

## **SUBTENANCIES: Get it in writing**

Subtenants without a residential tenancy agreement used to have access to rights and protections under NSW tenancy law. Now under s.10 of the Residential Tenancies Act 2010, subtenants without a written agreement who live with a head tenant who is on a residential tenancy agreement themselves, have no legal status as tenants and cannot use the tenancy laws to protect themselves.

People who sublet, including young people, local and international students, overseas visitors and single people of all ages, cannot afford to take on the full cost of a tenancy alone. Most of these renters are already vulnerable, and s. 10 makes them even more so by failing to provide legal redress when they have a dispute with their head tenants.

The worst areas of exploitation involve money. Many subtenants have difficulty getting their bonds returned; they are sometimes charged excessive fees for utilities or are made to pay penalties that tenants do not have to pay. Subtenants can also find the living arrangements aren't what they thought they would be, e.g. having to share a room. People who sub let are also vulnerable to being evicted without notice.

Sometimes strong evidence of an arrangement can be enough to get over the written residential tenancy agreement threshold. If there is email correspondence between the person wishing to sublet and the head tenant, for instance, that discusses the room that the person will let, the address of the property, the rent and bond to be paid and the duration of the arrangement, this might be enough to show that the person is, in fact a subtenant. If you are subletting and are not sure about your legal status, give EATS a call.

The following are some of the matters EATS has seen where people who sublet have not been protected and what we have advised:

### **Example 1:**

Joe sub let a room in an apartment. He had no written agreement with the head tenant. The head tenant lived there and they had a residential tenancy agreement. Joe had copies of emails between him and the head tenant outlining the details of the arrangement. When Joe decided to move out he gave the head tenant 9 days notice and asked for the bond to be refunded. The head tenant refused to pay back the bond unless Joe gave them 28 days notice.

EATS advised Joe that he could apply to the Consumer, Trader and Tenancy Tribunal for his bond back and try to rely on the emails as evidence that he was a sub tenant. But if he were a sub tenant, he would need to give 21 days notice, not 9.

### **Example 2:**

Aine rented a room in a three bedroom flat for three months. The head tenant lived in one of the other rooms and Aine had no written agreement. The head tenant told Aine that they were increasing her rent by \$20 a week starting the following week and if she didn't like it she could move out with one week's notice.

Aine was advised that without a written agreement, the head tenant could indeed force her to either pay the rent increase or move out. Aine could not afford the extra \$20 per week and would need longer than a week to find a new place. EATS suggested that Aine negotiate with the head tenant for more time. Aine eventually decided to offer the head tenant three weeks rent out of her bond, that she would pay the difference and use the time to find a new place to live.

### **Example 3**

Kyoko moved into a flat with a head tenant and another woman, paying two weeks rent in advance. She did not pay a bond and did not have a written agreement. She found the place very noisy and the head tenant would go into her room without consent. The next time rent was due Kyoko paid one week instead of two and complained about the noise and the access. The head tenant told Kyoko to leave immediately. Kyoko had nowhere to go and was worried she would be locked out.

EATS advised Kyoko that without a written agreement if the head tenant decided to evict her there was not much that she could do. We advised her to tell the head tenant in writing when she intended to move out, to box up her goods and store her valuables elsewhere and find a new place to live as quickly as possible.

All of these people would have had remedies to their problems if they had written agreements with their head tenants. The lesson to gain from this is that a written agreement is essential in all sub-letting arrangements. EATS is very disappointed that the Residential Tenancies Act 2010 has removed the rights of previously protected renters. We have and will continue to push for increased rights for this marginalized group.