



Re: Photographing and filming tenants' possessions for advertising purposes

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Thank you for the opportunity to provide comments on the consultation paper regarding photographing and filming tenants' possessions for advertising purposes.

The Tenants' Union welcomes the consultation into this issue and is keen to participate in the consultation process.

The submission attached outlines our brief comments on the situation in the ACT with regard to the photography of tenant's possessions.

We are happy to discuss these issues further.

Yours sincerely

Deborah Pippen
Executive Officer

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Submission by Tenants' Union (ACT)

1. Introduction

- 1.1. The Tenants' Union (TU) is one of the primary providers of information, advice and education to tenants in the ACT.
- 1.2. The Tenants' Union membership consists of private, public and community housing tenants, occupants of other forms of accommodation as well as individuals interested in tenancy issues. The TU represents people renting in the ACT (private, public, community), works to promote the rights and interests of tenants and undertakes housing and tenancy-related projects.
- 1.3. The TU is a community legal centre providing tenancy advice, information and casework through the Tenants' Advice Service (TAS). The TU also undertakes community legal education, producing information, conducting workshops and presentations, promoting tenant participation. The TU is funded through the Department of Justice and Community Safety, by a proportion of the interest earned from bonds lodged with the Office of Rental Bonds.
- 1.4. In the last year (2012/13) our service provided 2,554 advices to tenants on tenancy/housing issues. In addition to this we had direct contact with people renting through a variety of other forums including presentations, workshops, information stalls, and community meetings. Furthermore we participate in a range of networks and forums with community service workers and providers who have contact with people renting.
- 1.5. The consequence of this experience and range of services, and close links with related organisations, is extensive knowledge of tenancy and housing issues in the ACT. Accordingly the TU is providing a submission responding to issues and items identified as being of particular relevance to tenants in the ACT, and therefore the organisation.

2. Brief comments

General experiences

- 2.1. Anecdotally it's not uncommon to see properties advertised that show photos of the tenant's possessions. Whether or not the tenants of those properties gave permission (or indeed knew they could refuse permission/negotiate on the issue) is unknown.
- 2.2. We have had about 3-4 calls about this issue in the last year primarily in relation to photographs taken during routine inspections.

Privacy

- 2.3. In the ACT the standard residential tenancy terms ("SRTT") are contained within the *Residential Tenancies Act 1997* (ACT) ("the Act"). The term relevant to protection of a tenant's privacy is clause 52 – "The lessor must not cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in the use by the tenant of the premises."

Access

- 2.4. According to clause 75 a lessor cannot require access for any purpose outside the provisions in the tenancy agreement, the Act, the law generally or an order of the tribunal. It is our position that the lessor cannot require access for the express purpose of taking photos.

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2.5. However as the lessor can conduct routine inspections in accordance with clauses 77 and 78, they could use that access for the purpose of taking photos. However it would be our position that clause 52 would still prevent a lessor from taking photographs if those photographs interfered with the tenant's privacy. Photographs of the tenants possessions, or living arrangements are very likely to cause a breach of the tenant's privacy. This is for many reasons including the inability of the tenant to ensure the security of those photos. For purposes such as advertising, there would be no privacy, and the possibly negative consequences outlined in the consultation paper may occur.

Possible actions/outcomes

2.6. We echo the TUV's concerns that tenants will often avoid taking action to avoid retaliatory actions by landlords/agents or for fear of receiving bad references.

2.7. We have a template letter that we provide to tenants for them to send to agents where photographs are being taken at routine inspections. It does not address where those photos might be taken for advertising purposes, but the same general arguments would apply. That letter is attached to this submission. That letter quotes a case from the NSW tribunal regarding the issue of photography.

2.8. We have a tenant recently report to us that a private lessor who was selling the property had accessed her property without proper notice (in fact the tenant specifically denied permission to access), had professional photos taken which showed some of the tenant's valuable possessions and then put them on the sale advertisement. The tenant is following this up, but there were also other pressing issues arising in the tenancy which she is dealing with first. This situation raises an interesting point that many tenants might be in the process of moving out and dealing with disputes about breaking lease when photographs are requested/taken. This may result in a "fight the bigger fight" approach, with tenants less likely to follow up on the issue of breach of privacy.

2.9. From a practical point of view, lessors should be encouraged to have photos of the property taken when it is vacant for insurance purposes – which could also then be used for advertising purposes.

2.10. The taking of any photographs (for any purpose) should be at the express consent of the tenant, perhaps with an additional requirement that the agent/landlord take all reasonable steps to ensure that the tenant has time to arrange their property, be at the property while the photographs are taken and be able to view the photographs before they are used for advertising purposes.

Fill in your details, strike out words that are not applicable, add in any relevant dates and send to the agent via email and/or post.

<name of tenant>
<address of tenant>

<name of property manager>
<name of agency>
<address>

<date>

Dear <insert name of property manager>,

RE: photographs at time of inspection

I refer to our recent telephone conversation/email regarding the routine inspection conducted by your agency on <insert date>.

I have been/was advised that the practice of your agency is to take photos of my property and its contents during routine inspections.

I request/requested that you **do not/did not** take photos of my property. **If you do so/as you did so you will/have place/d** yourself in breach of clause 52 of the Standard Residential Tenancy Terms, Schedule 1 to the *Residential Tenancies Act 1997* (ACT) which provides that the lessor (and their agent) shall not cause or permit any interference with the my reasonable peace, comfort and privacy.

There is no reason why you should need to take photos of the property which include images of my personal possessions. I also note that you cannot assure me of the full confidentiality of those photos, particularly if they are to be passed on to the lessor.

However, if the photos will only show the need for repairs, or do not include any part of my personal possessions, I am prepared to consent to such photos being taken provided that I am able to view them before they are submitted to the lessor or any 3rd party.

I note that I may make a claim for compensation at ACT Civil and Administrative Tribunal (ACAT) if this conduct **occurs/persists** at a subsequent inspection. I draw your attention to the following matter heard in the NSW Consumer, Trader and Tenancy Tribunal in 2007 (NSW matters are relevant to ACT Tribunal decisions).

RT 07/28086 Applicant: Tanveer Zia Respondent: Kalim & Yvonne Bechara CTTT member: K. Rosser Reasons: 6/6/07 incident. *"I find that the action of the landlord's agent in remaining in the premises taking photographs once it was clear that the tenant did not consent to this amounts to a breach of the tenant's right to quiet enjoyment. I consider the breach to be a serious one, particularly as the agent should have been aware of his obligation under the Act. I consider that the tenant was within his rights to document the incident on video. A breach of the Act by the landlord's agent amounts to a breach by the landlord. I am satisfied that the tenant is entitled to compensation for the breach and I order that the landlord pay the tenant the sum of \$400.00 in respect of the breach".*

Please note that if you plan to take photos during a routine inspection I will ensure that a witness is present. If you take any photographs, I will request that you stop doing so. If you refuse, I will withdraw permission for you to remain on my property, and request that you leave immediately. I may also consider commencing further action at the ACAT.

I am happy to discuss this matter with you to see if we can come to a mutually convenient arrangement regarding the need for record of the condition of the property.

Yours sincerely, <tenant's name>