

## THE BOOT FACTOR

is published by the  
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Thursday: 9.00am - 1.00pm  
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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,

I am moving out of my flat so I can live with my girlfriend. There is only one month to go till my lease runs out, but my agent has said that I must pay penalty costs, like rent, advertising and a re-letting fee. What is a 're-letting' fee?

*Responsible Renter*

Dear Responsible Renter,

*A re-letting fee is a charge payable to agents, so they can make arrangements to re-lease the property. (If a private landlord manages your property, they cannot charge this fee). This fee varies, it is usually equivalent to one weeks' rent, though some agents are known to charge two. These details should be set out in the agents' management agreement. If you are leaving close to the end of your fixed term, you should argue that you only need to pay a small portion of this fee, as you have 'seen out' most of the fixed term.*

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Dear EATS,

I got a letter from my landlord yesterday stating that he has received reports of excessive noise & that we are in danger of getting evicted if it happens again. I can only think that he is referring to the party we had a few weeks' ago, even though we notified all the neighbours and the noise levels were fairly low.

*Attentive Tenant*

Dear Attentive Tenant,

*Your tenancy agreement states that you are not to cause noise and nuisance to the surrounding neighbourhood, otherwise you are in breach of your tenancy agreement and can be given a Termination Notice. Although the law doesn't define what 'noise & nuisance' actually is, it sounds like your party may have upset some people and your landlord is giving you a 'warning' about future complaints. You can speak to your landlord or write him a letter about the incident if you believe the complaints are unfounded.*

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Dear EATS,

We have just moved into a house which was advertised at \$350 rent per week, but the landlord has asked if we'd prefer to pay rent monthly. I know that this means we have to pay a little extra, so how do we work out what this amount is?

*Alert Lessee*

Dear Alert Lessee,

*As you have pointed out, paying rent monthly means that you have to add a bit extra to make up for the 30 and 31 day months within the year. There is a formula you use to calculate this amount. Take your weekly rent, divide this figure by 7, multiply it by 365 and then divide it by 12.*

*This will give you the figure for the monthly rent.*

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## INFORMATION & PRACTICAL TIPS FOR ALL TENANTS

**IN THIS ISSUE...** new tenancy laws, DOH & repairs debts, current rental market & more

### THE NEWSLETTER OF THE EASTERN AREA TENANTS SERVICE

#### EATS Annual General Meeting & Website Launch

4pm Thursday 29th November 2007

ECHO Neighbourhood Centre, Ground Floor, 27 Spring St, Bondi Junction

please RSVP by 22 November 2007- 9386 9145

# www.tenantsrights.org.au

## New Proposed Tenancy Laws

### How will they affect tenants?

**The NSW Minister for Fair Trading, Linda Burney, has released a report which makes recommendations for changes to the current residential tenancy laws. These changes include 102 recommendations, some of which we have outlined below. The Office of Fair Trading is asking for submissions by the 31 December 2007 from people and organisations interested in commenting on this report; go to [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)**

\* **Mortgagee repossession-** Tenants to be given at least 30 days notice and a rent-free period when a landlord defaults and a bank seeks repossession of the premises.

\* **Sale during fixed term-** Tenants to be notified if a landlord decides to sell during the fixed term and tenants entitled to a rent reduction during the inspection period. There are also significant changes to 'access' and notice periods for the purpose of inspections.

\* **Eviction for rent arrears-** When a tenant is 14 days behind in their rent payments, the landlord can issue a termination notice. It will then be up to the tenant to apply for a hearing at the CTTT to defend the landlords' request for possession of the premises. If the tenants don't do this, the landlord may be able to get orders for possession from the CTTT without the need for a hearing.

\* **No-cause eviction-** 90-day notice for a 'no-cause' eviction to be given to tenants in continuing agreements. Although tenants will get more time, the CTTT will lose the right to make decisions about extending that period of time in cases where the tenant is in extreme hardship.

\* **Share housing-** One party in a co-tenancy will be able to get their name taken off the lease and the CTTT will get the power to make decisions in co-tenancy disputes. This will include getting bond money returned.

\* **Reasonable security-** More emphasis on providing a definition for what 'reasonable security' means. These are to be included in a specific section of the condition report and brought to the attention of the landlord.

\* **Service of notices-** Postal of notices to be reduced from four working days to two and notices placed in the letterbox, under the door and via email to be deemed valid in some circumstances.

\* **Rent payments and receipts-** maximum rent to be set at two weeks in advance irrespective of weekly rate but tenants to pay more voluntarily. Some changes to the requirement to issue rent receipts and to alter the method of payment with adequate notice and consent.

\* **Rental bond-** Landlords can ask for a 'top-up' of the the bond where the rent has been increased. Tenants to be given a copy of the outgoing condition report where there are claims for 'damage' to the premises.

\* **Ending agreements early-** A 'cap' on the amount that can be charged when a tenant breaks the lease within the fixed term of the agreement. This will be set according to a sliding scale, based on the amount of time left on the lease.

\* **Tenancy databases-** The CTTT to hear claims in relation to listings and to be given the power to change past listings.

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# HIGH RENTS & LOW VACANCIES

Tenancy services are seeing an increase in calls regarding higher rents, greater competition for premises, unfair application processes and illegal practices by landlords and agents (bidding and 'price' auctions, charging extra deposit fees). This has caused a great deal of insecurity amongst renters and is leading tenants to accept 'less than favourable situations' in the scramble to ensure they secure a rental property.



**"People are flocking to these places and that means there is a lot of competition. When that happens there is a concern that people end up bidding for tenancies rather than rents reflecting the actual value." smh 4/10/07**

## Housing Affordability a real issue

There have been many reports in the media recently dealing with the 'lack of affordable housing' and the ensuing impact on the rental market. Changes to home ownership patterns; where people would traditionally be focusing on buying, market prices have effectively meant that they are forced into renting, for longer periods, perhaps facing the prospect of never being able to buy. More people renting means higher demand and greater competition for fewer places. Young people, choosing to live closer to the inner city, are also said to be contributing to the increase in rental prices. Coupled with reports of the growing incidence of 'mortgagee repossessions' and stories of people unable to keep up with payments, this has all added to a growing sense of fear and concern.

## The reality 'out there'

What is the reality of the situation? There are stories of people 'jostling' at inspections, with queues of prospective tenants. In order to secure these properties, people are offering higher rents, or advance payments for long periods. Certain agents and landlords are taking advantage of this, with reports that some of them are holding 'price auctions', giving the premises to the highest bidder. Callers have complained about the fact that advertised prices are often misleading, and that upon turning up to sign the lease, they find that the rent has 'increased'. There is little they can do about this, if they don't agree, they lose the property. Some illegal practices however, such as charging a two-week reservation fee instead of one, can be challenged, although people are reluctant to do this during the 'vulnerable' application process. This is also the case for people forced to sign agreements with unfair or illegal additional terms. Some of these are unenforceable, but it means tenants have to know how to recognise them.

Sometimes, even signing a lease is no guarantee of security. Tenants are often saying that they will not ask for particular repairs because they do not want to get a rent increase. (Sometimes, they get a rent increase anyway). Others will not complain about access breaches, because they do not want to get a termination notice. This is generating a great deal of insecurity, with tenants constantly being reminded that there are 'lots of other people out there looking for somewhere to live'. Tenants are aware that landlords can charge higher rents for new tenancies, as they do not have to wait for the 60 day written notice period they are required to give to tenants on continuing agreements. (Although of course, they do have to go to the trouble of getting new tenants).

It is difficult to know what the reality is. Whilst increased reports from callers can be alarming, a *Mediawatch* program earlier this year exposed attempts by unscrupulous agents 'skewing' figures and setting up 'false' tenants for media interviews. Some agents have been 'caught out' saying they have higher offers (when they don't) in order to push up rental rates. When this has been challenged, they have had to back down.

It is heartening to know that there are tenants who will continue to assert their rights and still win!



## WHAT ARE 'TENANT REPAIR COSTS' ?

This is when the Department of Housing (DOH) holds you responsible for damage to your premises, (whether the damage is caused by you or a person who enters your premises with your permission), and the DOH repairs the damage, then recovers the cost of repairs from you.

## HOW DO THEY CHARGE THE TENANT REPAIR COSTS?

The DOH will only charge the Tenant Repair Costs if you have accepted liability or they have sufficient evidence to show that you are responsible for the damage. The DOH must take the following steps before charging you with Tenant Repair Costs:

1. Collect information and evidence about the type and extent of the damage and the circumstances under which the damage may have occurred.
2. Discuss the list of damages, and the possible causes, either with you or a third party.
3. Send you a letter to say that they consider you responsible for Tenant Repair Costs. The letter must include the nature of repairs and a request for repayment. It will also include a form called a *Notice of Liability* which must be filled out and returned within 14 days of receipt, if you accept responsibility for the damage. This letter will also tell you that if you dispute these costs, you must inform the DOH immediately by providing written reasons. They will stop sending letters whilst they review their decision.
4. Depending on the outcome of this review, the DOH may cancel/amend the Tenant Repair Costs and advise you in writing or pursue the matter by taking you to the Consumer, Trader and Tenancy Tribunal/Local Court to recover the costs.

# Department of Housing & Tenant Repair Costs

## WHAT TYPE OF DAMAGE IS INCLUDED?

- \* broken windows;
- \* punctured internal cabinet doors and walls;
- \* burns or other damage to carpets which are beyond fair wear and tear;
- \* broken and damaged clotheslines and hoists;
- \* broken locks;
- \* damaged doors and security screens;
- \* damage to toilets and basins;
- \* sewer chokes caused by items flushed down the toilet;
- \* abandoned furniture or vehicles at the end of the tenancy.

## WHAT CIRCUMSTANCES MUST THEY TAKE INTO ACCOUNT?

- \* the ingoing Condition Report completed at the beginning of the tenancy (this records the condition of the premises when you moved in);
- \* the impact of fair wear and tear;
- \* whether your illness or inability to maintain the premises has contributed to the damage;
- \* whether the damage is a result of criminal activity such as domestic violence, 'break & enter' or vandalism. (You must have a police report confirming these incidents so that you can provide it as evidence to the DOH.

## WHAT KIND OF DECISIONS CAN I APPEAL?

- \* the decision to charge you Tenant Repair Costs
- \* not to waive the Tenant Repair Cost on the grounds of ill health, domestic violence or criminal activity.
- \* that you are ineligible for housing assistance due to an outstanding Tenant Repair debt from your former tenancy.

**For further information, please refer to the DOH's website on [www.housing.nsw.gov.au](http://www.housing.nsw.gov.au) or contact our advice line.**

Acknowledgement: NSW Department of Housing, Tenant Repair Costs - EST0090A, policy last amended on 16/02/2007.