

THE BOOT FACTOR

is published by the
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Monday: 9.00am - 3.00pm
Tuesday: 11.00am - 5.00pm
Thursday: 9.00am - 1.00pm
Friday: 9.00am - 1.00pm

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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,

I have just received an eviction letter because my landlord wants to sell the property. I'm in the middle of packing and trying to find a place to live and I'm getting calls from the selling agent asking to let people through to view the house. This is getting really annoying.
Responsible Renter

Dear Responsible Renter,

It can be very stressful moving house, however, the law states that you are required to give 'reasonable' access while your landlord (and anyone acting as your landlords' agent) is required to give you 'reasonable' notice of access for inspections. We suggest that you write to them, with set 'viewing times' and ask that they organise inspections during these times. This way you are fulfilling your obligations, whilst still maintaining some control over access to your house.

EATS

Dear EATS,

I have just moved into a flat above a shop. It's really big and cheap, (and now I know why). The restaurants downstairs are open late and the patrons are very noisy. I have spoken to my agent who has said there is nothing they can do and that if I want to leave, I will have to pay rent till they find a new tenant.

Attentive Tenant

Dear Attentive Tenant,

There is a legal principle that warns the 'buyer to beware'. That means that, prior to signing the agreement, you should have viewed the premises and taken all considerations into account when making your decision. Your agent is right. If you decide to leave, you will have to 'break your agreement early' and be liable for penalty costs. You may be lucky however, if it is as big and cheap as you say, they may be able to get new tenants fairly quickly so that you do not have to pay such a large 'penalty'.

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Dear EATS,

We have been in this flat for eight years. The landlord has done nothing to improve the premises during this time. Last year, he put the rent up by \$30 and has now sent another notice, asking for a \$20 increase.

Alert Lessee

Dear Alert Lessee,

It seems really unfair that your landlord can keep increasing the rent even though they have not spent any money renovating the flat. However, it is the 'market' that dictates the price of rental, which is why we are seeing such large 'across the board' increases. We suggest that you do some investigation into 'market rents' in your area, (taking into account the condition of the premises), to determine whether you are able to gather evidence to challenge this increase at the Tribunal.

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INFORMATION & PRACTICAL TIPS FOR ALL TENANTS

IN THIS ISSUE... housing amendment bill, companion animals, repairs & retaliation.....

THE NEWSLETTER OF THE EASTERN AREA TENANTS SERVICE

EATS says goodbye to three of its long-term workers, Jo Kwan, Cecilia Kim and Ken Beilby. We thank them for all their hard work and wish them all the best for the future.

www.tenantsrights.org.au

REPAIRS AND RETALIATION

"But if I complain, won't they kick me out?"

"I told them about the stove repair, all they did was raise the rent. It never got fixed".

We have all heard about the current situation surrounding the tight rental market. The low vacancy rates have resulted in inflated rents, short-term leases, rent bidding/auctions, competitiveness at inspections, advertising of rental 'ranges' as opposed to fixed rent rates, tenants being asked to pay rent months in advance. The media continues to run stories on the 'plight of the renter' and has even been offering tips for securing a property.

Tenants' advice services have reported huge numbers of calls regarding the dreaded 'application process' and people become quite disheartened by the fact that there is no law to stop landlords/agents advertising 'rent ranges' or trapping tenants into signing a higher rate on their agreements. As they say "take it or leave it, there's plenty more willing to sign".

Whilst it is problematic for applicants, the impact is also being felt by tenants who are already housed. Fear of a rent increase or a Termination Notice has meant that some tenants will not ask for repairs and will not complain when the landlord breaches the agreement in other ways. Often, a tenancy worker will give advice about pursuing a repairs issue only to have the tenant ask: "Will this mean they can kick me out?". It undermines the purpose of tenancy legislation when tenants feel they cannot assert their rights for fear of retaliation.

So, what is the legal situation? Tenants have an obligation to notify the landlord of any damage to the premises and can request a repair. It is best that any requests are made in writing so there is proof of the landlords' knowledge of the issue. Landlords have an obligation to attend to repairs and maintenance. If there is no action in regards to a repairs request, the tenants can pursue the matter through the Consumer, Trader & Tenancy Tribunal.

Termination Notices (and rent increase notices) can be given in accordance with the Residential Tenancies Act. The amount of notice given depends on the grounds for termination. A 60 day 'no grounds' termination notice is precisely that. Landlords do not have to justify their reason for giving one to a tenant on a continuing agreement. This is what tenants are worried about; the fact that the landlord can kick them out for 'complaining' or 'making demands'.

The Residential Tenancies Act states that the Tribunal has the power to refuse orders for possession where they are convinced that the landlord has issued a notice in retaliation for the tenant asserting their rights. In this case, a 'paper trail' culminating in a Tribunal application is the most effective way of arguing retaliatory eviction. However, it is not an application that the tenant can make. It can only be used as a defence in a situation where a landlord is already seeking orders for possession at the Tribunal. And unfortunately, it is also a fairly difficult to prove.

So, how does an adviser answer such a query about a tenant being penalised for asserting their rights? The answer is that there is no guarantee either way. There are situations where a tenant hasn't made any 'demands' and they still receive a termination (or rent increase) notice. In these cases, the tenant feels doubly insulted. It is difficult to justify Tribunal action at this stage and definitely no evidence for a retaliatory eviction argument.

Ultimately, tenants have to make their own choice. There is always a chance that the landlord will use any excuse to evict a tenant and take advantage of the tight market. However, there is also something to be said for a landlord fulfilling their obligations and keeping their valued tenants happy.

THE BOOT FACTOR

Pets & Renting

The issue of pets in rented premises can be confusing and heart-breaking. Finding a place to live which is appropriate (in terms of space and security) is increasingly difficult and getting the (written) permission of the landlord (as well as the owners' corporation, in some cases) adds to the problem. Below, we have highlighted various groups of tenants and outlined the corresponding laws that relate to them, as well as providing relevant websites for further information.



The Companion Animals Act 1998 replaces the Dog Act 1966. It sets out requirements for the keeping of dogs and cats, including microchipping and life-long registration. It also defines the responsibility of owners within the public domain. Check your local council website for further info.

Assistance animals and disability

Tenants with a hearing or visual impairment may have a guide dog or hearing dog. If the dog meets the definition of an 'assistance animal' then the tenant is able to assert their rights under the Companion Animals Act to keep the dog on the premises. As an 'assistance animal' the dog needs to be trained to assist your mobility, as opposed to any other disability. If you can show that your stress/anxiety or depression meet the definition of a disability and your dog has been trained to alleviate your disability, then you may be able to assert your rights under the Disability Discrimination Act to keep the animal on the premises.

Private Tenants

Ownership of pets in a private tenancy is dependant on the type of agreement you have signed. Under the standard form of agreement (prescribed by the Residential Tenancies Regulation 2006), you are able to keep a pet, as this agreement has no term relating to pet ownership. If the agreement has been printed by a Real Estate Agent or industry group, (the most common form), your agreement may have an additional clause requiring you "to keep no animals or birds without the prior written consent of the landlord" and this must be adhered to. If consent is given, it is required in writing and will usually be added as an additional term. (The verbal consent of the Real Estate Agent is not sufficient). Gaining the consent of the landlord will be easier if you can show that you are a responsible pet owner.

For further information about making this agreement go to: www.petnet.com.au

Strata Tenants

In a strata scheme, tenants are also bound by by-laws. These are the most common:

- a) you can only have pets with the written permission of the Owner's Corporation and they cannot "unreasonably withhold its approval",
- b) you can only have pets with the written permission of the Owner's Corporation and this permission *can be* unreasonably refused,
- c) you cannot have any pets at all.

Before signing an agreement, ask for a copy of the by-laws and assess the situation regarding pet ownership.

Further information can be found via the following website: www.lawsociety.com.au

Public Tenants

Housing NSW policy allows pets on the property if:

- a) the property is suitable for the animal,
- b) the pets do not interfere with the neighbours,
- c) they comply with the Companion Animals Act 1998.

Tenants cannot have a dog if it is 'restricted' as defined by the Companion Animals Act 1998, or declared a 'dangerous dog' by a local council or local court, under the Companion Animals Act.

For more information on pet ownership in Housing NSW, see their policy at : www.housing.nsw.gov.au

Community Housing Tenants need to check the policies relating to pet ownership of their Housing Association, prior to the signing of a tenancy agreement.

What can the landlord do if I have a pet on the premises without their consent?

If the landlord becomes aware that there is an unapproved pet on the premises, they may send you a 'warning letter' asking that you remove the pet or risk receiving a Notice of Termination. As it is a breach of the tenancy agreement they could issue you with a Termination Notice requiring you to vacate the premises within 14 days. If you receive a Termination Notice, call your local tenancy service for further advice regarding your situation.



The Housing Amendment (Tenant Fraud) Act 2008

Public Housing has generated a lot of media interest lately, largely due to the recent amendments that attempt to deal with 'tenant fraud'. The NSW Housing Minister expressed his intolerance with people "ripping off those most in need"; public housing tenants who were allegedly sub-letting their properties, occupants who were not declaring their full income and tenants who failed to disclose the fact that they owned other properties and/or businesses.

As a result, the Housing (Tenant Fraud) Bill was passed on the 9th April 2008, with virtually no debate. (Clover Moore was the only Member who spoke against the Bill, with The Greens since apologising for having missed the opportunity to comment).

There are a number of concerns that have been voiced about the impact that these laws will have on tenants and in particular, about the increase in powers that they grant to the Department of Housing.

Recovering Rental Debts

Under the Social Housing Act, tenants are required to declare their income, and any changes to their income, on a regular basis, in order to assess their rental subsidy. Under the new legislation, failure to declare these changes will be deemed a criminal offence and tenants face being fined \$2,200 and/or running the risk of 3 months' imprisonment. In addition, they may be required to re-pay the debt and/or face eviction due to outstanding rent arrears.

These changes have effectively given Housing NSW 'prosecutory powers' to impose criminal charges on tenants. They have also given them the power to recoup rent, from other household members, who have not been declaring their income.

In the past, where the Department suspected that tenants had not given them the correct information about the amount of household income received, they

cancelled their subsidies, effectively 'creating' rent arrears. Termination Notices could then be issued and eviction pursued through the Tribunal. Now, tenants also run the risk of imprisonment.

Accessing information from other agencies

Housing NSW is now able to access information held by other government agencies, such as the Roads & Traffic Authority, Maritime NSW, The Office of Fair Trading and Lands NSW, in cases where they suspect that a tenant is running a business, owns property or other assets. This information can be used to confirm and prosecute a tenant (or their occupant) for fraud.

Amnesty

Tenants and occupants will be given 3 months (from 1 July 2008 to 1 October 2008) to make any declarations regarding their circumstances, without incurring any penalty or having to pay any debts.

Exemptions

This legislation will not affect: registered carers who are additional occupants, tenants in properties managed by the Aboriginal Housing Office or Community Housing providers. Consideration will also be given to tenants who are in particularly difficult circumstances, that may involve ill health or domestic violence.

Public Tenants Respond

Some tenants believe that the Ministers' claims are largely over-exaggerated and that these new laws will fail to recoup much, in the way of monies owed. Tenants say that in reality, most people are honest and the few that do not report extra income are people that are trying to balance family expenses whilst keeping within Centrelink and Housing NSW income limits. They claim that there is a real disincentive in people earning too much, as this affects their benefits and eligibility for public housing and that, unfortunately, people get 'stuck' trying to sort all this out.