

Unfair evictions hurt us all.



What is Make Renting Fair?

Make Renting Fair is over 80 organisations who are calling for the Residential Tenancies Act 2010 to be reformed to allow the eviction of tenants only with prescribed grounds. This group was formalised in 2017 after NSW Fair Trading's 2016 statutory review of the Act failed to recommend change, despite detailed evidence from tenants and advocates of a significant imbalance in the legal protections and obligations of tenants and landlords.

The problem – tenants can be evicted without a reason

Over 2 million people rent their homes in NSW – that's one in every three households, and the number is growing.

Renting is no longer a short-term situation for people at university or young people before they buy a home. Families and older people are also typical renters now, and more people are renting for longer. A "no grounds" termination notice issued by a landlord gives a tenant 30 days at the end of a fixed term, or 90 days during a periodic tenancy, to vacate the property. As the name suggests, a landlord is not obliged to give a reason for the eviction in either case.

Imagine having only 90 days to pack up the family home and find somewhere new that allows life to continue as before – close to schools, childcare and work, within the community you've chosen for yourself and your family.

That's really unfair. There is always a reason to end a tenancy, and a no grounds notice is a trump card that overrides any objections tenants might raise against an unfair eviction. Checks and balances are not working, so tenants have no protection against being evicted unfairly.

Our current laws don't give renters the chance to argue against a "no grounds" notice of termination, to test whether the landlord's reason is fair (like moving back in themselves) or unfair (like ending a tenancy because someone has asked for repairs). Introducing additional grounds and ending no-grounds evictions will go a long way toward ensuring landlords aren't able to make decisions that unreasonably upend renters' lives, or keep them in a permanent state of uncertainty about their housing.

What is the extent of the problem?

When a renter is evicted without grounds, there is no record of it. It is impossible to know just how many people have received a no-grounds termination notice. But a recent survey by Choice, National Shelter and the National Association of Tenants Organisations suggests that of the 2 million renters in New South Wales right now, 140,000 will be evicted without a reason at least once in their lives (Unsettled, 2017). But the problem runs much deeper, as many more renters don't ask for repairs or raise other issues with their landlord, because they're worried about an unfair eviction.

The solution – make renting fair

There is a significant imbalance in the rights of tenants and landlords that makes most tenants susceptible to eviction at any time. The two provisions in the NSW Residential Tenancies Act 2010 that allow for evictions without a reason – section 84 and 85 – should be amended.

Landlords should be given an expanded list of ‘reasonable grounds’ for ending a tenancy. The specific grounds would require public consultation to ensure they find the appropriate balance, and might include requiring the home for their own use, or where substantial renovation or redevelopment is planned.

Amending tenancy legislation in this way would ensure landlords can be transparent about their reasons for ending a tenancy, and time tenants would be protected against unfair evictions.

What would this mean for landlords and tenants?

In most circumstances a tenancy ends when a notice of termination is issued and the tenant moves out. This would continue, but landlords would require reasonable grounds to issue a notice – and those reasonable grounds would be decided in public consultation. Where a tenant does not move out as required by a notice of termination, the landlord would continue to have access to the NSW Civil and Administrative Tribunal for an eviction order.

This change would provide tenants with certainty around their tenancy and give them the ability to challenge an unfair eviction which they currently cannot do.

What would this mean for NCAT?

Currently for most eviction orders, the Tribunal considers the landlord’s reason for ending the tenancy, and any evidence brought before it. This change would mean they would do the same for eviction orders where they currently aren’t allowed to consider the reason. For instance, if the landlord wants to end the tenancy in order to move into the property themselves, they might present evidence of a change to their current housing situation.

If a tenant believes a landlord’s reason to be untrue, they could present details of this to the Tribunal. If the Tribunal finds the landlord’s reasons are genuine, an eviction order could be made.

This would not result in a significant shift of bargaining power to tenants at the point of ending a tenancy. Landlords who have a good reason to end a tenancy could still do so, but tenants would be protected against evictions where the landlord does not have a good reason.

Why now?

Rental affordability in NSW is at a critical level, which has a big impact on what happens at the lower end of the market. All renters are susceptible to housing insecurity, but without reliable shelter it can be easy for vulnerable people to slip through the cracks and experience homelessness. The 60,000 people waiting for stable and affordable social housing are hanging precariously onto the housing they can currently afford whilst hoping to avoid an unfair eviction.

The spectre of a “no grounds” eviction hangs over every tenant. Addressing this fundamental imbalance between renters and landlords will provide increased security for renters without creating uncertainty for landlords.