



Australian Capital Territory

Residential Tenancies Amendment Act 2005

A2005-39

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2004 099B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Residential Tenancies Amendment Act 2005

A2005-39

An Act to amend the *Residential Tenancies Act 1997*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

2004 099B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Residential Tenancies Amendment Act 2005*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Residential Tenancies Act 1997*.

Note This Act also amends the *Residential Tenancies Regulation 1998* (see s 27).

4 Standard residential tenancy terms Section 8

omit

A residential tenancy agreement—

substitute

(1) A residential tenancy agreement—

5 New section 8 (aa)

insert

- (aa) if the lessor and tenant agree—may contain a fair clause for posted people; and

6 Section 8

renumber paragraphs when Act next republished under Legislation Act

7 New section 8 (2)

insert

- (2) In this section:

fair clause for posted people means the following clause:

Termination because of posting

- (1) The tenancy agreement may be terminated—
- (a) if the lessor is posted to Canberra in the course of the lessor's employment—by the lessor giving the tenant at least 4 weeks written notice; or
 - (b) if the tenant is posted away from Canberra in the course of the tenant's employment—by the tenant giving the lessor at least 4 weeks written notice.
- (2) The tenancy ends—
- (a) 4 weeks after the day a notice is received under subclause (1); or
 - (b) if a later date is stated in the notice—on the stated date.

8 New section 10 (4A)

insert

- (4A) The tribunal must not endorse a term mentioned in section 15 (5) in relation to a tenant unless satisfied that the tenant owes an amount to the commissioner for housing.

**9 Lessor's obligations
Section 12 (3) (c)**

substitute

- (c) for the premises that are the subject of the proposed residential tenancy agreement—
- (i) a copy of an energy efficiency rating statement (if any) for the habitable part of the premises; or
 - (ii) a copy of a fresh energy efficiency rating statement for the habitable part of the premises if—
 - (A) building work under the *Building Act 2004*, section 6 has been carried out on the premises that affects the energy efficiency rating of the habitable part of the premises; and
 - (B) before the building work was carried out, an energy efficiency rating statement had been prepared for the habitable part of the premises;
- (d) if the premises are crisis accommodation provided by a declared crisis accommodation provider—a statement explaining that the lessor can terminate the agreement on 4 weeks notice if the lessor needs the premises to use as crisis accommodation for someone other than the tenant.

10 New section 12 (4)

insert

- (4) In this section:

declared crisis accommodation provider means a crisis accommodation provider declared under section 126.

**11 Rent or a bond only
New section 15 (5)**

insert

- (5) This Act does not prevent the commissioner for housing from requiring a tenant to agree to pay an outstanding amount owed by the tenant to the commissioner for housing in relation to a previous tenancy in consideration for giving the tenant a right to occupy premises if the tribunal has, under section 10, endorsed the term of the residential tenancy agreement requiring the payment.
- (6) The inclusion in a residential tenancy agreement of a term requiring payment of an outstanding amount owed by the tenant to the commissioner for housing does not prevent—
- (a) the commissioner and the tenant agreeing to the tenant repaying the outstanding amount over a period of time longer than the period set out in the term; or
 - (b) the commissioner from taking action against the tenant in relation to the outstanding amount.

12 Section 23

substitute

23 Deposit of bond by lessor

- (1) The tenant must pay the bond to the lessor.

- (2) Subsection (1) does not apply if the lessor and tenant agree that the tenant will deposit the bond with the Territory.
- (3) If the tenant pays the bond to the lessor and not to the lessor's agent, the lessor must, before the prescribed period ends, deposit with the Territory—

- (a) the amount of the bond; and
- (b) a notice in accordance with section 25.

Maximum penalty: 20 penalty units.

- (4) If the tenant pays the bond to the lessor's agent, the agent must, before the prescribed period ends, deposit with the Territory—

- (a) the amount of the bond; and
- (b) a notice in accordance with section 25.

Maximum penalty: 20 penalty units.

- (5) An offence against this section is a strict liability offence.

- (6) In this section:

prescribed period means—

- (a) 2 weeks after the day the lessor receives the bond; or
- (b) if another period is prescribed by regulation—the prescribed period.

13 Condition reports
New section 29 (6)

insert

- (6) To remove any doubt, a condition report for premises may, but need not, contain a list of items at the premises, other than goods leased with the premises.

**14 Termination
Section 36 (j) (iii)**

substitute

- (iii) the tenant vacates the premises;
- (k) for crisis accommodation—if the lessor—
 - (i) gives the tenant 4 weeks notice to terminate the agreement; and
 - (ii) has given the tenant information about alternative accommodation; and
 - (iii) needs the premises to use as crisis accommodation for someone other than the tenant.

15 Section 40

substitute

40 Content of warrant

- (1) A warrant issued under this part must—
 - (a) authorise any police officer to take appropriate action, with any necessary and reasonable assistance, to evict a named person, or a named person and everyone else on the premises, within the period stated in the warrant; and
 - (b) require a police officer to give the named person not less than 2 days notice of the proposed eviction.
- (2) Subsection (1) (b) does not apply if the registrar believes on reasonable grounds that—
 - (a) there are exceptional circumstances; and
 - (b) it would be inappropriate to give the notice required by subsection (1) (b).

- (3) A regulation may prescribe what is, or is not, appropriate action to be taken under a warrant.

16 Section 42

substitute

42 Conditional orders

- (1) If the enforcement of a termination and possession order is subject to a condition (an ***enforcement condition***), the order expires on a day stated by the tribunal in the order.

Example of enforcement condition

that a person fails to pay rent arrears to the lessor within 6 months after the day the termination and possession order is made

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The expiry day must not be more than 1 year after the day the order is made.
- (3) However, subsection (2) does not apply if the tribunal believes on reasonable grounds that—
 - (a) there are exceptional circumstances; and
 - (b) it would be inappropriate to state an expiry day in accordance with subsection (2).

42A Failure to comply with conditional order

- (1) A lessor may apply to the registrar for a warrant for the eviction of a person if—
 - (a) the tribunal has issued a termination and possession order subject to an enforcement condition; and
 - (b) the order has not expired; and

-
- (c) the lessor satisfies the registrar that the enforcement condition has been satisfied; and
 - (d) the person to whom the order was directed continues to live at the premises.
- (2) On receiving an application for a warrant, the registrar must—
- (a) list the application for hearing before the tribunal not earlier than 1 week after the day the notice under paragraph (b) is given to the person; and
 - (b) give notice to the person to whom the termination and possession order is directed stating—
 - (i) that an application for a warrant for eviction has been made; and
 - (ii) the time when, and the place where, the application is to be heard; and
 - (iii) that the person should seek legal advice about the application if the person wants to continue to live at the premises.

42B Hearing of application

- (1) An application under section 42A must be decided as if it were an application under section 49 for a termination and possession order.
- (2) After considering the application and hearing the parties who attend the hearing, the tribunal must—
 - (a) allow the application; or
 - (b) dismiss the application.
- (3) If the tribunal allows the application, the tribunal must direct the registrar to issue a warrant for the eviction of the person.
- (4) If the tribunal dismisses the application, the tribunal may—

- (a) confirm the termination and possession order subject to the enforcement condition; or
- (b) make another termination and possession order subject to an enforcement condition; or
- (c) set aside the termination and possession order.

17 **Damage, injury or intention to damage or injure**
Section 51 (c)

substitute

- (c) if the lessor is a corporation—injury to a representative of the corporation or a member of a representative’s family; or
- (d) serious or continuous interference with the quiet enjoyment of nearby premises by an occupier of the premises.

18 **New section 107A**

in division 6.5, insert

107A **Substitution of tenant**

- (1) This section applies if—
 - (a) the tenant, or a cotenant, (the ***removed person***) has given an undertaking to a court to leave the premises; or
 - (b) a court has made an order, other than an interim order, to remove the removed person from the premises.
- (2) An occupant of the premises, other than the removed person, (the ***occupant***) may apply to the tribunal to be the tenant or cotenant under the residential tenancy agreement for the premises instead of the removed person.
- (3) To remove any doubt, an application may be made by the occupant even though the occupant is not a tenant or cotenant under the residential tenancy agreement.

-
- (4) The application must—
- (a) be in writing; and
 - (b) include—
 - (i) evidence of the removed person's undertaking to the court to leave the premises; or
 - (ii) a copy of the court order to remove the removed person from the premises.
- (5) The tribunal may make an order substituting the occupant as the tenant, or cotenant, if—
- (a) the grounds of the application are proved; and
 - (b) the lessor has been given an opportunity to be heard on the application.
- (6) If the application is in relation to premises leased under a housing assistance program under the *Housing Assistance Act 1987*, the tribunal must not make an order under subsection (5) that is inconsistent with the eligibility criteria of the program.
- (7) The order is subject to any condition stated in it by the tribunal.

19 **New part 6A**

before division 6.6, insert

Part 6A **Tenancy databases**

107B **Definitions for pt 6A**

In this part:

personal information means—

- (a) an individual's name; or

- (b) information or an opinion, whether true or not, about an identified individual.

tenancy database means a database (whether or not stored in a computer) containing personal information—

- (a) relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; or
- (b) entered into the database for reasons relating to, or arising from, the occupation of residential premises under a residential tenancy agreement.

107C Non-application to internal databases

- (1) This part does not apply to a tenancy database kept by an entity for use only by the entity or its employees.

- (2) In this section:

entity includes the commissioner for housing.

107D Restriction on inclusion of personal information

- (1) A person (the **listing person**) must not include personal information about someone else (the **ex-tenant**) in a tenancy database unless—
 - (a) the ex-tenant was named as a tenant in a residential tenancy agreement; and
 - (b) the agreement has ended; and
 - (c) there is a reason prescribed by regulation for including the personal information about the ex-tenant; and
 - (d) the maximum period prescribed by regulation for which information may be included in the register has not ended; and

-
- (e) the listing person has—
- (i) given written notice to the ex-tenant about the personal information the listing person proposes to include in the database (the *information proposed to be included*); or
 - (ii) taken other reasonable steps to disclose to the ex-tenant the information proposed to be included; and
- (f) the listing person has given the ex-tenant a reasonable opportunity to review the information proposed to be included.
- (2) Subsection (1) (e) and (f) do not apply if the listing person cannot find the ex-tenant after making reasonable enquiries.
- (3) Subsection (1) (f) also does not apply in relation to personal information that, immediately before its inclusion in the tenancy database, is publicly available.

Example of publicly available information

personal information obtained from publicly available court records

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

107E Application to tribunal about contravention

- (1) An individual who claims that the individual's personal information has been included in a tenancy database in contravention of section 107D may apply to the tribunal about the inclusion of the information.
- (2) The application must be made within 6 months after the day the individual becomes aware of the inclusion of the information.
- (3) If the tribunal decides there has been a contravention, it may—
- (a) order a person to take stated steps to remedy the contravention; or
 - (b) make any other order it considers appropriate.

107F Application to tribunal about incorrect or unjust inclusion in database

- (1) An individual who has had personal information included in a tenancy database may apply to the tribunal for an order under this section.
- (2) The tribunal may order a person to take stated steps to—
 - (a) have the individual’s name or other personal information about the individual omitted from the database; or
 - (b) have stated changes made to the personal information about the individual that is in the database.
- (3) The tribunal may make the order only if satisfied—
 - (a) the database includes personal information about the individual that is incorrect or misleading; or
 - (b) the inclusion of the individual’s name or other personal information about the individual in the database is unjust in the circumstances, having regard to—
 - (i) the reason for the inclusion of the personal information; and
 - (ii) the individual’s involvement in the acts or omissions giving rise to the reason for the inclusion of the personal information; and
 - (iii) the adverse consequences suffered, or likely to be suffered, by the individual because of the inclusion of the personal information; and
 - (iv) any other relevant matter.

Example for par (a)

Information about Tania is included in a tenancy database because of a minor matter. The database does not give details of the matter but includes a notation implying that Tania may be responsible for a serious breach of the Act.

Examples for par (b)

- 1 Information about Sally is included in a tenancy database because of damage caused to premises by Sally's domestic partner during a domestic violence incident. Because of the inclusion of the information, Sally cannot obtain appropriate and affordable accommodation.
- 2 Information about Robert is included in a tenancy database because rent remained unpaid by Robert months after it was payable. During that period, Robert was in hospital recovering from a serious accident and unable to make arrangements for payment.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

107G Application to tribunal about proposed inclusion of personal information

- (1) An individual who is aware that someone (the *listing person*) intends to include personal information about the individual in a tenancy database may apply to the tribunal for an order under this section.
- (2) The tribunal may—
 - (a) order the listing person, or someone else, not to include the individual's personal information in the tenancy database; or
 - (b) order the listing person, or someone else, not to include the individual's personal information except with stated changes or on stated conditions; or
 - (c) make any other order it considers appropriate.
- (3) The tribunal may make the order only if satisfied that, if the personal information were included as proposed, the tribunal could make an order in relation to the personal information under section 107E or section 107F.

107H Order for compensation

- (1) This section applies if the tribunal makes an order against a person under section 107E, section 107F or section 107G.
- (2) The tribunal may also make an order requiring the person to pay to a stated person, within a stated period, an amount the tribunal considers appropriate as compensation for the loss or damage caused by including the personal information.
- (3) The amount of compensation must not exceed—
 - (a) \$5 000; or
 - (b) if another amount is prescribed by regulation—that amount.

20 Division 6.6 heading

substitute

Part 6B Enforcement

**21 Referees
Section 116 (5) to (7)**

substitute

- (5) A referee may hear and decide an application and make any order the tribunal may make.
- (6) If a referee is hearing and deciding an application, division 6.5 and part 6B apply to the hearing as if a reference to the tribunal were a reference to the referee.
- (7) However, a referee must not order the payment of—
 - (a) compensation for a breach of the standard residential tenancy terms or standard occupancy terms; or
 - (b) any amount (other than unpaid rent) that cannot be ascertained by reference to a receipt or statement of account.

22 New section 126

in part 9, insert

126 Declared crisis accommodation provider

- (1) The Minister may, in writing, declare an entity to be a crisis accommodation provider in relation to stated accommodation (*crisis accommodation*).
- (2) However, the Minister must not make the declaration in relation to accommodation unless satisfied that the entity—
 - (a) provides, or intends to provide, the accommodation as emergency accommodation for people in crisis; and
 - (b) provides, or intends to provide, information to people accommodated in the accommodation, whether on or before termination, about alternative accommodation and, if appropriate, other services.
- (3) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

23 New section 127A

insert

127A Transfer of public housing under will

- (1) A public housing tenancy agreement may provide that the tenant must not give the tenant's rights under the agreement by will to another person who is not an occupant of the premises.
- (2) If a person takes possession of public housing premises under a will, the commissioner for housing may apply to the tribunal to adjust the rent, or terminate the agreement.

- (3) In considering an application under subsection (2), the tribunal must have regard to the eligibility criteria under relevant housing assistance programs under the Housing Assistance Act 1987.

**24 Regulation-making power
Section 136 (2) (d)**

substitute

- (d) the keeping of records;
(e) tenancy databases.

**25 Standard residential tenancy terms
Schedule 1, clause 23**

substitute

- 23 The lessor must keep the condition report for a period of not less than 1 year after the end of the tenancy.

26 Schedule 1, new clause 55 (3)

insert

- (3) This section does not require the tenant to notify the lessor about anything that an ordinary tenant would reasonably be expected to do, for example, changing a light globe or a fuse.

27 Dictionary, new definitions

insert

crisis accommodation—see section 126.

enforcement condition—see section 42 (1).

personal information, for part 6A (Tenancy databases)—see section 107B.

tenancy database—see section 107B.

28 Residential Tenancies Regulation 1998, new section 4A

insert

4A Appropriate action under warrant—Act, s 40

It is appropriate for a police officer to physically remove a person from premises—

- (a) between 8 am and 6 pm from Monday to Thursday, other than on a public holiday; or
- (b) if authorised by the warrant in exceptional circumstances—at any time.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 17 February 2005.

2 Notification

Notified under the Legislation Act on 31 August 2005.

3 Republications of amended laws

I certify that the above is a true copy of the Residential Tenancies Amendment Bill 2005, which was passed by the Legislative Assembly on 18 August 2005.

Clerk of the Legislative Assembly

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