

ILLEGAL USE changes

A landlord can issue a tenant with a termination notice for illegal use of their premises. They can do this before an accused person is found guilty. A termination notice must give the tenant two weeks to move out. If they do not, the landlord can apply to the Consumer, Trader and Tenancy Tribunal for an order for termination.

One of the responsibilities of a tenant is to not use, or allow other people to use, the premises for any illegal purpose. The Residential Tenancies Act 2010 (NSW) separates illegal acts into two categories - the use of the premises for drug manufacture, sale, cultivation or supply and general illegal use, for example, storing stolen goods.

The previous Residential Tenancies Act allowed Tribunal Members to take into account the circumstances of the breach and to make any orders they felt fit to make. This meant that Tribunal Members could refuse to terminate a tenancy if they felt that this was not appropriate in the circumstances. It is generally considered that the tenancy division is not the place to 'punish' the tenant, and that the only consideration is whether there is an established breach of the agreement.

The Residential Tenancies Act 2010 appears to still allow this discretion, except in cases of drug cultivation, sale, supply or manufacture, in which case a Tribunal Member must terminate the tenancy. We are not sure how Tribunal Members will implement this in practice. In social housing tenancies the discretion still applies in both drug matters and standard criminal matters.

In a standard criminal matter there is much that a tenant can do to improve their chances of keeping the tenancy. Character references and letters from support services are good evidence, as is any documentation relating to bail or parole.

If a tenant is receiving any form of counselling it is important to provide evidence of this and in instances where the tenant has a complex history it is useful for the tenant to do a statutory declaration describing this. Income statements are also useful in showing that it would be difficult for the tenant to afford alternative accommodation.

In a drug matter, a tenant should argue for the matter to be adjourned until criminal proceedings are finished on the basis that charges may not be laid. If termination is granted, a tenant can ask for time to move, although we would realistically be talking weeks rather than months and there is no guarantee that any additional time would be granted.

Obviously, the message to take away from this article is that any form of criminal activity in a rental premises is not a good idea. Tenants should make sure that they don't use their rental properties for illegal use and that they ensure that their guests do likewise.