

## NSW Registrar's Compliance Assessment Notes - October 2017

### Use of section 85 of the Residential Tenancies Act 2010 (NSW)

The intent of this guidance note is to clarify for community housing providers the Registrar's expectations regarding the use of section 85 of the *Residential Tenancies Act 2010* (RTA) in the context of the Tenancy and Housing Services performance outcome of the National Regulatory Code. This outcome expects registered community housing providers to be fair, transparent and responsive in delivering housing assistance to tenants, residents and other clients. The guidance note is not intended to provide legal advice or guide the rulings about the use of section 85 of the RTA in all circumstances.

#### *Conform to Housing Policy*

Any landlord can make use of section 85 to terminate a tenancy without grounds. However CHPS must also be guided by the government policies which apply to them. In this case it is the NSW Community Housing Access Policy.

The NSW Community Housing Access Policy (2014) states: "Community housing providers should not routinely terminate agreements under Section 85 of the Residential Tenancies Act 2010 (NSW) as this section of the Act does not require a tenant to be given reasons for termination and does not afford the tenant recourse to the NSW Civil and Administrative Tribunal".

This policy directive was advised to all registered community housing providers in

NSW by the housing agency on its release and is taken into account by the Registrar when considering the fairness of tenancy management practices in NSW by providers registered under the NRSCH.

*Section 85 should not be used where there are grounds for termination that afford natural justice to the tenant.*

If a termination notice is issued under Section 85 of the RTA, the Registrar would expect to see that there is a proper internal mechanism for scrutinising the decision before it is implemented and an avenue within the CHP where the tenant has a right of review of the decision to use S85 for terminating a lease.

To ensure that transparency and fairness is afforded to tenants when terminating a lease, in most circumstances it is expected that the use of S85 is used only where there are no other options available.

#### *What the Registrar will be looking for...*

The Registrar will be seeking assurance that your policies and processes are consistent with the NSW Community Housing Access Policy.

Your policies and procedures for the use of S85 may also be reviewed with a view for determining how the tenant is afforded procedural fairness when this type of notice is used.

We may seek details of the notices to terminate issued during the reporting period including the number issued under S85 and the reasons for using S85.

We may also seek evidence to validate that your policies and procedures were followed where you issued a notice to terminate under s85.