

RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Excessive Rent Increases

BACKGROUND

Rental laws in the ACT are changing from 1 November 2019. The changes will ensure that the the *Residential Tenancies Act 1997* (the RTA) operates effectively and strikes a fair balance between the rights of tenants and landlords. The RTA is the key piece of legislation setting out the rights and obligations of landlords and tenants in the ACT.

This Fact Sheet is designed to help you understand the changes. The information in this Fact Sheet is not legal advice. You should seek legal advice if in doubt about your individual circumstances.

The rights and obligations of the landlord and tenant depend on the RTA and on the individual residential tenancy agreement (including whether it is for a fixed term or periodic). You should always check your agreement as a starting point.

WILL EXISTING RESIDENTIAL TENANCY AGREEMENTS BE AFFECTED?

The terms of existing agreements will not change, but the way those terms operate might be affected by changes to the RTA. Residential tenancy agreements made after the new laws have commenced will include the new standard terms. If in doubt, seek legal advice about your individual circumstances.

WHEN CAN A LANDLORD INCREASE THE RENT?

Under a fixed term tenancy agreement, rent may not be increased during the fixed term unless the amount of the increase (or the method for working it out) is set out in the agreement.

Rent may not be increased outside of a fixed term agreement at intervals of less than 12 months.

WHAT IS AN EXCESSIVE RENT INCREASE?

The Tribunal has the power to review rental rate increases upon an application by a tenant. If the increase is permitted under the tenancy agreement, then the Tribunal must allow it as long as it is not 'excessive.'

Generally, a rental rate increase is presumed to be excessive if it is more than the amount set under the legislation: the 'prescribed amount.' There is a formula for calculating the prescribed amount.

If a rental increase is less than this prescribed amount, the tenant must satisfy the Tribunal that the increase is excessive. If a rental increase is more than this prescribed amount, the landlord must satisfy the Tribunal that the increase is not excessive.

The formula for calculating the prescribed amount uses the percentage increase in the rents component of the housing group of the Consumer Price Index for Canberra published by the Australian statistician. The Consumer Price Index is the most commonly used statistic in the calculation of inflation. The Australian Bureau of Statistics publishes the Consumer Price Index figures on its website at: <https://www.abs.gov.au/Price-Indexes-and-Inflation>.

The prescribed amount is 110% of the percentage increase. That is, a landlord can increase the rent on a property by ten percent more than the increase in the Consumer Price Index.

HOW CAN A LANDLORD INCREASE THE RENT HIGHER THAN THE PRESCRIBED AMOUNT?

Yes – however, a landlord may only increase the rent by an amount more than the prescribed amount only if:

- the residential tenancy agreement permits the landlord to increase the rent by the amount (such as under a fixed term agreement); or
- the tenant agrees in writing to the increase; or
- the landlord obtains the approval of the ACT Civil and Administrative Tribunal.

If the landlord wants the tenant to agree to the increase, they must give eight weeks notice of the increase in writing. The notice must state the amount of the proposed increase and that the increase is more than the prescribed amount. The notice must state that if the tenant does not agree to the increase, the landlord may only make the proposed increase with the prior approval of the Tribunal.

MORE INFORMATION?

You can access the RTA on the ACT Legislation Register at www.legislation.act.gov.au.

You can access information about the ACT Civil and Administrative Tribunal and contact details for the Tribunal at www.acat.act.gov.au. Please note that the Tribunal can assist with questions about its procedures but it cannot give legal advice on individual situations.

Tenants can access the Tenants' Advice Service on (02) 6247 2011 between 10:00am and 1:30pm to leave a voice message on their advice line. The Tenant's Union ACT website also includes a range of information and factsheets about rental issues: <http://www.tenantsact.org.au/services/tenants-advice-service/>.

The Legal Advice Bureau at the Law Society is a free service and can provide advice to both tenants and landlords. It can be contacted on (02) 6274 0300.