



## BRIEFING PAPER

### Residential Tenancies and Housing Legislation Amendment (Public Housing— Antisocial Behaviour) Bill 2015

Redfern Legal Centre (RLC), Marrickville Legal Centre (MLC), Eastern Area Tenants' Service (EATS), Illawarra Legal Centre and Kingsford Legal Centre (KLC) are independent, not-for-profit organisations that provide legal advice and advocacy for vulnerable members of our community. We assist thousands of tenants every year, including a significant number of social housing tenants. Our services are very concerned about the impact of the Bill on vulnerable

2013, social housing landlords in NSW made over 10,000 applications for termination of social housing tenancy agreements.

*NSW Land & Housing Corporation v Raglione* [2015] NSWCATAP 75

NSW Land & Housing Corporation applied to the Tribunal for termination of John Raglione's social housing tenancy in circumstances where there was serious criminal activity. At first instance, the Tribunal found that John had engaged in illegal activity but declined to terminate after considering the tenant's circumstances.

However, on appeal the Appeal Panel found that the Tribunal had erred in refusing to terminate the tenancy. The Appeal Panel found that the criminal activity was very serious and that John's evidence about his circumstances had little credibility.

This case shows that the current law is working. On the rare occasions that the Tribunal gets it wrong and refuses to terminate a tenancy that should be ended, the Appeal Panel can correct the error and make the appropriate orders.

#### **Recommendation**

***Maintain existing decision making powers for the Tribunal in relation to strikes***

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Termination is not a just outcome in all circumstances. It is only in special circumstances that the Tribunal exercises its discretion to continue a tenancy. The Tribunal's ability to decline to make termination

orders is an important safeguard, especially for the most vulnerable tenants, and removing this discretion will lead to injustice.

*Aboriginal Housing Office v Corrie* (Social Housing) [2013] NSWCTTT 650 (23 December 2013)

Sarah Corrie is an Aboriginal single mother of four young children. Her tenancy was terminated after her casual boyfriend did several \$10-\$20 marijuana deals from her premises over a period of two weeks. Sarah had never previously had trouble in her tenancy, was not involved in the drug deals, was not charged, and co-operated with police (they even sent a letter of support for her to the Tribunal). The Tribunal terminated her tenancy because it thought it had no discretion to decline the order, following the NSW District Court decision in *New South Wales Land and Housing Corporation v Cain* [2013] NSWDC 68.

While the Tribunal's discretion was subsequently restored by the Supreme Court of Appeal, Sarah's story provides a clear example of how the changes proposed will lead to unfair and unjust outcomes for the most vulnerable social housing tenants.

This is particularly so in cases where an occupant, not the tenant, has engaged in the criminal conduct. The

ISSUE 3: Three 'strikes' termination for breaching the tenancy agreement (ss 154C & 156A)

The Bill will allow social housing landlords to issue 'strike' notices if the landlord believes that the tenant has breached the tenancy agreement. If a tenant receives two 'strike notices', the landlord may issue a third 'strike notice' and make an application to the Tribunal for termination of the tenancy agreement. If the tenant does not challenge the strike notice within 14 days of its issue, the notice will constitute conclusive proof of the alleged breach at any later Tribunal hearing. If they did challenge it, the tenant will

