

New South Wales, and indeed Australia, has a broken housing culture. It has infected our tenancy laws. We must change the culture. We must change the laws.

At the heart of the change we need is security of tenure for renters. All else flows from this. We require laws that genuinely protect a tenant from being forced out of their home.

What would I know?

I have been a tenants' advocate for 18 years. I have advised thousands of tenants in metropolitan and regional areas of NSW over that period. I have appeared at the NSW Civil and Administrative Tribunal (NCAT) and its predecessor the Consumer Trader and Tenancy Tribunal on hundreds of occasions. I have advised tenants under the *Residential Tenancies Act 2010* and before that the *Residential Tenancies Act 1987*. I have heard first hand the shock felt by people from other parts of the world, finding themselves subjected to NSW's tenancy laws for the first time. I have listened as tenants describe the impact these laws have on their lives. In 2019 I was part of a research team studying the effect of tenancy laws on tenants' wellbeing. <https://files.tenants.org.au/policy/2019-Lives-turned-upside-down.pdf>

'No grounds' termination and retaliatory eviction: stories of harm

The current legislation has a theoretical protection against a tenant being issued a 'no grounds' termination notice on a retaliatory basis.

Proving a notice of termination was issued on a retaliatory basis can be difficult. It is most often a challenging case to argue and a landlord will rarely acknowledge that they are seeking termination because a tenant is seeking to enforce their rights. However, proving retaliation is less challenging than the task of further convincing an NCAT member to use their discretionary powers to declare that a termination notice has no effect.

I attended NCAT with _____, whose real estate agent had been kind enough to confirm in writing that the landlord had ended the tenancy because _____ had requested repairs to the premises. In her preliminary comments before sending us outside to conciliate, the tribunal member addressed me directly. 'I note that you are asserting that this termination notice was retaliatory. If I found today that the notice was retaliatory and the landlord immediately issued a fresh no grounds notice of termination, what would you do then?' To which I replied, 'We would re-apply to NCAT and again assert that the notice was retaliatory.' At that point the member rolled her eyes and directed us to 'go outside and discuss a date for the tenant to vacate.'

This anecdote is not a criticism of the tribunal member who made this comment, but rather an example of the thinking of a tribunal member based on the legal realities faced by tenants. If a landlord wants a tenant gone for any reason (or no reason), sooner or later the tenant will have to leave their home.

Where does it end?

The current law regarding retaliation requires the tenant to have 'taken or proposed to take any action to enforce a right of the tenant'. This is narrow in scope and fails to protect a tenant from a landlord's retaliation for other reasons.

_____ was working in the hospitality industry was directed by his employer to refuse further service of alcohol to a patron who was also _____'s landlord. _____ complied with

his employer's direction. The following day received a 'no grounds' termination notice from his landlord.

No protection is offered to a tenant who has not asserted their rights under tenancy law, but has otherwise incurred the landlord's ire.

What might a tenant have to do to keep their home?

The current laws ensure tenants exist in a state of perpetual vulnerability. Tenants are forced to make calculations about whether and how to raise any issue related to their home. They are sometimes forced to make even more difficult judgement calls.

was contacted by her landlord on Facebook one evening and asked on a date. Minh politely declined. The following day the landlord issued with a 'no grounds' termination notice.

Removing 'no grounds' terminations

1. What is your preferred model for ending fixed term leases and why?

An election promise was made to ensure that a reason was required for a landlord to end both no grounds notices and fixed term agreements, and renters rightly expect this to occur. A landlord should always have to provide a reason to end a tenancy. If reasons were required to be given for periodic but not fixed terms, power and control would be exercised increasingly by some landlords and their agents using fixed term agreements. It is likely that landlords would offer shorter fixed term agreements, and/or successive fixed term agreements, to allow them to retain the right to issue a notice without grounds.

The list of reasons a landlord should only be able to give to end a tenancy agreement include if:

- A landlord or an immediate family member needs to live in the property
- The property requires renovations that would render a property uninhabitable
- The property is to be demolished
- The property's use is to be changed

The preparation of a property for sale should not be a permissible reason to end a tenancy. A landlord has the right to sell their property, but they should not have an entitlement to remove a tenant from their home prior to the sales process being completed. Were this reason able to be given for ending a tenancy, it could be widely used by landlords as an excuse to remove a tenant from their property. Landlords could simply sign a contract with a selling agent in order to be able to end a tenancy at will.

Having a reason that is open to misuse in the list of grounds to end a tenancy risks undermining the entire aim of improving tenants' security of tenure.

3. What would be an appropriate notice period for the five proposed reasons? Why is it reasonable?

All of these grounds should require a minimum notice period of no less than 90 days. During the notice period the tenant must be able to leave without the requirement to provide their own notice, including if they are in a fixed term agreement. These reasons to end the agreement are all foreseeable and tenants ought to be given adequate time to find a new home.

4. What reasons should require evidence from the landlord? What should the evidence be?

- A landlord or an immediate family member needs to live in the property

A statutory declaration should be required from the landlord and (if not the landlord themselves) the person who will move into the property.

- The property requires renovations that would render the property uninhabitable

The landlord should be required to provide an approved development application for the proposed work and evidence of the start date of the work.

- The property is to be demolished

The landlord should be required to provide an approved development application for the demolition and evidence of the start date of the work.

- The property's use is to be changed

The landlord should be required to provide evidence of the approval of the change of use and evidence of the date that the usage will commence.

5. Should any reasons have a temporary ban on renting again after using them? If so, which ones and how long should the ban be?

If there is no disincentive to misrepresent the reasons for ending the agreement, tenants will remain vulnerable to unfair eviction, and with it the associated financial and emotional costs of moving.

There should be a ban placed on renting the premises again if any grounds are misrepresented by a landlord. The ban should be 6 months as standard. While a ban may provide a disincentive to landlords, it fails to address the hardship experienced by tenants from being forced to move.

Compensation

The essential element that must accompany any list of grounds for notices of termination is the ability for a tenant to seek compensation from a landlord where it is subsequently found that the grounds cited in the notice were not correct. There must be serious and tangible consequences for misrepresenting the grounds to end the agreement. At a minimum, the tenant must be able to seek reasonable costs for the landlord breaching their requirement to truthfully cite their grounds.

Information to help renters know when a rent increase is 'excessive'

The historical dearth of information available on the amount of rent tenants in NSW pay prevents essential analysis and hampers public policy responses.

26. Do you have any concerns about the NSW Government collecting information on rent increases and making it publicly available for renters?

Information on rent prices and rent increases should be publicly available. Requiring this would increase transparency for tenants and landlords alike.

27. What do you think is the best way to collect this information?

Using a mechanism such as Rental Bonds Online would provide the simplest and most accurate means of collating the data. It is not onerous to require increases to be recorded. If a landlord or

agent considered it sufficiently onerous to have to provide this information they could decline to increase the rent to avoid the task.

Other changes to improve rental affordability

Failure to properly regulate rent increases continues to undermine tenants' security of tenure. If the magnitude of rent increases remains unfettered a landlord will have a simple mechanism to pressure a tenant out of their home.

had lived in his home for four years and always paid his rent on time. He had recently read in the news that rents were increasing in his neighbourhood. He had received a \$30 rent increase about 6 months earlier. received an email from his real estate agent containing a rent increase notice for an extra \$250 a week. left a message for his real estate agent asking to discuss the rent increase. The following day Carlos received a 'no grounds' notice of termination from his agent. ' agent also sent him a 2 word text message, 'you decide!'

Limiting the frequency of rent increases is a welcome initiative, but limits on frequency of increases is very much tinkering around the edges, and is no substitute for regulating the magnitude of the increase. In addition, the legislation was poorly drafted and has been able to be circumvented at will. In combination with no grounds termination notices, rent increases have been used as a tool of control by some landlords and their agents.

28. Do you think the 'one increase per 12 months' limit should carry over if the renter is swapped to a different type of tenancy agreement (periodic or fixed term)?

It is essential that the current loophole be closed, and that an increase should be limited to once in a 12 month period, regardless of tenure type.

29. Do you think fixed term agreements under two years should be limited to one increase within a 12 month period? Why or why not?

It is appropriate to limit rent increases to once in a 12 month period in all circumstances. In practice tenants apply for a property at a particular rent, and if they were later to be asked to sign an agreement containing a rent increase, they would have limited bargaining power to resist the 'request'.

applied for a property seeking a 12 month tenancy agreement and was approved. When Jodie later attended the real estate agency to sign the agreement she was instead asked to sign a 6 month tenancy agreement. was told by the agent that this was simply an administrative change and that of course she would be offered a renewal after 6 months. had already booked and paid a deposit for a removal van. Jodie signed the agreement. At the end of the 6 month agreement was issued an 'end of fixed term' notice of termination.

It is necessary to limit the power landlords can exert over tenants in pre agreement matters, as tenants have no legal recourse in this space.

30. What do you think about the above options? Please provide detail.

Reversing the onus of proof in excessive rent increase matters would be a welcome and long overdue initiative. The current task for tenants to prove a rent increase is excessive borders on herculean, requiring them to provide information they do not have and cannot get.

Below is an excerpt from a recently made NCAT Notice of Order:

The legislation sets out the matters which the Tribunal may consider in determining an application that the rent is excessive.

The parties may choose to present evidence being:

- a copy of advertisements of at least three similar properties in the locality.***
- statements (preferably in the form of Statutory Declarations) from the tenants of similar properties indicating rent payable, inclusions and conditions of premises.***
- a copy of a lease from tenants of similar properties.***
- photographs of the applicant's premises (inside and outside) and where practical of similar properties (at least of the exterior).***
- list of properties from Real Estate Agents in the locality indicating addresses of premises available for rent, rent payable, inclusions and brief description to establish similarity to the applicant's premises.***

Market rent is an inappropriate benchmark to measure a prospective rent increase against. The existing excessive rent laws facilitate a situation where the more rents increase the more rents are allowed to increase. It is fuelling a crisis of unaffordability and is untenable in a civilised society.