Changes to Anti-Social Behaviour Laws in Social Housing

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Acknowledgement of Country
Changes to Anti-Social Behaviour Laws in Social Housing

1. Introduction: The new laws
2. Terminations prior to 2015
3. The main changes
4. The Three Strikes scheme
5. Mandatory evictions
6. Rental subsidies
7. Questions; How to get tenancy advice

RESOURCES: rlc.org.au/training/resources/anti-social
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Introduction: New laws

Came into force in December 2015

Changes to:
- Residential Tenancies Act 2010
- Housing Act 2001

Affects what the tribunal can consider when social housing landlords seek termination.
What is anti-social behaviour?

FACS Housing policy definition:

“Antisocial behaviour is behaviour which disturbs the peace, comfort or privacy of other tenants or neighbours or the surrounding community which results in a breach of the tenancy agreement under the provisions of the Residential Tenancies Act 2010”
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Terminations before November 2015

General breach:
- NCAT must consider whether breach is sufficient to justify termination
- Wide discretion
- Still exists

Illegal use (drug offences & other kinds of illegal use):
- Previously there was a wide discretion

Serious damage or injury by tenant or other occupant:
- Previously there was a wide discretion
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The main changes

1. Three strike scheme
2. Mandatory evictions for certain breaches
3. Cancellation of rent subsidy as rent arrears
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Three strikes scheme

- Termination for breach generally – only where a breach is sufficiently serious to justify termination
- The scheme is aimed at less serious breaches of the tenancy agreement
- Three strikes in 12 months → termination
Breaches

Examples:

- obscene language or bullying and harassment towards neighbours or visitors
- noise causing nuisance
- leaving large amounts of rubbish in the home or common areas
The process

- Strike notice issued by social housing provider
  - Tenant has 21 days to provide submissions in response (first tier appeal)
    - Social housing provider will consider submission
      - Social housing provider withdraws strike
      - Social Housing provider upholds strike
        - Tenant has 21 days to ask for a review of this decision (HAC)
Three strikes scheme (continued)

- If within 12 months a tenant has 2 recorded strikes and they breach for a third time, the housing provider can issue a termination notice and go to the tribunal for eviction.

- There is no opportunity for tenant to ask for an internal review of the third strike notice.
Why appeal?

- 21 day time limit
- If a tenant doesn’t respond to the initial strike notice by providing submissions, then the strike is legally proven
- If a tenant doesn’t appeal the decision of the social housing provider to uphold issuing of the strike notice, then the strike is legally proven
Appealing a strike notice

First – Get advice!

The notice itself must fulfill these requirements:

1. Must be in writing; and
2. Must inform them a strike has been recorded; and
3. Must set out details of allegations; and
4. Must remind them of other strikes in previous 12 months; and
Appealing a strike notice (continued)

5. Must warn them that if a third strike is recorded in 12 months a termination notice may be given; and

6. Must inform the tenant of their right to review; and

7. Must tell them how to make submissions and by which date; and

8. Must warn them that if they don’t make submissions, the strike will be taken to be legally proven in NCAT.
Factual errors should be disputed and backed up with evidence where possible.

If there was a breach:
- The reasons for the breach
- The client circumstances
- What is being done to address the breach

Provide evidence for everything.
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Mandatory evictions: the previous law

- The tribunal had a much wider discretion and could consider many more issues when determining whether to terminate a tenancy.
Mandatory evictions: the new law

- Applies to breaches relating to damage to people or property, or illegal use of the property.
- FACS Housing Policy defines this as severe illegal behaviour.
- The Tribunal **MUST** terminate if the breach is proven **UNLESS** one of three exceptions applies. There are different exceptions for different breaches.
The exceptions

1) The breach was not committed by the tenant.

2) The tenant satisfies the tribunal there are other exceptional circumstances which mean the tenancy should not be terminated.
The tribunal is satisfied that termination would result in undue hardship to someone living in the household who is:

- A child
- A domestic violence survivor
- A person with a disability.
Breach = Damage to property

Tribunal MUST terminate UNLESS

- Undue hardship to:
  - child
  - DV survivor
  - person with a disability who lives in the property

Other exceptional circumstances
Breach = Injury to people

Tribunal MUST terminate UNLESS

- Less serious injury
  - Undue hardship to:
    - child
    - DV survivor
    - person with a disability who lives in the property

- Serious injury
  - The injury was not committed by tenant
Breach = illegal use of the property

Tribunal MUST terminate UNLESS

- Serious drugs
- Firearms
- Brothel, production of child abuse material, car/boat rebirthing
- Other illegal use

Undue hardship to:
- child
- DV survivor
- person with a disability who lives in the property

Other exceptional circumstances
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Rental subsidy - the old law

• What is a rental subsidy?

• Retrospective cancellation

• The Diab decision:
Debt arising from cancellation of rental subsidy **DOES NOT EQUAL** rent arrears. Cannot terminate for this reason.
Rental subsidy – the new law

- A debt arising from a cancellation of a rent subsidy **DOES EQUAL** rental arrears and the social housing provider **CAN** apply for termination.
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Questions?

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