



Australian Capital Territory

Residential Tenancies Legislation Amendment Act 2016

A2016-50

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Australian Capital Territory

Residential Tenancies Legislation Amendment Act 2016

A2016-50

An Act to amend legislation about residential tenancies, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Residential Tenancies Legislation Amendment Act 2016*.

2 Commencement

- (1) Sections 19, 23, 24 and 28 commence on the later of—
 - (a) the commencement of the *Family Violence Act 2016*, section 6; and
 - (b) the commencement of this Act, section 3.

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

- (2) The remaining provisions commence on a day fixed by the Minister by written notice.

Note 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)).

- (3) If the remaining provisions have not commenced within 12 months beginning on this Act's notification day, they automatically commence on the first day after that period.
- (4) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the *Residential Tenancies Act 1997* and the *Uncollected Goods Act 1996*.

Part 2 Residential Tenancies Act 1997

4 Standard residential tenancy terms New section 8 (1) (ba)

insert

- (ba) if the agreement is a fixed term agreement and the lessor and tenant agree—may contain a break lease clause; and

5 Section 8 (2)

substitute

- (2) In this section:

break lease clause means the following clause:

Termination before end of fixed term—fee for breaking lease

- (1) If the tenant ends a fixed term agreement before the end of the fixed term (other than for a reason permitted by the Residential Tenancies Act or the agreement), the tenant must pay a fee (a *break fee*) of the following amount:
- (a) if the fixed term is 3 years or less—
- (i) if less than half of the fixed term has expired—6 weeks rent; or
- (ii) in any other case—4 weeks rent;
- (b) if the fixed term is more than 3 years—the amount agreed between the lessor and tenant.
- (2) The lessor agrees that the compensation payable by the tenant for ending a fixed term agreement before the end of the fixed term is limited to the amount of the break fee specified in subclause (1).

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 8 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 8 weeks written notice.
- (2) A notice under subclause (1) must be accompanied by evidence of the posting (for example, a letter from the employer of the lessor or tenant confirming the details of the posting).
- (3) The tenancy ends—
 - (a) 8 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.

**6 Energy efficiency rating—advertising
Section 11A (1) (b), except penalty**

substitute

- (b) the advertisement does not contain—
 - (i) if there is an existing energy efficiency rating of the habitable part of the premises—a statement of the energy efficiency rating; or
 - (ii) if there is no existing energy efficiency rating statement for the habitable part of the premises—a statement to that effect.

7 New section 11B

insert

11B Smoke alarms

A lessor must not enter into a residential tenancy agreement with a tenant in relation to premises unless—

- (a) smoke alarms are installed at the premises; and
- (b) the installation of the smoke alarms complies with the building code, volume 2, part 3.7.2.

**8 Successive residential tenancy agreements
Section 22**

omit

section 32

substitute

division 3.4 (Release of bond money)

9 Section 29 heading

substitute

29 Condition report—start of tenancy**10 New section 30A**

insert

30A Final inspection and condition report—end of tenancy

- (1) A lessor must, together with the tenant, carry out an inspection of the premises at the end of the residential tenancy agreement.
- (2) The lessor must, together with the tenant, complete and sign a condition report based on the inspection.

- (3) However, a party may complete and sign the condition report in the absence of the other party if the party has given the other party a reasonable opportunity to be present when the report is completed and signed.

**11 Deductions from bond
Section 31 (a)**

omit

the cost

substitute

the reasonable cost

12 New section 31 (aa)

insert

- (aa) the reasonable cost of securing the premises if the tenant fails to return the keys for the premises to the lessor at the end of the tenancy;

13 Section 31 (c)

omit

the cost

substitute

the reasonable cost

14 Sections 32 to 34

substitute

32 Definitions—div 3.4

In this division:

bond release application, in relation to a residential tenancy agreement, means an application to the Territory for payment out of the trust account of the amount of the bond paid under the agreement.

33 Bond release application—general

- (1) A bond release application may be made after the termination of a residential tenancy agreement by—
 - (a) the tenant and lessor jointly, under section 34A (Bond release application—joint application); or
 - (b) the tenant, under section 34B (Bond release application—application by tenant); or
 - (c) the lessor, under section 34C (Bond release application—application by lessor).

Note 1 If a form is approved under s 133 for this provision, the form must be used.

Note 2 A bond release application may be made before the termination of a residential tenancy agreement in certain circumstances (see s 34D).

- (2) The lessor or tenant may make more than 1 application in relation to the agreement only with the director-general's permission.

34 Bond release application—lessor's obligations

- (1) If a residential tenancy agreement is terminated, the lessor must give the tenant—
 - (a) a bond release application form signed by the lessor; and

- (b) if the application includes a claim by the lessor for a deduction from the bond—
 - (i) a written statement of the reasons for the deduction; and
 - (ii) if the reasons include a reason mentioned in section 31 (a) or (aa) (Deductions from bond)—a written estimate of the cost of the repairs or restoration.
- (2) The lessor must give the signed bond release application to the tenant—
 - (a) if the application includes a claim for a deduction from the bond for a reason mentioned in section 31 (a) or (aa)—10 working days after the day the residential tenancy agreement is terminated; and
 - (b) in any other case—3 working days after the day the residential tenancy agreement is terminated.

34A Bond release application—joint application

- (1) This section applies if—
 - (a) a lessor gives the tenant a signed bond release application form under section 34 (Bond release application—lessor's obligations) in relation to a residential tenancy agreement; and
 - (b) the tenant or, if there is more than 1 tenant, each tenant signs the form.
- (2) The lessor or tenant may give the signed application to the Territory.
- (3) On receiving the signed application, the Territory must pay out of the trust account—
 - (a) to the tenant or, if there is more than 1 tenant, the tenants—the amount claimed as the bond in the application, less any amount claimed by the lessor as a deduction from the bond; and
 - (b) to the lessor—any amount claimed as a deduction.

-
- (4) The amount paid out of the trust account must not exceed the amount of bond paid into the trust account in relation to the residential tenancy agreement.

34B Bond release application—application by tenant

- (1) A tenant may make a bond release application to the Territory if—
- (a) the tenant has not received a bond release application form from the lessor under section 34 (Bond release application—lessor’s obligations); or
 - (b) the tenant has received a bond release application form under section 34 and has not signed the form; or
 - (c) if there is more than 1 tenant—
 - (i) the tenants have received a bond release application form from the lessor under section 34; and
 - (ii) the tenant making the application has signed the form; but
 - (iii) at least 1 tenant has not signed the form.
- (2) On receiving a bond release application from the tenant, the Territory must—
- (a) give written notice of the application (a *notice of application*) to the lessor and each tenant who has not signed the application (other than the applicant); and
 - (b) if the Territory does not receive a notice disputing the application from a person mentioned in paragraph (a) within 2 weeks after the day the person was given the notice of application—pay out of the trust account in accordance with the application the amount claimed as bond in the application.
- (3) The amount paid out of the trust account must not exceed the amount of bond paid into the trust account in relation to the residential tenancy agreement.

34C Bond release application—application by lessor

- (1) A lessor may make a bond release application to the Territory—
 - (a) if—
 - (i) the lessor had given a tenant a bond release application form under section 34 (Bond release application—lessor’s obligations); and
 - (ii) the tenant has not given the signed bond release application to the Territory or lessor within 10 days or any longer period prescribed by regulation; or
 - (b) if, despite taking reasonable steps to do so, the lessor has been unable to give a bond release application form to a tenant under section 34.
- (2) On receiving a bond release application from the lessor, the Territory must—
 - (a) give written notice of the application (a *notice of application*) to the tenant; and
 - (b) if the Territory does not receive a notice disputing the application from the tenant within 2 weeks after the day the tenant was given the notice of application—pay out of the trust account in accordance with the application the amount claimed as bond in the application.
- (3) The amount paid out of the trust account must not exceed the amount of bond paid into the trust account in relation to the residential tenancy agreement.

34D Bond release application before end of agreement

- (1) A bond release application may be made before the termination of a residential tenancy agreement if it is—
- (a) made by the tenant and lessor jointly; or
 - (b) made by the lessor for payment to the tenant, or by the tenant for payment to the lessor, of the total amount of the bond paid under the agreement; or
 - (c) made by the lessor or tenant in accordance with an order of the ACAT stating that money is to be paid from an amount of bond.

Note 1 If a form is approved under s 133 for this provision, the form must be used.

Note 2 Section 34E deals with applications mentioned in s (1) (c).

- (2) On receiving an application under subsection (1) (a), the Territory must pay out of the trust account—
- (a) to the tenant—the amount claimed as the bond in the application, less any amount claimed by the lessor as a deduction from the bond; and
 - (b) to the lessor—any amount claimed as a deduction;
- (3) On receiving an application under subsection (1) (b), the Territory must pay out of the trust account the amount claimed as the bond to the person mentioned in the application as the recipient.
- (4) The amount paid out of the trust account under subsection (2) or (3) must not exceed the amount of bond paid into the trust account in relation to the residential tenancy agreement.

34E Bond release application—ACAT order

- (1) This section applies if a lessor or tenant makes a bond release application, to the Territory, in relation to a residential tenancy agreement that is in accordance with an order of the ACAT stating an amount of money is to be paid from an amount of bond.

Note If a form is approved under s 133 for this provision, the form must be used.

- (2) On receiving the application, the Territory must—
- (a) give written notice of the application (a *notice of application*) to the party to the agreement who did not make the application; and
 - (b) pay out of the trust account an amount of bond in accordance with the application.
- (3) The amount paid out of the trust account must not exceed the amount of bond paid into the trust account in relation to the residential tenancy agreement.

**15 Disputes about all or part of bond
Section 35 (1) (a)**

substitute

- (a) a tenant or lessor is given a notice (a *notice of application*) about a bond release application under section 34B (2) (a) (Bond release application—application by tenant) or section 34C (2) (a) (Bond release application—application by lessor); and

**16 Termination
New section 36 (n)**

insert

- (n) if the agreement contains a fair clause for posted people—a party to the agreement terminates the agreement in accordance with the clause.

17 New section 36 (2)

insert

- (2) In this section:

fair clause for posted people—see section 8 (2).

**18 Entry for eviction purposes
New section 37 (6)**

insert

- (6) This section is subject to section 61A (Lessor may enter premises to confirm abandonment).

**19 Significant hardship
Section 44 (1), new example**

insert

Example—significant hardship

Chris and Jamie share premises under a residential tenancy agreement. The Magistrates Court makes an interim order under the *Family Violence Act 2016* that prohibits Chris (the respondent) from being on premises where Jamie (the protected person) lives. Jamie wishes to end the residential tenancy agreement and leave the premises. If the agreement were to continue, Jamie would suffer significant hardship.

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).

20 New section 61A*insert***61A Lessor may enter premises to confirm abandonment**

- (1) This section applies if a lessor of premises under a residential tenancy agreement has taken all reasonable steps to contact the tenant and believes on reasonable grounds that the premises have been abandoned by the tenant.

Example

David has a fixed-term residential tenancy agreement with Michael to rent Michael's house. David hasn't paid his rent for 4 weeks so Michael tries to call David on the telephone number David gave him as a contact number. After several unsuccessful attempts to call him, Michael then sends letters to David's postal and email addresses but gets no response. Michael also drives by the house on several occasions at different times and notices that there is never any activity there. He also notices a smashed window and broken glass on the ground. Michael has taken all reasonable steps to contact David and has reasonable grounds for believing the premises have been abandoned by David.

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 lessor may, without the tenant's consent, and without giving notice to the tenant, enter the premises during the residential tenancy agreement to confirm whether the premises have been abandoned.
- (3) However, the lessor must not enter the premises—
- (a) on Sunday; or
 - (b) on a public holiday; or
 - (c) before 8am or after 6pm.

**21 Notice of intention to vacate—award of compensation
Section 84 (1) (b)***omit everything before paragraph (b) (i), substitute*

- (b) if the agreement does not include a break lease clause, apply to the ACAT for compensation for—

22 New section 84 (5)

insert

(5) In this section:

break lease clause—see section 8 (2).

23 New division 6.5A heading

after section 84, insert

**Division 6.5A Powers and decisions of ACAT—
protection orders****24 Section 85**

substitute

85 Definitions—div 6.5A

(1) In this division:

FV Act means the *Family Violence Act 2016*.

protected person—

- (a) in relation to a protection order under the FV Act—see the FV Act, dictionary; or
- (b) in relation to a protection order under the PV Act—see the PV Act, dictionary.

protection order means—

- (a) a protection order under the FV Act; or
- (b) means an interim or final personal protection order under the PV Act.

PV Act means the *Personal Violence Act 2016*.

respondent—

- (a) in relation to a protection order under the FV Act—see the FV Act, dictionary; or
- (b) in relation to a protection order under the PV Act—see the PV Act, dictionary.

- (2) In this section:

personal protection order means a protection order applied for under the PV Act, section 12.

85A New tenancy agreement—family violence and protection orders

- (1) This section applies if—
 - (a) the Magistrates Court has made a protection order; and
 - (b) the respondent is a party to a residential tenancy agreement in relation to premises; and
 - (c) the protected person under the order—
 - (i) is also a party to the residential tenancy agreement; or
 - (ii) has been living in the premises as the protected person's home but is not a party to the agreement; and
 - (d) either—
 - (i) the order includes an exclusion condition or a condition prohibiting the respondent from being within a particular distance from the protected person; or
 - (ii) the respondent has given an undertaking to the court to leave the premises.

- (2) The protected person may apply to the ACAT for either of the following orders:
- (a) an order terminating the existing residential tenancy agreement;
 - (b) an order—
 - (i) terminating the existing residential tenancy agreement; and
 - (ii) requiring the lessor of the premises to enter into a residential tenancy agreement with the protected person and any other person mentioned in the application.
- (3) Each of the following is a party to a proceeding on the application:
- (a) the protected person;
 - (b) the lessor;
 - (c) the respondent;
 - (d) any other existing tenants.
- (4) In this section:
- exclusion condition*—
- (a) of a protection order under the FV Act—see the FV Act, section 39 (4); or
 - (b) of a protection order under the PV Act—see the PV Act, section 31 (4).

85B Applications under s 85A—ACAT orders

- (1) This section applies if the ACAT receives an application under section 85A from a protected person under a protection order.
- (2) The ACAT may make the order applied for if satisfied that—
- (a) it is reasonable to make the order, taking into consideration the length of the protection order and the length of time remaining on the term of the existing residential tenancy agreement; and

- (b) it is reasonable to make the order, taking into consideration the interests of any other tenants (other than the respondent) under the existing residential tenancy agreement and, in particular, whether the other tenants support the protected person's application; and
- (c) for an order mentioned in section 85A (2) (b)—
 - (i) the protected person or the protected person's dependent children would be likely to suffer significant hardship if the protected person were compelled to leave the premises; and
 - (ii) that hardship would be greater than the hardship the lessor would suffer if the order were made; and
 - (iii) the protected person and any other person mentioned in the application could reasonably be expected to comply with the terms of a residential tenancy agreement; and
 - (iv) if another person is mentioned in the application—the lessor has been given an opportunity to consider the person's suitability as a tenant.
- (3) If the ACAT makes an order mentioned in section 85A (2) (b), the new residential tenancy agreement must—
 - (a) be subject to the same rent and frequency of rent payments as the existing residential tenancy agreement; and
 - (b) if the existing residential tenancy agreement is a fixed term agreement—run for a term not longer than the remainder of the fixed term; and
 - (c) otherwise be on the same terms as the existing residential tenancy agreement, subject to any changes the ACAT decides.
- (4) If the ACAT makes an order mentioned in section 85A (2) (b), the existing residential tenancy agreement is terminated when the new residential tenancy agreement is signed by the parties to the agreement.

- (5) The ACAT may determine the liabilities of the respondent, the protected person or any other tenants under the existing residential tenancy agreement in relation to the bond paid under the agreement.

25 New part 13

insert

Part 13 Transitional—Residential Tenancies Legislation Amendment Act 2016

144 Definitions—pt 13

In this part:

commencement day means the day the *Residential Tenancies Legislation Amendment Act 2016*, section 6 commences.

existing residential tenancy agreement means a residential tenancy agreement that is in force on the commencement day.

145 Existing residential tenancy agreements—lessor to install smoke alarms

- (1) This section applies in relation to an existing residential tenancy agreement if—
- (a) no smoke alarms are installed at the premises; or
 - (b) smoke alarms are installed at the premises but the installation does not comply with the building code, volume 2, part 3.7.2.
- (2) Not later than 12 months after the commencement day, the lessor must install smoke alarms at the premises.
- (3) The installation of the smoke alarms must comply with the building code, volume 2, part 3.7.2.

- (4) Subsection (2) does not apply if the residential tenancy agreement is no longer in force 12 months after the commencement day.

Example

Before the commencement day, Kathy leases residential premises to Paul. However, 4 months after the commencement day, Paul terminates the residential tenancy agreement. Under subsection (4), Kathy does not have to install smoke alarms at the premises.

However, if Kathy leases the premises to someone else after the commencement day, under section 11B, she will need to install smoke alarms in the premises.

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).

146 Existing residential tenancy agreements—tenant to replace smoke alarm batteries

- (1) This section applies in relation to an existing residential tenancy agreement if—
- (a) the lessor installs a smoke alarm at the premises under section 145; or
 - (b) before the commencement day—a smoke alarm is installed at the premises and the installation complies with the building code, volume 2, part 3.7.2.
- (2) The tenant must replace a battery in the smoke alarm whenever necessary.

147 Expiry—pt 13

This part expires 12 months after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

26 Standard residential tenancy terms
Schedule 1, new clause 23A

insert

End of tenancy—inspection and condition report

- 23A
- (1) At the end of the tenancy, an inspection of the premises must be carried out in the presence of the lessor and tenant.
 - (2) A condition report based on the inspection must be completed in the presence of, and signed by, the lessor and tenant.
 - (3) A party may complete and sign a condition report in the absence of the other party if the party has given the other party a reasonable opportunity to be present when the report is completed and signed.

27 Schedule 1, new clause 53A

insert

Lessor to install and maintain smoke alarms**Lessor to install and maintain smoke alarms**

- 53A
- (1) The lessor must install and maintain smoke alarms in the premises.
 - (2) The installation of the smoke alarms must comply with the building code, volume 2, part 3.7.2.

28 Schedule 1, clause 54 (5)

substitute

- (5) If the tenant, or a person living at the premises, is a protected person in relation to an interim or final order made under the *Family Violence Act 2016* or the *Personal Violence Act 2016*, the tenant or person may change locks (at his or her own cost) without the agreement of the other party.

- (6) If a lock is changed, a copy of the key to the changed lock must be provided to the other party as soon as possible unless doing so would affect the safety of a protected person.

29 Schedule 1, new clause 63A

insert

- 63A The tenant must replace the battery in a smoke alarm installed in the premises whenever necessary.

30 Dictionary, note 2

insert

- building code
- working day

31 Dictionary, new definitions

insert

bond release application, for division 3.4 (Release of bond money)—see section 32.

FV Act, for division 6.5A (Powers and decisions of ACAT—protection orders)—see section 85 (1).

protected person, for division 6.5A (Powers and decisions of ACAT—protection orders)—see section 85 (1).

protection order, for division 6.5A (Powers and decisions of ACAT—protection orders)—see section 85 (1).

PV Act, for division 6.5A (Powers and decisions of ACAT—protection orders)—see section 85 (1).

respondent, for division 6.5A (Powers and decisions of ACAT—protection orders)—see section 85 (1).

Part 3 **Uncollected Goods Act 1996****32** **Goods deemed uncollected**
Section 5 (a)*after*

received

insert

or holds

33 **Section 5 (c)***after*

received

insert

or held

34 **Application of div 2.2**
Section 6*after*

received

insert

or held

35 Section 21

substitute

21 Personal effects

- (1) Personal effects (other than a personal document) may be disposed of by public auction after 3 months.
- (2) A personal document may be disposed of—
 - (a) by returning the document to the authority that issued it; or
 - (b) if it is not practicable to return the document to the authority that issued it—in any other lawful way that the possessor thinks appropriate.
- (3) A personal document must not be disposed of in a way that results in personal information about the owner of the document becoming publicly available.

- (4) In this section:

personal document means any of the following:

- (a) a birth certificate, passport or other identity document;
- (b) a bank book or other financial statement or document;
- (c) a photograph or other personal memorabilia;
- (d) a licence or other document conferring an authority, right or qualification;
- (e) a document prescribed by regulation.

36 Dictionary, definition of *personal effects*

omit

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 8 June 2016.

2 Notification

Notified under the [Legislation Act](#) on 24 August 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Residential Tenancies Legislation Amendment Bill 2016, which was passed by the Legislative Assembly on 4 August 2016.

Clerk of the Legislative Assembly

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