

Renting Matters Episode 4 Hit The Road Jack

00:04

Hello, everyone. This is Law for Community Workers on the Go, a podcast for community and health workers. 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 Widjabul Wyabul 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.

In this episode of the tenancy podcast, we discuss eviction - when the landlord ends the agreement. We speak to Justin, Assistant Principal Solicitor at Marrickville Legal Centre, who gives his tips for community workers.

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"The best thing to do for the client is to warm refer them to their local tenancy service at the start. It's very important it's not left to the last minute because the quicker they get to us, the quicker the service can take some action for the tenant and potentially save the tenancy. It's very important, especially in Community and Public housing matters that the clients get to us quick so we can do some dispute resolution rather than wait till it's already at the Tribunal.

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We also speak to Alison and Amanda, solicitors working in Redfern Legal Centre's Tenancy and Housing Service who offer some advice to tenants about when they have to leave, once their tenancy has been terminated.

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"But I think it's important to note that even when a tenant has been issued with a notice of termination, the landlord cannot just force them out of the property on the vacant possession date that is provided for in the notice. The landlord will always, before they're able to get a tenant to move out, need to make an application to the Tribunal seeking termination and possession orders. And then, if the tenant is still in the property after the possession date that's ordered by the Tribunal, then the landlord would need to apply for and be granted a warrant for possession and then have that executed by the Sheriff from the Sheriff's Office in New South Wales. So until that process has been gone through, a landlord cannot forcibly remove a tenant from the property."

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This is a series called Renting Matters. 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 in 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.

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.

I'd like to welcome Justin to the podcast. Justin is a very experienced tenants' advocate and is Assistant Principal Solicitor at Marrickville Legal Centre. Justin, thanks for joining us today. Would you please tell us a bit about Marrickville Legal Centre and the tenancy work you do there?

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Thanks for having me. Marrickville Legal Centre is a Community Legal Centre. It's a generalist service and we operate a lot of different auspiced services, including two tenancy services being the Interwest Tenancy Service and the Northern Sydney Tenant Service. We also have a statewide strata service that sometimes does advise tenants who live in strata schemes. In tenancy we predominately cover social and community housing, private tenancies, boarding houses, lodgers, share houses and tenants that live in strata schemes as well.

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As you know this episode is about what happens when a landlord wants a tenant to leave. What would be your top tips for tenants who receive a notice of termination?

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I probably have two main top tips and one would be first to check if the notice is actually valid. Is it in writing? Has it been signed? Does it set out the address of your tenancy? Does it say what date you need to leave? Is the grounds ticked (if there is a ground) and most importantly is the notice period correct? The validity of the notice is important to determine what your next steps might be.

The second main tip I'd have is you're actually not required to leave on the day that the notice says, contrary to what many agents and landlords will tell you. And the landlord cannot evict you without an NCAT order.

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I guess another piece of advice might be to seek advice before they act.

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Yes. And there's local tenancy services throughout New South Wales and there's the Tenants' Union and we're available to assist tenants when they do receive a notice of termination and teaching them best how to respond to those notices.

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Justin, what does the landlord have to do to end a tenancy agreement?

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In most situations, for example, if a tenant has fallen behind in rent, or there's an alleged breach, such as the premises not being clean, the landlord has to serve you a notice of termination. In some other situations, in limited circumstances, a landlord can sometimes apply to the Tribunal to terminate a tenancy without a notice and there are also some situations where an immediate notice can be used, for example, if a premises becomes unusable due to a fire or a flood as an example. The important thing I think, to know as a tenant is the landlord cannot ask you to leave without a notice or a Tribunal order. So there are many situations that might apply. But that's the most important thing to know if you do receive a notice of termination.

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And is the process any different for different sorts of tenancies?

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Yes, it can be in some situations. I'll give an example. So if you if you are in a fixed term, you know, you've got a six month residential tenancy agreement at the end of that agreement, the landlord could issue a 30 day no ground notice to say they want you out, because the fixed term is expiring. If you're in a periodic lease, for example, which runs week to week, they would have to issue a 90 day notice. So there's different kinds of notice periods for different sorts of tenancies. And in the world of tenancy, there's many scenarios that exist. Another example if you're a sub-tenant without a written agreement and your head tenant lives there, then you're only entitled to reasonable notice. So there are definitely different sorts of notices for different sorts of tenancies.

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What sort of grounds do you most commonly see being used by landlords to end a tenancy agreement?

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Unfortunately, most common grounds we see are what we call "no grounds". So in New South Wales, it's still legal for a landlord to issue a "no grounds" notice. And that can be when your fixed term is coming to an end, but more often, when you're in a periodic agreement, and the landlord simply just wants their premises back. It often even happens in situations where there might be a dispute about a breach or you might be in rental arrears, but it's easier for the landlord to just give you a "no grounds" notice to get you out. And the reason for that is when you're served a "no grounds" notice and it goes to the Tribunal, the Tribunal has to terminate your tenancy. There's no discretion there, whereas they have a lot more discretion when we're talking about things like an alleged breach or rent arrears. So we see that "no grounds" is used most often as the easiest way out for landlords to end tenancy agreements.

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And Justin is that typically the grounds that you will see used when the landlord wants to sell the property?

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Interestingly, yes. It's a bit difficult during a fixed term. But sometimes if a landlord wants to do renovations before selling the premises, they will give a "no grounds" rather than a sale of premises termination.

Justin, what is a section 92 eviction?

Broadly a s92 deals with termination for things like threats, abuse, intimidation, harassment. It's where your landlord is alleging that you or someone that lives with you is either persistently or seriously threatening or abusing them, the real estate agent or allowing that kind of conduct to happen. It's not very common, particularly in private tenancies, but they do arise sometimes in more vulnerable housing scenarios. For example, in community housing matters. And they often, in my experience, arise just due to miscommunication and frustration of process. Broadly speaking, it deals with threats, abuse, intimidation and harassment allegations.

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So the allegations about that behaviour can be either against the landlord themselves or workers in public housing or community housing offices. Is that correct?

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Yeah, so s92 does extend to employees and contractors of the landlord or their agents. So for example, in a community housing scenario it would include the client service officers that work at the main office.

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Are you ever able to resolve those evictions in the tenant's favour?

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We, more often than not, resolve s92s outside of the Tribunal through dispute resolution, negotiation with the providers. As I said, they often come from vulnerability, miscommunication and frustration, rather than a genuine desire to threaten abuse intimidate or harass. So we are more often than not resolving these outside of the Tribunal.

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More broadly in what circumstances can tenants fight or oppose a notice of termination?

Almost in

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any situation, a tenant can respond to a notice of termination. For example, if you disagree with a rent arrears that the landlord is claiming, or if you disagree that you are in breach then you can fight the notice. You don't have to leave on the vacant possession date in the notice. The landlord then has the option to say "Well okay, I'm going to take this to the Tribunal for a termination order", and you get a

right of reply at the Tribunal. When we're dealing with things like breach, for example causing a nuisance or the premises not being reasonably clean, the Tribunal has a lot of discretion. Even if they've found a breach has occurred, they can state the breach is not sufficient enough to justify termination. And they consider many factors like "What is the breach? What's the history of this tenancy? What's the age of the tenant, their state of health, their employment, their hardship? and "Has the tenant remedied this breach? Is it now a stale termination notice that's no longer relevant?" So there's definitely grounds for tenants to find those notices, particularly around breach. "No ground" notices can be more difficult, but there is a possibility there to fight back a "no grounds".

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Justin, the areas your service covers for advice include suburbs where there are lots of apartment buildings. Are you seeing any particular issues or patterns of evictions relating to those large apartment complexes?

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Yes, we have quite a few large apartment complexes, particularly in the Northern Sydney area. I think the COVID pandemic has brought up some interesting patterns and issues for tenants in those complexes. We have seen a large increase in breach notices for things like noise and nuisance. And that's breach notices coming both from the landlord and from the Owners Corporation of the Strata Building. We've also seen an increase in "no ground" notices. I'll give an example. Recently, we've seen quite a large private provider who has turned their large apartments into residential tenancies, which they were not before the COVID pandemic, and then they've been trying to terminate all the tenants recently, to get the apartments back for the original use. What we've found is that a lot of the termination notices are old, invalid, and the providers are asking tenants to leave with very minimal notice. So the reliance on these expired notices to have the tenant removed is invalid and doesn't work. And that's the kind of pattern we've been seeing with these large complexes.

I guess 11:51 the pandemic has brought up all sorts of previously unforeseen problems that filter down to tenants renting in different situations.

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Yeah, absolutely. Unfortunately, we have seen that rise in neighbourhood disputes during tenancies, which can have a flow on effect that can lead to termination. For example, if your Owners Corp issues you a breach of bylaw, your landlord can then use that to try and terminate your residential tenancy agreement.

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I suppose in a situation where, especially in Sydney, there's been an extended lockdown where people are in their homes for more significant periods of time, then these sorts of issues are likely to arise more frequently.

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Absolutely. Because they're not issues we saw as much as we have seen during the lockdown because people are working from home and naturally are more sensitive to the noise when you're actually at home.

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Justin ,this podcast series is for community in support workers, as well as for tenants. Do you have any tips about what community workers supporting clients who receive a notice of termination could do to assist them?

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The best thing to do for the client is to warm refer them to their local tenancy service at the start. It's very important, it's not left to the last minute because the quicker they get to us, the quicker the service can take some action for the tenant and potentially save the tenancy. It's very important, especially in community and public housing matters that the clients get to us quick so we can do some dispute resolution rather than wait till it's already at the Tribunal.

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So Justin, they're all questions that I had for you today. Is there anything else that you wanted to add?

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I'll just really stress that it's very important to check the validity of the notice. And to not think you need to leave on the date set out in the notice, which is the most common misconception our tenants that approach us have, because more often than not the landlord or the real estate is not going to tell you you can remain there, if you've got nowhere to go. They will keep asking you to leave on that date. It's your right to stay there post the vacant possession date and then it's the landlord's right to go to NCAT and depending on the type of notice for example, if its breach, you'll have a right of reply.

And finally 13:59 Justin, are there resources on Marrickville Legal Centre's website that you would direct tenants to?

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We do have some resources. I would probably direct tenants more to the Tenants' Union fact sheets because they're well thought out and very extensive.

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That's great, Justin, thank you.

Thank you. That was Good.

I'd like to welcome Alison and Amanda to the podcast today. Amanda and Alison are solicitors working in Redfern Legal Centre's, Tenancy and Housing Service. Thank you both for joining me this morning. Could you please tell our listeners a little bit about Redfern Legal Centre and the work you both do there?

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Absolutely. My name is Amanda. Like Bridget said I'm a tenancy solicitor in our Housing and Tenancy team there. Redfern Legal Centre is a Community Legal Centre and it's situated in the inner suburbs of Sydney, New South Wales. We have a really broad range of practice areas that our solicitors work 15:00 across and they include tenancy and International Student Support Services. We have a Financial Abuse Service, Police Accountability Practice and various Employment Law services as well. So there's a really broad range of work that Redfern does. But Alison and I give free legal advice to any renter that is within our catchment area.

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And what is the catchment area that you cover and what mix of housing is in that area?

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So we have a really broad mix of housing in our area. We're obviously situated in the inner suburbs, so our catchment area goes all the way from Balmain and Leichardt in the north west, across to Erskineville, and Newtown in the inner west, down to Eastlakes, Botany and Mascot in the south, and right across to Rushcutters Bay and Elizabeth Bay as well in the east. So obviously that encapsulates the whole of the inner suburbs of Sydney and so we have such a broad range of housing. We have a lot of public housing tenants. We have a load of private housing tenants and we also have some unusual mixes of a lot of boarding houses and also share housing tenants as well.

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This episode is about when a landlord ends a tenancy agreement. Would you please tell our listeners about the different circumstances in which a landlord can end a tenancy agreement and what notice they have to give to end the agreement?

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Sure, there are quite a few ways that a landlord can end a tenancy. Most do require them to first issue a tenant with a termination notice. The main ways that a landlord can end a tenancy include where the landlord wants to end the tenancy at the end of a fixed term. If they want to end the tenancy at the end of the fixed term, they need to issue a tenant with a notice of termination, giving them 30 days to vacate the property. And so that 30 day notice period must include the last day of the fixed term. So what I mean by that, is that they could issue an end of fixed term notice 30 days before the end of the fixed term requiring that the tenant move out, give vacant possession on that last day or on the other end of the spectrum, they could issue a tenant with a notice of termination on the very last day of the fixed term, which would require them to give vacant possession for 30 days after that.

A landlord can also terminate a tenancy in a periodic agreement, so a month by month or a rolling agreement where there's no fixed term on a "no grounds" basis, but they need to give 90 days' written notice in order to terminate a periodic tenancy. And then in circumstances where the landlord is alleging that the tenant has breached the agreement in some way, they can also terminate on that basis. So in most of those circumstances, they're required to give 14 days' notice through a notice of termination to a tenant in order to terminate the tenancy for breach but there are some circumstances for some alleged breaches that are more serious, such as serious damage to the premises or alleged injury to a

landlord or a landlord's agent or use of the premises for an illegal purpose, for example. A landlord is able to make an application directly to the Tribunal, rather than just issuing a notice of termination.

I think it's important to note that even where a tenant has been issued with a notice of termination, the landlord cannot just force them out of the property on the vacant possession date that is provided for in the notice. The landlord will always, before they're able to get a tenant to move out need to make an application to the Tribunal seeking termination and possession orders. And then if the tenant is still in the property after the possession date that's ordered by the Tribunal, then the landlord would need to apply for and be granted a warrant for possession, and then have that executed by the sheriff from the Sheriff's Office in New South Wales. So until that process has been gone through, a landlord cannot forcibly remove a tenant from the property.

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I should also clarify for any listeners that might not be aware of the term a “fixed term agreement” means that when you are still in the period of a tenancy agreement that you've signed for a particular period.

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Yeah, that's correct. So a fixed term agreement could be anything, you could have an agreement that says that you agree to stay for 3 months, or for at least six months or 12 months, and it's generally a specified term, it will have a start date and an end date. That's what an end of fixed term agreement is. Whereas a periodic agreement, it doesn't specify a term, it's open ended and continues week by week or month by month.

It's also interesting to note with periodic agreements is that once a fixed term expires, the tenancy agreement will just automatically switch to a periodic agreement. So if you're outside the term of your fixed term, say your 12 months finished last week, you're now automatically on a periodic agreement.

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And also when you're on a periodic agreement, the rights and obligations that you have in the fixed term continue the same. Yeah, that's correct.

You mentioned “no grounds” notice of termination, there what are they?

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So a “no grounds” termination, notice is effectively a termination given by the landlord for no reason. So, in New South Wales, the landlord is entitled to the property back in, in certain circumstances, and those are at the end of the fixed term if they want it, or at any point during a periodic agreement. So, those notices that Alison talked about being the 30 days to the end of the fixed term or the 90 days in the periodic agreement are the “no grounds” notices that we have in New South Wales and they can be given without needing to provide a reason why the landlord wants to end the agreement.

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What other grounds do you see in notices of termination?

The biggest one that we see and probably the most common one other than “no grounds”, notices that are issued, are notices for breach. And so a landlord can give a notice of breach to attendance requiring 14 days to leave the property for any breach the Residential Tenancies Act or agreements. So that can be for things like rent arrears, for any sort of other breach like damage to the property or unlawful use of the property. It can be for interfering with other neighbours’ quiet enjoyment of their properties. It can be something as maybe as minor as having a pet on the premises where there hasn’t been express permission given to have a pet and things like that. So that’s another really common one. So there’s termination notices for things like death as a sole tenant or for frustration of an agreement, which can often be used improperly by landlords as well. So yeah, there are a wide range of ways or grounds that can appear in a termination notice. Sale of the property is another one, but breach is the biggest one other than “no grounds” that we see.

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And in relation to these other grounds. Does the Tribunal have any discretion when determining the orders that they make?

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Generally, yes. As we said earlier, once you get a termination notice, there’s no requirement for you to move out in accordance with that termination notice, and there’s a legal process that then needs to happen through the Tribunal. Generally, the tribunal does need to check that the termination notice was given validly. And in cases of breach, the Tribunal will also need to figure out on the evidence that’s presented to them, whether they believe that a breach did actually occur, but then also whether or not they see that the breach is sufficiently serious enough to justify the termination. So the Tribunal will look at what the breach is, whether or not that’s been shown on evidence to have happened. And then they will look at all the circumstances surrounding the breach, and the consequences of termination for both the tenant and the landlord. And they’ll do this weighing up exercise and then determine whether or not they will terminate the tenancy or whether there’s some other remedy available to the landlord like an order that requires the tenant to do as they’re supposed to do under the Act.

There are some exceptions to this though. And one really notable one is where a social housing provider is attempting to terminate a tenancy on the basis of illegal use of the property or an unlawful use the property. And there are some uses of the property, which will effectively remove discretion from the Tribunal in terms of termination. And there’s quite a legal and complex process in terms of arguing those cases to give discretion back to the tribunal. In the majority of circumstances, the Tribunal does have discretion in what it will do, but in some circumstances, and particularly as they relate to our more vulnerable clients, that discretion has then been removed.

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Alison, I understand that you have helped a client who has been terminated on the grounds of illegal use, which Amanda has mentioned. Could you tell us a little bit about the case, the background situation and the legal issues involved in that matter and I guess also how the matter resolved?

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Yeah, sure. So this client was a public housing tenant. An elderly man with significant physical disabilities, as well as mental health issues and he was being terminated by the Land and Housing Corporation or they were seeking termination on two bases. So, under the general breach provisions, which Amanda touched on before, under Section 87 of the Residential Tenancies Act and as well on the basis of illegal use, which is, again what Amanda was touching on. Where there is an application for illegal use and the tenancy is a social housing tenancy that brings with it mandatory termination of the tenancy, unless certain exceptions are satisfied.

And so, the exception that is relevant to a section 91 application, essentially, in order for a tenant to allow the Tribunal to have discretion not to terminate the tenancy, they need to demonstrate that either themselves as the tenant or an occupant of the property is either a child, someone who in whose favour and AVO has been made or could be made, or they're a person suffering from a disability within the definition of the Anti-Discrimination Act. And as a result of one of those things, they would suffer undue hardship if the tenancy was to be terminated.

So we put on a variety of different arguments, we were actually arguing that he did not breach his residential tenancy agreement. We were saying that he did not intentionally or recklessly cause or permit his premises to be used for an illegal purpose, which is what Housing were alleging. I suppose the background to this, which gives a bit of context is that due to his physical disabilities and illnesses, he was unable to complete daily tasks for himself. So, including doing his washing, doing his cooking, he struggled with all of those types of things. So he'd had a friend who was coming in and staying with him a couple of days a week, who was assisting him in doing those everyday tasks. And he really did rely on her for help. But unbeknownst to him, she was charged with the supply of drugs from his property. As a result, because he's the tenant, that is why Housing made the application against him.

We argued that he didn't intentionally or recklessly cause a permit the property to be used for an illegal purpose because he didn't have any actual knowledge about what was going on. He also did inquire with his friend about what she was doing, because he did have some suspicions, but she told him nothing was happening, and that he didn't have anything to worry about. And I guess he had no reason to doubt her, she was his friend. And also he relied on her so heavily. I think there was an element of her potentially taking advantage of him and of that trust in her actions.

And so in the end, we were also able to put on evidence that he did have a disability to satisfy the definition in the Anti-discrimination Act, because he had a mental health issues. And we were able to get him to see a psychologist and get a report that really assisted us in putting forward that argument. So as a result of that, the Tribunal did ultimately determine that section 91 was not satisfied, that the landlord was not able to prove that under section 91, with the mandatory termination, that he had intentionally or recklessly caused or permitted the use of his property for an illegal purpose. But because they had also applied under the general breach provisions and issued him with a notice of termination, the Tribunal did ultimately say that he was vicariously liable for the actions of his friend. So because he'd invited her into the property, therefore, he is responsible for any actions that took place while she was there. But they did determine that, despite that in the circumstances, and due to the hardship that he would face if he was made homeless, it was not sufficient in the circumstances to

justify the termination of his tenancy. And so the outcome of it was that a Specific Performance Order was made. So what that means is there was an Order made by the tribunal, which just required that he comply with the terms of his tenancy agreement, and specifically not to use the property for an illegal purpose moving forward.

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That sounds like a very complicated case, but a wonderful outcome for the tenant involved.

Yeah, it was a really good outcome for him. I do think though, it highlights an issue that we see a lot. Particularly in our catchment area, because it's so densely populated with social housing tenancies. That issue is that in a lot of cases, a landlord of the social housing tenancies tends to see termination as the first option rather than trying to work with a tenant to resolve any issues or link them up with other support services. And really, termination and making someone homeless in every case but particularly for this demographic of clients, who are going to suffer such undue hardship, if their tenancies are terminated, really termination should be a last resort, not the first resort. And the fact that we have so many tenants having to come to us for assistance to try and get this outcome, I think that shows there are problems with the system and the legislation as it is.

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With unlawful lockouts, where people's goods are left behind, is there anything they can do in those circumstances to get their belongings back?

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Absolutely, I mean, the first port of call is always to arrange or trying to negotiate a time with the head tenant or the landlord to get your things back. They are required to give you an opportunity to get them back. So this is dealt with under the Uncollected Goods Act. And it actually outlines a landlord or head tenant's obligation in relation to goods that are left behind. That includes giving you an opportunity to come and get them back, not disposing of them without adequate notice. And the kind of notice and how much notice they need to give depends on the value of the goods that are there.

So if you're ever in a situation where the landlord is refusing that you can come and get them or saying they're going to throw them out, an application can also be made to the Tribunal to deal with those things. And the Uncollected Goods Act is broken down into value of the goods, obviously, and different kinds of notices depending on what the goods are, but Fair Trading has a really great factsheet on what the obligations are in relation to those goods. So if you just Google "Fair Trading uncollected goods" that fact sheet will pop up, and it provides a really great overview of that legislation.

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Thanks, Amanda. And I should note that in the show notes, and for this episode, I'll include a link to that fact sheet for our listeners.

Another issue that can arise in relation to the ending of a tenancy by the landlord is the issue of retaliatory evictions. What are they?

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So retaliatory evictions are where a landlord gives the tenant a termination notice, it can be a “no grounds” notice, or it can be another kind of notice directly in retaliation to a tenant trying to enforce their rights under the Residential Tenancies Act or agreement. So, the most common form of retaliatory eviction we see where a tenant is in a periodic agreement, that's no fixed term, can be terminated at any time and they want to get repairs done to their property. And so quite often, they can struggle to do that. They say to the landlord, “Look, we're going to consider taking it to the Tribunal so that you fix the leak in our roof” and the landlord turns around and gives them a 90 day termination notice on “no grounds” basis and that can be considered a retaliatory eviction.

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Are tenants ever successful in raising that as an issue in the Tribunal?

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Sometimes they are. It's a high bar. You need to be able to show that the landlord had the motivation, wholly or in part (that's the words of the Act) to serve this notice as a result of you trying to enforce your rights. So the best way for that to be shown is when you say I'm going to go to the Tribunal to get repairs done.” And they in the email back to you say “Well, here's your notice of termination, get out.”

That would be a fairly straightforward case and would probably hit the bar, but quite often, that doesn't happen. And so we see that on the evidence that most tenants come to us with, whilst we could see it could be retaliatory, it would fall down in the Tribunal, because it doesn't meet that high bar of showing that the landlord was motivated to serve you that notice because you were trying to enforce your rights as a tenant in New South Wales.

And additionally, we have seen sometimes people be successful in their arguments, but then still had the termination order enforced because the relationship between the landlord and the tenant has broken down to a point where the Tribunal says well, it's not worth keeping the tenancy on foot. So yes, you've jumped over the bar that we require to consider this retaliatory but in the end, we'll still terminate the tenancy on the basis of the relationship breakdown.

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So whilst we have this legislation, which does offer some protections for tenants, it seems that there are areas for potential law reform as well. Absolutely, yeah.

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When a tenant has to leave a tenancy because they're being evicted and the appropriate orders have been made by the Tribunal, what are their obligations about payment of rent?

In relation to a situation where a tenant has been issued with a notice of termination, they can at any time move out in accordance with that notice. If they're in a fixed term agreement, and they've been issued an end of fixed term notice, even if they move out before the end of that notice, they'll be liable to pay rent up to and including the last day of the fixed term. If on the other hand, it's a periodic agreement, and they've been issued with a 90 day “no grounds” termination notice, they can leave at

any time after the issue of that notice, but they'll be liable for rent up to and including the day that they give vacant possession of the property.

And if they're still in the property, if they don't move out in accordance with the notice, and it does go through the correct legal process that we've been continuing to talk about, they will be required to continue paying rent up to and including the day that the tenancy is terminated by the Tribunal. And then if they're still remaining in the property after the termination orders have been made, the Tribunal will often order what is called an "occupancy fee". It's essentially the rent broken down into the daily "occupation fee" and that will also be payable until they've given that vacant possession of the property.

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This particular series focusing on tenancy forms part of legalised law for community workers podcast, what tips do either of you have for things that community workers can do to support clients who received a notice of termination?

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I think as a starting point, there are very good fact sheets on the Tenants' Union of New South Wales website. There is one on a situation where the landlord has asked a tenant to leave and it does provide basic information but very accurate information about a tenants' rights in those circumstances. I'd say as a starting point community workers could either have a look at that themselves or direct their clients to have a look at those resources.

And another thing that community workers can always do is to get in touch with their local tenants' advice service or the clients' local tenants advice and advocacy service. And they can do that on behalf of the tenant and get in touch with a service like ours at RLC. And they can receive a call back or their client at least will receive a call back and can get some advice. There are a couple of tips that I would recommend.

35:08

Yeah, it's worth noting as well that the advice and advocacy services that are run out of Redfern Legal Centre in relation to tenancy run across the state. So we have our local catchment area. But there are also tenants' advice and advocacy services for just about every catchment area across New South Wales. So if you're not in the inner suburbs of Sydney, don't fret. There is advice that can be given to your client, you just need to search on the Tenants' Union website what those contact details are, so don't be afraid to reach out.

The second one is some of these tenancy ending events can be really complex, particularly and if you're a community worker, you're likely dealing with more vulnerable tenants, you know tenants who've experienced trauma or domestic violence or who are looking potentially at being homeless. And so some of these questions can be complex so getting advice, but also realising that there are other resources out there. Legal aid may not be able to take on a matter and represent, but there are other grants to assist with things like expert reports from psychologists and things. So if you're dealing with a social housing termination matters that's something that would be really useful to you and your clients

Also, as well realising that, and being really clear with your client, that just because they've received a termination notice, it does not require them to move out. So that's something that we often see is that sometimes tenants come to us or community workers come to us and they say "This is what's happened and the tenant's moved out", or "the tenants' about to move out". And once that happens, there's not really much we can do in terms of saving the tenancy because the tenancy is already over. But just realising that there is a legal process that needs to take place before somebody can be removed from their premises. So it's not actually a requirement for a tenant to move out in accordance with just a termination notice that's given to them.

36:56

That's really great information. And I should also mention that the Tenants' Union website has the postcode finder and if a community worker searches on that, then they'll be given the details of the local tenancy service to where their client lives.

Thank you so much, Alison and Amanda. Is there any final things that you would like to add on this topic?

37:19

Yeah, you're not alone in supporting clients through this stuff, there is some really difficult things that come up and there are really complex areas of residential tenancy law, and boarding houses and share houses and trying to figure out why your client falls. Our services a huge assist you in doing that, and even if it's not in a representation form, so even if we don't fully take it off your hands, we're a really good resource for backup. And that's the priority of our service as well is to backup community workers that are dealing with these issues. So just to bear that in mind as well.

37:50

Thank you and we will also include in the show notes, a link to the Redfern Legal Centre website so community workers can look for information about your tenancy service and the other services offered by Redfern Legal Centre. So once again, thank you so much for your time and for the information that you've shared and for the fabulous work that you do in your service.
Thanks Bridget.

That's all for this episode. Thank you for joining us. Please stay tuned for our next episode, which will be out soon. That episode will be about living in a residential land lease community in New South Wales. Please also have a look at our show notes for links to useful Fact Sheets and websites where you can get information and support