



ACT
Government

THE RENTING BOOK

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A GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES
Tenant | Property Owner | Real Estate Agent



This is an information handbook authorised by the Commissioner for Fair Trading issued under the *Residential Tenancies Act 1997*.

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This book is a guide for all tenants, property owners and agents involved in renting residential property in the ACT. It explains your rights and responsibilities under residential tenancy laws.

WHAT IS THE RESIDENTIAL TENANCIES ACT?

While this book covers the main issues of the *Residential Tenancies Act 1997* you should note:

- ☑ this is a guide only and does not take the place of sound legal advice;
- ☑ that decisions by the ACT Civil and Administrative Tribunal may result in different interpretations of the Act; and
- ☑ a residential tenancy agreement should be read in conjunction with the Residential Tenancies Act.

The *Residential Tenancies Act 1997* commenced on 26 May 1998. The Act is amended from time to time. Major amendments were made to the Act by the *Residential Tenancies Amendment Act 2004* and the *Residential Tenancies Amendment Act 2005*. The *Residential Tenancies Legislation Amendment Act 2016* commences on 24 August 2017 and makes changes to the *Residential Tenancies Act and Uncollected Goods Act 1996*.

The Act applies to both private and public tenancies. If a person rents a house, unit, flat or room from a private owner, a community organisation, or the government, the Act will apply.

DOES THE RESIDENTIAL TENANCIES ACT APPLY TO YOU?

The Act applies to all people in residential tenancy agreements.

A residential tenancy agreement has been entered into if:

- one or more persons (tenants) enter into an agreement with the owner of the property or a real estate agent to occupy the property and pay for that right;
- the tenant or tenants have a right to occupy the property for use as a home; and
- the property is either a house, unit, flat or room.

It is important to note that a residential tenancy agreement can be written, oral or a combination of both.

A number of tenancy situations are not covered by the Residential Tenancies Act.

The Act does not apply to people who live in:

- a retirement village; or
- a nursing home or hostel for aged or disabled persons.

Some residential tenancy agreements are not covered by the Act.

These include:

- agreements in conjunction with the sale or purchase of a property;
- agreements where the property is owned by a company and the tenant/s have a controlling interest in that company; and
- agreements for the right to occupy the property for a holiday.

The Act makes a provision for occupancy agreements. An occupancy agreement is not a residential tenancy agreement, but an arrangement that is often granted for a short period of time or is an oral or partly oral and partly written agreement (such as boarder or lodger agreement or on campus accommodation). “Occupancy principles” provide that an occupant is entitled to:

- ☑ a minimum standard of repair and cleanliness of the premises;
- ☑ a measure of security of tenure, such that termination and eviction by the owner may only take place in accordance with agreed periods of notice and procedures so that arbitrary eviction is not possible;
- ☑ clearly defined rights of privacy subject to access for inspections and other appropriate purposes;
- ☑ an occupant is entitled to quiet enjoyment of the premises;
- ☑ clear information concerning the rules of the premises and the rights of residents; and
- ☑ access to appropriate in-house and external dispute resolution processes.

Jurisdiction is given to the ACT Civil and Administrative Tribunal to hear disputes in relation to occupancy agreements having regard to the occupancy principles.

TERMS

There are a number of terms that apply to residential tenancy arrangements in the ACT which you need to understand.

Lessor	a lessor has been traditionally known as a landlord or property owner. Under the Residential Tenancies Act a lessor or an agent acting on their behalf is the person who gives a tenant the right to occupy the property.
The ACT Revenue Office	is the organisation authorised to act as an independent custodian of the bond paid by tenants. The records held by the ACT Revenue Office are protected by the Information Privacy Act 2014.
Residential Tenancy Agreement	is an agreement where one party, the lessor, gives another person, a tenant, the right to occupy a property for use as a home.
ACT Civil and Administrative Tribunal	is a tribunal established to hear disputes arising from tenancy agreements.
Standard Residential Tenancy Terms	are the terms located in schedule 1 of the Act, which are included or are taken to be included in all residential tenancy agreements.

SECTION 1

ENTERING INTO A RESIDENTIAL TENANCY AGREEMENT



ENTERING INTO A RESIDENTIAL TENANCY AGREEMENT

RESIDENTIAL TENANCY AGREEMENTS

When a lessor grants a tenant the right to occupy a property to use as a home, and this right is given for value, both parties have entered into a residential tenancy agreement.

A residential tenancy agreement can be written, oral or a combination of both. It is advisable, however, that all residential tenancy agreements be in writing. This is to avoid any confusion that may arise as it can be difficult to prove what information was included as part of an oral agreement.

When you enter into a residential tenancy agreement (including oral agreements) you are entering into a legally binding contract. Tenants and lessors should think carefully before entering into a residential tenancy agreement as once the agreement is made it is too late to change your mind.

WHAT INFORMATION SHOULD BE INCLUDED IN A RESIDENTIAL TENANCY AGREEMENT?

The Residential Tenancies Act has standard terms that apply to all residential tenancy agreements in the ACT. These are set out in the Schedule to the Act. All written and oral residential tenancy agreements must include these terms.

CAN ADDITIONAL TERMS TO THE STANDARD TERMS BE ADDED PRIOR TO THE SIGNING OF THE RESIDENTIAL TENANCY AGREEMENT?

Different words and additional terms may be added to the standard terms and conditions in all residential tenancy agreements. However, if these terms are inconsistent with the standard terms, the terms are void and have no effect, unless the ACT Civil and Administrative Tribunal endorses those terms.

Even if the tenant signs an agreement, without the endorsement of the Tribunal, the additional terms are not enforceable. Endorsement applications must be made with the written consent of both parties.

The Act allows the lessor and tenant to include a specific '*fair clause for posted people*' in the residential tenancy agreement without the need for endorsement, where the terms of termination are in accordance with the clause.



The ACT Civil and Administrative Tribunal has decided that as some inconsistent terms have been endorsed previously, there is no longer any need to have them formally endorsed again provided that both parties have agreed to the inclusion of the term (or example: no pets or no smoking).

For further information about endorsement procedures or information about what types of terms no longer require endorsement, contact the ACT Civil and Administrative Tribunal on 6207 1740 or www.acat.act.gov.au

ADDITIONAL TERMS THAT ARE CONSISTENT WITH THE STANDARD TERMS

An example of an additional term that is consistent with the standard terms is one which gives the tenant exclusive rights to occupy and use the premises, or a car park or storage area belonging to the premises. Such a term is consistent with the standard terms about exclusive possession and use of the premises and does not require endorsement of the Tribunal.

ADDITIONAL TERMS THAT ARE INCONSISTENT WITH THE ACT OR OTHER TERRITORY LAW

An additional term added to the standard terms cannot agree to exclude any of the standard terms or the operation of the Act or other territory law in any circumstances. Such an additional term is void.

ADDITIONAL TERMS THAT ARE INCONSISTENT WITH THE STANDARD TERMS

An example of an additional term that is inconsistent with the standard term is one in which the tenant agrees to allow a person engaged by the lessor to carry out gardening on the property once a fortnight. This is a term which would be inconsistent with the tenant's rights to exclusive possession and quiet enjoyment.

An additional term which is inconsistent with the standard terms is void unless both the tenant and the lessor have agreed to the inclusion of the term in writing and the ACT Civil and Administrative Tribunal has endorsed the term.

FAIR CLAUSE FOR POSTED PEOPLE

An additional fair clause for posted people can be added to the standard terms without endorsement from the Tribunal. If both the lessor and tenant agree, the precise clause as stated in section 8 of the Act can be added to the residential tenancy agreement for a fixed term agreement.

OPTIONAL 'BREAK LEASE' TERM

A lessor and tenant may agree to include in the residential tenancy agreement, where an amount must be paid by the tenant if they terminate a fixed term lease early, that would remove a lessors eligibility to apply to ACAT for compensation in the event of early termination by the tenant.

BEFORE SIGNING THE AGREEMENT:

1. the lessor must give the tenant a copy of the proposed residential tenancy agreement;
2. the lessor must indicate to the tenant any terms or conditions which are inconsistent with the standard tenancy conditions and the manner in which they are inconsistent. It should be noted that any inconsistent term must be endorsed by the ACT Civil and Administrative Tribunal—see above;
3. the tenant must be given a copy of this book or advised where to obtain a copy;
4. the tenant must be given reasonable time to consider the agreement;
5. the tenant must provide the lessor with his/her full name;
6. a property owner must provide the tenant with his/her name and an address where the tenant can contact the owner;
7. if the agreement is signed by a real estate agent on behalf of a property owner, the agent must provide the tenant with the agency's full name, the fact that they are acting as an agent, and if the agent is a company, an employee (usually the property manager) who can be contacted in relation to the agreement; and
8. the lessor must give the tenant a copy of an energy efficiency rating statement (if any) for the habitable part of the premises, if no existing efficiency rating statement for the habitable part of the premises—a statement to that effect must be given to the tenant.

CHANGING A RESIDENTIAL TENANCY AGREEMENT ONCE IT HAS COMMENCED



Unless both parties agree, a tenant or lessor cannot change a residential tenancy agreement after it has commenced. Exceptions to this agreement are included where significant hardship is evident or where Family Violence limits the ability for a tenant to continue with their tenancy agreement. A protected person under an interim or final protection order may apply to ACAT for orders varying their tenancy arrangements in certain circumstances.

SUB-TENANCY AND ASSIGNMENT

A sub-tenancy occurs when a tenant, with the written consent of the lessor, subleases his or her tenancy to another person. If a tenant does not have the written consent of the lessor, the sub-tenant does not receive the same rights that are given to tenants, and the lessor may have grounds to terminate the tenancy agreement.

Similarly, a tenant cannot assign the lease to another person without the written consent of the lessor. You should seek advice before considering to assign a lease.

Once there is permission, the sub-tenant has tenancy rights in relation to their agreement with the head-tenant.

These rights only exist until such a time as the tenancy agreement of the head tenant ends. The sub-tenant does not have an agreement with the lessor.

Share housing can be a complex area of tenancy law and it is a good idea to get information and advice about these arrangements.

For more information on shared housing in the ACT, please refer to the Tenants Union ACT 'Crowded House' booklet available from www.tenantsact.org.au

DOES A TENANT HAVE TO PAY A BOND TO ENTER INTO A RESIDENTIAL TENANCY AGREEMENT?

A lessor can require that a tenant pay a bond for the residential tenancy agreement. The bond required cannot exceed the first four weeks of rent payable under the residential tenancy agreement.

As an alternative or, in addition to the bond, the lessor can request that the tenant obtain either a guarantee or indemnity for the performance of any obligation under a residential tenancy agreement. However, whether a bond, guarantee or indemnity has been paid, the total cost to the tenant cannot exceed four weeks rent.

A guarantor is only liable for the difference of the bond amount. For example, if a house is rented at \$250 per week, the bond can be a maximum of \$1000. If the tenant pays a bond of \$600, then the guarantor can only be held liable for \$400.

A lessor cannot require or accept money or any other form of payment, other than rent or bond, for the following:

- agreeing to enter into, extend or renew a residential tenancy agreement;
- agreeing to the assignment or transfer of a tenant's rights under a residential tenancy agreement;
- consenting to a tenant entering into, extending or renewing a residential tenancy agreement with a sub-tenant;
- vacating of the property by the tenant;
- giving the tenant a key to the property; or
- informing the tenant about the availability of a residential property.

RESIDENTIAL TENANCY DATABASES



A Residential Tenancy Database (RTD) is a database which is held by a company or other organisation which contains information about tenants that has been supplied by former real estate agents and lessors. RTDs are sometimes checked by real estate agents (and occasionally private landlords) when deciding whether to enter into a residential tenancy agreement with a prospective tenant.

Information can only be entered about a tenant after the end of the tenancy agreement and listings can only be made as a result of serious breaches of the tenancy agreement. The information listed must be accurate and up-to-date and relate only to the breach.

Under the Residential Tenancies Act lessors and agents are to notify tenants of their practice in using tenancy databases and to provide certain information if a search of a database reveals information about a particular applicant. This information includes the name of the residential tenancy database, the personal information about the applicant in the database, the name of the person who listed the information on a database and is identified in the database and how and in what circumstances the applicant can have the personal information removed or amended under this part. A person may apply to the ACT Civil and Administrative Tribunal for an order to prohibit, remove or amend a listing in certain circumstances.

The Act clarifies the circumstances in which a lessor or lessor's agent is entitled to list personal information about a former tenant in a RTD.

The purpose of the Act is to ensure that tenants are not unfairly discriminated against in the rental market.

The collection, use, disclosure and storage of personal information is subject to the *Commonwealth Privacy Act 1988*, last amended on 12 March 2014 to include the new Australian Privacy Principles (APP's). Entities who do not use personal information in accordance with the Act may be subject to a complaint to, and investigation by the Privacy Commissioner.

SECTION 2

LODGING A RENTAL BOND WITH THE ACT REVENUE OFFICE



LODGING A RENTAL BOND WITH THE ACT REVENUE OFFICE

On the Bond Lodgement Form you should:

- list all parties separately;
- provide the contact numbers and email addresses for all parties to the bond; and
- include only persons who have contributed to the bond—**DO NOT** include children or persons who have not contributed any money.

BEFORE YOU SIGN

- never sign or ask a tenant/s to sign a form that has not been fully completed.
- do not use correction fluid otherwise the form will be invalid.
- if an error is made, any alterations should be crossed through and signed in full by all parties adjacent to the changes.

If a bond is required as part of the residential tenancy agreement:

- the tenant can pay the bond directly to the lessor and the lessor will deposit at the ACT Revenue Office;
- a private lessor must lodge the bond with the ACT Revenue Office within two weeks of receiving the bond or the commencement of the tenancy, whichever date is the later. **IF TAKEN, A BOND MUST BE LODGED WITH THE ACT REVENUE OFFICE. IT IS AN OFFENCE TO RETAIN THE BOND PRIVATELY;**
- a managing agent is required to lodge the bond with the ACT Revenue Office within four weeks of receiving the bond, or the commencement of the tenancy, whichever date is the later;
- if only part payment is received, each payment should also be lodged with the ACT Revenue Office within two weeks for a private lessor and within four weeks for a managing agent;
- the lessor can reach an agreement with the tenant for the tenant to lodge the bond directly with the ACT Revenue Office;
- if the tenant is to lodge the bond, the tenant is not entitled to possession of the property until he or she produces evidence that the bond has been paid; and
- if a bond is required as part of the residential tenancy agreement, the ACT Revenue Office requires that a Bond Lodgement Form be completed by all parties to the bond.



The parties to the bond may be different to those identified on the residential tenancy agreement. For example, if the bond is paid by an organisation or a company, list the organisation or the company as the tenant. This is relevant because the ACT Revenue Office can only refund bond.

The ACT Revenue Office will provide the lessor and the tenant with a receipt acknowledging the lodgement of the bond.

If the lessor or managing agent fails to lodge the bond within the specified period, a tenant can apply to the ACT Civil and Administrative Tribunal for an order requiring the lessor to lodge the bond. If a lessor or managing agent does not lodge the bond, a fine up to \$10,000 can be imposed by the Tribunal.

PAYMENT METHODS

MANAGING AGENTS

The *Agents Act 2003* prevents agents from making payments out of Trust Accounts other than by cheque, credit card or direct credit to the ACT Revenue Office.

PRIVATE LESSORS

The ACT Revenue Office can accept a cheque, money order, credit card or direct deposit.

The ACT Revenue Office will not accept third party cheques with respect to payment of a bond. All cheques must be payable to the 'ACT Rental Bonds'.

CONDITION OF PREMISES REPORT

A Condition of Premises Report must be filled out whenever a tenancy begins.

The condition report must be on, or to the effect of, the condition report form published by the Territory.

An example of a Condition of Premises Report can be found at www.tenants.act.org.au.

The report should be true and accurate. Inaccurate reports may affect the amount of bond that is refunded at the end of a lease.

The report is both the lessor's and the tenant's assessment of the state of repair or the general condition of the property, as well as any goods leased with the property. If a dispute arises, the report may become important evidence.

The steps to complete a report are:

- 1.** the lessor must complete the report and provide the tenant with two copies within one day of the tenant taking possession of the property;
- 2.** if the tenant agrees with the report, he or she should sign the form without making any changes;
- 3.** if the tenant disagrees with the report then the tenant should make a note on the report indicating what he or she disagrees with; and
- 4.** once the form has been signed and any changes made, the tenant should return one copy of the report to the lessor within two weeks.

If the tenant does not sign the form, then it may be implied that the tenant agreed with all the information that was included in the report.

If a tenant does not receive a condition report within one day of taking possession of the premises, it is implied that the tenant's statement about the condition of the premises is true.

TRANSFERRING A BOND BETWEEN TENANTS

Tenants frequently leave tenancies and it has been difficult to manage the process of tenant/s leaving and new tenant/s becoming part of the original tenancy. The simplest way of managing this process is to refund the bond to all parties and start a new tenancy agreement which involves lodging a new bond.

Another way of achieving this without a new bond being lodged is to arrange for the transfer of the bond on paper between the tenant/s leaving the tenancy and the new tenant/s coming into the tenancy. This can be achieved by the completion and lodgement of a Transfer of Tenants form (TT-602).

Before a transfer can take place the incoming tenant/s, the outgoing tenant/s and the lessor or lessor's agent need agree on this course of action. Some lessors or lessor's agents are not willing to have this process take place.

Completing a Transfer of Tenants form for the bond does not end a tenancy agreement. The original residential tenancy agreement has to be terminated and a new one entered into between the lessor or lessor's agent and the new tenants.

For a transfer to occur, all tenants (both incoming tenant/s and the outgoing tenant/s) need to provide the lessor or lessor's agent with a completed and signed Transfer of Tenants form. This document is evidence that the tenant/s have changed and that the new tenant/s have full entitlement to the bond.

There is an assumption that any entitlement to the bond by the outgoing tenant/s has been dealt with before the Transfer of Tenant form is lodged.

Once the lessor/agent has received this form, they need to lodge it with Rental Bonds, the ACT Revenue Office.



Special Note

It is the outgoing tenant/s responsibility to ensure that they have been paid their full entitlement to the bond by the incoming tenant/s. Once the Transfer of Bond Form is lodged, the new tenant/s have full entitlement to the bond.

TRANSFERRING A BOND BETWEEN PROPERTIES

Another situation that often occurs is when tenants move into a new property and would prefer the bond automatically transfer to the new property. This can occur if the property is managed by the same lessor/ agent as the original property. It will be necessary for the tenant and the lessor to complete a Transfer of Premises form (TP-601) and lodge the form with Rental Bonds, the ACT Revenue Office. The office will then essentially refund the original bond and pay the amount into the new bond for the new property.

CHANGE OF MANAGING AGENT/ LESSOR FORM

When the managing agent or owner changes in relation to a property, it is important that the ACT Revenue Office is advised. A Change of Managing Agent/Lessor form enables changes in owners or managing agents to be registered with the ACT Revenue Office. The information subsequently ensures that the list of parties authorised to sign is up-to-date.

In the case of a transfer of lessor as a result of the sale and purchase of a property, solicitors are requested to arrange for the new owners of the property to sign a Change of Lessor or Managing Agent Form as part of the settlement process. The form is subsequently lodged with the ACT Revenue Office as evidence of the new owners. A solicitor cannot sign on behalf of the property owners.

Where the ACT Revenue Office is not satisfied as to the proper execution of a document, it will not be accepted for processing.

AGENT SIGNATURE AUTHORITY FORM

This form can be used each time there is a change in property managers, to remove or give authority to act on behalf of their agency in relation to rental bond matters.

TENANT FORWARDING ADDRESS FORM

This form enables the tenant to provide his/her forwarding address for all bond-related correspondence to the ACT Revenue Office. Without this information it is difficult for the ACT Revenue Office to contact tenants.

SIGNATURES OF A REPRESENTATIVE

Only parties to a bond can sign in respect to a bond. If one or more signatures are missing, or cannot be validated, the transaction may not be processed by the ACT Revenue Office.

The only exceptions permitted are as follows:

- by attorney under a Power of Attorney;
- by authorised personal representative of a deceased person; or
- where the person signing produces a letter of authority.

RENTAL BONDS FORMS

Rental bond forms, including those for the lodgement and refund of rental bonds, are available from the ACT Revenue Office website at www.revenue.act.gov.au.

Special Note

Land tax is payable to the ACT Revenue Office when a residential property is rented. The lessor has 30 days from the start of the tenancy to notify the ACT Revenue Office about the tenancy, or to ensure that the managing agent does so. Penalty tax and interest will apply to the lessor if the ACT Revenue Office is not notified. For more information visit www.revenue.act.gov.au.

SECTION 3

DURING THE
TENANCY



DURING THE TENANCY

TENANT'S CONDUCT DURING THE RESIDENTIAL TENANCY AGREEMENT

Once a tenant has entered into a residential tenancy agreement with a lessor, both parties have rights and obligations.

The tenant can only use the property for a residential purpose. The tenant has an obligation under the agreement not to:

- use or allow the property to be used for an illegal purpose;
- cause or allow nuisance;
- interfere with the quiet enjoyment of neighbours;
- leave the property vacant for more than three weeks without informing the lessor; and
- sublet part or all of the property without the written consent of the lessor.

RENT

Rent is an important component of any residential tenancy agreement. Tenants pay rent on a regular basis and have an obligation to pay rent on time, in accordance with the residential tenancy agreement. Both parties should agree on the amount of rent payable and include this figure in the agreement.

PAYMENT OF RENT

The residential tenancy agreement should state:

- how much rent is to be paid;
- how rent will be paid, e.g. directly into a bank account; and
- when rent is to be paid.

A lessor can request that a tenant provide up to one calendar month's rent in advance.

A lessor cannot change the way in which rent is to be paid unless both parties agree. For example, if rent is currently paid by cheque, a lessor cannot demand that a tenant pay the rent directly into a bank account unless the tenant agrees to the change.



RECEIPTS FOR PAYMENT OF RENT

If the rent is paid directly into a bank account, the lessor is not required to give the tenant a receipt.

A lessor has an obligation to provide a receipt to tenants when the rent is paid:

- ✓ **in person**—a receipt must be given at that time; or
- ✓ **by another method**—the receipt should be provided or sent by post within one week.

A receipt for rent or bond should include:

- ✓ the date of payment;
- ✓ the period for which the payment was made;
- ✓ which property the payment was made for; and
- ✓ whether the payment was for bond or rent.

RECORDS

The Residential Tenancies Act requires that lessors should keep a record of all rental payments made for a period of 12 months after the end of the tenancy. You should note, however, that other legislation, for example taxation legislation, may require records to be kept for a longer period.

RENTAL INCREASES

Rent cannot be increased in the first 12 months of a tenancy and, for an existing tenant, may only be increased once each year thereafter.

For any rental increase to be effective the lessor must give the tenant eight weeks' notice in writing of the rental increase.

If a tenant disagrees with the proposed increase in rent, then the tenant can either:

- ✓ vacate the property before the increase takes effect. The tenant must give the lessor three weeks' notice in writing that he or she intends to vacate the property; or
- ✓ apply in writing to the ACT Civil and Administrative Tribunal, at least two weeks (unless there are special circumstances) before the proposed increase, for a review of the rental increase. If the tenant applies to the Tribunal the increase does not take effect until, and will depend upon, an order of the Tribunal.

BOND INCREASES

The bond cannot be increased during the life of a tenancy. If a tenancy terminates then the current bond is disbursed as a result of the termination. If the property is then re-let at an increased rent the new bond payable can be increased.

REVIEW OF EXCESSIVE RENTS

The Tribunal has the power to review any proposed rental increases which are considered excessive.

The Tribunal can make an order which will:

- allow the proposed increase;
- disallow the proposed increase;
- allow only part of the increase; or
- approve such increase as the Tribunal considers just.

The normal threshold prescribed by the Act to determine whether a rental increase is excessive, is whether the increase is greater than 20% of the increase in the CPI (Privately-Owned dwelling Rents Expenditure class) over the period since the last increase.

If the proposed increase is greater than the resulting figure, the lessor must give reasons why the increase should be allowed such as rental rates for comparable premises. However, if the increase is less than the amount, the tenant should provide the Tribunal with reasons why the proposed increase should not be allowed.

Example:

Where CPI increase over specific period = 2.3% Current rent = \$280

Proposed rent = \$300 2.3% of \$280 = \$6.44

20% of \$6.44 = \$1.28

\$6.44 + \$1.28 = \$7.72

Therefore, any increase of greater than \$7.72 would require the lessor to provide evidence as to why the increase should be granted. Any increase of less than \$7.72 would require the tenant to show why they thought the increase excessive.

For more information on relevant CPI figures are available at www.tenantsact.org.au

The Tribunal will consider the following in deciding whether to allow an increase:

- ✔ the rental rate before the proposed increase;
- ✔ costs incurred by the lessor in relation to the property;
- ✔ services provided by the lessor to the tenant;
- ✔ the state of repair of the property;
- ✔ rental rates for comparable property;
- ✔ the value of any work or improvements made by the tenant with the consent of the lessor;
- ✔ any previous increases in the rental rate for that tenancy agreement;
- ✔ the value of fixtures and goods supplied by the lessor as part of the residential tenancy agreement; and
- ✔ anything else the Tribunal deems relevant.



RENT REDUCTION

The tenant can apply to the Tribunal for an order that the rental rate be reduced. Tenants can apply for a reduction in rent if their use or enjoyment of the property has significantly diminished as a result of:

- ✔ the loss of any appliance, furniture, facility or service supplied by the lessor;
- ✔ the failure by the lessor to maintain the property in a reasonable state of repair (for matters which are the responsibility of the lessor);
- ✔ the failure by the lessor to maintain any appliances, furniture or facility to a reasonable state of repair depending on the condition at the commencement of the residential tenancy agreement;
- ✔ the failure by the lessor to provide and maintain locks and other security devices to ensure that the property is reasonably secure;
- ✔ the loss of the use of all or part of the property;
- ✔ interference by the lessor with the tenant's quiet; or
- ✔ enjoyment of the property—this includes the tenant's right to use the property in reasonable peace, comfort and privacy.

PROPERTY MAINTENANCE

The lessor must not enter into a residential tenancy agreement unless the lessor has installed and maintains smoke alarms in the premises. The tenant must replace a battery in a smoke alarm wherever necessary.

Where there is an existing residential tenancy agreement before the commencement day of the Residential Tenancies Legislation amendment act, the lessor has a transitional period of 12 months to ensure the smoke alarms are installed.

The tenant has the responsibility for maintaining the property in a reasonable condition throughout the residential tenancy agreement.

The tenant should:

- ✓ not intentionally or negligently damage the property;
- ✓ notify the lessor of any damage as soon as practicable; and
- ✓ maintain the property and any contents in a reasonable and clean condition.

At the end of the residential tenancy agreement the tenant should leave the property in substantially the same condition as it was at the beginning of the tenancy, subject to fair wear and tear.

The tenant should not make any alterations to the property without the lessor's consent. For example, the tenant should not install shelves without the lessor's consent or install a pergola on the property without the consent of the lessor. A lessor must **not** be unreasonable in granting consent.

PROPERTY DAMAGE

A tenant may be responsible for damage or other breach of a tenancy agreement by visitors or guests who are on the premises with the permission of the tenant.

SMOKE ALARMS AND INSTALLATION OF SMOKE ALARMS

A smoke alarm installed at premises subject to a residential tenancy agreement must comply with Australian Standard 3786, be functional and be installed on or near the ceiling and may be battery operated or hard-wired.

A smoke alarm must be installed in the premises subject to a residential agreement:

- a. in each storey of the premises containing a bedroom;
 - i. in every corridor or hallway associated with a bedroom; and



- ii. if there is no corridor or hallway—between each part of the premises containing a bedroom and the remainder of the premises; and
- c. in each storey of the premises not containing a bedroom.

REPAIRS TO THE PROPERTY

The lessor must provide the property, and any furniture, fittings and appliances which are included in the agreement, to the tenant in a reasonable state of repair, in a reasonable state of cleanliness, and in a reasonably secure condition.

The tenant must notify the lessor of any repairs that are necessary. The lessor must make the repairs to the standard of a tradesperson within 4 weeks of being notified unless otherwise agreed. (If the repairs are urgent see below).

A lessor must arrange a suitable time with the tenant to make repairs.

A lessor is obliged to repair any faults which were present at the commencement of the residential tenancy agreement unless those faults were stated in the agreement. A lessor is obliged to repair faults, to the standard of a tradesperson, which were present at the commencement of the residential tenancy agreement in order to make the property fit to live in.

If a tenant causes damage to the property through intent or negligence, he or she is obliged to make repairs to the standard of a tradesperson standard and at the tenant's own cost. The lessor is not obliged to repair damage caused by the negligence or willful act of the tenant. At the end of the tenancy, the tenant must return the property to the lessor or lessor's agent in the same condition as the start of the tenancy, fair wear and tear excepted.

URGENT REPAIRS

The tenant should notify the lessor of the need to carry out any urgent repairs as soon as possible. The lessor should carry out any repairs as soon as they are necessary, depending on the problem.

There are special guidelines for the performance of urgent repairs. Urgent repairs are those which are needed to correct serious faults or problems with the property which could be dangerous to the tenant, or could result in substantial damage to the property or its contents.

An urgent repair is work that is needed to repair:

- ☑ a burst water service;
- ☑ a blocked or broken lavatory system;
- ☑ a serious roof leak;
- ☑ a gas leak;
- ☑ a dangerous electrical fault;
- ☑ flooding or serious flood damage;
- ☑ serious storm or fire damage;
- ☑ a failure of gas, electricity or water supply to the property;
- ☑ the failure of a refrigerator supplied with the property; a failure or breakdown of any service on the property essential for hot water, cooking, heating or laundering;
- ☑ a fault or damage that causes the residential property to be unsafe or insecure;
- ☑ a serious fault in any door, staircase, lift or other common area which inhibits or unduly inconveniences the tenant in gaining access to and use of the property; or
- ☑ a fault or damage likely to cause injury to person or property.

WHEN CAN THE TENANT AUTHORISE URGENT REPAIRS?

If the tenant is unable to contact the lessor, or the lessor fails to perform the urgent repairs, then the tenant may arrange for the repairs to be performed.

The tenant can only authorise urgent repairs with a maximum value equivalent to 5% of the rent of the property over a year.

Example:

52 weeks x \$280 per week = \$14 560

5% of \$14 560 = \$728

Therefore, the tenant can authorise urgent repairs to the value up to and including \$728.



If the tenant seeks to arrange for urgent repairs to be performed, then the tenant must follow these steps:

- 1.** contact a qualified person nominated by the lessor in the residential tenancy agreement;
- 2.** if no person is nominated, or the nominated person is unavailable, then a tenant must choose a qualified tradesperson; and
- 3.** as the lessor is liable for the cost of the repairs, advise the tradesperson to bill the lessor directly.

If the tenant does not follow these procedures, then the tenant is personally responsible for the cost of any urgent repairs arranged by him or her.

CHANGING LOCKS

A lessor or tenant may change the locks for the property with the consent of the other party. The party who changes the locks is responsible for the costs, unless both parties come to an arrangement where the costs will be shared.

In the case of an emergency, the lessor or the tenant can change the locks without the consent of either party. If either party changes the locks, then they must give the other party a copy of the key as soon as possible.

A protected person under a protection order can take practical measures to secure the property by changing the locks at their own cost without the consent of the other party. A copy of the key to the changed lock must be provided to the other party as soon as possible unless doing so would affect the safety of the protected person.

ONGOING PROPERTY EXPENSES

Lessor

The lessor is responsible for:

- the cost of any rates and taxes relating to the property;
- any services where there is not a separate metering device;
- the annual supply charge for water and sewerage;
- any body corporate fees if the property is a flat, unit or apartment; and
- services for which the lessor agrees to be responsible.

Installation of services

Where the tenant requires essential services to be installed in the property, the lessor shall pay for the cost of installing these services, for example gas, electricity and water, and telephone line.

ONGOING EXPENSES

Use of services

The tenant is responsible for charges associated with the consumption of services used during the tenancy provided there is a separate meter, for example electricity, gas, water and telephone. The lessor must regularly provide copies of the bills for tenants to verify in order for them to be paid. The lessor cannot request payment for all bills at the end of the tenancy.

The lessor is liable for the cost of services up to the commencement of the residential tenancy agreement and after the agreement has expired.

Metered services

The lessor is responsible for any services connected in the lessor's name. At the commencement of the residential tenancy agreement, the lessor must arrange for readings or measurements of those services.

The lessor must give the tenant an opportunity to verify any reading or measurements. The lessor should also arrange for readings of the same metered services at the end of a residential tenancy agreement. If the lessor fails to arrange for the meter to be read, then the lessor shall be responsible for the payment of these services after the last reading or measurement date (also see Section 5—reading of metered services).

INSPECTIONS

HOW OFTEN?

The lessor may inspect the property following the commencement of the residential tenancy agreement during the first and last month of the agreement. The lessor may also apply to ACAT to make an order allowing the lessor can also inspect the property twice within a 12 month period access to premises for an inspection. During an inspection the lessor may take photographs of damage to property or of matters requiring repair or remedy so long as they do not unnecessarily infringe the tenant's right to privacy. The lessor may also inspect the property twice in a 12 month period.

NOTICE

The lessor must give the tenant written notice one week in advance of any inspection. The inspection shall take place at a time which is agreed to and is convenient to both parties. However, if both parties cannot agree on an appropriate time, then the lessor can apply to the Tribunal for an order for access to the property.

The lessor shall not have access to the property:

- ✓ on Sundays;
- ✓ on public holidays; or
- ✓ before 8.00 am and after 6.00 pm unless the lessor has the consent of the tenant or is carrying out urgent repairs.



ENTRY BY THE LESSOR

The lessor cannot enter the property without the consent of the tenant, except in emergencies, or if the lessor believes on reasonable grounds that the premises have been abandoned.

Example:

The lessor may enter premises to confirm abandonment.

Where the lessor has taken all reasonable steps to contact the tenant and believes on reasonable grounds that the premises have been abandoned by the tenant. Although the standard times of access apply.

ACCESS TO THE PROPERTY BY OTHER PARTIES

NEW TENANTS

If a tenant is vacating the property, then he or she must allow reasonable access to the property in the last three weeks of the residential tenancy agreement to allow prospective tenants to view the property. The lessor must give the tenant 24 hours' notice of any inspection.

NEW OWNERS

If the owner is selling the property, the tenant must allow reasonable access to the property upon 24 hours' notice to allow an inspection by prospective purchasers. The tenant is only required to give access to prospective purchasers if the property owner has a genuine intention to sell the property and has previously informed the tenant in writing of his/her intention to do so.

SECTION 4

ENDING THE TENANCY



ENDING THE TENANCY

If the tenant wants to leave the property, or the lessor wants the tenant to leave, there are certain procedures that must be followed to terminate the residential tenancy agreement.

Many tenancy disputes arise when the residential tenancy agreement ends. It is important that both tenants and lessors apply the correct procedures when they wish to terminate a residential tenancy agreement.

FINAL INSPECTION AND CONDITION REPORT—END OF TENANCY

The lessor and the tenant must carry out an inspection of the premises at the end of the residential tenancy agreement. The lessor must together with the tenant, complete and sign a condition report on the inspection.

When terminating a residential tenancy agreement there are some terms that you should be aware of:

Fixed term residential tenancy agreement—is an agreement between a tenant and a lessor for a specific period of time. For example, a 12 month residential tenancy agreement is the most commonly used fixed term agreement.

Periodic residential tenancy agreement—is an agreement between a tenant and lessor which has no fixed period. A month to month residential tenancy agreement is an example of a periodic tenancy. Periodic leases automatically start at the end of a fixed term.

Standard terms and conditions—the Residential Tenancies Act prescribes that certain terms and conditions are included in all residential tenancy agreements. These terms are included in the Schedule to the Act and have already been discussed in Section 1 of this book.

HOW A RESIDENTIAL TENANCY AGREEMENT CAN END



A residential tenancy agreement can only end in the following situations:

- ☑ a fixed term residential tenancy agreement ends and the tenant vacates the property on or after the date of expiration;
- ☑ the tenant gives the lessor notice of an intention to terminate the tenancy and vacates the property in accordance with that notice;
- ☑ the ACT Civil and Administrative Tribunal terminates the agreement;
- ☑ the ACT Civil and Administrative Tribunal makes a Termination and Possession Order;
- ☑ the tenant abandons the property;
- ☑ a person other than the lessor may terminate the agreement if he or she is a successor in title to the lessor;
- ☑ the tenant and the lessor agree in writing to terminate the agreement;
- ☑ where the tenant and the lessor are the same person;
- ☑ where the lessor or tenant repudiates the agreement and the other party accepts that repudiation and the property is vacated;
- ☑ where there is a break lease clause. Termination before end of fixed term—fee for breaking lease;
- ☑ fair Clause for posting people—Termination because of posting; or
- ☑ *under the Family Violence Act 2016* and the *Personal Violence Act 2016*—Where there are grounds for significant hardship and or protection orders. In these circumstances the ACT Civil and Administrative Tribunal needs to make an order. The protected person need not have a final protection order to apply to the ACT Civil and Administrative Tribunal.

This book explains some of the more commonly used termination procedures. If you require further information, contact the agencies listed in Section 7 of this book.

Either the tenant or the lessor can seek to terminate a residential tenancy agreement. A person can seek to end a tenancy agreement by serving a notice to vacate. If the person is seeking to end the agreement because of a breach, usually the person must first serve a notice to remedy and give the person a chance to remedy the breach before serving the notice to vacate.

An agreement can be terminated by giving notice in the approved form or by a order from the ACT Civil and Administrative Tribunal.

Note : A lessor must not enter the premises to regain possession of the property, even if a lawful notice has been served on the tenant. If the tenant refuses to move out, the lessor must apply to the ACT Civil and Administrative Tribunal for a termination and possession order to regain possession. Under no circumstances should a lessor attempt to gain access. If a tenant refuses to move out, a warrant will need to be issued by the ACT Civil and Administrative Tribunal so that police can remove the tenant.

The Act contains special provisions for termination of a residential tenancy agreement for crisis accommodation.

For further assistance in relation to the process of terminating a residential tenancy agreement visit the ACT Civil and Administrative Tribunal website at: www.acat.act.gov.au

This website contains information sheets, Tribunal legislation, previous Tribunal decisions, application forms and approved notices.

TERMINATION BY THE TENANT

A tenant can terminate a residential tenancy agreement:

- by giving appropriate written notice and vacating in accordance with that notice; or
- via the ACT Civil and Administrative Tribunal; or with the agreement of the lessor.

Note: You should seek advice prior to considering terminating an agreement.

TERMINATION BY NOTICE

A tenant is entitled to terminate a residential tenancy agreement by serving a notice of intention to vacate and vacates in accordance with that notice where:

- the lessor has breached the terms and conditions in the residential tenancy agreement;
- the property is not fit for habitation or the property will not be available due to government action;
- a fixed term residential tenancy agreement has ended; or
- a residential tenancy agreement is periodic.



Where a tenant terminates an agreement by notice, rent is still payable until the date specified in the notice of intention to vacate, or until the tenant vacates the property, whichever is the later. The lessor does not have a right to seek compensation for loss of rent if the correct notice is given in the appropriate circumstances.

BREACH OF TERMS AND CONDITIONS

If the lessor has breached the terms and conditions in the lease agreement, the tenant can seek to terminate the agreement by applying directly to the ACT Civil and Administrative Tribunal or by giving notice to the lessor by:

- 1. written Notice to Remedy**—the tenant must give the lessor written notice requesting the breach be remedied within two weeks;
- 2. breach remedied**—if the lessor remedies the breach within the two week period, the tenancy continues;
- 3. notice of intention to vacate**—if the breach is not remedied, or it cannot be remedied, the tenant can give a notice of intention to vacate the property with a notice period of two weeks; or
- 4. breach remedied**—if the breach is remedied during the two week period during the notice of intention to vacate, the tenant has the choice of continuing the tenancy or vacating at the expiration of the 14th day.

The agreement is terminated on the date specified in the notice of intention to vacate. Rent is payable to the date specified or to the date the tenant vacates, whichever is the later.

PROPERTY NOT FIT FOR HABITATION OR NOT AVAILABLE DUE TO GOVERNMENT ACTION

In exceptional circumstances, where the property is not fit for habitation (for example, an internal wall has collapsed or the roof has blown off) or is unavailable due to government action (for example, an area has been evacuated for quarantine purposes), the tenant has two options:

- the tenant can terminate the residential tenancy agreement by giving the lessor two days' notice. The agreement terminates at the end of the two days; or
- if the tenant does not give notice to terminate the agreement, then the agreement continues. However, if the tenant does not occupy the property for the period when the property is uninhabitable, he or she is not liable to pay rent. When the tenant resumes occupancy of the property, he or she must continue to pay rent.

AT THE END OF A FIXED TERM RESIDENTIAL TENANCY AGREEMENT

At the end of a fixed term residential tenancy agreement, for example at the end of a 12 month tenancy, the tenant can terminate the tenancy by giving the lessor three weeks written notice. However, at the end of the fixed term period, if a tenant does not terminate the fixed term residential tenancy agreement, the tenancy will automatically become a periodic tenancy.

Note: The above applies only to tenants. A lessor cannot use these grounds for termination.

TERMINATION BY THE TENANT OF A PERIODIC TENANCY

A tenant can terminate a periodic residential tenancy agreement at any time by giving the lessor three weeks' notice. If the tenant abandons the property or does not give the lessor the correct three weeks written notice, then the lessor is entitled to claim from the tenant compensation up to three weeks rent.

TERMINATION BY THE TRIBUNAL

A tenant can approach the ACT Civil and Administrative Tribunal directly to terminate a residential tenancy agreement during a fixed term or periodic tenancy if:

- ☑ the lessor has breached the standard terms and conditions in the lease agreement and the breach justifies termination;
- ☑ the tenant would suffer significant hardship if the agreement were to continue;
- ☑ the tenant or the tenant's family or the tenant's property has suffered, or is likely to suffer, damage or injury by the lessor; or
- ☑ the lessor made a false or misleading statement, which resulted in the tenant entering into the residential tenancy agreement.

To have a residential tenancy agreement terminated by the ACT Civil and Administrative Tribunal, a tenant must make an application in writing to the Tribunal.

Tenants can obtain application forms and assistance from the Tribunal (www.acat.act.gov.au). Advice and assistance can also be provided by the Tenants' Advice Service.



TERMINATION WITH THE AGREEMENT OF THE LESSOR

If the tenant and the lessor agree in writing, a residential tenancy agreement can be terminated at any time in accordance with their written statement.

TERMINATION BY THE LESSOR

A lessor can terminate a residential tenancy agreement:

- via the Tribunal; or
- with the agreement of the tenant.

The lessor can terminate the tenancy agreement where it is evident the tenant has abandoned the property.

If the tenant does not vacate the premises in response to a valid notice by the lessor, the tenant may be liable for any costs or damages the lessor suffers as a result of the tenant's breach of the tenancy agreement. These costs and damages can, in some cases, be considerable.

TERMINATION BY NOTICE

If a lessor wants to terminate a tenancy he/she must follow the processes set out in the standard terms in relation to the reason for seeking termination.

If they have grounds they generally must first serve a written Notice to Remedy before issuing the tenant with a written Notice to Vacate. If the tenant remains after the due date of vacation, then the lessor must seek a Termination and Possession Order from the Tribunal. If the tenant does not vacate the property, there is a risk to the tenant of paying the added costs of the lessor (such as damages relating to alternative accommodation) and added rent.

A lessor can issue the tenant with a Notice to Vacate if:

- the tenant has failed to pay rent;
- the tenant has breached any term or condition of the residential tenancy agreement, other than non-payment of rent and the breach justifies termination;
- the property is not fit for habitation or the property will not be available due to government action; or
- the residential tenancy agreement is periodic and the lessor has grounds specified in relation to periodic tenancies.

The lessor may also issue a notice without cause (see page 38).

FAILURE TO PAY RENT

A lessor may issue a Notice to Vacate for a tenant's failure to pay rent for one week (i.e. the rent must be overdue), by complying with the following:

- ☑ the lessor must first serve the tenant with a Notice to Remedy, on or after the 8th day after the rent was due;
- ☑ the Notice to Remedy must state that all of the outstanding rent to date is to be paid within one week of the Notice to Vacate and that no further action will be taken if the rent is paid; and
- ☑ if the rent is not paid within 1 week following the Notice to Remedy, the lessor can issue the tenant with a Notice to Vacate the property within two weeks.

However, if the tenant has been given a Notice to Remedy on two previous occasions, a lessor is not required to issue a Notice to Remedy for a third failure to pay rent—the lessor can automatically issue a Notice to Vacate.

If the tenant does not vacate the property within the two week period specified in the Notice to Vacate, the lessor must apply to the Tribunal for a Termination and Possession Order before the lessor can evict the tenant.

It is important to note that only the ACT Civil and Administrative Tribunal can order eviction. A NOTICE TO VACATE DOES NOT TERMINATE THE TENANCY.

BREACH OF ANY OTHER TERM AND CONDITION OF THE RESIDENTIAL TENANCY AGREEMENT

If the tenant is in breach of the terms of the agreement or the Act, then the lessor may issue a Notice to Vacate, subject to the following:

- 1. written Notice to Remedy**—the lessor must serve the tenant with a written notice requesting that the breach be remedied within two weeks;
- 2. breach remedied**—if the tenant remedies the breach within two weeks, then the residential tenancy agreement will continue; or
- 3. Notice to Vacate**—if the tenant fails to remedy the breach within the two week period specified in the Notice to Remedy, then the lessor can give the tenant a Notice to Vacate which requires the tenant to vacate the property within two weeks.

However, if a tenant has breached the agreement on two previous occasions, a lessor is not required to issue a Notice to Remedy for a third breach—the lessor can automatically issue a Notice to Vacate. If the tenant does not vacate the property within the two week period specified in the Notice to Vacate, the lessor must apply to the Tribunal for a Termination and Possession Order before the agreement can be terminated and the tenant evicted.

PROPERTY NOT FIT FOR HABITATION OR NOT AVAILABLE DUE TO GOVERNMENT ACTION



In exceptional circumstances where the property is not fit for habitation (for example, an internal wall has collapsed or the roof has blown off) or is unavailable due to government action (for example, an area has been evacuated for quarantine purposes), the lessor has two options:

- 1.** the lessor can terminate the residential tenancy agreement by giving the tenant one week's notice. The agreement terminates at the end of the week; or
- 2.** if the lessor does not give the tenant notice, then the agreement continues. However, if the tenant does not occupy the property for the period when the property is uninhabitable, the tenant is not liable to pay rent. When the tenant resumes occupancy of the property, the tenant must continue to pay rent.

WITHOUT CAUSE

The lessor can give a Notice to Vacate the property without any reasons. The lessor must give 26 weeks' notice to the tenant to vacate the property. If it is a fixed term tenancy, then the 26 weeks must not expire during the fixed term period. The tenant may vacate the property within the last two weeks of the notice expiring, provided that the tenant gives the lessor four days' notice of an intention to vacate. The tenant can also give three weeks' notice at any time when the lease is periodic.

RESIDENTIAL TENANCY AGREEMENT IS PERIODIC

The lessor can terminate a periodic tenancy by issuing a Notice to Vacate only if:

- the owner of the property or an immediate relative of the owner genuinely intends to live in the property—the lessor must give at least four weeks' notice;
- a person who is not an immediate relative of the owner, but has a close family or personal relationship with the owner, genuinely intends to live in the property—the lessor must give at least four weeks' notice;
- the owner has a genuine intention to sell the property—the lessor must give at least eight weeks' notice; or
- the owner has a genuine intention to reconstruct, renovate or make major repairs to the property which cannot reasonably be carried out with the tenant in residence—the lessor must give at least 12 weeks' notice.

If the tenant has been given a Notice to Vacate on any of the above grounds, the tenant can vacate the property within the last two weeks of the notice period, provided that the tenant gives the lessor 4fourdays' notice of an intention to vacate.

If the tenant does not vacate the property in accordance with any Notice to Vacate, the lessor must apply to the Tribunal for a Termination and Possession Order to have the tenant formally removed from the property.

TERMINATION BY THE TRIBUNAL

A lessor can make an application to the Tribunal for a Termination and Possession Order of a residential tenancy agreement during a fixed term or periodic tenancy if:

- the tenant has failed to pay rent and the lessor has issued a Notice to Vacate and the tenant has not vacated the property;
- the tenant has seriously breached the standard terms and conditions in the residential tenancy agreement, other than failure to pay rent;
- the lessor has issued the tenant with a Notice to Vacate on grounds permitted by the standard terms and conditions and the tenant has failed to vacate the property in accordance with the notice;
- the lessor would suffer significant hardship if the agreement were to continue;
- the lessor or the lessor's family or the lessor's property has suffered or is likely to suffer damage or injury by the tenant;
- the residential tenancy agreement was entered into as part of a contract of employment and the tenant has ceased to be employed by the lessor;
- the tenant made a false or misleading statement, which resulted in the lessor entering into the residential tenancy agreement; or
- the tenant has assigned or sublet the property without the written consent of the lessor.

A lessor must make an application to the Tribunal for a Termination and Possession Order. Lessors can obtain application forms from the Tribunal and can also obtain the forms and assistance from the ACT Civil and Administrative Tribunal website (www.acat.act.gov.au).

The Termination and Possession Order will specify the date that the residential tenancy agreement will terminate and the date by which the tenant must vacate the property.

TERMINATION WITH THE AGREEMENT OF THE TENANT

If the tenant and the lessor agree in writing, a residential tenancy agreement can be terminated in accordance with their written statement.



ABANDONMENT OF THE RESIDENTIAL TENANCY AGREEMENT BY THE TENANT

Where a tenant abandons the property before the end of the tenancy, the agreement terminates on the day of abandonment.

If a tenant abandons a tenancy, the lessor may apply to the Tribunal for compensation from the tenant.

A lessor is entitled to a maximum of 25 weeks rent or the value of rent for the unexpired portion of the agreement, whichever is the lowest amount. Where the lessor is seeking compensation they have a duty to mitigate their losses.

WARRANTS OF EVICTION

If the tenant continues to reside in the property in contravention of a Termination and Possession Order made by the Tribunal, the lessor may approach the Registrar of the Tribunal for a warrant of eviction unless the order itself automatically operates as a warrant of eviction.

A warrant of eviction authorises the Police to take appropriate action to remove the tenant from the property. Unless there are exceptional circumstances, the Police are required to give the tenant two days' notice before exercising their powers.

COMPENSATION TO THE LESSOR

If a tenant has been given a Termination and Possession Order, and fails to vacate the premises, the lessor may make an application to the ACT Civil and Administrative Tribunal for a compensation order. The Tribunal may order the tenant to pay any rent for the period during which the tenant remains in possession of the premises.

The Tribunal may also order that the tenant pay the reasonable costs of the lessor in applying for a warrant of eviction and having the warrant executed.

Important: Never sign a blank form. Ensure the form is filled out fully before signing.

SECTION 5

WHEN THE TENANT
LEAVES THE PROPERTY—
REFUND OF A RENTAL BOND



WHEN THE TENANT LEAVES THE PROPERTY—REFUND OF A RENTAL BOND

When a tenant leaves a property there may be a number of matters that need to be considered.

It is advisable when the tenant leaves the property that both parties arrange for a joint inspection of the property. A final inspection must take place prior to the tenancy ending, usually on the last day when the tenant then returns the keys. The final inspection is the opportunity for the lessor to identify problems. Both parties should endeavour to come to an arrangement to rectify any problems which are identified and agreed to as part of the final inspection. The tenant must be given a reasonable opportunity to rectify any damage he/she is responsible for.

RENTAL BONDS

THE RENTAL BOND CANNOT BE USED TO COVER RENT

The tenant cannot use the rental bond to pay the rent for the last weeks of the tenancy. A tenant cannot stop paying the rent a month before the end of the tenancy on the assumption that the bond will cover the rent.

WHAT CAN BE DEDUCTED FROM A BOND?

The bond can be used to pay for:

- ☑ any damage caused by a tenant—the cost of repairs to the property to restore it to substantially the same condition as it was when the tenant moved in, subject to fair wear and tear;
- ☑ any outstanding rent owed under the agreement at the time the agreement is terminated;
- ☑ the cost of replacing any fuel used by the tenant during the course of the tenancy which was supplied by the lessor;
- ☑ any legal costs incurred by the lessor for assigning or transferring the tenant's rights under the residential tenancy agreement;
- ☑ any amount expressed in a term of the agreement to be deductible by the lessor from the bond, if the term is endorsed by the Tribunal; and
- ☑ the reasonable costs of the repairs or restoration.



WHEN AND HOW CAN A BOND BE RELEASED?

Either party can make an application to the ACT Revenue Office for the release of a bond. This application is normally made after the completion of the residential tenancy agreement. The lessor must give the signed bond release application to the tenant within three working days after the residential tenancy agreement is terminated.

Where there is an estimate of claims to be deducted the lessor must give the tenant the signed bond release within 10 days. The lessor must also provide details of whether they are making a claim on the bond and the reason in writing to the ACT Revenue Office and must include reasonable amount or actual amount.

The ACT Revenue Office requires that a Refund of Bond Form is completed to claim the bond. It is important that all agents/lessors ensure that their claims for refund of bonds are correct before submitting them to the ACT Revenue Office.

The lessor or tenant may make more than one application in relation to the agreement only with the Director-General permission.

REFUNDS BEFORE TERMINATION OF THE TENANCY

An application can be made before the completion of the residential tenancy agreement if:

- ✓ the application is made by both parties;
- ✓ the application is made by the lessor for the bond to be paid to the tenant;
- ✓ the application is made by the tenant for the bond to be paid to the lessor; or
- ✓ the Tribunal orders that a portion or the full bond is to be paid out to the tenant or lessor.

MORE COMPLEX REFUNDS AFTER TERMINATION OF THE TENANCY

If there is any doubt about the validity of a Refund of Bond Form due to:

- ✓ signatures not matching;
- ✓ deletion of text not signed in full by all parties;
- ✓ deliberate alterations without the consent of all parties;
- ✓ a claim by either party who states they signed a blank form, which did not have any disbursement details; or
- ✓ tenant or lessor not signing.

The ACT Revenue Office will notify all parties seeking their consent to the refund. If no counter claim is made within 10 working days of the notice, the claim will be paid out in accordance with the claim made on the refund form as submitted prior to advising all parties to the bond.

This process protects the rights of all parties to the tenancy/bond.

Note: five working days are allowed for the notification to reach each party before the 10 working day period commences.

DISTRIBUTION OF BOND BETWEEN TENANTS

At the time a bond is lodged, it is assumed that if there is more than one party to the bond, the bond is attributed in equal shares. However, if this is not the case, the ACT Revenue Office will require a signed statement and signed photo identification from the parties indicating the distribution of the bond at the time the refund is claimed.

CHANGE OF NAME

It is very important, given the requirement of the ACT Revenue Office, to validate all claims that information regarding the tenancy is up to date. For example, if a tenant changes his or her name, it is important that the ACT Revenue Office is formally advised, for example by way of marriage certificate or change of name certificate.

This will ensure that at the time of refund there are no issues regarding valid signatures.

CHANGE OF ADDRESS

It is important that address details are notified to the ACT Revenue Office for all parties. The only mechanism available to the ACT Revenue Office to process a unilateral bond refund is to give Notice under Section 34 of the Act. This means that the most recent address will be used to notify all parties by email and/or mail that a claim for refund has been received.

DISPUTES

If there is a dispute about the refund of a bond between the lessor and the tenant/s, they may be handled through negotiation between the parties, by mediation or by written application to the ACT Civil and Administrative Tribunal. If the ACT Revenue Office receives opposing rental bond application forms, the disputes will be referred to the Tribunal.

REFUND METHODS

The ACT Revenue Office can only refund a bond by Electronic Funds Transfer (EFT) or by cheque.

If a tenant is in urgent need of his or her refund, it is recommended they use the EFT option. Once a bond is refunded by EFT the funds will be available in the customers' account within 48 hours of processing a valid refund.

Cheques issued by the ACT Revenue Office have a three to five day clearance period.



READING OF METERED SERVICES

If the tenant vacates the property after giving the lessor the required notice, the lessor should arrange for any metered services connected in the lessor's name to be read before the day after the required notice expires. If the lessor fails to do so, then the lessor will be responsible for the costs of those services from the last time the meter was read.

If the tenant fails to give the required notice to the lessor and vacates the property, the lessor should arrange within a reasonable period of time for all metered services in the lessor's name to be read. It will be the tenant's responsibility to pay the cost of those services.

UNCOLLECTED GOODS

Items that have been left in the property once a tenant has vacated the property become abandoned goods. The *Uncollected Goods Act 1996* imposes strict guidelines for the disposal of abandoned goods. A lessor cannot simply dispose of the goods, without following the process set out in the Act. A copy of a brochure explaining uncollected goods can be obtained from the ACT Revenue Office on (02) 6207 3000 or at www.revenue.act.gov.au.

SECTION 6

ACT CIVIL AND
ADMINISTRATIVE
TRIBUNAL—DISPUTE
RESOLUTION



ACT CIVIL AND ADMINISTRATIVE TRIBUNAL—DISPUTE RESOLUTION

It is always best to try and resolve a dispute with the other party. However, if you cannot resolve your dispute, the *Residential Tenancies Act 1997* provides a quick and efficient dispute resolution process.

ACT CIVIL AND ADMINISTRATIVE TRIBUNAL

The ACT Civil and Administrative Tribunal is an independent body which hears and decides applications for orders from tenants and lessors. The Tribunal is a quick and inexpensive way of resolving disputes. Tribunal hearings are informal and the emphasis is on the resolution of disputes.

THE TRIBUNAL MAKES ITS DECISIONS IN THE FORM OF ORDERS AND CAN MAKE A LESSOR OR A TENANT COMPLY WITH ITS RULINGS. FOR EXAMPLE, THE TRIBUNAL CAN MAKE ORDERS THAT:

- a rent increase is excessive;
- compensation is to be paid to a tenant or lessor; or
- the residential tenancy agreement be terminated.

A fee will apply for any application to the Tribunal.

The person who makes the application must provide enough evidence to convince the Tribunal on the balance of probabilities that his/her application should be approved.

DISPUTE RESOLUTION



When the Tribunal receives an application regarding dispute resolution it will list a conference or a hearing depending on the urgency of the matter and the type of orders sought. The application form can be downloaded from the Tribunal's website at www.acat.act.gov.au.

Upon receiving an application, the Registrar of the Tribunal can:

- contact anybody relevant to the tenancy dispute to seek to resolve the matter;
- contact anybody relevant to the tenancy dispute to request further information;
- refer the dispute to an approved mediator if both parties agree and the Registrar is of the opinion that mediation is the best solution to resolve the matter;
- conduct a preliminary conference or refer the application to a referee if the Registrar considers that there is a chance that the dispute can be resolved; or
- refer the dispute to the ACT Civil and Administrative Tribunal for a hearing.

REMEDIES AVAILABLE TO THE TENANT

A tenant can apply to the Tribunal for a range of orders including:

- to make orders endorsing a term that is inconsistent with the standard residential tenancy terms;
- allowing the whole or part of the rental bond to be released;
- terminating a residential tenancy agreement;
- specifying that a Notice to Vacate was invalid;
- granting compensation if an invalid Notice to Vacate was given by the lessor;
- disallowing part or the whole of a proposed rental increase;
- to reduce the amount of rent that is payable;
- for the mediation of a dispute with a lessor; or
- for the review of a listing on a tenancy database.

REMEDIES AVAILABLE TO THE LESSOR

A lessor can apply to the Tribunal for a range of orders including:

- ☑ to make orders endorsing a term that is inconsistent with the standard residential tenancy terms;
- ☑ allowing the whole or part of the bond to be released;
- ☑ terminating a residential tenancy agreement;
- ☑ granting compensation if the tenant has failed to vacate the property in accordance with an order of the Tribunal, or for any costs incurred by the lessor in applying to have a tenant evicted;
- ☑ granting compensation if the tenant has abandoned the property;
- ☑ specifying that a Notice to Vacate was invalid, or for compensation if an invalid notice was given by the tenant;
- ☑ allowing for an increase in rent; or
- ☑ for mediation of a dispute with a tenant.

PENALTIES

The Act includes serious penalties for non-compliance with the Act or with Tribunal orders.

The Act includes a number of offences where the penalty is a fine and/ or imprisonment. For example, it is an offence to include false or misleading statements about the energy efficiency rating of the habitable areas of leased premises in an advertisement. The offence carries a maximum fine that is currently \$550.

Non-compliance with a Tribunal order may result in the Tribunal imposing a penalty of up to \$5,000. Further contraventions of Tribunal orders may be criminal offences and attract higher penalties.

Note: There is also a penalty for failing to lodge a bond within the prescribed timeframe.

SECTION 7

PROBLEMS—WHERE
TO GO FOR FURTHER
INFORMATION



Note: The street addresses of the following offices are current as of July 2017. If you intend visiting any of the offices, it would be advisable to telephone or check the relevant website for updated locations.

ACT REVENUE OFFICE

The Renting Book is authorised by the Commissioner for Fair Trading under Clause 13 of schedule 1 to the *Residential Tenancies Act 1997*.

The Renting Book can be accessed from: www.revenue.act.gov.au.

Street Address: 220 Northbourne Avenue Braddon ACT 2612

Postal Address: GPO Box 158 Canberra City ACT 2601

Phone: (02) 6207 3000

Email: rb@act.gov.au

Website: www.revenue.act.gov.au

Website Access Generally: If you do not have personal access to the Internet, you can gain access through public libraries or internet cafes.

ACT CIVIL AND ADMINISTRATIVE TRIBUNAL

The ACT Civil and Administrative Tribunal is an independent body which has exclusive jurisdiction to hear and determine all matters arising from private and public residential tenancy agreements.

Note: ACAT can provide information about ACAT processes but cannot provide advice about tenancy matters.

Street Address: ACT Civil and Administrative Tribunal, ACT Health Building
Level 4, 1 Moore Street, Canberra City ACT 2601

Postal address: GPO Box 370 Canberra City ACT 2601

Phone: (02) 6207 1740

Fax: (02) 6205 4855

Email: tribunal@act.gov.au

Website: www.acat.act.gov.au

TENANTS' ADVICE SERVICE (TAS)

TAS provides free legal advice and assistance on tenancy matters to all tenants.

TAS also provides free tenancy workshops and presentations.

The TAS website has extensive information on a wide range of tenancy matters and questions.

Phone: (02) 6247 2011 for all advice (10.00–11.30am weekdays)

Website: www.tenantsact.org.au



WELFARE RIGHTS AND LEGAL CENTRE

The Centre provides free legal advice and assistance on tenancy matters to tenants on low incomes with a focus on Housing ACT clients.

Postal address: PO Box 337 Civic Square ACT 2608

Phone: (02) 6218 7900

(9.30am–1.00pm Monday, Tuesday, Thursday and Friday)

Email: wrlc@netspeed.com.au

Website: www.welfarerightsact.org

REAL ESTATE INSTITUTE OF THE ACT (REIACT)

REIACT represents the views of the real estate profession in the ACT and preserves and maintains its integrity and status and suppresses dishonourable and unprofessional conduct and practices.

Postal Address: PO Box 22 West Deakin ACT 2600

Phone: (02) 6282 4544

Fax: (02) 6285 1960

Email: admin@reiact.com.au

Website: www.reiact.com.au

HOUSING ACT CUSTOMER ASSISTANCE HELPLINE

Note: for Housing ACT tenants only.

Phone: 133 427

HOUSING ACT—RENTAL BOND LOANS

Note: for Housing ACT tenants only.

Street Address: Nature Conservation House
(Cnr Benjamin Way and Emu Bank)
Belconnen ACT 2617

Phone: 13 34 27

