



[REDACTED]
02/08/2014 08:25

To law.reform@lawreform.vic.gov.au

cc [REDACTED]

bcc [REDACTED]

Subject Photographing and filming tenants' possessions for advertising purposes

[REDACTED]

*Chair
Victorian Law Reform Commission*

Dear Madam / Sir

[REDACTED]

One of my clients was Miranda (not her real name). I refer you to her story that was one of a number of stories under the heading 'The law is an ass' published in Shelter NSW's *Around the House* in September 2009. Go to:

http://www.cpsa.org.au/files/OPTS/Newsletter78_pp24-25.pdf

Miranda is in her late 50s and had lived in her Eastern Suburbs [NSW] flat for over 30 years. Her landlord placed the flat for sale on the market and, unbeknown to Miranda, he authorised a real estate agent to enter the flat and take photos of the interior. To her horror, she discovered that her bedroom and all her years of collecting, plus the contents of the rest of the house were placed on the Internet for the whole world to view. Eventually the landlord sold the flat and Miranda moved out. However, Miranda lodged a complaint with the [NSW] Office of Fair Trading asking that it investigate the actions of the real estate agent in entering the premises and placing photos of the interior on the Internet. Well, Office of Fair Trading advised the following: 'Based on the information obtained in this instance [discussions held with the agent] it was determined not to pursue the matter further.' Older Persons Tenants Service (OPTS) sought clarification on what 'information' led to them not pursuing the matter further. That was in April 2009. OPTS is still waiting for a written reply, although it was told that the landlord had given his permission for the real estate agent to enter the premises. Hold on one moment! The real estate agent knew the law and it is clear that he did not satisfy himself that the tenant had given permission. In any one's terms, this is a clear breach of the Rules of Conduct binding real estate agents. Perhaps the real reason that the Office of Fair Trading is not pursuing this matter is that the Government gives them insufficient staffing to pursue anything but agents with their fingers in the till.

I am aware that, in the above case, a friend of Miranda first alerted her

to the fact that the inside of her flat could be viewed on the Internet. Miranda contacted the real estate agent who agreed to remove the pictures. Sometime later Miranda again became aware that they were still on the Internet for the whole world to view.

I also was aware of the practice of real estate agents taking photos at the time of period inspections. This raises similar issues and prompted me in June 2010 to post on 'TAAS Wiki' the information in the first of the attached files. 'TAAS Wiki' is a resource used by Tenants Advice and Advocacy Services across New South Wales. I have also included a copy of a decision from the Consumer, Trader and Tenancy Tribunal on a similar matter that had come before the Tribunal in 2007.

I trust that the above material will be useful in your examination of this issue.

Regards

(Dr) Robert Mowbray

Social Worker

Project Officer, Tenancy and Older Persons

Tenants' Union of NSW

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Check out *Tenants NSW* website at: www.tenants.org.au

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Photos at time of inspection

Section: Author R. Mowbray. June 2010

It is becoming increasingly common for real estate agents to take photographs of the inside and outside of a tenant's premises at the time of an inspection.

If the tenant objects to this as an invasion of their privacy, then they should advise the real estate agent that they are not permitted to take photographs.

Sample Letter

See below for a sample letter that you might send to the tenant

[letterhead]

[date]

[name and address of tenant]

Dear ...

Photographs at time of inspection

I refer to our telephone conversation yesterday.

You advised that your real estate agent takes photos of your possessions when undertaking periodic inspections.

If you request the agent to desist and he or she continues to take photographs, they place themselves in breach of Section 50 (2) of the Residential Tenancies Act 2010 and face a penalty of up to \$1,100 if prosecuted in the Local Court. I am attaching to this letter the relevant legislation.

They may also face a claim for compensation awarded to the tenant in the Consumer, Trader and Tenancies Tribunal. I draw your attention to the following matter heard in the Consumer, Trader and Tenancy Tribunal in 2007.

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.

If representatives of the real estate agent come to your premises in the future, make sure that you have a witness present. If they commence to take photographs, I suggest that you request that they stop doing this immediately. If they refuse, I suggest that you give them a copy of my letter and ask that they read it. If they still refuse, I suggest that you contact me again, with the view to commencing action in the Consumer, Trader and Tenancies Tribunal.

I also am enclosing a set of tenants' rights fact sheets that I suggest you keep with your residential tenancy agreement.

I trust that this letter is helpful.

Yours sincerely

..... Tenant Advocate