

RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Overview

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.

WHAT ARE THE MAJOR CHANGES TO THE RTA?

The changes will:

- make it easier for tenants to keep pets and make modifications in rental properties, within a consent framework that will balance the legitimate interests of landlords;
- make it easier for tenants experiencing family violence to change their tenancy arrangements;
- provide that a tenant who vacates a property during a fixed term does not need to pay a 'break lease' fee if the lessor finds a replacement tenant, subject to reasonable costs; and
- provide additional protection to tenants against excessive rent increases.

There are more detailed fact sheets on each of these separate topics available on our website.

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.

PETS

IS A TENANT PERMITTED TO KEEP A PET ON THE PROPERTY WITHOUT THE LANDLORD'S KNOWLEDGE?

Only if the tenancy agreement permits it. If the tenancy agreement does not have a provision about pets, the tenant may have a pet without seeking the permission of the landlord.

A tenancy agreement can impose a requirement that the tenant must seek the landlord's consent before keeping a pet. If that requirement is in the agreement, the tenant must comply with it and seek consent before keeping a pet on the property.

CAN A TENANCY AGREEMENT PROHIBIT PETS COMPLETELY?

No. The tenancy agreement may only state that the tenant must seek the landlord's consent before keeping a pet.

CAN A LANDLORD REFUSE CONSENT FOR A PET?

Yes – however a landlord may only refuse consent for a pet with the approval of the ACT Civil and Administrative Tribunal. The landlord must apply to the Tribunal within 14 days of receiving the tenant's

request, or the landlord will be taken to have consented.

The Tribunal may approve the landlord's refusal if satisfied that:

- the property is unsuitable to keep the animal;
- keeping the animal would result in unreasonable damage to the property;
- keeping the animal on the property would be an unacceptable risk to public health safety;
- the landlord would suffer significant hardship; or
- keeping the animal would be contrary to law.

The Tribunal is independent and will make fair decisions about pets as quickly as possible. The Tribunal also offers mediation services as a way to informally resolve disputes without requiring a full hearing.

HOW CAN THE LANDLORD ENSURE THAT THE TENANT SEEKS THEIR CONSENT?

When the landlord places an advertisement to lease a property, they must declare that the tenant will be required to seek their consent to keep a pet. A landlord can be fined if they fail to state this in their advertisement.

When signing the tenancy agreement, the agreement can include the clause that requires the tenant to obtain the lessor's prior written consent to keep an animal. If the clause is not in the agreement, the tenant may keep a pet.

WHAT IF OWNING A PET IS AGAINST THE RULES OF THE BODY CORPORATE?

A tenant is required to comply with their requirements under both the RTA and under strata law (the *Unit Titles (Management) Act 2011*).

Under strata law, the owners corporation's consent is required to keep a pet. Owners corporations must not unreasonably withhold their consent.

WHAT IF THE ANIMAL CAUSES DAMAGE TO THE PROPERTY?

The tenant is responsible for all repairs or additional maintenance to the property required due to keeping an animal on the property. If this damage exceeds the bond paid, the tenant is responsible for the excess.

CAN LANDLORDS REQUEST AN INCREASE IN THE BOND OR A 'PET BOND' IN ADVANCE FROM THE TENANT?

No. The RTA makes it clear that tenants are responsible for additional damage caused by pets. The maximum bond amount remains at not more than the first four weeks of rent payable.

CAN LANDLORDS IMPOSE A CONDITION TO INSPECT THE PROPERTY MORE REGULARLY?

No. The existing rules for a landlord to inspect a property still apply.

WHAT ABOUT TENANTS WITH ASSISTANCE ANIMALS?

The new laws do not affect the protections given to people who rely on assistance animals. The *Discrimination Act 1991* makes it unlawful for landlords to discriminate against a tenant who has a disability, which includes their reliance on an assistance animal.

MODIFICATIONS

IS A TENANT ABLE TO MAKE MODIFICATIONS TO THE PROPERTY WITHOUT THE LANDLORD'S KNOWLEDGE?

No. A tenant must not make any modifications to the property without the consent of the landlord.

The landlord may give consent subject to reasonable conditions. These conditions may include requiring the tenant to use a suitably

qualified tradesperson to undertake the modification.

IF A TENANT PAINTS A WALL, DO THEY HAVE TO PAINT IT BACK TO THE ORIGINAL COLOUR WHEN THEY LEAVE? IF THEY PUT A NAIL IN THE WALL, DO THEY HAVE TO PATCH THE WALL UP 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).

CAN LANDLORDS REFUSE CONSENT TO MODIFICATIONS?

Yes, but there are certain types of 'special modifications' where the landlord cannot refuse consent unless they seek orders from the Tribunal. Special modifications are modifications made for the following 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;
- for the security of the property or people on the property (e.g. deadlocks or alarms); or
- minor modifications. Minor modifications are changes that can be removed or undone so that the property is restored to substantially the same condition it was in at the start of the tenancy (fair wear and tear excepted).

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.

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.

For modifications other than special modifications, the landlord does not need a Tribunal order to refuse consent, but must not withhold consent unreasonably. If the tenant thinks that the landlord has unreasonably withheld consent, then the tenant may apply to the ACT Civil and Administrative Tribunal to obtain consent for the modification. The Tribunal will consider the matter fairly taking into account the views of both parties.

WHAT 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? WHO PAYS FOR THE IMPROVEMENT?

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. The tenant cannot require the landlord to pay for all or part of the modification even if it improves the property and is left in place. The tenant and landlord may agree to share the costs of the modification.

EXCESSIVE RENT INCREASES

WHAT IS AN EXCESSIVE RENT INCREASE?

An excessive rent increase is an increase in excess of the threshold set under the legislation. The threshold is 110% of 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>>.

CAN A LANDLORD INCREASE THE RENT HIGHER THAN THE THRESHOLD?

Yes, but only in certain circumstances. A landlord may increase the rent by an amount more than the prescribed amount if:

- the residential tenancy agreement permits the landlord to increase the rent by the amount; or
- the landlord and the tenant agree to the increase; or
- the landlord obtains the approval of the ACT Civil and Administrative Tribunal.

BREAK LEASE FEE

WHAT IS A BREAK LEASE FEE?

A residential tenancy agreement may provide that a break lease fee is payable by a tenant who vacates a property during a fixed term.

The break fee varies depending upon the term of the tenancy agreement and how much time is left on the agreement. If your residential tenancy agreement is for a period of more than three years, different rules apply: consult the RTA and seek legal advice as necessary.

WHAT ARE THE CHANGES TO THE RULES GOVERNING BREAK LEASE FEES?

Instead of break lease fees being calculated based on the rent (as is currently the case), the maximum break lease fee payable will be limited to the actual loss incurred by the landlord. The fee will be limited to:

- the lost rent before a new tenant is found (this will depend on the amount of time between when the tenant breaks the lease and a new tenant moves in); and
- the landlord's reasonable costs for advertising and re-letting the property.

The landlord's reasonable costs for advertising and re-letting will be capped. The cap varies depending upon what proportion of the term of the agreement has been completed: if you are less than half way through, the cap is one weeks' rent; if you are more than half way through, the cap is two-thirds of one weeks' rent.

It is important to note that this is just the cap. If the actual cost to the landlord is less than the cap, the full capped amount cannot be charged.

MORE INFORMATION?

There are more detailed fact sheets on each of these separate topics available on our website.

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.