

IMPROVING NSW RENTAL LAWS

Housing Trust Submission

11 August 2023

Housing Trust welcomes the opportunity to make a submission in response to the NSW Government's Improving NSW rental laws consultation paper.

Based in the Illawarra, on the outskirts of Greater Sydney, Housing Trust are the largest Tier 1 Community Housing Provider (CHP) in the region and the only CHP solely dedicated to the region.

Removing No Grounds Termination Notices & Ending Fixed Term Leases

We strongly advocate for the elimination of the no grounds termination notice while acknowledging the necessity for landlords to regain possession of their property under legitimate and substantiated circumstances.

The current notice period of 90 days would still be considered reasonable. We support the proposed five new reasons for ending a lease and believe it is reasonable to expect landlords to provide supporting evidence to substantiate these grounds, however it is essential to establish specific criteria for the type and timing of the evidence to be submitted.

The Victorian example of providing a contract or a building permit to end a tenancy under the reconstruction, repair or renovation clause would seem sufficient however it would be more difficult to obtain evidence for say a family member moving in. In this instance, a temporary ban on reletting the property may be the necessary distractor for landlords trying to end a tenancy for no reason.

Furthermore, we advocate for the adoption of a comparable approach when ending a fixed term lease. This is supported in survey findings collected by NSW Fair Trading during two periods: December 2019 – March 2020 and April 2020 – May 2020. The data reveals that the highest proportion of Termination Notices, originating from agents or landlords, stemmed from the end of fixed term leases (43.3%)

To enhance transparency, we recommend imposing additional disclose obligations on agents and landlords. This requirement would come into play when a decision not to renew a lease is made prior to entering a fixed term agreement. For instance, if the property is

intended for short term rental due to the landlord's intention of moving in, this information should be conveyed upfront.

Keeping Pets

There should be greater flexibility for tenants to keep pets. Presently, an increasing number of residential listings bear the phrase "strictly no pets", resulting in tenants with an impeccable rental history alongside their cherished animal being denied an opportunity to rent a property.

A stereotype exists around tenants with pets even though animals can provide profound solace, protection, and accountability. Landlords and agents require a more comprehensive understanding of tenants and their pets and should emphasise on the positive aspects of pet ownership rather than fixating on perceived negatives.

Nonetheless, landlords should retain the option to consider pets as we recognise some properties may not be suitable for pets, for example a small unit with no yard or balcony would not be suitable for a dog. There may also be other circumstances where the landlord may not be able to allow pets and there should be some specific requirements or evidence-based rules where the landlord can choose to not allow pets.

We would not be supportive of landlords needing a ruling through NCAT as this will only add further burden to an already strained system and would only cause further delays in applying for and leasing out of properties. A prescribed list of reasons like that of the Residential Tenancy and Rooming Accommodation Act 2008 (QLD) would be reasonable.

For unit living, a change in the strata by law system was implemented to make it easier for owners to keep pets in units. However, this did not improve the process for renters as obtaining information or formal approval from strata agents is difficult, can be a long process and at times costly. Renters cannot commit to paying a deposit or signing a lease without knowing if they have consent for their animal and landlords cannot afford to have a vacancy while waiting for the approval especially when they have other suitable candidates.

Renters Personal Information

We acknowledge the importance of gathering a certain level of personal information to effectively assess a tenants' identity and financial suitability for a rental property. However, it is essential to establish clear guidelines regarding the extent of information required and would be supportive of a standardised tenancy application.

Transparency in the handling and retention of tenants' personal records is crucial, especially concerning rental applications regardless of whether they are submitted online or in hard copy. This should include: -

- Specification of the data collection process
- Explanation for the landlord/agent's need for personal information.
- Outline measures employed by the landlord/agent for secure data storage and protection.
- Provision of a method for tenants to access their held information.
- Identification of circumstances under which the agent/landlord may disclose personal information.
- Guidelines for addressing potential IT security breaches.
- Establishment of pathways for tenants to voice concerns over data handling.

It would be advantageous to have more specific laws in place that identifies how records must be saved, for how long (including for unsuccessful applicants, existing tenancies, and post tenancy periods). These regulations should also apply to private landlords opting to rent their properties independently.

The duration for which agents, landlords and proptech companies can retain renters personal information would vary based on the specific stage of the tenancy process. Pertaining to tenancy applications, it is recommended that the personal information of non-approved applicants be securely destroyed/deleted once a formal tenancy agreement has been established.

Consultation with insurance agencies is advisable to ascertain what, if any potential consequences of having inadequate tenant information may have on tenancy insurance

claims or whether it may impact other avenues when seeking damages i.e. garnishee orders.

While obtaining necessary tenant information is vital, the implementation of well-defined guidelines and regulatory framework, alongside collaboration with insurance entities, can help ensure responsibility and secure data practices while safeguarding the interests of both landlords and tenants.

We acknowledge the existence of property technology applications capable of organising, evaluating, and prioritising rental applications. Certain apps are structured to process only completed applications – those containing all necessary responses and supporting documents. This mechanism appears to streamline the evaluation process for individuals assessing numerous applications, which appears equitable and practical. However, we cannot endorse the practice of automated ranking based on provided information.

As a community housing organisation actively participating in the Community Housing Leasehold Program, we often encounter challenges as the information we possess may not align with the criteria requested by conventional online application platforms. Additionally, a prevalent trend among agents is to exclusively accept applications through digital channels, placing us at a significant disadvantage when applying for rental properties. This predicament also adversely affects renters who may lack access to or familiarity with such technology. We therefore advocate for mandating agents and landlords to facilitate the receipt of applications both digitally and in hard copy form.

Portable Rental Bond Scheme

The financial burden on renters is evident, with the significant increase in rental costs leading to higher bond expenses. Given that not all tenants can choose their moving times, a scenario might arise where they receive only a 30-day notice to vacate. This situation can make it financially unfeasible to save up for a new rental bond while covering additional moving expenses and continuing to pay rent for the current property.

While a portable rental bond scheme seems promising in theory, there are existing options to alleviate the pressure of paying a new rental bond, such as the current ability to pay by

instalments through RBO. Regrettably, these options are underutilised as they are less favoured by agents and landlords.

Landlords also seek assurance that the bond they receive can cover any end of tenancy charges. Therefore, the introduction of a portable rental bond scheme would necessitate specific parameters. These parameters would prevent the bond from transferring to a new tenancy until the previous tenancy has been settled by the landlord or agent. Additionally, a timeframe for the full payment of the bond (i.e. 30 days) for the new tenancy would be required. Consideration must also be given to how landlords could claim costs if a tenancy is terminated due to unpaid bonds.

An application process for a portable rental bond could be one suggestion. It could work in a way that the tenants apply via RBO submitting their current rental bond number and a tenancy ledger showing up to date rent payments. The system could also notify the current landlord or agent through a standard email, requesting basic information on potential claims against the current rental bond.

If it is ensured that the lodged bond remains unaffected until the finalisation of the tenancy, we strongly endorse the implementation of this scheme. We would also advocate for its compulsory adoption by landlords and agents, considering the limited use of existing instalment options due to their preference for full bond payments.

Furthermore, this scheme might prompt discussions on the timing of finalising an end of tenancy and setting deadlines for landlords and agents to release bonds.

Rent Increases & what is considered “excessive”

We endorse the recent amendments to the legislation, which now only permits one annual rent increase. However, this change may have also contributed to substantial rental hikes. We would support that this be further limited to once annual increase irrespective of the lease term.

It is important to note that in NSW, there is no limit on rental increases, landlords are allowed to increase rents up to market value, provided they can justify the increase, yet there is no requirement to prove this unless the tenant wishes to dispute the increase. Market rent is commonly determined by supply and demand and does not necessarily consider the age and condition of the property or any other contributing factors.

Instances have come to our attention where rents have surged by 30% - 40%. When compared with a 3% increase in interest rates during 2022 and Australia's average wage growth of merely 3.7% it is reasonable to consider a rent increase of even 10% to be excessive.

We propose that the NSW Government gather data on rental increases for enhanced monitoring and consider revising legislation to incorporate a percentage cap on annual rental increases that aligns more closely with the Consumer Price Index (CPI). The most rational means of collecting this data is through the RBO platform, as it would be readily accessible for both renters and landlords.

While we acknowledge that imposing a cap on rental increases could impact landlords negatively, we advocate for broader changes to the rent increase process. If a cap is instituted and a landlord seeks to exceed it, the responsibility should lie with the landlord to make an application to NCAT and present a case justifying the need for a rent increase beyond the cap. The current process which allows a tenant to dispute a rent increase in NCAT is not favoured as tenants often hesitate to challenge a rental increase due to concerns around potential eviction.

Other Changes to make rental laws better – embedded networks, free way to pay rent & renting in strata schemes

We endorse the implementation of updated rental regulations aimed at enhancing the transparency of embedded networks.

While we recognise that this information is currently provided in the standard residential tenancy agreement, it is important to acknowledge that renters might not fully comprehend the implications and expenses associated with embedded networks.

It is therefore crucial to make this information readily accessible in rental listings and during property viewings. Prospective tenants should receive comprehensive details regarding the specific embedded network applicable to the property they are considering. This would allow them to make well informed choices prior to submitting their application.

Such information should encompass, but not be limited to, costs and process for connections and disconnections, relevant contact details and a clear breakdown of the services encompassed within the embedded network.

When exploring options for convenient and cost-free rent payment methods, we would emphasise the need for a better definition of “reasonably available”. What might be deemed reasonable for one individual could differ significantly for another. In this context, we find it necessary to advocate for a stronger standard.

However, we cannot endorse the inclusion of cash payments as a requirement. Its important to recognise that such a method raises security concerns for landlords, agents and housing organisations. An alternative cash payment at a bank would be a more suitable option.

Electronic payment avenues should remain unrestricted as some of the current methods including the DEFT payment system (which incurs fees), or BPay (which may incur bank fees that are exempt under this clause) may be all that is offered. Renters should also have the option to pay by direct deposit and not only direct debit. ensuring flexibility in their chosen payment approach.

We strongly support the revision of legislation to ensure that renters are provided with a cost free electronic method for rental payments.

Regarding renters moving into strata schemes, we would recommend implementing additional disclosure requirements like those applied to properties with embedded networks. This would provide renters with information about by laws and other strata related pre-requisites within rental advertisements or during property viewings.

Instances have arisen where tenants have executed lease agreements, only to later discover that they cannot immediately occupy the premises due to strata scheme regulations dictating specific move in days. Other restrictions also disallow renters from moving in over weekends and demanding cash bonds be paid to the strata or building management prior to occupancy to cover potential damages. However, renters are not made aware of any pre-existing damages.

Furthermore, by providing by laws and other strata requirements upfront it would provide renters with insight into policies regarding pets and other stipulations imposed by the strata scheme. This comprehensive disclosure would empower renters to make informed decisions when considering whether to apply for a particular property.

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