

THE BOOT FACTOR

is published by the
Eastern Area Tenants Service (EATS)
PO Box 1091
Bondi Junction NSW 1355
eats_nsw@clc.net.au
www.tenantsrights.org.au

Contributors: Jo Kwan, Ken Beilby,
Cecilia Kim and Cass Wong.
Design & Layout: Nicole Barakat

TELEPHONE ADVICE
(02) 9386 9147

Monday: 9.00am - 3.00pm
Tuesday: 11.00am - 5.00pm
Thursday: 9.00am - 1.00pm
Friday: 9.00am - 1.00pm

EATS is a FREE service for all tenants in the
Woollahra, Waverley & Randwick LGAs.

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We welcome your feedback about

THE BOOT FACTOR

This newsletter is primarily intended to be for people who live in, or are affected by, the state laws of New South Wales, Australia. The Boot Factor is intended to be a guide to the law and practice only. You should seek expert advice and assistance if you are faced with a specific problem. For further advice contact the Eastern Area Tenants Service 9386 9147.

From the Advice Line...

Dear EATS,

My real estate agent has sent me three letters in the past two weeks saying that I am behind in my rent. I have all my rent receipts and I have always paid my rent on time. I feel harassed by their letters and I want them to stop sending them to me. What should I do?

Responsible Renter

Dear Responsible Renter,

Firstly, you should formally request a copy of your rental ledger. This will show your history of rent payments. If the real estate agent has missed any payments for which you have a receipt, write a letter to them requesting that they correct your ledger, and attach a copy of the receipt. If they continue to send letters after you have corrected them, you should make an application to the Consumer, Trader and Tenancy Tribunal (Tel: 1300 135 399) to end the breach of your peace, comfort and privacy.

EATS

Dear EATS,

When I moved into my new place in Clovelly last Saturday, the real estate agent handed me a condition report for me to fill in. While juggling between moving, settling in and working, I forgot to fill it out and found the report this Friday night. How soon should I return this report?

Attentive Tenant

Dear Attentive Tenant,

You must complete the tenant's section of the condition report and return it to the agent within 7 days of receiving the report. The condition report should be given to you at the time of signing your lease or before. When you fill it out, record as much detail as possible. If you need more space, attach additional pages to the report. You should note every nail hole, crack or scratch etc. If possible, take photographs of the inside and outside of the premises and keep them in a safe place. You do not need to send the photographs to the agent, they are for your own reference.

EATS

Dear EATS,

I moved into this house in Daceyville January 2006. I heard that I could now ask my landlord to install smoke alarms. Is this true?

Alert Lessee

Dear Alert Lessee,

From 1 May 2006, it is compulsory for smoke alarms to be installed in rented premises. Smoke alarms can either be operated by battery or hard wired. The landlord must provide and maintain the smoke alarms. Write a letter to your landlord requesting the installation of a smoke alarm. The landlord must provide you with a minimum of 2 days notice to come and install it. At the start of the tenancy, it is landlord's responsibility to fit new batteries, however, during the tenancy, it is your responsibility.

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INFORMATION & PRACTICAL TIPS FOR ALL TENANTS

IN THIS ISSUE... Illegal Lockouts + DoH Lease Review + CTTT Rehearings + more!

THE NEWSLETTER OF THE EASTERN AREA TENANTS SERVICE

We are excited to announce the launch of our new website this month!

The website means that EATS can continue to provide tenants in the Waverley, Woollahra + Randwick local government areas with more opportunities to access important information about their rights + responsibilities. **Visit our website today!**

www.tenantsrights.org.au

I missed my Tribunal hearing!

What should I do now...?

Rehearing Applications to the Consumer, Trader and Tenancy Tribunal

You receive a notice from the Consumer, Trader and Tenancy Tribunal (CTTT) to attend a hearing next Wednesday at 11:15am. You write the time and date in your diary and put the notice on the fridge. The week quickly passes...

On Tuesday night, you come home after watching the latest action flick and your stomach is feeling terrible! Before you know it, you are up half the night in pain and in the morning you decide to go see a doctor. After some medication, you're feeling slightly relieved, but you look at the clock and it's 12:30pm!

You have just missed your Tribunal hearing! You ring the Tribunal in a panic and an officer informs you that the hearing has finished and a decision was made to terminate your tenancy and you must deliver vacant possession in 2 weeks time. **What should you do now?**

In cases where you miss the Tribunal hearing, you have the right to lodge a Rehearing Application within 14 days of being notified of the Tribunal's decision.

In 2005 & 2006, the Tribunal granted rehearings to only 24% of applicants (Consumer, Trader and Tenancy Tribunal Annual Report 2005-2006). In order to ensure that you would be granted a rehearing, your application must satisfy one of the following grounds:

1. the decision of the Tribunal in your matter was not fair and equitable; or
2. the decision of the Tribunal was against the weight of the evidence; or
3. significant new evidence has arisen.

You must explain why you were absent at the hearing by writing a Statutory Declaration and providing supporting documents, such as a letter from a doctor. You must then explain how you would suffer "substantial injustice" if you were not granted a rehearing by addressing one or all of the grounds listed above. If possible, attach relevant evidence and documents. Think of a Rehearing Application as your chance to present your case in writing, as if you were present at the initial hearing. Include as much detail and information as possible.

If you only have one day to complete the Rehearing Application, write basic details and lodge the application first either online or by fax. Once the application is received, the Tribunal will regard it as a lodgement and you are still able to send in more information after the lodgement. Be mindful that unless you pay the application fee of \$31 (\$5 for concession), a hearing will be not listed.

Once the application is received, the Rehearing Officer at the Tribunal will make a decision whether to grant a **stay** on the proceedings. A stay is when the Tribunal temporarily "freezes" the existing orders. Ensure that you always ask for a stay, most often once the stay is granted, the Tribunal allows the other party to respond to your application within 14 days. Once a written response is received, the Rehearing Officer makes the final decision on whether a rehearing should be granted. You will be notified of the decision in writing.

If a rehearing is granted, your matter will be listed for a hearing again and you must make sure that you attend this hearing as you cannot lodge a rehearing application on a rehearing.

If a rehearing is not granted, the stay will be lifted, which means the previous orders will become effective. Unless you have grounds to apply to the Supreme Court of NSW, you will not be able to request another hearing.

THE BOOT FACTOR

ILLEGAL LOCKOUTS

An illegal lockout is when the landlord or real estate agent attempts to regain possession of the premises without going through the correct legal processes. Only a person acting on a warrant of possession issued by the Consumer, Trader and Tenancy Tribunal (CTTT) or a court can physically remove a tenant. Locking a tenant out is illegal and landlords who do this, as well as those assisting them, may face a penalty of up to \$22,000 or 12 months imprisonment.



A lockout can include:

- Changing the locks;
- Cutting off the power;
- Putting the tenant's possessions on the street;
- Evicting you from the premises without an order from the CTTT or a court.

What should you do if the landlord threatens to lock you out?

If you think you are going to be locked out, you should contact the police and say that the landlord is trespassing and a breach of the peace is being committed. When the police arrive, show them evidence that you are a tenant, such as a rent receipt or tenancy agreement. Remember to ask the police to record your complaint and give you an event number, as you may need to tender the police report if the matter proceeds to the CTTT. You should also contact the Fair Trading Centre on 13 32 20 immediately and ask them for assistance, give them your name and the landlord's name, the address of the premises, the landlord's address and both your telephone numbers. The Fair Trading Centre may refer the case for further investigation and prosecution.

What happens if you have been locked out?

If it looks like the landlord is going to succeed in locking you out, **do not use force to remove the landlord.** A safer approach is to take your valuable possessions and have reliable witnesses with you. If possible, you may also want to take photographs of the events. Stay somewhere else and keep any receipts for meals, motels or hotels, taxis, removal or storage. Spend only what you have to and then seek compensation for reasonable expenses incurred as a result of being locked out. You should then seek to have possession of the premises reinstated to you by making an application to the CTTT and ask for an urgent hearing under a covering letter. Application forms are available online at the CTTT website (<http://www.fairtrading.nsw.gov.au/cttt.html>) or from our offices.

In your application, you may want to seek the following orders, subject to the circumstances of your case and what you consider is appropriate:

- that the tenant be allowed back into the premises and possession be returned;
- that the landlord stop breaching the tenant's quiet enjoyment;
- that the tenant be allowed to change the locks or opening device and not supply a copy of the key(s) to the landlord;
- that the tenant be reimbursed for the cost for replacing the locks;
- that the landlord pay compensation for losses the tenant has incurred because of the landlord's breach.

What happens if orders for termination and possession have been made by the CTTT?

If you are aware that orders of termination and possession have been made but are unsure whether a warrant has been issued, you should contact the CTTT or the sheriff's office to check the date and time the warrant is to be executed. If this has happened, you should vacate the premises in due time and look for somewhere else to stay. In the event that you become displaced, you should contact the Homeless Persons Centre on 9265 9081 for assistance with accommodation. On the day you vacate the premises, you should take goods that are of sentimental value with you, start packing goods you are able to, do an inventory of all goods left at the premises which you are unable to move, take photographs if possible and arrange with your landlord to collect the rest of your goods within two working days of you vacating the premises. If your landlord refuses you access to your goods, you should write to them immediately stating what they have done and your version of events. This letter is important as evidence if the matter proceeds to the CTTT. You must apply within 28 days after the landlord gains possession of the property for an order that the goods be delivered to you. The landlord may seek compensation for costs incurred for the removal, storage or delivery of the goods.

Remember, a lockout does not end a tenancy unless a possession order has been made by the Tribunal or a court.



The NSW Department Of Housing Lease Review

Before the 1st July 2005, when a new tenant signed a tenancy agreement (lease) with the NSW Department of Housing (DoH), they were offered a fixed term lease which would move straight to a continuous lease at the end of the fixed term lease. **All new tenants who have signed a lease after the 1st July 2005, will now always be on a fixed term lease.** The length of which will be either two, five or ten years.

This change has mainly been brought about by the DoH's view that very few tenants need housing assistance for the rest of their lives and that they only need the assistance of the DoH for a short period while they improve their personal circumstances.

How is the length of the fixed term lease worked out?

Under the *Types and Length of Lease Policy*, the DOH sets out the basic criteria for being offered one of the above mentioned leases. This determination is based on how long (in the DoH's view) you and any dependants will require assistance from them. The table below is an extract from this policy and shows which fixed term lease is likely to be offered in relation to the situation of the tenants.

Length of Fixed Term Lease Explanation

Ten Year Ten year leases are for clients with ongoing housing and support needs that are unlikely to decline over the next five years.

Five Year Five year leases are for clients with housing and support needs that will most probably continue in some form over the next five years.

Two Year Two year leases are for clients with either transitional or temporary support needs that will probably decline over the two years, or where the continuing need for public housing is unclear over the next five years because the household's financial circumstances may improve.

Review and Eligibility

Once on a fixed term lease, the DoH will review it six months before it expires and a decision will be made about whether or not you are still eligible for social housing. If the DoH finds that you are still eligible, then a new fixed term lease will be offered based on the above table. If it is decided that you are no longer eligible for public housing, you will be given a notice of termination and asked to vacate by the last day of your fixed term lease.

Both the decision of which fixed term tenancy you should be placed on, and whether or not you are currently eligible for public housing can be challenged. However, once you have been given a notice of termination, if you do not leave by the specified date, then the DoH may take further action to evict you through the Consumer, Trader and Tenancy Tribunal.

Do I have a choice of being given a new fixed term lease?

Unfortunately, no, the decision of whether or not to place a tenant on another fixed term lease is the choice of the DoH. Once your current fixed term lease ends, the DoH can send you a notice specifying that you will be placed on another fixed term lease. If this happens then you cannot fight against a fixed term lease in favour of a continuing lease.

Remember, the decision as to what kind of fixed term lease you will be placed on can be challenged and you are able to appeal it. Firstly, by internal appeal to the person who has made the determination, if this is not successful, you can appeal externally to the Housing Appeals Committee for an independent determination as to whether or not the DoH has applied its policies.

Should the DoH take any Tribunal action against you or you wish to appeal a decision of the Department, please contact EATS on 9386 9147 urgently for further advice as time limits apply.