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IN THIS EDITION

LANDLORDS TAKE NOTE – LEASE TO NOISEY TENANTS AND IGNORE COMPLAINTS - IT'S YOU THAT NOW RUN THE RISK OF FINES AND JAIL

Re-printed with consent from Grace Lawyers

Previously, landlords who crammed partying backpackers and students into houses and apartments could ignore complaints about noise, passing them back to tenants who changed so often no one could be held responsible. But in a game changing move, a noise-abatement order has been served on the owners, rather than their tenants, of a Double Bay apartment.

The downstairs neighbours had complained for years of noise and disturbance. Anyone breaching a noise-abatement order can face fines of up to $5500 as well as charges of contempt of court that could lead to jail terms. For Jean Whittlam, 71, and her son Anthony, 41, the noise abatement order marks the end of a five-year battle with the owners of the apartment above their flat in New South Head Road, Double Bay.

"We've been told this is the first time anything like this has ever happened," said Mr Whittlam, who said the upstairs flat had been run as a backpacker flophouse. "It's great … It gives all of us hope." Landlords John and Sarah Hanna, who own more than 100 properties in the eastern suburbs, denied the allegation. "It's an insult to call the tenants of this flat backpackers," Mrs Hanna, 76, said. "They were educated people from good families who just happened to be English and Irish." However, Jean Whittlam claimed in court that the Hannas' tenants were often shouting and singing at night, slamming doors, playing soccer at 2am, swearing, partying and playing loud music.

The Hannas' lawyer disputed that the owners could limit the noise because they did not live in the apartment, but the magistrate, Harriet Grahame, ruled they were responsible because they could control who they leased the apartment to, for how long and, if necessary, make physical changes to the property to decrease noise.

Colin Grace, of Grace Lawyers, whose firm represented the Whittlams, said this was a landmark decision. "It means if a landlord has been told about a problem with their tenants but does nothing about it they effectively 'adopt' the problem and are responsible for it." Recent changes in the tenancy laws allowing landlords to demand written consent before tenants can sublet mean owners have even less excuse for not knowing who lives in a property.

PETS – SCHEMES FOUND TO HAVE SOUVREIGN RIGHT TO CHOOSE – APPEAL PANEL OF NCAT DECISION

Extract re-printed with consent – Grace Lawyers

LawyersUnder the old Strata Schemes Management Act **1996** (NSW) it was possible to have by-laws which banned pets except in respect to assistance animals. Such by-laws were often breached, and it fell on strata schemes to decide whether or not to spend the time and money enforcing the by-laws.

However, since the Strata Schemes Management Act **2015** (NSW) there have been a series of decisions from single Tribunal Members of the NSW Civil and Administrative Tribunal (NCAT), all of whom set aside no pet by-laws under Section 150 as being "harsh, unconscionable or oppressive". The underlying assumption of those cases was that by the passing of the Strata Schemes Management Act 2015 (NSW) the Government indicated a shift towards allowing lot owners to keep pets in buildings.

Further, the keeping of pets was part of a "lot owner's basic right of habitation". Accordingly, no pet by-laws were struck down as being inherently harsh, unconscionable and oppressive with minimal regard to such matters as the history of the by-law and the knowledge of the lot owner challenging the by-law when purchasing into the building.

On 27 May 2020 the Appeals Panel of the NSW Civil and Administrative Tribunal published three decisions setting aside as wrong, previous decisions striking down no pet by-laws (Those cases being: The Owners – Strata Plan No 55773 v Roden; Spiers v The Owners – Strata Plan No 77953 [2020] NSWCATAP 95 and, The Owners – Strata Plan No 58068 v Cooper [2020] NSWCATAP 96).

At the risk of over simplifying, those decisions rejected the notion that a blanket no pet ban was inherently harsh, unconscionable or oppressive or that lot owners had a "basic right" to keep pets.

Instead, those decisions advocate a more balanced and considered approach should be taken in respect to assessing no pet by-laws, by considering such matters as:

- the terms of the by-law,
- the history of the by-law,
- the circumstances in which the by-law came to operate on various lot owners (including the circumstances in which any lot owner acquired their legal interest in property), and
- the particular circumstances of the applicant that might otherwise demonstrate the by-law is harsh, unconscionable or oppressive.

The effect of the appeal decisions is that owners corporations now have a chance to justify and uphold no pet by-laws as well as other by-laws that ban certain other activities that the majority of lot owners consider affect the balance and enjoyment of all lot owners in their buildings. This is particularly so where a no pet or other banning by-law (e.g. hard flooring) has been in place for a significant period of time and/or a lot owner has purchased into the building knowing it was a "no pet" building.

If your scheme wishes to have a "no pets policy" – make sure you put this bylaw in place BEFORE there is an application to keep a pet. Note it is a breach of the Anti-Discrimination Act to have one policy for owners and another for tenants.

A RANGE OF ALTERATIONS MAY NOW BE MADE BY TENANTS – USING QUALIFIED TRADESMEN

A new section has been inserted to the Residential Tenancies Act 2010 (NSW) which will allow a tenant to make alterations and minor changes to the property, with the landlord's consent, from 23 March 2020.

S66(2A) provides that some of these changes may be:

- inserting fly screens
- installing or replacing hooks, nails or screws for hanging paintings, picture frames etc
- installing a wireless removable outdoor security camera
- applying shatter-resistant film to window or glass doors
- installing phone line or internet connection etc

Some minor restrictions to this are if the property is listed on the "loose-fill asbestos insulation register – or if the property is a heritage item, or in a strata scheme.

Please bear in mind that what may seem an innocent request from your tenant, may still require the scheme's approval before you give your consent as the landlord. To best protect yourself, please obtain a renovations form from reception by emailing mail@prostrata.com.au and have the tenant complete it, submit it to you, and if you are happy with the proposed work, then sign and submit the form to our office - at the same email address. If permission of the committee is not required, we will authorise it straight away.

IMPORTANT MAINTENANCE TO DO LIST FOR WINTER

There are some key maintenance items that are critical during the winter months to keep you and those that occupy your unit safe during the cooler months. If you can't tick of each one of the below now, please make it a priority for the coming week.

- Have your hot water tank serviced – we will attend to this with your committee if it is a communal system – however if it is within your lot – a regular service can ensure longevity of the tank, and that it does not burst. No one enjoys a cold shower in winter, and you would be responsible for any damage to your unit or the one below, should the water escape any tray it sits in. Contact the manufacturer of your tank for an annual service.
- Smoke detector batteries – change these if you have not done so in the last month or two. Statistically there are more fatal fires in winter than any time of year. So, ensure residents in your property are aware if there is a fire, by refreshing the batteries. These batteries are your responsibility as the owner to replace.
- In February 2020 Sydney experienced a 1/30 year storm/rainfall. This inundation occurred unexpectedly, and it is therefore very important to have pumps serviced regularly. If they do not work when needed, you will not be able to get a contractor out in time to remedy things before the area it services, floods. If you are unsure if your pump has been serviced recently please contact us so we can double check.
- We don't hear of people with colds and flu, nor mould issues in properties, in summer as we do in winter. We well ventilate our properties without a second thought in the warmer weather. This is even more critical however in winter, with illnesses in the air, and the moisture we create through heating our properties. We need to ventilate our homes every day, even if it is only for 10 or 15 mins, to keep ourselves and our abodes, healthy.