

AUSTRALIAN CAPITAL TERRITORY
RESIDENTIAL TENANCIES ACT 1997
DETERMINATION

INSTRUMENT NO. 82 OF 1998

Under subsection 134(1) of the *Residential Tenancies Act 1997* I determine that the criteria to which the Residential Tenancies Tribunal is to have regard for the purposes of section 10 of the *Residential Tenancies Act 1997* are as follows:

A. In relation to an application that does not concern accommodation provided by a community housing organisation or a supported, crisis or transitional accommodation provider or joint venture:

1. Whether the lessor and the tenant consent to the proposed term,
2. The nature and substance of any negotiations between the lessor and the tenant;
3. Whether inclusion of the term would result in any material detriment to either the lessor or the tenant; and
4. Whether the Residential Tenancies Tribunal has endorsed a term in substantially the same form.

B. In relation to other applications:

- 1 The terms of any agreement relating to the provision of accommodation between the lessor and tenants prior to the commencement of the *Residential Tenancies Act 1997*,
2. The consent of the lessor and the tenant to the proposed terms or any consultation between the lessor and
 - (a) the proposed tenant ; or
 - (b) current tenants of the lessor or any organisation representing the interests of tenants;
3. In relation to a head lease or joint venture arrangement, the nature of any obligations imposed by the lease or arrangement on the lessor relating to the premises,
- 4 Any dispute resolution processes which recognise the jurisdiction of the Residential Tenancies Tribunal;

5. The circumstances in which the accommodation is available or is able to be provided by the lessor and the relevance of provisions varying the prescribed terms relating to;
- (a) the form of the condition report;
 - (b) in the case of shared housing arrangements:
 - the method by which the cost of services is allocated amongst tenants, and/or
 - the tenant's responsibility to take reasonable care of common areas adjacent to or part of the premises; and/or
 - the tenant's responsibility to ensure that common areas adjacent to or part of the premises are kept reasonably clean.
 - (c) the tenant's use of the premises and in particular the need to ensure the peace comfort and privacy of other tenants at the same premises;
 - (d) the tenant's capacity to change locks in an emergency;
 - (e) the imposition of rental rate increases in the first twelve months of the commencement of the tenancy and the frequency of rental rate increases thereafter;
 - (f) the limits upon the tenant's capacity to exclude persons (including the lessor) from the premises where such limitations are clearly stipulated (including the circumstances under which the lessor may enter the premises and any period of notice to be given to the tenant prior to entry by the lessor),
 - (g) the lessor's capacity to relocate the tenant where the circumstances under which any relocation may be effected are clearly stipulated;
 - (h) the period of notice to be given to a tenant to vacate the premises in specified circumstances, and the form of that notice;
 - (i) in relation to community housing organisations , any requirement that the tenant remain a member of the community housing organisation providing the accommodation; and
 - (j) the specific circumstances in which a lessor may terminate an agreement for:
 - any breach of the rules of the organisation providing the accommodation; or
 - any behavior by which a tenant has intentionally or recklessly caused or permitted injury (or is likely to so cause or permit injury) to the employees or agents of the lessor or other tenants of the lessor.

C. Definitions:

For the purposes of this determination:

“community housing organisation” means a body corporate that:

- (a) provides long term accommodation affordable with respect to income and responsive to the accommodation needs of tenants; and
- (b) provides the opportunity for tenants to maximise control over their housing through various forms of tenant participation; and
- (c) is not carried on for the pecuniary profit or gain of its members

“supported, crisis or transitional accommodation” means accommodation provided by a body corporate that:

- (a) has as its principal purpose:
 - (i) the provision of accommodation for persons in urgent need of accommodation; or
 - (ii) the provision of therapeutic, health, welfare or care related assistance or services to persons; or
 - (iii) the provision of accommodation for persons who are homeless; and
- (b) is not carried on for the pecuniary profit or gain of its members.

“a homeless person” has the same meaning as it has in section 4 of the Supported Accommodation Assistance Act 1994 (Commonwealth)

“shared accommodation” means accommodation provided to two or more tenants each of whom have equal access to defined adjacent common areas and joint responsibility for the reasonable care and cleanliness of common areas.

“head lease” refers to an arrangement where housing is provided by a head lessor to a community housing organisation or a supported, crisis or transitional accommodation provider.

“joint venture” refers to an arrangement where housing is provided by an organisation jointly with a community housing organisation or a supported, crisis and transitional accommodation provider.


GARY HUMPHRIES
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26 MAY 1998