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Principal Policy Officer
Residential Tenancies Bill 2009
Fair Trading Policy Division
NSW Fair Trading
PO Box 972
Parramatta NSW 2142

By e-mail: policy@services.nsw.gov.au

Dear Principal Policy Officer,

Draft Residential Tenancies Bill 2009 – domestic violence issues

1. The draft Residential Tenancies Bill 2009 has recently come to our attention, and we wish to make some comments on the provisions concerning apprehended violence orders (AVOs) and tenancy.
2. This submission has been prepared jointly by Women's Legal Services NSW and Hawkesbury Nepean Community Legal Centre. Both services regularly provide legal advice and representation to women who are escaping domestic violence, including in relation to tenancy and AVOs.
3. The proposed provisions relating to changes of locks (section 72), change of tenancy (section 79), early termination without compensation (section 102) and repayment of bond to former co-tenant (s 174) are welcome changes. Our clients regularly face problems relating to their tenancy arrangements when they experience or are escaping domestic violence. These include circumstances where the woman stays in the house and when she leaves the house.
4. We make the following suggestions to strengthen the proposed provisions:

Section 79(1) Termination of tenancy

5. It is unclear what order would be required in an AVO to 'prohibit' a co-tenant from having access to the residential premises: would a 'not enter' order (standard order 3) or an order specifying a residential exclusion zone (standard order 4) be required, or would a 'not reside' order (standard order 2) be sufficient? In our view, it would be appropriate for the tenancy to be terminated where a person is ordered to not reside at *or* not enter the premises, or is excluded from the premises. In both cases, the person cannot live at the premises and so it would be inappropriate for them to remain a tenant.

Recommendation 1:

Amend section 79(1) to clarify that a tenancy is terminated when there is a ‘do not enter’, ‘not reside’ or a residential exclusion zone in a final AVO.

Section 102(1)(d) Early termination without compensation to landlord

6. It would be useful to clarify to whom notification must be given in the case of a co-tenancy; that is, the landlord and/or the co-tenant.

Recommendation 2:

Clarify to whom a termination notice must be given under section 102(1)(d).

Section 104(2) Termination of agreement or co-tenancies by Tribunal

7. The explanatory note states that a co-tenant may apply to the Tribunal for a termination order terminating his or her own or another co-tenant’s tenancy if the co-tenant whose tenancy is being terminated is the subject of a final AVO (Part 4, Division 3, para (f)). This does not appear to be reflected in section 104 of the draft Bill.
8. We support the inclusion in the legislation of such a grounds for termination and make the following additional comments.

Who is the ‘subject’ of a final AVO?

9. It would be useful to clarify that both the protected person and the defendant are the subject of a final AVO. Many of our clients face tenancy problems when they cease residing at premises because the perpetrator of domestic violence remains at the premises. As a co-tenant, they will remain liable for rent and any damage to the property. This may lead to a tenancy debt and if they are unable to pay they may be listed on a blacklist on a tenant database, which can make it very difficult for them to get other rental properties.

Who can apply to the Tribunal?

10. It would be useful to clarify who can apply to the Tribunal. For example, it seems inappropriate to provide that a co-tenant who is not the protected person or defendant could apply for the termination of a tenancy of another co-tenant. Similarly, a defendant should not be able to apply for the termination of a protected person’s tenancy.

Recommendation 3:

Amend section 104 to specify that a co-tenant who is the:

- protected person in a final AVO can apply to the Tribunal for a termination order terminating their own co-tenancy or another co-tenant’s tenancy, if the other co-tenant is the defendant;
- defendant in a final AVO can apply to the Tribunal for a termination order terminating their own co-tenancy (where the protected person is also a co-tenant)

Termination of tenancy on the basis of domestic violence

11. Evidence of domestic violence should also be included as grounds for applying for termination. It can take a long time to obtain a final AVO and, even where there is serious domestic violence, victims may not wish to seek an AVO. Victims of domestic violence

may need to end their own tenancy prior to a final AVO or in cases where they are not seeking an AVO.

12. This could come within the ‘special circumstances’ provision in section 104(2). However, victims would be better protected if the draft Bill expressly provided that the Tribunal can terminate a person’s co-tenancy, on that person’s application, where there is evidence of domestic violence perpetrated against them by a co-tenant or occupier.
13. Further consideration would be required as to what would satisfy the Tribunal as evidence of domestic violence.

Recommendation 4:

Amend section 104 to specify that the Tribunal can terminate a person’s own tenancy or co-tenancy, on that person’s application, where there is evidence of domestic violence perpetrated against them by a co-tenant or occupier.

Termination of sole tenancy on the basis of domestic violence

14. While the draft Bill expressly provides for the Tribunal to terminate the tenancy of a co-tenant who is subject to a final AVO, it does not expressly provide for the Tribunal to terminate the sole tenancy of a tenant who is the protected person or a victim of domestic violence. This could come within the ‘special circumstances’ provision in section 106(1). However, victims would be better protected if the draft Bill expressly provided that the Tribunal can terminate a person’s own tenancy or co-tenancy, on that person’s application, where they are the protected person under a final AVO relating to another occupier, or where there is evidence of domestic violence perpetrated against them by another occupier.

Recommendation 5:

Amend the draft Act to specify that the Tribunal can terminate a person’s own tenancy, on that person’s application, where they are the protected person under a final AVO relating to another occupier, or where there is evidence of domestic violence perpetrated against them by another occupier. The sections should provide that the victim of domestic violence will not be held liable for compensation if their tenancy is terminated on these grounds.

15. Please contact us if you would like to discuss our comments or require further information.

Yours faithfully,



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