

RESIDENTIAL TENANCIES AMENDMENT (OCCUPANCY AGREEMENTS) BILL 2011

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Bill introduced on motion by Ms Clover Moore.

Agreement in Principle

Ms CLOVER MOORE (Sydney) [10.02 a.m.]: I move:

That this bill be now agreed to in principle.

One of my first experiences as a new member of Parliament in 1988 was trying to help a group of boarding house residents who had been evicted onto the street in Kings Cross on a Friday night. They received no prior notice of the eviction, which left them on the street with no money or options. Their eviction was legal. Despite lobbying for reform since that time, boarding house residents continue to live with the risk of eviction without notice. Unlike mainstream renters, who are covered by the Residential Tenancies Act, boarding house residents have no specific legislative protections, leaving them with few options to enforce a range of basic rights that most renters take for granted, such as having urgent repairs done or getting bond refunds.

Residents often have problems getting basic things like receipts when rent is paid. Their only protection is common law, which has no fair and easy way to resolve disputes. These often vulnerable people have to go through the costly and time-consuming Supreme Court to attempt to get a remedy for disagreements. Neither tenants nor their landlords can access the Consumer, Trader and Tenancy Tribunal [CTTT] if they seek to resolve disputes. And, with no rights or obligations, there are many disputes.

The difficulty in resolving problems is exacerbated given that many boarders have complex health needs and can sometimes be socially isolated. Recently a boarder reported to me that a person has more protection buying a toaster than being a boarder. The situation is unfair and unacceptable. It is similar for other renters, including residents of licensed residential centres for people with a disability, lodgers in private homes, some residents in residential caravan parks, and occupants of residential colleges, hotels, motels, refuges, crisis accommodation and share-houses not covered by a lease. Madam Speaker, this is an incredibly important bill about the most vulnerable people in our society and it would be appreciated if members could have their conversations outside.

People with a mental illness living in some licensed boarding houses are reported to suffer serious abuse and exploitation. The Tenants Union of New South Wales refers to these renters as marginal renters and earlier this year released a policy paper on needed reform to give them fair protection. The policy paper recommended the establishment of occupancy agreements that comply with basic non-prescriptive occupancy principles based on part 5A of the Australian Capital Territory Residential Tenancies Act 1997. Other organisations have joined the Tenants Union's call for occupancy agreements, including Bridge Housing, the Coalition for Appropriate Supported Accommodation, the Greater Sydney Aboriginal Tenants Service, the Mental Health Coordinating Council, the New South Wales Federation of Housing Associations, the Park and Village Service, People with Disability Australia Incorporated, the University of Sydney Students Representative Council, Uniting Care New South Wales and Australian Capital Territory, as well as a number of tenancy advocacy and legal advice organisations.

Occupancy agreements are also supported by the Eastern Area Tenants Service, the Marrickville Legal Centre and the Redfern Legal Centre, which I have worked with to develop this bill. The Residential Tenancies Amendment (Occupancy Agreements) Bill would introduce rights and responsibilities for residents and landlords who are not covered by existing tenancy law based on the Australian Capital Territory model of occupancy agreements. Under the bill residents are referred to as occupants and landlords are referred to as grantors. Contracts between the two are defined as occupancy agreements. The bill would require occupancy agreements between occupants and grantors to comply with basic non-prescriptive principles, regardless of whether the agreement refers to those principles or not, or whether there is a written, verbal or implied agreement.

The basic occupancy principles identified in the bill are that occupants have the right to quiet enjoyment of their homes, which should be provided in a clean, secure and reasonable state of repair; occupants have the right to a written agreement and written receipts for any money paid; occupants can be charged for a fair share of their use of a utility; grantors can set rules but cannot charge penalties if they are breached or if there is a breach of a term of an agreement; grantors can enter premises on reasonable grounds to carry out inspections or repairs; reasonable notice must be given before rent increases or evictions, with occupants having the right to know what circumstances could lead to an eviction; and both parties must try to sort out disputes using reasonable dispute resolution processes.

Under the bill both occupants and grantors would have access to the Consumer, Trader and Tenancy Tribunal to resolve disputes arising from an occupancy agreement or the occupancy principles. The bill would require grantors who take bonds from occupants to lodge those bonds with the Director General of Fair Trading. This would be a big improvement as there are current reports of some grantors withholding a bond and using it to threaten occupants. The bill would provide basic flexible protections that can be applied to all rental situations not covered by any other legislation. Through establishing the regulations the Government would be able to build on these protections, working with providers, advocacy groups and occupants to tailor more prescriptive protections for different situations such as boarding houses, crisis accommodation and residential colleges. While the Government works through this process occupants will have access to basic rights such as a clean, safe and secure home as well as responsibilities such as following rules. Grantors will be able to set reasonable rules and carry out inspections of premises.

Unlike the situation in New South Wales, boarding house residents in Queensland, South Australia, Tasmania, Victoria and the Australian Capital Territory have some form of protection. This bill is based on the Australian Capital Territory model, which advocacy groups widely say provides the most appropriate protection, given it covers all types of marginal rental living arrangements and has the flexibility to ensure industry viability. Industry viability is fundamental. Boarding houses and other marginal rental arrangements provide an essential stopgap between homelessness and other low-cost accommodation. Without boarding houses, vulnerable people are more likely to become homeless and will find it even harder to access support services and get long-term accommodation. Indeed, people in boarding houses are generally classified as being in tertiary homelessness.

The Government has estimated that there are about 460 registered boarding houses and the Australian Bureau of Statistics has said that there are about 7,600 residents in New South Wales, but there has been a serious and continuing decline in boarding house numbers since

the 1970s. Owners and operators say that their costs have continued to increase, and this means they will increase rents or sell up, particularly in the inner city, where old boarding houses can attract high prices. My 1993 legislation to reduce rates and land tax for boarding houses helped, but it needs updating and expanding. The 2007 Department of Housing Boarding House Accommodation Study report recommended simplifying land tax exemptions, extending the Boarding House Financial Assistance Program, and better promotion of incentives to operators. I am pleased that the Government has updated the Boarding House Financial Assistance Program, which provides industry support.

The need for regulation has been reinforced by a number of submissions to the current social affairs committee inquiry into international student accommodation calling for better protection of vulnerable overseas students living in boarding houses. Indeed the New South Wales Ombudsman's submission notes that the current lack of regulation of unlicensed boarding houses is a significant concern. In response to my question in Parliament in June the Minister committed to reform to protect residents' rights while ensuring the boarding house industry is viable. I welcome the Minister's commitment in this field and his determination to move ahead.

The Minister's response referred to an interdepartmental committee on reform of the private residential services sector, and I note that the committee's December 2010 discussion paper supported law reform. Marginal renters deserve better than the current legal limbo and this bill will give them basic protections that the Government can build upon while providing flexibility to providers to ensure the industry's viability. I thank Chris Martin from the Tenants Union and Jacqui Swinburne from the Redfern Legal Centre, who have been working on this issue for a long time and have helped to develop this bill. I also thank the Eastern Area Tenants Service and the Marrickville Legal Centre for their contribution, as well as my parliamentary research officer, Tammie Nardone. I commend the bill to the House.

Debate adjourned on motion by Mr Geoff Provest and set down as an order of the day for a future day.