

**Submission
No 17**

RESIDENTIAL TENANCIES AMENDMENT (PROHIBITING NO GROUNDS EVICTIONS) BILL 2024

Organisation: Redfern Legal Centre

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Legal
Centre**

Submission to the Select Committee on the Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024

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Gadigal Land, 73 Pitt St Redfern NSW 2016 | PO Box 1805, Strawberry Hills NSW 2012

Phone: (02) 9698 7277 **Web:** rlc.org.au **Email:** info@rlc.org.au

ACN: 31 001 442 039

1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is a non-profit community legal centre that provides access to justice. Established in 1977, RLC was the first community legal centre in NSW and the second in Australia. We provide free legal services and education to people experiencing disadvantage in our local area and statewide. We work to create positive change through policy and law reform work to address inequalities in the legal system, policies and social practices that cause disadvantage.

We provide effective and integrated free legal services that are client-focused, collaborative, non-discriminatory and responsive to changing community needs - to our local community and state-wide. Our specialist legal services focus on tenancy, credit, debt and consumer law, financial abuse, employment law, international students, First Nations justice, police accountability, and we provide outreach services including through our health justice partnership.

2. RLC's Inner Sydney Tenancy Advice and Advocacy Service

RLC has a long history of providing tenancy advice, assistance and advocacy. Since RLC was founded in 1977, we have provided free advice to tenants. Since 1995, RLC has been funded by NSW Fair Trading to conduct the Inner Sydney Tenants' Advice and Advocacy Service (ISTAAS).

We provide free, confidential legal information, advice and advocacy to tenants living in public and private residential housing in the inner city – including in the City of Sydney, Leichardt and Botany local government areas. ISTAAS currently faces overwhelming demand, due to increased costs of living, increased evictions and decreased vacancy rates.

ISTAAS prioritises people with complex needs and at risk of homelessness. We advise and advocate for social housing tenants on a wide variety of matters, particularly complex terminations for rental arrears or allegations of antisocial behaviour, major repairs and transfers. We also advise and advocate for renters in complex housing arrangements like share houses, boarding houses and lodging arrangements.

Our submission is informed by the experiences of our clients.

3. No grounds terminations

Most tenancy agreements are initially an agreement for a fixed term, typically six or twelve months. At any time before the fixed term, a landlord can issue a 30-day termination notice without any grounds, and terminate the tenancy at the end of the fixed term.

If the tenancy continues and the landlord and tenant do not enter into a new fixed term agreement, then the tenancy becomes a periodic tenancy. At any time during a periodic tenancy, a landlord can issue a 90-day termination notice on no grounds.

Landlords do not have to provide any reason or justification for issuing a no grounds notice, and tenants cannot put any case to the NSW Civil and Administrative Tribunal (**The Tribunal**) to explain the hardship they would experience if evicted. In a no grounds termination matter, the Tribunal has no discretion to consider a tenant's circumstances. It must terminate the tenancy.

ISTAAS regularly answers calls from distressed tenants who have received a no grounds termination notice. Almost 1 in 5 of the private tenants we advised in the last 12 months had received a no grounds notice of termination from their landlords.

A high proportion of these termination notices were preceded or followed by a rent increase notice. While tenants can dispute a proposed rent increase in the Tribunal if they feel it is excessive, it is usually not pragmatic to do so because the landlord can simply issue a no grounds termination notice to end the tenancy. Renters are then forced to choose between the financial distress of paying an unreasonable or unaffordable rent increase, or the stress, inconvenience and expense of having to find alternative accommodation in a competitive rental market.

No grounds terminations act as a deterrent to tenants wishing to enforce their rights. Many tenants are rightly concerned that they will be issued with a termination notice if they ask for repairs or try to negotiate on a proposed rent increase. In our experience, the limited protection against 'retaliatory' eviction provided in the Act is not enough to offset this imbalance.

Case Study: Peta's Story

Peta was a reliable tenant who had always paid her rent on time and looked after her home. Towards the end of her tenancy agreement, her landlord was asked if she would like to renew. She was told that she could re-sign to a new fixed-term tenancy agreement at a higher rent. Peta believed that the higher rent was excessive and tried to negotiate a lower amount acceptable to her and the landlord.

Peta did not receive a response for over two weeks. When the landlord finally replied, it was with a notice to terminate the tenancy at the end of fixed term. No reason for the termination was given.

Peta told the landlord that she would agree to pay the increased rent that had originally been asked for, but her landlord refused this offer and said that Peta would have to move out. Peta then offered to pay even more rent to remain in the tenancy. The landlord still refused. The threat of eviction caused Peta (a single mother with three children) considerable stress as she was forced to try and find another home for her family at an affordable rate in a very competitive rental market.

Case study: Cameron

Cameron was offered a new fixed-term agreement by their landlord Robert, with a 25% rent increase. Cameron felt this was excessive but wanted to keep living in their home, so they made what they felt was a reasonable counter-offer. Robert rejected Cameron's offer, and immediately sent them an end of fixed term termination notice. Cameron went back to Robert and offered to pay the amount originally asked for. Robert refused and said he was going to continue with the termination of the tenancy.

Case study: Jerry

Jerry was nearing the expiry of his residential tenancy agreement. The managing agent for the property called Jerry and told him that someone was offering to pay \$300 per week more rent for his place. He was asked to match that offer. Jerry was willing to pay more rent but thought this was too much, so he sent the agent an email to negotiate a fair increase.

The agent replied by emailing back an end of fixed term termination notice. The agent stated that the tenancy was being terminated because the landlord had decided to move in.

Jerry felt that he was really being terminated because he tried to negotiate on the rent. He suspected that the landlord was not actually intending to move into the property, and the agent had just said this to try to avoid a retaliatory eviction application.

These stories are representative of the many people we have advised who have been evicted from their homes because their landlord decided to terminate their tenancy after attempted rent negotiations. In all these examples there were no breaches or other issues with the tenancy. In the first two cases, the tenants were in fact willing to pay the amount the landlord had asked to continue in the tenancy, but the landlord refused that option and chose to go ahead with termination. In all cases, if not for the no grounds notices the tenants could have stayed on in the tenancy with enough security to negotiate freely with the landlord on a reasonable rent increase.

Case study: Josh and Sarah

Josh and his wife Sarah were renting a place in Sydney on a twelve-month tenancy agreement. Before the end of the fixed term, the real estate agent had emailed Josh to ask if they would like to renew the agreement and sign another fixed term agreement. Josh and his wife agreed and asked the real estate agent to send through the new lease for them to sign.

A few days later, Josh was informed that the landlord had changed his mind. They were issued with an end of fixed term no-grounds termination notice. Josh and his wife were highly distressed and were fearful that they would not be able to find a new place they could afford within the 30 days given by the landlord. They were never given any reason for the landlord's change of mind.

Case Study: Anita

Anita and her housemates were co-tenants with a periodic lease. There were no issues with the tenancy and the landlord, real estate agents and tenants were on good terms. But the agent had told Anita that at this stage the landlords couldn't commit to a new fixed term tenancy agreement because they were thinking of moving back into the property.

Then Anita and her housemates received a 90-day no grounds termination notice. Knowing that they had no way to dispute this notice, they found another place to rent and moved out. They paid for removalists and an end of lease clean, and they had to sell or dispose of the furniture that wouldn't fit in the new place.

A few weeks after moving, Anita found out that the property had been leased to someone else for around \$100 more per week. Anita would have agreed to pay that amount to stay in the tenancy, but the agent never offered this as an option.

These case studies demonstrate that some no grounds notices appear completely arbitrary. In such cases the stress, cost and inconvenience of having to move are exacerbated by the fact that the evictions had no reasonable grounds.

4. Fixed term and periodic tenancies

The end of a fixed term is not a valid reason for termination. Removing 'no grounds' terminations must also include the removal of section 84 of the Residential Tenancies Act 2010.

There is no rational basis for making a distinction between fixed term and periodic tenancies in circumstances where the tenant is not in breach of the tenancy agreement. Landlords should be required

to provide a valid reason for ending both periodic and fixed term tenancy agreements. If no grounds terminations are removed for periodic tenancies but not for fixed term tenancies, tenants will continue to be evicted arbitrarily even though they have not breached the tenancy agreement. Most of the above client stories arose from end of fixed term termination notices.

5. Proposed new grounds

As a general principle, in circumstances where the tenant is not in breach of the tenancy agreement, a landlord should only be able to terminate the tenancy if the property is going to be removed from the private rental market for a significant period.

The Bill proposes three additional grounds for termination by a landlord:

The landlord or a person associated with the landlord intends to occupy the residence for at least 12 months.

It is reasonable to include this ground. It is essential that only a limited and clearly defined class of people with an immediate family relationship with the landlord be included to minimise uncertainty and avoid unnecessary disputes.

The landlord intends to carry out renovations or repairs at the residential premises that will render the premises uninhabitable for at least 4 weeks, and has obtained all necessary permits to carry out the renovations or repairs

It is reasonable that necessary work such as reconstruction, demolition or major renovation of the premises be included as grounds for terminating a tenancy. However, in our view repairs fall into a different category and should not be included in this ground.

Landlords have an obligation to keep the premises in a reasonable state of repair. It would be inconsistent with that obligation to allow a landlord to terminate a tenancy agreement so that they can carry out the repairs and maintenance that they are legally required to conduct during the tenancy.

The general principle should be that a tenancy can only be terminated if repair works are necessary, are not the result of a landlord breach (like a failure to maintain the premises), and the premises need to be vacant for a significant period for the works to be done.

The 4-week time period proposed is also too short to adequately protect tenants from unnecessary termination. It leaves open the likelihood of termination for inessential repairs and renovations, and for retaliatory termination where a tenant has requested repairs. A longer period for building works should be specified that adequately balances the interests of landlords and tenants.

It should be made explicit that this ground of termination does not apply to social housing tenancies.

The residential premises will be used in a way, or kept in a state, that means the premises cannot be used as a residence for at least 6 months.

It is reasonable to include this ground to terminate a tenancy.

This ground should only be available when the premises are no longer going to be used for any residential purpose. If a landlord proposes to put premises to another kind of residential use, for example by converting from private apartments to a registered boarding house, then the landlord should not have a right to terminate the tenancy of someone who wishes to continue living there.

6. Evidence requirements

Each new ground for termination should include prescribed forms of evidence to provide certainty and prevent misuse of these provisions.

A model where each ground includes specific evidence requirements, and prescribed evidence is required to be annexed to the termination notice could be effective to reduce the number of disputed matters. This would ensure tenants are in receipt of the landlord's evidence at the time of receiving the termination notice and are able to make an assessment for themselves of whether the landlord's reasons are genuine. A similar mechanism is already in place for domestic violence termination notices under section 105C of the Act.

7. Notice periods

A blanket 90-day notice period for termination notices, regardless of whether the tenancy is fixed term or periodic, is reasonable to give tenants sufficient time to find an alternative property and prepare to move.

However, extending the notice period to 90 days for fixed term agreements would be of little benefit to tenants without the removal of section 110(3) of the Act, which requires tenants vacating early in response to an end of fixed term notice to pay rent up to the end of the fixed term of the agreement.

Tenants who are not at fault should be free to start applying for alternative rentals immediately and should be able to vacate with no further rent liability once they find somewhere to move.

8. Penalties and enforcement

We support the inclusion of penalty provisions for landlords who misuse these grounds. A more general penalty provision could be introduced into the Act to cover landlords who issue a termination notice of any kind without a valid, genuine and supportable basis. This would simplify the law and provide tenants with further protection from any termination without genuine grounds.

There needs to be an effective regime to enforce penalties. NSW Fair Trading must be empowered and resourced to consistently impose penalties on landlords where appropriate.

It is reasonable that tenants have a right to apply for a remedy after the termination of their tenancy if it transpires that the landlord has not put the property to the use that was specified in the notice. However, from a practical point of view, the evidence required to pursue such a remedy is usually out of reach for tenants who have moved out of the property, and remedies aside from compensation are unlikely to be worth pursuing if a tenant has already moved out.

Additional alternative automatic mechanisms are required to effectively deter non-genuine terminations, like temporary bans on reletting the property, and automatic compensation to tenants who are terminated through no fault or breach of the agreement.