more bedrooms.<sup>21</sup> Such distressing waiting times contribute to the large and increasing number of people experiencing homelessness in NSW.<sup>22</sup>

### Michael's story

Michael\* was referred to KLC by a nurse. He is a single parent of 3 young children who lives in public housing in a 2-bedroom home. One of Michael's children requires additional learning and behavioural support because of a medical condition. This support includes providing the child with their own space to learn and regulate their emotions. To provide this support, Michael has given his child their own bedroom. Michael shares the remaining bedroom with his two other children. Michael's neighbours have made complaints about the children making noise.

Michael was approved for a priority transfer to housing that would provide more space for him and his children. Despite this "priority" status, the transfer still had not taken place after several years. Housing's ongoing inability to provide suitable housing to Michael is negatively impacting his mental health and his family's quality of life.

*\*Client's name and some details changed to protect confidentiality*

The Government should also reconsider whether current affordable housing initiatives are effective, particularly in high-rent areas like the south-east of Sydney. Nationally, there is a shortage of 305,000 affordable and available homes for people in the lowest income group.<sup>23</sup> While developers sometimes claim to provide 'affordable housing', there is a lack of transparency around the use of this phrase, which should only be used for housing where rent is no more than 30% of a household's income.<sup>24</sup> This is illustrated by a 2021 development in our local area, a Meriton development called 'Pagewood Green'.<sup>25</sup> Only 45 affordable housing units were planned as part of a major development of 2,223

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<sup>20</sup> Equity Economics and Development Partners Pty Ltd (for the NSW Council of Social Services et al), *Supporting Economic Recovery in NSW: Investment in Social and Affordable Housing is Critical to Supporting Jobs Today and Families into the Future* (Report, 15 May 2020) 10–15 <[https://www.ncoss.org.au/wp-content/uploads/2020/05/Equity-Economics-Supporting-Economic-Recovery-in-NSW\\_Final\\_220620.pdf](https://www.ncoss.org.au/wp-content/uploads/2020/05/Equity-Economics-Supporting-Economic-Recovery-in-NSW_Final_220620.pdf)>.

<sup>21</sup> 'Expected Waiting Times', *Department of Communities and Justice* (website, August 2023) <<https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>>.

<sup>22</sup> *Law and Justice Foundation of NSW, 'Homelessness in Australia: Key Facts' (Factsheet, November 2018)* <[http://www.lawfoundation.net.au/ljf/site/templates/resources/\\$file/Homelessness\\_AUS.pdf](http://www.lawfoundation.net.au/ljf/site/templates/resources/$file/Homelessness_AUS.pdf)>; NSW.

<sup>23</sup> Kath Hulse et al, *The Supply of Affordable Private Rental Housing in Australian Cities: Short-Term and Longer-Term Changes* (Final Report No 323, December 2019) 1 <[https://www.ahuri.edu.au/data/assets/pdf\\_file/0024/53619/AHURI-Final-Report-323-The-supply-of-affordable-private-rental-housing-in-Australian-cities-short-term-and-longer-term-changes.pdf](https://www.ahuri.edu.au/data/assets/pdf_file/0024/53619/AHURI-Final-Report-323-The-supply-of-affordable-private-rental-housing-in-Australian-cities-short-term-and-longer-term-changes.pdf)>.

<sup>24</sup> *Ibid* 2.

<sup>25</sup> Meriton, 'Pagewood Green' (website, 6 August 2021) <<https://pagewoodgreen.com.au/>>.

units.<sup>26</sup> This meant that only about 2% of the development was designated affordable housing. This is highly inadequate, and barely makes a dent in the desperate need for affordable housing in south-east Sydney.

#### **Recommendation 8: Landlords should make renters aware of embedded networks**

Landlords should be required to tell potential renters about the use of embedded networks. This should occur at an early stage of the rental application process, like in the rental advertisement or as part of an information sheet provided to prospective tenants.<sup>27</sup> The advertisement or information sheet should explain the consequences of an 'embedded network' in similar wording to Section 9.1.1 of the Consultation Paper.<sup>28</sup>

#### **Recommendation 9: Landlords and agents should offer a free electronic way to pay rent**

Renters should be offered a free electronic way to pay rent.

##### **Marco's story**

Marco\* recently migrated to Australia. He pays his rent in cash, a month in advance. Due to a number of breaches of the RTA by his landlord, Marco wants to give two weeks' notice to terminate his lease. Because the landlord comes in person to collect the rent, Marco is afraid that the landlord will only accept the full month's rent and that his refusal to pay will lead to a confrontation.

*\*Client's name and some details changed to protect confidentiality*

In our work, particularly with international students, we often see tenants who are forced to pay their rent in cash. Many of our clients are surprised that this is legal. Cash payments can put our clients in a precarious position when attempting to resolve conflicts with their landlords. Clients are also frequently not provided with rental receipts, which can make it challenging to establish whether payments have occurred.

Choice have also described the increasing trend where tenants are pushed to pay their rent via an app for a fee.<sup>29</sup> While cash payments might also be 'reasonably available' (allowing the real estate agent to skirt the law), tenants should also have the option of a convenient and free electronic payment method.

#### **Recommendation 10: The Government should identify and close gaps in legal protections for some 'boarders'**

Alongside improving conditions for tenants, the Government should also increase protection for people living in properties described by landlords as boarding houses. As international students have returned, KLC has observed people being increasingly being signed on to boarding house agreements for what appear to be normal apartments or rooms in houses.

<sup>26</sup> Bayside Council, 'Council's Community Housing' (13 May 2021) <<https://www.bayside.nsw.gov.au/news/councils-community-housing>>; BATA II Site- 128 Bunnerong Road and 120 Banks Avenue, Eastgardens Planning Agreement 2019 cl 16.1.3 and sch 7 annexure A table 3 <[https://s3-ap-southeast-2.amazonaws.com/ehq-production-australia/245b7bbd65563735f3d639da2bf168a6f33a297d/documents/attachments/000/094/288/original/130-150\\_Bunnerong\\_Road\\_Pagewood\\_VPA\\_BATA.pdf?1543808315](https://s3-ap-southeast-2.amazonaws.com/ehq-production-australia/245b7bbd65563735f3d639da2bf168a6f33a297d/documents/attachments/000/094/288/original/130-150_Bunnerong_Road_Pagewood_VPA_BATA.pdf?1543808315)>.

<sup>27</sup> Department of Customer Service, above n 7, 20.

<sup>28</sup> Ibid 20.

<sup>29</sup> Choice, *At What Cost? The Price Renters Pay to Use RentTech* (Report, April 2023) 16.



### **Toby's story**

Toby\* is an international student who moved to Sydney for his postgraduate studies. Toby rented a one-bedroom apartment through an established real estate chain. The room was furnished, but Toby otherwise understood that he was taking on a standard lease. At the end of his fixed-term agreement, the real estate agent asked for a rent increase. Toby wasn't sure, so asked to go on a 'rolling lease'. A few weeks later, Toby was given two weeks' notice to move. When Toby told the real estate agent that he should have 90 days' notice (under a periodic lease), the real estate agent said that Toby had signed a boarding house agreement.

While it might have been possible to argue that Toby should have been protected under the RTA at NCAT, Toby ultimately found other accommodation. Due to the short notice period, Toby had to settle for accommodation an hour away from his university.

*\*Client's name and some details changed to protect confidentiality*

### **Felipe's story**

Felipe\* signed an agreement for a room in a large house which included a shared living room and kitchen. The document stated that it was a residential lease agreement; however, many of the terms were not consistent with the rights of tenants. This included the right of the landlord to evict him with minimal notice and onerous rules about what he could do in the house. One day a builder arrived with no notice and began erecting new walls in the lounge room. He continued to turn up with no notice each day. It became clear that the landlord was creating new rooms and intended to move many more people into the house. Felipe sought the advice of KLC as he was concerned about his rights in the property – he had no access now to the lounge room, his quiet enjoyment was being disturbed by the work, and he was concerned at the prospect that there would be many more people living in the house. When KLC looked at the nature of his contract and the arrangements in the house we formed the view that he was in fact a tenant and was entitled to have his bond lodged, minimum eviction periods and a right to have notice if the landlord wanted to access the property. We advised him to lodge a claim with the tenancy Tribunal and argue he was a tenant. His landlord was trying to evade the law by treating him as a boarder.

*\*Client's name and some details changed to protect confidentiality*

The RTA and NCAT process is designed to be simple mechanism for tenants and landlords to assert their rights. However, for renters caught up in sham boarding house arrangements, it becomes more difficult for tenants to navigate the NCAT process.

Yours faithfully,

KINGSFORD LEGAL CENTRE