

28 January 2016

Statutory review of the Residential Tenancies Act 2010
Policy and Legislation
NSW Fair Trading
PO Box 972
Parramatta NSW 2124

Via email: policy@finance.nsw.gov.au

Re: Statutory review of the Residential Tenancies Act 2010

To whom it may concern,

I write to make a submission to the statutory review of the Residential Tenancies Act 2010 on behalf of Community Legal Centres NSW.

Community Legal Centres NSW (CLCNSW) is the peak representative body for Community Legal Centres (CLCs) in NSW.

CLCs are independent community organisations providing equitable and accessible legal services. CLCs work for the public interest, particularly for disadvantaged and marginalised people and communities. CLCs not only provide legal advice and assistance, but also encourage and enable people to develop skills to be their own advocates. We promote human rights, social justice and a better environment by advocating for access to justice and equitable laws and legal systems. CLCs work towards achieving systemic change through community legal education, and through law and policy reform. CLCs employ qualified staff including solicitors, social workers and community legal educators. We also have volunteer solicitors, barristers, law students and others working with us to extend our legal services. CLCs are both generalist and specialist centres and include the Tenants' Union of New South Wales.

Many CLCs include Tenants Advice and Advocacy Services who assist tenants of private rental housing, social housing tenants, boarders and lodgers, and residential park residents.

Community Legal Centres NSW supports the work of our members in responding to this review of the Residential Tenancies Act 2010, especially the Tenants' Union of New South Wales.

In response to your question ‘Should landlords be required to provide a reason for terminating a tenancy? And if so, what types of reasons should be considered?’, Community Legal Centres NSW say yes. There is always a reason behind ending a tenancy. The law should allow for good reasons, and prevent tenancies ending for bad reasons like discrimination. The law already includes three reasons for ending a tenancy: where the tenant has breached their agreement, the property is sold subject to vacant possession, or the landlord will suffer hardship if the tenancy continues. Further reasons could include: where the landlord requires the property for use as their own residence, or for that of a family member; where the property is to be substantially renovated, such that a tenancy can not be accommodated for the duration of the work and; where the landlord requires the property for any purpose that is sufficient to displace an occupying household.

You also ask, are there any types of occupancy arrangements which should be included or excluded from the Act? Does the Act adequately address the interests of sub-tenants/co-tenants and landlords in shared tenancy agreements? We say that every person who pays for their accommodation should have access to legally enforceable rights. Renters who are excluded from the Act should be covered by other appropriate legislation. And people who live in shared housing should have their agreements recognised for what they are, not for what they have written down.

You ask, ‘Is further guidance required in relation to whose responsibility it is to repair the premises and when the repairs must be carried out? Are there alternative ways to improve the standard of rental properties?’ We say yes. Current repairs and maintenance obligations are clearly set out in the law, yet tenants often struggle to get repairs done. This can be addressed by giving tenants a broader range of remedies and easier enforcement options against landlords who do not meet these obligations. And a schedule of inspections for repairs and maintenance needs should be required for rental properties, with a written report produced at least once every five years.

You ask, ‘Are any additional protections needed for tenants and landlords regarding inspections and privacy? Should there be specific provisions in the Act that deal with the use of photographs or videos showing a tenant’s personal property to advertise premises for sale or lease?’ We say yes. If a landlord or real estate agent insists on coming into a property without a tenant’s permission, they should be required to do so at a time convenient to the tenant. And a tenant should always be able to refuse having photographs or videos taken inside their home.

You ask, ‘Do the existing provisions governing rent increases strike the right balance between the interests of landlords and tenants? And if not, how could they be improved?’ We say no. Affordability indexes show that tenants are struggling to pay high rents in New South Wales. Rents should not be allowed to go up more than once every 12 months, and where they are to be increased beyond a measure such as the Consumer Price Index, it should fall to landlords to show that the increase is reasonable.

You also ask about how Tenants’ Advice and Advocacy Services can be improved? For more than 20 years, tenants in New South Wales have had access to independent, specialist advice and advocacy services. These services are funded by the interest on tenants’ bonds –but they haven’t had a proper funding increase since 2002. Since then, the number of people renting in New South Wales has increased by 25%.

There is over \$1.2 billion of tenants' money sitting in the Rental Bond Board, generating about \$60million in interest each year. Tenants' Advice and Advocacy Services receive 8 cents from every dollar of that interest. The NSW Government takes 66cents from every dollar to contribute to other services, such as the New South Wales Civil and Administrative Tribunal. 10 cents in every dollar is put towards a growing surplus that currently stands at around \$66 million. Tenants themselves get less than half-of-one cent of every dollar earned.

You ask, 'Should a portion of the interest on rental bonds continue to be paid to tenants, or should this portion also be used to fund services for tenants?' We say, let's do both! We're asking for an additional \$5.2million per annum to restore the real value of funding to Tenants' Advice and Advocacy Services, to be paid for from the \$66 million surplus of interest on tenants' bonds. We're also asking for more of that interest to be returned to tenants directly when they claim a refund of their bond. This is both fair and affordable.

You ask, 'Do the current information, advice and dispute resolution services operate effectively? Do you have any other suggestions to encourage the early resolution of tenancy disputes and reduce the number of tenancy disputes? We say yes. In order to remain effective, these services need to be funded properly. Tenants' Advice and Advocacy Services provide one-on-one support and assistance to tenants in a way that no other services do. They do this in tenants' interests only, and they are the only services who assist tenants in hearings at the New South Wales Civil and Administrative Tribunal. Because of this, they are unique in their understanding of dispute resolution processes. This is important when giving information or advice to tenants about the various ways a dispute could be resolved. Well-advised tenants' make well-considered Tribunal applications, and are also aware of when matters can be better resolved outside of the Tribunal.

Community Legal Centres NSW also supports the recommendations proposed by Women's Legal Services NSW relating to domestic violence and the Residential Tenancies Act 2010.

If you require further information please contact Kerry Nettle, Strategy and Communications Officer , Community Local Centres NSW on 9212 7333 or Kerry_nettle@clc.net.au

Yours sincerely,

Nassim Arrage

Chairperson

Community Legal Centres NSW