

RESIDENTIAL TENANCIES AMENDMENT ACT 2019

Pets

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.

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

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.

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

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 THE LANDLORD REFUSE CONSENT FOR A PET?

The 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.

HOW DOES THE TENANT REQUEST CONSENT FOR A PET?

If required under the tenancy agreement, the tenant must request consent in writing from the landlord. This could be done via email or letter. If the landlord does not respond within 14 days of receiving the request, the landlord is taken to have consented.

DOES THE LANDLORD NEED THE TRIBUNAL'S APPROVAL TO IMPOSE CONDITIONS ON OWNING A PET?

If the condition is a reasonable condition about the number of animals that may be kept on the property or the cleaning or maintenance of the property, the landlord does not require the Tribunal's approval.

If the landlord wants to impose other conditions, they must seek the prior approval of the Tribunal.

WHAT IF THE TENANT DISAGREES WITH THE CONDITIONS SET BY THE LANDLORD?

The tenant can apply to the Tribunal to resolve the dispute.

WHAT IF THE LANDLORD IS ALLERGIC TO ANIMALS? WHAT IF THE PROPERTY IS AN

APARTMENT AND IS NOT SUITABLE FOR A LARGE DOG?

The landlord can apply to the Tribunal for an order permitting them to refuse consent. 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 to informally resolve disputes without requiring a full hearing.

WILL A TENANT KNOW IF THE RENTAL AGREEMENT WILL REQUIRE A LANDLORD'S CONSENT WHEN LOOKING FOR A PROPERTY?

Yes. Landlords are required to state in their advertisements for rental properties if the proposed tenancy agreement for a property will require their consent for keeping a pet. Landlords must also state if they have prior approval from the Tribunal to impose a condition on consent. This advertising requirement is intended to provide prospective tenants with information to assist them to decide whether to inspect or apply for a particular rental property.

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.

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.