



How owners can take action

How to prevent or address the problem of smoke-penetration in apartments

There are options available to owners to address the problem of smoke-penetration in apartment blocks. An initial approach to resolve the problem might be to discuss possible solutions directly with the smoker. This may be effective and no further action is required. However, this may only be a short-term strategy. Implementing a by-law in your apartment complex is a longer term solution that protects all residents of an apartment complex.

■ Introduce a smoke-free by-law

To manage the shared living environment of all residents and ensure proper use of common property, strata schemes can introduce a set of rules called by-laws. By-laws apply to all residents in a strata scheme. An owners' corporation can introduce by-laws to address smoke-penetration in apartments. The NSW Government *Strata Schemes Management Regulation 2016*¹ includes example by-laws concerning smoke-penetration that

can be adopted and used in strata schemes. Cancer Council NSW recommends a 100% smoke-free home. A first step is to check whether your strata scheme already has by-laws concerning smoke-penetration.

■ How to introduce a smoke-free by-law

If a property owner in a multi-unit development does not own the entire development, this owner should seek the support of the owners' corporation to establish a strata by-law that prohibits smoking throughout the entirety of the development. The members of an owners' corporation can create smoke-free by-laws or make changes to existing ones. New by-laws can be made through a special resolution at a general meeting of the owners' corporation, which requires that 75% vote in favour of the resolution. See Fact sheet 5: Smoke-free by-laws: know your options.

Legal Case Study

Bhandari versus Laming 2015

Landlord required to pay compensation to a tenant for failing to provide premises that were fit for habitation due to sustained smoke-penetration.

Ms Laming and her young daughter had been renting an apartment in inner Sydney for some time when Ms Laming complained to her landlord about the smoke penetrating her apartment from a resident who was smoking in the unit below. She was concerned about the health effects on herself and her child. The landlord did not take any action so she took her case to the NSW Civil and Administrative Tribunal.

The Tribunal agreed with Ms Laming that her unit was not fit for habitation. The Tribunal found that it was not acceptable for a tenant and a child to live in an environment which smelt of tobacco smoke, particularly when the smoke was so strong that it caused them to feel unwell. The Tribunal ruled in her favour, stating that the landlord had failed in his responsibility to provide premises that were fit for habitation. The landlord was ordered to pay Ms Laming \$11,681 in compensation for breaching the residential tenancy agreement. The compensation included a 40% rent reduction from the commencement of the lease and compensation for packing and removalist costs Ms Laming incurred when she was forced to move out of the unit.



The tribunal said that the landlord could have asked the owners' corporation to introduce a by-law to ban smoking, attain an order for the smoker to stop smoking or undertake repairs to prevent smoking passing between the two units. Laming's landlord was fined for not providing a healthy living environment for his tenant. The Laming ruling could set precedent for many other landlords to be vulnerable to similar fines for not providing a healthy living environment for their tenants.

There are other ways to address smoke-penetration through the legal system

Under the current *Strata Schemes Management Act 2015*², tenants or owner/occupiers cannot cause a nuisance or hazard that can interfere with another person enjoying their apartment or common property. If cigarette smoke drifts into your apartment from other parts of your strata building it can become a nuisance, and as a result, be subject to legal redress. If you are a landlord, you should be aware that under the *NSW Residential Tenancies Act 2010*³ you must take all reasonable steps to ensure that other neighbouring residents do not interfere with the reasonable peace, comfort or privacy of tenants residing in your premises. In both of these cases the Civil and Administrative Tribunal is empowered to hear and settle disputes relating to residential tenancies.

The Civil and Administrative Tribunal

Tenants and owners have the right to apply for a hearing by the Civil and Administrative Tribunal and have the power to take a resident who smokes to the Tribunal seeking that the resident cease all behaviour (including smoking) that is causing a nuisance. Owners' are responsible for providing tenants with premises fit for habitation. In a case heard by the Civil and Administrative Tribunal (see above) a landlord was ordered to pay compensation to a tenant as it was decided that he had failed in this responsibility as the tenant was experiencing smoke-penetration from a neighbouring apartment.

REFERENCES

- ¹ New South Wales Government. *Strata Schemes Management Regulation*. 2016 [Accessed 12 September 2016]; Available from: <http://www.legislation.nsw.gov.au/>.
- ² New South Wales Government. *Strata Schemes Management Act*. 2015 [Accessed 12 September 2016]; Available from: <http://www.legislation.nsw.gov.au/#/view/act/2015/50/full>.
- ³ New South Wales Government. *Residential Tenancies Act*. 2010 [Accessed 12 September 2016]; Available from: <http://www.legislation.nsw.gov.au/#/view/act/2010/42>.