

# Australian High Court decision sheds light on shocking housing conditions in Northern Territory

Leith Smith  
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There were only brief Australian media reports on a recent High Court ruling in favour of residents in a remote indigenous community against their landlord, the Northern Territory (NT) Department of Housing.

The corporate and government media outlets substantially covered up the details of the appalling conditions the public housing tenants have faced at the hands of successive governments, Labor and Liberal-National alike.

Kwementyaye Young, an elderly resident of Ltyentye Apurte/Santa Teresa, approximately 85 kilometres from Alice Springs in central Australia, was one of 70 tenants who fought for basic social rights against the NT government.

Under one government after another, the NT housing department refused to rectify critical, even potentially life-threatening faults such as the lack of a back door, no air-conditioning, water leaks, broken toilets and insect infestation.

Young herself had gone without a back door and perimeter fence for nearly six years.

On November 1, after a more than seven-year legal battle, during which Young tragically died in July, the High Court decided that the NT department had breached the territory's Residential Tenancies Act and was due to compensate some tenants or their remaining family members.

The case sheds light on the squalid conditions that NT governments have imposed upon these residents, and the protracted fight that tenants had to wage through tribunals and courts to secure redress.

For the most part, this struggle was against the NT's current Labor government, which took office in August 2016. That was six months after residents first took

their case to the NT Civil and Administrative Tribunal, arguing the dwellings in which they lived had been left in a state of shocking disrepair and were unsafe for habitation.

This record further exposes the claims of the NT Labor government, together with the current Albanese federal Labor government and other state and territory Labor governments, that this year's October 14 failed referendum on inserting an indigenous Voice assembly into the Australian Constitution would have meant "better outcomes" for Aboriginal and Torres Strait Islander people.

The evidence from the case demonstrates that Labor governments have long ruthlessly denied "better outcomes" to indigenous people, knowing full well the harm they were causing. That was not because of the lack of a Voice institution at the heart of the governmental and parliamentary ruling establishment.

Young was 71 years old at the time her tenancy agreement began in 2011. She spoke little English, and was unable to read the lease, as her first language was Eastern Arrernte.

Initially, in 2016, the NT tribunal examined a sample of four out of the 70 cases, those belonging to Young, Jasmine Cavanagh, Mr Conway and Clayton Smith. The evidence before the tribunal was damning.

Young, who testified through a translator, showed that a shower and drain had been leaking for 2,117 days, and that she had no back door for 2,090 days and a toilet that flushed poorly and failed to clear waste for 534 days. In a community where animals roamed freely, the perimeter fence was bent all the way to the ground for 2,328 days.

The absence of a back door was a significant security

and safety danger in circumstances where, as Young described, wild horses may have bent the fence around the property, and where snakes may have entered the house.

Young, who was in her late 70s when she brought the case, also had no air-conditioner for 2,121 days, in the often-scorching heat of central Australia, and no fully-functioning stove for 170 days. She still had to pay \$4,735.80 in rent to the NT government despite living in an uninhabitable environment.

Conway had a home infested with insects for 1,035 days and, on account of leaking water, had slept in the kitchen for 1,989 nights.

As the case was fought, the NT government tried to find any excuse to avoid its legal obligations. For example, it claimed that a back door was not a necessary safety feature and that the residents were excluded from receiving compensation for distress or disappointment in their housing conditions.

As a result, Young's claims for compensation were rejected by both the tribunal and the full court of the NT Supreme Court. The tribunal ruled that an external door was not "a security device" within the meaning of the NT Residential Tenancies Act and therefore the tenancy agreement had not been breached.

On appeal, in a hearing by a single judge of the NT Supreme Court, the housing department CEO conceded that an external door was necessary to ensure that the premises were reasonably secure, and that the department had therefore failed to comply with a term of the tenancy agreement.

On further appeal by the NT government, however, in February 2022 the Court of Appeal of the Supreme Court ruled any award of damages for the tenancy agreement breach was restricted to physical (not mental) inconvenience, thus excluding compensation for distress or disappointment.

Eighteen months later, the High Court of Australia finally reversed that reactionary ruling. There was media speculation that the outcome could open the door for similar claims by tenants nationally. However, governments and landlords could stymie such legal actions by amending the language of leases or legislation.

While the case was going through the courts, the NT Labor government announced plans to change the way it charged rent in remote communities. It would impose

a flat rate of \$70 per bedroom per week, leading to rent hikes of some 40 percent for more than two-thirds of residents. Ostensibly, the higher rents, which began early this year, were designed to fund maintenance and repairs in community housing. According to reports from residents, however, little has improved.

Such conditions have existed for decades. They worsened after the 2007 NT military-police National Emergency Response, or "intervention," conducted by the former federal Liberal-National government of Prime Minister John Howard and extended by his successor, Labor's Kevin Rudd. The right to manage community housing was taken from residents, with an emergency lease handed to the NT government.

Later, the federal government convinced residents to sign over the housing stock on a 40-year lease to the government in exchange for maintenance and funding for repairs. Once the lease was signed, the federal government sublet the entire arrangement to the NT government, which has had responsibility ever since.

These conditions are not confined to the NT. Thousands of tenants are reported to be living in "substandard" public housing in remote Aboriginal communities in Western Australia. Similar conditions have been reported in remote housing in Queensland and South Australia in particular.

The corporate media barely mentioned the horrific conditions revealed by Young's case, before quickly moving on. That is not least because growing numbers of working-class tenants nationally also face poor conditions and soaring rents, at the hands of the same governments and housing authorities, as well as private landlords.



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