

A law unto themselves

By **Robert Mowbray**, Tenant Advocate, Older Persons Tenants Service

A number of recent cases involving residents of boarding houses highlight inadequate protection for this category of tenant.

Steve had rented a flatette in an inner Sydney boarding house for donkey's years. A new owner had taken over and started to renovate around the residents. Soon two police officers visited Steve at his place of employment and stated that he had to vacate. They said that they wanted his stuff out that day. They said that they were acting on a complaint made by 'Vicky', the owner of the premises.

Steve saw the same police at home later that day. At one point they walked up the stairs to Steve's front door. One said words to the effect: 'If you don't get your stuff out in half an hour, we're going to chuck it down the stairwell.' He accused the resident of not paying rent, which was untrue. Steve decided to vacate the premises. A complaint to the local police station met with the response: 'There is no Event recorded for this incident'.

Two weeks later, Bill and Bill, two other residents of the same boarding house, were locked out. The first Bill was very sick and his medication was locked in his room. After Older Persons Tenants Service successfully obtained an urgent hearing of the Consumer, Trader and Tenancy Tribunal, 'Vicky' agreed to pay compensation to the two Bills who, thanks to the support of wonderful neighbours, found alternative accommodation. They saw little point in

returning to a house being demolished around them.

Barry, a tenant who lives in a boarding house in Sydney's inner west, refused to pay a rent increase because he had not received proper notice. He had always insisted on his rights and was considered a trouble-maker. The caretaker of his boarding house handed him a notice that stated: 'If you fail to comply with this notice, the police will be called and you may be charged with trespassing'. Attached to this notice was a document purporting to be signed by the local chamber magistrate. It also bore the endorsement of an inspector of police. It said: '... the resident of a boarding house has no security of occupancy and can be evicted without the need for a court order.'

Mario lives in a boarding house in the suburb next to Barry's. He fell behind in rent. The owner told Mario to bring his rent up-to-date and, if he didn't, then the owner would follow the advice that he had received from the local chamber magistrate. The owner stated that this was to the effect that an owner may change the locks and bar the resident's entry, seize the resident's goods and sell them on the market to recover rent owing.

Older Persons Tenants Service drafted letters that both Barry and Mario handed to their landlords, pointing out the folly of attempting to lock-out these residents. Both continue to reside at their boarding houses.

Ignorance of the law

Steve, the two Bills, Barry and Mario all were victims of landlords who are a law unto themselves and, it appears, chamber registrars (previously chamber magistrates) and police officers who are ignorant of the laws as they relate to boarding houses, and police officers who expose themselves to hefty fines and jail terms.

Section 6 (2) of the *Residential Tenancies Act* 1987 does *not* exclude from that Act premises that are a boarding house. Section 6 (1) (d) excludes 'a residential tenancy agreement where the tenant is a boarder or a lodger.'

Residents of boarding houses may be:

- (i) tenants who are covered by the provisions of the *Residential Tenancies Act* 1987;
- (ii) residents who are covered by the provisions of the *Landlord and Tenant (Amendment) Act* 1948; or
- (iii) tenants who are boarders or lodgers and are therefore not covered by the provisions of the *Residential Tenancies Act* 1987.

In the case of the first class of residents set out above, it is an offence under section 72 (1), (2) of the *Residential Tenancies Act* 1987 for anyone to seek to recover possession of premises without an order of a court or the Consumer, Trader and Tenancies Tribunal. Under section 125 of the Act there is a penalty of up to \$22,000 for a breach of this provision.

In the case of the second class of residents, it is an offence under section 62 of the *Landlord and Tenant (Amendment) Act* 1948 to lock out a resident subject to this Act. Under section 95 of the Act there is a penalty of up to \$1,100 for a body corporate, or a penalty of \$550 or imprisonment for a term not exceeding six months for any other person, or both penalty and imprisonment.

In the case of the third class of residents, they may be evicted without court orders – *however, whether a resident belongs to this class is properly decided by a court or tribunal.*

Further, section 177A of the *Conveyancing Act* 1919 states that the common law right of a person to levy distress for rent is abolished. Indeed, it was

abolished in the Great Depression of the 1930s. So, long gone are the days when a landlord could seize a tenant's goods for unpaid rent.

Unfortunately, the money paid for occupation by a boarder or lodger is not rent, it is a licence fee. Therefore the prohibition of distress for rent does not apply if the resident is a lodger.

In late 2008 Older Persons Tenants Service took up the above issues with both the Attorney-General's Department and the Commissioner of Police.

As a result all *court staff* and *police officers* throughout New South Wales have been sent directives not to become involved in disputes in boarding houses and to refer landlords for proper advice.

However a bad April Fool's joke lingers on. When introducing the *Residential Tenancies Act* into Parliament on 1 April 1987 the then Minister for Consumer Affairs stated that urgent consideration would be given to the position of boarders and lodgers in an early review of the legislation (*NSW Hansard*, 1 April 1987, p. 9735). That's the group identified above as vulnerable under the existing law.

Well, over 22 years later nothing has changed for boarders and lodgers. Groups like the Tenants Union of NSW continue to lobby on the issue, proposing an 'occupancy agreement' as the basis for law reform. But are the polities listening?

The Commonwealth Government's white paper on homelessness, *The road home* (released in December 2008), stated that it will review the impact of the lack of legislative protection for boarders and lodgers on homelessness (p. 27).

Meanwhile landlords will continue to act as a law unto themselves ... but hopefully no longer abetted by court officers and police! ☺