

RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Modifications

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.

WILL EXISTING RESIDENTIAL TENANCY AGREEMENTS BE AFFECTED?

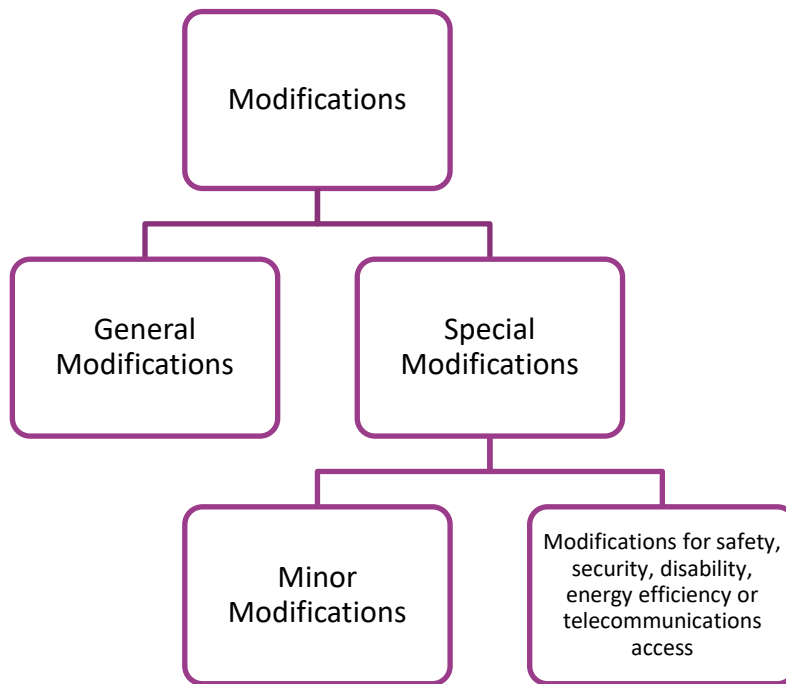
The terms of existing agreements will not change, but the way those terms operate might be affected by changes to the RTA. Residential tenancy agreements made after the new laws have commenced will include the new standard terms. If in doubt, seek legal advice about your individual circumstances.

WHAT IS A MODIFICATION?

Under the RTA, the tenant must not make any changes to the property without the written consent of the landlord. Changes to the property are called modifications.

There are two categories of modification: general modification and special modifications. Special modifications include minor modifications and modifications for safety, security, disability, energy efficiency or telecommunications access.

The rules for seeking consent from the landlord for general modifications and for special modifications are different.



WHAT IS A SPECIAL MODIFICATION?

Special modifications are a category of modification that is made up of two subcategories.

The first subcategory are modifications that can be removed or undone so that the property are restored to substantially the same condition as the property were in at the commencement of the agreement, fair wear and tear excepted. This might include (depending on the circumstances) modifications like putting up picture hooks, installing a bathroom shelf, affixing blinds to a window, or planting a herb garden. These modifications are called 'minor modifications'.

The second subcategory are modifications made for one of the following defined reasons:

- for the safety of people on the property (e.g. furniture anchors or child safety gates);
- to assist a tenant who has a disability (e.g. access ramps, safety rails) – the tenant must provide a written recommendation of a health practitioner in support of their request;
- to improve the energy efficiency of the property;
- to allow access to telecommunication services; or
- for the security of the property or people on the property (e.g. deadlocks or alarms).

WHEN CAN LANDLORDS REFUSE CONSENT TO MODIFICATIONS?

Landlords can refuse consent to special modifications (including minor modifications) only with the approval of the Tribunal. Landlords can refuse consent for general modifications, but they must not refuse consent unreasonably.

Type of modification	Can landlord refuse consent?
Special modification - Minor modification - Modifications for safety, security, disability, energy efficiency or telecommunications access	Landlord needs approval from Tribunal to refuse consent. Landlord must apply to Tribunal for this approval. If the tenant requests consent for a special modification in writing from the landlord (e.g. via email), and the landlord does not respond within 14 days, the landlord is taken to have consented.
General modification (any other kind of modification other than a special modification)	Landlord does not need approval from Tribunal to refuse consent, but landlord cannot unreasonably withhold consent. Tenant must apply to Tribunal if they believe the landlord has unreasonably withheld consent.

Table: When can a landlord refuse consent?

WHEN WILL THE TRIBUNAL APPROVE A LANDLORD'S REFUSAL TO CONSENT TO SPECIAL MODIFICATIONS (INCLUDING MINOR MODIFICATIONS)?

The Tribunal may make an order permitting the landlord to refuse consent to a special modification (or impose conditions on consent) if:

- the lessor would suffer significant hardship if the modification were made;
- the special modification would be contrary to law;
- the special modification is likely to require modifications to other residential properties or common areas (e.g. in apartment buildings); or
- the special modification would result in additional maintenance costs for the landlord.

The Tribunal will consider the matter fairly taking into account the views of the parties.

CAN LANDLORDS PUT CONDITIONS ON CONSENT?

Yes. For all modifications, including special modifications, the landlord may impose a reasonable condition on consent. For example, they can require the proposed modification to be done in a stated way to minimise damage to the property, or that a qualified tradesperson must undertake both the modification and restoration at the end of the tenancy.

DOES A TENANT HAVE TO REMOVE A SPECIAL MODIFICATION (INCLUDING A MINOR MODIFICATION) AT THE END OF THE TENANCY?

Yes. Unless otherwise agreed, at the end of the tenancy, the tenant is responsible for restoring the property to substantially the same condition as the property were in at the commencement of the residential tenancy agreement, fair wear and tear excepted.

WHAT IF THE LANDLORD WANTS THE MODIFICATION TO REMAIN IN PLACE AT THE END OF THE TENANCY? FOR EXAMPLE, A LANDLORD MIGHT WANT TO KEEP THE MODIFICATIONS THAT IMPROVE THE ENERGY EFFICIENCY OF THE PROPERTY.

If the landlord and the tenant agree, the modification may remain in place at the end of the residential tenancy agreement.

IF THE MODIFICATION IMPROVES THE PROPERTY, IS THE TENANT STILL REQUIRED TO RESTORE THE PROPERTY TO ITS ORIGINAL CONDITION AT THE END OF THE LEASE?

Many modifications requested by a tenant may improve the property (e.g. upgrading locks or installing energy efficiency devices). The tenant and the landlord can agree to leave the modification in place at the end of the tenancy. If the tenant and the landlord do not agree, the tenant must remove the modification.

WHO PAYS FOR THE MODIFICATION? WHAT IF THE MODIFICATION IMPROVES THE VALUE OF THE PROPERTY?

The tenant must pay for the modification. The tenant cannot require the landlord to pay for all or part of the modification, even if it improves the value of the property. Although the tenant cannot require the landlord to contribute to the cost, the tenant and landlord may still agree to share the costs of the modification. For example, they might decide to share the cost if they also agree that the improvement will be left in place at the end of the tenancy.

IF A TENANT:

- paints a wall, do they have to paint it back to the original colour when they leave?
- secures a bookshelf to the wall, do they have to patch the wall up when they leave?
- installs handrails for mobility, do they have to remove them when they leave?
- installs an alarm system, do they have to remove it when they leave?

Yes. Unless otherwise agreed, the tenant is responsible for restoring the property to substantially the same condition as the property in at the start of their tenancy (fair wear and tear excepted).

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.