

Final Tenancy Podcast Series - Ep 1 Mix V3 310821

This is the first episode in a series on tenancy in New South Wales called Renting Matters. In this first episode, we're discussing how to get a foot in the door, getting a tenancy in the private rental market in New South Wales. We talk to grant Arbathnot, Principal Solicitor of the Tenants' Union, about things to look out for at the start of a tenancy, including the tenancy agreement:

"Don't sign up to a tenancy agreement unless you're sure, because there is no cooling off period. You are bound, when that contract is made.

And the condition report:

"You must get that document filled out and signed back to the landlord or agent within seven days. So it's really important because if you end up in a dispute, it's going to be the primary evidence of the condition of the premises. And so they should be filled out like a paranoid detective. And you should take your own photos. Because photographic evidence is really helpful in sorting out disagreements in the condition report or anything that's not clear.

We'll also hear from Amity, a tenant in Sydney who has been renting for a long time. Amity talks about how being given a notice to leave her rented home made her feel. She'll also share her tips on how to maximise the chances of being the successful applicant for a tenancy:

"Usually right at the very start of the process I'll go and check on Rent Tracker, a website where you can set whether you're searching for the whole of the city or just a particular suburb or postcode and you can search by dwelling type, so whether you're looking at houses, apartments, etc, and how many bedrooms, to check what's been the median rent in that area over a certain period of time. And I find that really helpful just to get a sense of what shifts have been happening in the market. If you did feel like you're in a position to bargain then having that data from Rent Tracker would be quite helpful to know what's the medium in my area."

Hello, everyone. This is Law for Community Workers on the Go, a podcast for community and health workers. Hello, my name is Bridget Barker. I work in the Community Legal Education branch at Legal Aid New South Wales.

I would like to begin by acknowledging that this recording was made on the country of the digital Widjabul Wiabal people of the Bundjalung Nation and on the country of the Gadigal people of the Eora Nation. I acknowledge the traditional custodians of the land and pay my respects to Elders past, present and emerging. I acknowledge that this is Aboriginal land, always was, always will be.

This is a series called Renting Matters. In Renting Matters, we will talk about being a tenant in New South Wales. We will look at getting a tenancy, what can happen during a tenancy and how a tenancy

can end. The purpose of the series is to provide you with tips on how you can help your clients with tenancy issues.

This series will cover renting in private, public and community housing. It will also delve into other types of living arrangements, such as being a boarder, or lodger, or living in a residential land lease community.

The series is a joint project between Legal Aid New South Wales and the Tenants' Union of New South Wales. The Tenants' Union is a Community Legal Centre that specialises in New South Wales residential tenancies laws. It is the main body resourcing tenancy advocacy services across the State. It works to promote the interests of tenants across New South Wales.

The show notes attached to each episode will include links to resources and to organisations you can contact when you are helping a client with a tenancy issue. Please be aware that tenancy laws vary from state to state. So if you are listening to this podcast from another state or territory, the laws about tenancy may be different to those we talk about in New South Wales.

So let's get started with the interview with Grant.

Hi, Grant. Thanks for joining me today on this podcast. Would you tell us a bit about the Tenants' Union and your role there?

The Tenants' Union is a specialist Community Legal Centre and we deal with residential tenancy issues for tenants. I'm the Principal Solicitor and my day to day work is giving advice to about 80, mostly non lawyer tenants advocates around New South Wales. So when it gets weird, they call me.

Thank you. **So Grant, in your experience as a tenants' advocate, what should someone who is looking at properties to rent watch out for?**

First of all, Does it suit your needs? Can you afford it? does everything work? Check that the water's connected, the toilet flushes. Are there power points, enough? Are there connections for things like your television and the internet? It's best if all of the utilities are individually metered so that you can have your own accounts for things and manage that for yourself. Also, are there any need for repairs? And just don't sign up to a tenancy agreement unless you're sure, because there is no cooling off period. You are bound when that contract is made.

Okay, that's great advice. So for people who might be applying from a distance and looking at properties online, is there anything else in particular that they should look out for?

Oh the best advice there is just don't do it because we have encountered cases where the premises don't exist and people have paid a lot of money and never get it back. So if you are having to do that by remote control, then you want to be really certain that the people you're dealing with and the premises are actually in existence.

What about the rental agreement? I understand that leases have standard terms in New South Wales, is there anything a new tenant should look out for?

Yes, additional terms. There may be additional terms about what you can do at the premises, what you can do inside what you can do outside. And some of those will do what is called contracting out of the Act. The Tenancies Act says that additional terms are okay, if they don't contradict the Act or the standard agreement. So that a term that says, for example, the tenant will do repairs, is void, because the standard agreement says it is the landlord's responsibility to do repairs.

Okay, so the terms in the standard agreement set out the responsibilities of the tenant and the landlord.

Yes, that's right. And there's some extra things that landlords and real estate agents are fond of putting in, that don't really work, like, compulsory carpet cleaning if you don't have a pet. Like compulsory fumigation. Also, strata schemes have by-laws that become terms of the agreement. So breaching a by-law can be a breach of your agreement.

Can a tenant change anything about a place once they're in, such as you know, putting up hooks or painting?

They can but only with the landlord or agent's prior written consent and it should be specific. If it's about painting, it should include the colour. There are some things that are considered minor changes that the landlord can't unreasonably refuse consent for, but prior written consent is needed for any change or addition.

So if that's something that the tenant might have in mind at the start of a tenancy, then they need to raise that with the agent or landlord and then follow what you've said. Yes, that's right.

Grant, a condition report. What is that? And what should a tenant do when they're completing that?

A condition report is a description of the premises and it's usually a document that's a great big table that lists all the rooms and aspects of rooms like light fittings and window frames, power points, etc. And there's a column for the landlord or agent to mark it as clean, undamaged or working. And then there's a column for the tenant to mark it as they find it when they move into the place as dirty or damaged or not working or however compromised. For example, you would put a scratch on a floorboard into the condition report so that you're not going to be responsible for it at the end of the tenancy.

And you must get that document filled out and signed back to the landlord or agent within seven days. So it's really important because if you end up in a dispute, it's going to be the primary evidence of the condition of the premises. And so they should be filled out like a paranoid detective and you should take your own photos, because photographic evidence is really helpful in sorting out disagreements in the condition report or anything that's not clear.

So would the tenant provide those photos to the landlord or just have them in case a dispute were to arise?

I think people should keep them themselves. They are best if they're printed out and signed and dated, so that you can clearly say, I took these photographs on "date". And I dated them and signed them when I printed them. File them away with your tenancy agreement, in case you need them later.

There's also costs that people have at the start of a tenancy such as a bond and rent in advance, Sometimes a holding deposit. What are these payments for?

The bond is a security for the tenant's performance of the contract. So at the end of the tenancy, the bond is available for any amount of money the tenant owes to the landlord, whether it be for damage, or cleaning, or rent that is owed. It is limited by law to an amount equivalent to the first four weeks rent. The holding deposit is something that you may be asked to pay before you enter a tenancy contract and it means that they won't rent it to somebody else for a week while you're making up your mind. If you decide against taking it, you lose the deposit. If you do end up signing a tenancy contract, then that holding deposit is paid into rent.

Rent in advance is the normal way rent is paid. And the landlord or agent can't demand more than two weeks' rent in advance.

And what about guarantees? What are they? Do they come up very often?

The only security that can be given for the tenant's performance of the contract is the bond and so other security is void. It's actually illegal. A guarantee is worth absolutely nothing for a tenancy in New South Wales. Sometimes there are sham co-tenants as a guarantor. So for example, if somebody's mum goes on the tenancy agreement as a co-tenant, but she's never going to live there. And she's never going to pay the rent, unless something goes seriously wrong, that's a sham guarantee, and is illegal and void. However, it's much more difficult to prove that it's a guarantee than if it was just a written guarantee.

How is rent usually paid?

The law says that a tenant has to be offered at least one free way to pay rent and that could be paying at the agency that could be BPay at the post office, for example. There are what are called third party rent payment services that charge fees that some real estate agents quite like, because it makes the administration of rent collection easier, but they do cost tenants money. And even if you think the regular fee is okay, the default fees are not. If your bank account doesn't have enough money in it when the third party goes to make the transfer, then you may pay a fee to your bank for overdrawing your account. But you will also pay a fee to the third party for default under the contract you have with them. So we recommend against them.

And so if a tenant is paying rent through one of these third parties, is that still regulated by the tenancies Act?

No, it's not a contract between the landlord and the tenant. So it's not covered by the tenancies Act, except that there has to be an offer of one free way to pay rent. It's a difficult problem when the agent wants somebody to use that service. Because if you refuse, you may not get the tenancy.

Yes. So I guess then most people would tend to accept it and then someone on limited income could find themselves in debt fairly quickly. For people on limited income, is there any government support that someone renting in the private rental market might be able to access?

Yes, there is some support from the government department that is now called DCJ, Department of Communities and Justice, there are what they call "other products", and there's things like bond loans. and there's a system called "Start Safely", that helps people in circumstances of domestic violence. And they can also sometimes help you out with rent arrears, if the tenancy is viable, and you've just had a temporary problem that is going to end. So there is other help. There's also things like IPA vouchers for electricity, where money that you would spend on electricity could go into the rent account, if you managed to get an IPA voucher, from one of the charities that distribute those.

What can a worker who is supporting a client, trying to get a rental property do to help them?

I think they can help them with organising the paperwork. And they can also help them by figuring out what is affordable, and perhaps helping them with how they present to the prospective landlord or agent.

When you say how they present, did you have anything particularly in mind?

It could be how they fill out the forms. Some people will need help with different things.

What if a person has no rental history? I would think that it's difficult to be competitive for a rental property, if you don't have a rental history that you can use to satisfy the agent and the landlord.

Yes, that's a really difficult situation and arises with new migrants and overseas students, for example. The only thing that I can think of would be to present with a character reference and perhaps evidence of support that you have to help you with the tenancy. Being able to demonstrate that you're of good character, and you have the sort of support that will help you once they see that the tenancy is financially viable, could be of assistance.

I imagine it might be a problem for young people, too, who are just leaving home and haven't rented on their own before, that they would be in the same situation. Grant Do you see there are particular groups in the community who may experience additional barriers in getting a rental property?

People who are on Centrelink income, have the problem that they have very modest means, and the money really counts in getting a tenancy. There's also some problems with prejudice. For some people

who, for example, might be a new migrant, don't speak English. Well, there's been demonstrated prejudice against Aboriginal people in the tenancy market. And something we've noticed is that large families have trouble finding tenancies, especially if they are on low income

On the subject of people who experience additional barriers in the rental housing market, I'll just let our listeners know that in a later episode of this series, we will be focusing on tenants who experienced those additional barriers. So please look out for that episode.

Is there anything that you might have noticed that is a difference in the rental market between cities and country areas?

The thing that I've noticed is that cities afford anonymity, whereas in a country town, everybody knows everybody else and so your reputation locally is much more important. If you have the misfortune to have a tenancy fail, then it's likely that every real estate agent in town knows if you're in a small town.

As we're in the middle of the Covid19 pandemic, have you noticed an impact that that has had on the rental market?

It hasn't made anything easier. I think there's been a lot of trouble with people losing income and so on. Desperate negotiations occurring between landlord and tenant. Also, the pandemic is said to have caused an exodus from Sydney and so is driving rental markets in the country up in price and down in vacancy rates. So it's been difficult right across.

We'll include in the show notes for this episode links to the tenants union fact sheets about starting a tenancy. Is there anything else that community workers should know that might be available on your website?

The adviceline is listed on our website and it's currently available five days a week, so look out for that. And on the bottom of every page of our website is a postcode engine. If you put your postcode in, it will give you the contact details of the local tenants advice service, and tenants advocates are keen to work with community workers to help them out. So, between the tenant service and a community worker, they can help more tenants.

Thank you, Grant. It's been great speaking with you today. And I'm sure this information will be really helpful to community workers and tenants both.

We've heard from a tenant's advocate about getting the foot in the door and now we're going to hear from a tenant to get her perspective on getting a tenancy in the private rental market in New South Wales.

I'd like to welcome Amity to the podcast today. Amity is a tenant living in Sydney, who's agreed to talk to us about her experiences of getting that foot in the door and applying for rental properties.

Hi, Amity. Thanks for joining us today. How long have you been renting in Sydney?

I've been renting for 24 years now in Sydney.

During that time, I imagine you've had plenty of experiences having to apply for rental properties?

Yeah, I did a quick count this morning, actually, to see how many different houses I've lived in in that time. And I came up with 19 houses. Now haven't applied for a new tenancy that many times, but certainly quite a few times.

Well, that's great. We'll be drawing on that experience. today. When you've been through that, did you have any strategies that you use to help manage any stress or anxiety you might have experienced?

Yeah, I absolutely have to. I find moving very stressful. In some ways you think because I've done it so many times, I might be good at it. But certainly, that's not the case. I mean, when I was younger, and it was just me moving in and out of different share houses, I didn't find it as stressful then, because I had more time on my hands, I didn't have as much stuff. But now that it's myself, my partner and a child, it's more time consuming, because there's more to pack. And the stakes just seem a bit higher. So something I've learned is that when it comes time to move, I have to have a strategy for looking after myself in that process. Because it's inevitable that it's going to be very stressful.

One of the things I try to do is set limits on how much time I spend looking on the property apps trying to find somewhere. I've had periods where I'd be checking them literally in the middle of the night as though someone's posting a new house in my price range in my area. So I came to a point where I had to acknowledge that that wasn't helpful, that I did need some sleep. And so I do try and set limits around how many times per day I'll look at that.

Is part of the reason that you would be looking at those apps late at night because it's a very competitive rental market?

Absolutely. Sydney has really gotten very competitive in the last 10 years or so. It's not unusual in Sydney for people to have to offer higher than the rent they're already asking for. And if you look at how much rents have gone up in Sydney in the last 10 years, there's already little to nothing that is affordable on a basic wage. So, when you're faced with having to think about offering higher, if you find somewhere that suits you, it is really, really stressful.

You know, sometimes there's 40 families lining up at a house and you just kind of know, know, they can only approve a lease for one of those applications. That's part of where a lot of the stress comes from is the "what if we don't find somewhere before a date we have to be out of this house?".

That's completely understandable especially when you've got a child relying on you providing somewhere safe for them to live.

With kids involved, there's a lot of emotional work that you're having to do as well for kids. It can be really unsettling to move. So you know in the recent move that we did, really our biggest priority was to be able to stay close enough to not have to change schools, because my child loves his school. So I was really determined to try and keep him at the same school. So that really limited our options. Because you know, there's only so many suburbs that are within bike riding distance of the school.

But I guess that's probably the case for many people. They'd like to be within a certain distance of work or a community that they already have connections with.

Every time we have to move we kind of do the maths on "Do we move further out, so we can get cheaper rent?" But then we want to ride our bikes to work, so then we're paying for public transport. And there's always kind of things that you're juggling up every time, I start out with a list of like, these are the things that we need. And the longer you're looking and the closer you get to you know, the date that they're selling your house, or, you know, the landlord's moving back in or whatever it is the reason you have to be out, the list of things that I want in the house gets shorter.

That's really good information for people to think about - what it is that you want in a property and make a list of it and that, I imagine, helps you when you're searching for a property to rent.

And then how much, you know, rent, we're willing to pay kind of changes with that as well. There's been times when we've moved, and we might have kind of gone with "That's as much as we can afford" but you often end up having to go "There's nothing available in that price range", so you have to go up a bit and just accept that, like, we might not buy as many groceries or have less doctor's appointments or something. But you know, we always try and get a trade off with that. It's like, Okay, well, if we have to accept that our rent's got to go up, there has to be something about the house that's better than the one that we're in.

Now, as a part of your process when looking for a rental property do you use any particular resources or apps that you've found helpful?

Yeah, so I usually use the Domain.com app. And I'll also check things on Realestate.com. So I use those a lot. And usually right at the very start of the process, I'll go and check on Rent Tracker, a website where you can set whether you're searching for the whole of your city or just particular suburb or postcodes. And you can search by dwelling type, so whether you're looking at houses, apartments, etc, and how many bedrooms, to check what's been the median rent in that area over a certain period of time. And I find that really helpful, just to get a sense of what shifts have been happening in the market. It kind of gives you a sense of like what you can expect to be looking at, as well. If you do feel like you're in a position to bargain, then having that data from Rent Tracker would be quite helpful to know, "What's the median in my area?"

That sounds like a great resource for people to use. And you talked about looking at advertisements on real estate apps. Is there anything that you can tell from the advertisements?

Yeah, there's some things that are real red flags for me, you can look at something in an ad and you, you kind of almost have to go to the inspection expecting to be disappointed, because that is kind of the norm, like most ads are showing photos from years and years ago. So often you get to a house and you're like, Oh, this is not what it looks like in photos. Like, that's just kind of the norm. There's nothing too shocking about that.

Some things are a bit more shocking, like we found in the round of house hunting that we did towards the end of last year, we were hoping to get somewhere with a little bit of a backyard and often we'd turn up to somewhere. And you know, the key thing we were excited about with regards to this house was it looked like it had a great backyard in the photos and you know, we check on Google Maps as well and be like, Oh, yeah, cool. It's got a good backyard might get some nice sun. And then you'd get there and find that there's actually now a fence right at the very back of the house and what was the backyard is now another house that's been rented.

What else? So you know, you can't always tell from the ad, what the house is actually going to be like, going back to like those sort of online property websites or look at the property history. When we were looking last time that we noticed that it's been a new tenancy every year or two. And for me, that was a bit of a red flag. Like why aren't tenants staying in that house? Whereas if you can see that, you know, the last time the house was leased out was five years ago and it wasn't leased for another few years before that, then that potentially, that landlord is going to treat the house and the tenants a bit better than other ones.

So that puts up a bit of a red flag for you if a property's turning over tenants on a fairly short term basis.

Yeah, for me that that is a bit of a red flag but I do wonder if the one property has had tenants moving out every year, then I'm like, why didn't they stay? Like what kind of essential repairs is that landlord not willing to do that makes people move out so frequently?

I take from that, that you place a lot of importance on actually going and inspecting the property.

Yeah, definitely. I mean, they only ever open them for 15 minute windows in Sydney but I'll always make sure that I kind of get there for as much of that as I can. It can be hard to inspect properties, though, because a lot of the time they are bringing prospective tenants in before the current tenants have moved out. So it is actually quite hard to get a sense of what condition is the house in, in that regard, because if it's full of furniture, then you know, you might not be able to see how much mould there is on the walls and carpets and stuff.

One of the other things that we kind of keep an eye out for as well is often the ad will say, "bills included" and that's something that's also a bit of a red flag for me because it means that they're not separately metered, which often means that, you know, it's actually a house that's been divided in half, and the landlord lives out the front and is renting out the back half of the house, or possibly it's, you know, split and it'll be two different tenants.

I'm usually a bit wary of that, because I don't really want to my landlord living on my doorstep and checking over every day to see what I'm doing and not doing so. - not that I've got anything to hide, but I just the sort of right to privacy is really important to me,

Amity, is there anything that you do to prepare for house inspections?

Absolutely. If we think it's a house, we're likely to want to apply for, I'll make sure I've got all my documentation ready before I go there. Because if I do want to put in an application, you basically need to try and make sure yours is one of the first ones that lands on the Property Manager's desk, or sometimes I'll even bring it to the inspection.

I do treat it a bit like a job interview, I'll always make sure I dress very kind of smart and respectable. because I do feel that property managers are going to make certain judgments based on what you look like at the inspection. If they've got 10 applications sitting on their desk on Monday morning, I think they probably are going to use their discretion about which applications to prioritise,

I guess as well just like emotionally preparing myself like okay, we're going to look at six houses today, just like try not to get my hopes up too much. Because there is a I mean, there's such a vast difference in types of properties here.

So when you talk about taking paperwork with you to an inspection, when you think you'll want to apply for the property, what sort of documents Do you include in that paperwork?

Ah, there's so much paperwork, they always want a certain number of identification documents. Most real estate agents in Sydney will ask for your bank balance or some even asked for bank statements. Most will ask for a number of references. Like they want to know, what are the last few properties you rented? I have had some application forms where they've asked for property references and employment references and character references. And so I usually try and have those already beforehand. The last time when we started applying for houses, we had a cat we had for a very long time, so we used to always have a pet reference as well. We've had references written from previous landlords about him just to verify that they have a cat. They're responsible pet owners, and the cat has never damaged my property. And then we also usually write a cover letter for any application for our house to really just sort of say a bit about us. You know, we're a nice little family and just kind of introducing ourselves maybe say something that we like about the property, why it suits us and so forth.

When you've been successful in getting a tenancy, there's a condition report that you need to complete within seven days of moving in. Do you go about that in any particular way?

Yeah, I've learned over time that it's really worth investing some serious time and effort into that condition report, because almost always the one that you receive ticks "working and clean" for pretty much everything, regardless of the state that the things are in. And so I go through that pretty thoroughly and I make a note of anything, even just slight cracks in tiles or marks on walls or scratches on the floor. I just record all of that stuff on there because I have, unfortunately seen landlords that will try and gouge you for your bond when you're moving out even if it's stuff that most of us would consider

wear and tear. And I always feel like filling out the condition report really thoroughly at the beginning can hopefully protect you when you get to the end of the tenancy.

And do you take photos of anything when you're doing the condition report?

Absolutely, I take photos of pretty much everything, saved them in multiple ways. You know, so little about your landlord when you, ever really. I mean, that's one of the things that really annoys me about the application process is you have to give them so much information about yourself. And you get nothing about them, like you don't know, can they afford to do essential repairs, if they happen? Are they the kind of landlord that's being taken to the tribunal over and over again, for not fixing things that needed to be fixed, or for you know, turning up at the house every weekend to randomly come and do things in the backyard without giving you any notice? So there's a real imbalance of power in terms of what they know about you and what you know about them. So I just sort of work on the assumption that I need to protect myself in case they're one of those landlords.

Amity, when you're renting, you're often dealing with a property manager from a real estate agency. Do you have any particular approach in terms of the relationship that you have with them?

Yeah, I guess I do, I guess I treat it a bit like a kind of a professional relationship, in a way. I mean, they know so much about me, and I just feel like I need to keep it quite, you know, like a workplace, or kind of business like transaction in a way. It just feels like they're not your friend.

Always keep it very courteous. And another thing I would say about the relationship to the property manager is I'll make sure I put things in writing as well. So even if they've called me about something, and you know, we make an agreement about whether or not someone's going to come and fix it, I'll follow up with an email just "Hi, thanks for your call, just writing to confirm that so and so is coming on Wednesday", or whatever, just so we've got a kind of written record of things that have been agreed to or noted. And saying with any like, if there's any issues in the house, I'll put it in an email so that if a year down the track, that thing becomes a serious issue, you've got a record where "Well, I actually did tell you about that and you chose not to fix it."

Thank you, Amity for your wise tips that you've drawn from your experience as a renter over the years.

That's the end of the first episode. I hope you've found the information in this episode useful and it'll help community workers assist clients and if there are any tenants listening that there's useful information to help you next time you're applying for a tenancy.

Please have a look at the show notes listed for this episode because there's useful links to fact sheets on the Tenants' Union website, and organisations where you can go to get help if you encounter difficulties applying for a tenancy.

Our next episode will focus on problems that arise once you are in a tenancy. So please join us again for the next episode to get some useful tips and information about how to manage problems as they arise.