

Outasite Lite



The home and adjoining vacant site

STAND YOUR GROUND

When it comes to agreements, promises and contracts the advice is always the same – get it in writing. Why? Because if a dispute arises the terms, or even the existence, of a verbal agreement can be difficult to prove. In this edition of *Outasite Lite* we look at a recent case about whether a statement made by an agent amounted to a verbal agreement.

In 2015 a prospective home owner purchased a home in a land lease community partly based on a verbal statement made by the sales assistant. In 2017 this home owner was in dispute with the operator because of the statement. At the heart of the dispute was whether what the real estate agent had said

amounted to a binding promise or contract. The home owner believed it did but the operator claimed the agent had merely outlined a possibility.

The land lease community in question was being redeveloped and upgraded with older homes being removed and new homes being installed. There were a number of new homes for sale and the sales assistant showed several of these to the prospective home owner.

The home owner settled on a home that backed on to a grassy reserve and had a grassed area to one side. The home

owner says that during the inspection she specifically inquired about the grassed area and the sales assistant said that it was most likely going to be a community garden because the site was too small for the new homes being installed by the operator. The home owner chose to purchase this home because of the open space surrounding it.

In March 2017 the home owner was surprised when the operator erected a fence around the adjoining site. The project manager advised the home owner that they would be installing a home on the site. Not only was this different to what the home owner understood the site would be used for, the home owner believed the fence was partly on her site and because of this a boundary dispute arose.

Discussions with the operator's representatives did not lead to a resolution of the dispute so the home owner lodged an application with the NSW Civil and Administrative Tribunal (NCAT). She also sought advice from the Western Sydney Tenants Advice and Advocacy Service and Franya (Tenant Advocate) agreed to assist.

THE BOUNDARY

The home owner has a written site agreement and it provided indisputable evidence about the size of the site. The dimensions were written into the agreement and the home owner was therefore able to demonstrate that the boundary the operator was trying to establish for the vacant site was incorrect. However, although the operator acknowledged a mistake regarding the size of the home owner's site, the actual boundaries are still in dispute. The operator is asserting the joint boundary with the vacant site is closer to the home than the home owner was originally advised.

VERBAL AGREEMENT

The verbal agreement was more difficult because the operator denied there was any such agreement. The operator

acknowledged that a community garden had been mentioned by the real estate agent but claimed it had been made clear that no decision had been made about use of the adjoining site.

NEGOTIATIONS

The NCAT application was adjourned and the parties were encouraged to try to reach a settlement. Procedural directions were made for the exchange of documents and the Tenants' Union assisted Franya to prepare evidence and legal arguments to support the home owner's case

Once documents had been exchanged the parties entered into further negotiations, with Franya representing the home owner. The first offer from the operator was monetary compensation if the home owner agreed to a home being placed on the adjoining site. She declined the offer because what she really she wanted was the open space to remain.

The second offer from the operator was to relocate the home owner to another house within the community. The home owner again declined the operators offer because she liked the position of her current home. She had chosen it because of the position and since moving in had become good friends with her neighbour. She did not want to relocate.

Throughout negotiations with the operator the home owner held firm that the outcome she wanted was the open space to be retained at the side of her home. The operator eventually acknowledged this and offered to leave the site vacant for five years. The home owner again stood her ground.

After consultation with Franya, the home owner asked that the site remain vacant for 10 years. The operator refused that request and instead offered five and a half years, which the home owner reluctantly accepted. The agreement was put into writing and signed by the parties. Once it had been signed the operator removed the fence from the adjoining site.

The vacant site is now a grassy open space with no indication of what the future use may be.

The home owner is content with the agreement reached with the operator because, although she was confident that she was right, letting the Tribunal make the decision was risky. Through negotiation she was able to achieve an outcome that gives her peace for the next five and a half years.

The home owner has the highest praise for the professionalism of Franya. She said "Franya was there every step of the way for me and nothing was too much trouble. She was always available to talk through questions and concerns. I would highly recommend the Tenants Service to other residents of land lease communities who need advice or assistance".

Franya is an experienced Tenant Advocate who believes that building relationships with operators leads to better outcomes for land lease community residents. She is often able to achieve negotiated settlements for the people she assists. Franya says that "Through the negotiation process a relationship with an operator can be developed or improved whereas Tribunal proceedings can lead to a further breakdown of a relationship. It is important to look to the future and not just the present dispute".

Free advice from local services:

Tenants Advice and Advocacy Services

Eastern Sydney	9386 9147
Inner Sydney	9698 5975
Inner West Sydney	9559 2899
Northern Sydney	8198 8650
Southern Sydney	9787 4679
South Western Sydney	4628 1678
Western Sydney	8833 0933
Blue Mountains	4704 0201
Central Coast	4353 5515
Hunter	4969 7666
Illawarra South Coast	4274 3475
Mid Coast	6583 9866
Northern Rivers	6621 1022
North Western NSW	1800 836 268
South Western NSW	1300 483 786

Aboriginal Tenants Advice and Advocacy Services

Greater Sydney	9833 3314
Western NSW	6884 0969
Southern NSW	1800 672 185
Northern NSW	1800 248 913



Phone: 02 8117 3700

Email: contact@tenantsunion.org.au

Websites: thenoticeboard.org.au and tenants.org.au

Address: Suite 201, 55 Holt St, Surry Hills NSW 2010

Copyright: of *Outasite Lite* remains with the TU and contributors.

Disclaimer: Legal information in this newsletter is intended as guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia.

Views expressed by contributors are not necessarily held by the Tenants' Union.

Subscriptions: *Outasite Lite* is a free publication published by the Tenants' Union of NSW. To update your details or add someone to the mailing list please call or email.

Outasite Lite editor: Julie Foreman