

Ms. Tammy Nardone
Research/Policy Officer for Alex Greenwich MP
58 Oxford Street
Paddington NSW 2021

By email

18 February 13

Dear Ms Nardone,

RE: Private Members' Bill to remove s. 10 of the Residential Tenancies Act

Thank you for the opportunity to comment on your proposal to introduce a private members' bill aimed at giving subtenants without written residential tenancy agreements protections under the Residential Tenancies Act.

The Eastern Area Tenants' Service shares the concerns of the Inner Sydney Tenants' Advice and Advocacy Service that many renters subletting in share accommodation are 'falling through the cracks' since the introduction of s. 10.

EATS has held major concerns about section 10 since its commencement in 2011.

In arrangements where a head tenant sub-lets, s. 10 often has a disastrous impact. In our experience many head tenants refuse to sign residential tenancy agreements with potential housemates, even when asked to do so.

With rental affordability a huge issue within Sydney, the requirement of a written residential tenancy agreement to secure tenancy rights is an impediment to people finding affordable share accommodation. We provide the following case study as an example:

Amy is negotiating with a head tenant to share a house. Amy has asked her head tenant to sign a residential tenancy agreement, as she knows that if she does not have one she will not be covered under tenancy law. The head tenant is refusing to sign an agreement. Amy has looked at many places and is contemplating still moving in, even though the head tenant has asked her to pay a month in advance and has refused to lodge her bond money. She knows it will be hard to get a head tenant who will sign an agreement.

The removal of s. 10 will return important rights to some people in share housing including:

- The ability to claim for bonds;
- Dictated timeframes for termination notices and rent increases;



EASTERN AREA TENANTS SERVICE

LEVEL 2
74 NEWLAND STREET BONDI JUNCTION 2022
PO BOX 1091 BONDI JUNCTION 1355
ABN 79 818 621 421

advice. 9386 9147

fax. 9389 9824 email. EATS_NSW@clc.net.au

- The ability to claim for overpaid rent;
- The ability to apply for compensation and possible reinstatement at the premises if they are locked out by the head tenant;
- The ability to seek orders for access to goods left at the premises

For these reasons we would support your Private Members Bill.

Addressing additional concerns

We would note that removal of s. 10 will not necessarily guarantee rights for all people who live in share accommodation. The Consumer, Trader and Tenancy Tribunal must, in any share housing matter, look at the nature of the agreement and then determine whether that arrangement gives rise to a tenancy agreement. If it is deemed to be a boarding or lodging agreement, then the Consumer, Trader and Tenancy Tribunal will not have jurisdiction. The Boarding Houses Act 2012 will only provide jurisdiction in situations where there are 5 or more residents at a premises.

Even with the removal of section 10, some people in share accommodation will still be unprotected, including those who do not have exclusive use of their room, or who have some services provided, such as some meals and household cleaning.

The most common issues EATS deals with in relation to share housing are recovering bonds (security deposits) and terminations without notice.

EATS feels an important opportunity was lost when Clover Moore's Residential Tenancies Act Amendment Bill lapsed. This would have given the Tenancy Division of the Tribunal jurisdiction to hear certain matters and make determination on these matters in any instance where there was an agreement for the provision of accommodation.

The following cases are typical of the types of issues we encounter:

George lives in a house with a family. George does not have a room, but he does have a cordoned off area of the living room which has screens dividing him from the rest of the household. This section is cordoned off with screens with wooden frames for this purpose. George has been told to leave and the landlord keeps harassing him. George is worried that the landlord will change the locks while he is away and lock him out. He wants to know what his rights would be if this happens.

Meredith lives in a share household. She lives with a head tenant. She does not have a written agreement. She paid the head tenant \$500 as a 'security deposit' when she moved in. The head tenant was harassing her. Now the head tenant has told her that they are going to change the locks and keep all her belongings. Meredith is worried because the relationship has broken down completely and she knows she will have trouble getting her security deposit back.

Maxine was living in a share house and paying rent to the head tenant. There was a written agreement, but the head tenant tore it up after they had an argument. She got message to say that she needed to be out by 2pm that day. She could not leave on that day, and came back the following day to find that the head tenant had locked her out and changed the locks. She could not get her belongings. Maxine had also paid a bond of \$840. She does not know how she will get this back.

Currently, we can only advise people in this situation that they would need to argue jurisdiction at the Tribunal and that we could not guarantee that this would be successful. Arguing jurisdiction can be legally complex and usually requires the assistance of a tenant advocate.

We have observed that 'bond harvesting' is common among some landlords and head tenants offering share accommodation in our catchment. Renters who do not have accessible legal means of retrieving their bonds or security deposits are easy prey for unscrupulous landlords.

It is not unreasonable to expect a level of accountability on landlords and head tenants, or that they should be able to justify actions like keeping a person's bond or evicting them from their home. If speedy termination is required, (such as when there is violence or intimidation within a household) a landlord or head tenant can use provisions in the Residential Tenancies Act 2010 for almost immediate termination, apply for an Interim Apprehended Violence Order from the police, or do a combination of both.

General observations about share housing

If the above concerns were addressed many of the inequities that we encounter in share and other lower cost accommodation could have legal avenues of redress. However our service remains of the opinion that in many ways the Residential Tenancies Act 2010 seeks to impose a structure upon many share households, which does not in fact exist.

Responsibilities, which might be viewed as falling under the domain of a 'head tenant', are often distributed between residents; for example, utility accounts may be in one resident's name while another resident may be responsible for collecting the rents and arranging payment to the landlord.

Attempting to categorise residents into clearly defined hierarchies also does not recognise the transient nature of many share households. It is not unusual in many share houses for the tenant who had originally entered into a residential tenancy agreement to move out, leaving the residents remaining in the premises to carry on the running of the household and potentially bring further people into the household.

For example:

Annie has been living in a share house for some months. She never signed a residential tenancy agreement; she 'inherited' the tenancy from her friend Gabriella. Gabriella does not live there now. Annie is the point of contact for the landlord. She collects and organises the rent and liaises with the landlord on behalf of the other residents. There are three other people living with her.

The ability and or willingness of the Tribunal to find that a tenancy exists in such cases between the landlord and the current residents could safeguard the rights of household members in these circumstances.

It is unclear whether Members of the Tribunal could utilise the Residential Tenancies Act 2010 for such a purpose, or if they would be comfortable to do so. We believe

there may be some capacity for the Tribunal to utilise sections 11, 16 and 77 to achieve this. This would require the amendment or removal of Section 10.

Should you have any questions or wish to take these issues further please do not hesitate to contact Hayley Stone on (02) 9386 9145 or Hayley.Stone@clc.net.au.

Kind regards,

Hayley Stone

Tenant Advocate for
Eastern Area Tenants Service