

NORTHERN TERRITORY OF AUSTRALIA

RESIDENTIAL TENANCIES ACT 1999

As in force at 1 March 2000

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 22 March 2001

RESIDENTIAL TENANCIES ACT 1999

An Act to regulate the relationship of landlord and tenant under residential tenancy agreements and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Residential Tenancies Act 1999*.

2 Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3 Objectives

The objectives of this Act are:

- (a) to fairly balance the rights and duties of tenants and landlords;
- (b) to improve the understanding of landlords, tenants and agents of their rights and obligations in relation to residential tenancies;
- (c) to ensure that landlords and tenants are provided with suitable mechanisms for enforcing their rights under tenancy agreements and this Act;
- (d) to ensure that tenants are provided with safe and habitable premises under tenancy agreements and enjoy appropriate security of tenure; and
- (e) to facilitate landlords receiving a fair rent in return for providing safe and habitable accommodation to tenants.

4 Definitions

In this Act, unless the contrary intention appears:

ancillary property, in relation to premises to which a tenancy agreement relates or is to relate, means:

- (a) ancillary real property, including a garden, not forming part of the premises;
- (b) fixtures; and
- (c) chattels, including but not limited to furniture, other household effects and a garden watering system,

provided, or to be provided, by the landlord, either under the tenancy agreement or independently of the agreement for use by the tenant, but does not include common property within the meaning of the *Unit Titles Act*.

bond means a provision of a tenancy agreement or an agreement collateral to a tenancy agreement under which a tenant is required to give a security deposit for the performance of obligations under the tenancy agreement.

business day means a day other than a Saturday or Sunday or a public holiday.

Commissioner means the Commissioner of Tenancies within the meaning of section 13.

court means:

- (a) the Local Court; or
- (b) in respect of a matter in relation to which the Supreme Court has jurisdiction under section 125 – the Supreme Court.

fixed term tenancy means a tenancy for a fixed period specified in the tenancy agreement.

landlord means:

- (a) the person who grants the right of occupancy under a tenancy agreement; or
- (b) a successor in title to the tenanted premises whose title is subject to the tenant's interest,

and includes:

- (c) a prospective landlord or a former landlord; and
- (d) an agent of the landlord, prospective landlord or former landlord.

notice of termination means a notice of termination given under this Act.

periodic tenancy means a tenancy that is not a fixed term tenancy.

premises means residential premises or part of residential premises to which a tenancy agreement relates or is to relate, but does not include premises leased principally for business purposes whether or not the premises may be used for residence under the lease.

rent means an amount payable under a tenancy agreement for the occupancy of premises for a period of the tenancy.

rent rebate means an amount waived or remitted, in accordance with a scheme established under an Act of the Territory or the Commonwealth, from rent payable for residential premises.

residential premises means premises intended for occupation as a place of residence and includes a caravan intended for occupation as a place of residence and a houseboat intended for occupation as a place of residence.

security deposit means an amount of money a tenant has paid, or is required to pay, under a bond.

tenancy means the right to occupy premises under a tenancy agreement.

tenancy agreement means an agreement under which a person grants to another person for valuable consideration a right (which may be, but need not be, an exclusive right) to occupy premises for the purpose of residency.

tenancy dispute means a dispute between parties, or former parties, to:

- (a) a tenancy agreement; or
- (b) an agreement collateral to a tenancy agreement,

being a dispute about the tenancy to which the agreement relates.

Tenancy Trust Account means the Trust Account established under section 16.

tenancy under the Housing Act or **tenancy or proposed tenancy under the Housing Act** does not include a tenancy relating to premises not owned by the Territory, or a statutory authority, unless the landlord is the Territory.

tenant means the person who:

- (a) is granted a right of occupancy of residential premises under a tenancy agreement;
- (b) has a right of occupancy of residential premises because of an assignment from a former tenant or a subtenancy; or
- (c) has a right of occupancy of residential premises, otherwise than as a landlord, because of the operation of this Act,

and includes:

- (d) a prospective tenant or a former tenant; and
- (e) a person acting on behalf of the tenant, prospective tenant or former tenant.

Part 2 Application of and liability under Act

Division 1 Application

5 Act to bind Crown

- (1) This Act binds the Crown in right of the Territory and, in so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

6 Agreements to which this Act does not apply

This Act does not apply to an agreement:

- (a) under which a person occupies, or it is intended a person will occupy, premises provided for the purposes of holiday accommodation;
- (b) under which no rent is payable in return for the granting of a right to occupy premises for the purpose of residence;

- (c) under which no rent is payable and services are provided in return for the granting of a right to occupy premises for the purpose of residence;
- (d) for sale of premises granting to a party to the agreement a right to occupy the premises;
- (e) arising under a scheme in which:
 - (i) a complex of adjacent premises is owned by a company; and
 - (ii) the premises are let by the company to persons who jointly have a controlling interest in the company;
- (f) in respect of premises provided for the use of homeless, unemployed or disadvantaged persons for charitable purposes or for the purposes of providing emergency shelter or accommodation;
- (g) made between family members or friends under which a nominal rent is charged if the parties do not intend to create a tenancy agreement to which this Act applies; or
- (h) under which a person occupies or is intended to occupy a caravan, or a mobile home, that is in a caravan park.

7 Exemptions

- (1) The Minister may, by notice in the *Gazette*:
 - (a) exempt tenancy agreements of a specified class from all or any of the provisions of this Act or the Regulations; or
 - (b) modify specified provisions of this Act or the Regulations in their application to a specified class of tenancy agreements or a specified class of premises.
- (2) A provision of this Act or the Regulations specified in an exemption or modification under subsection (1) does not apply, or applies as so modified, in relation to a tenancy agreement or premises within the class specified in the exemption or modification.
- (3) Before making an exemption or modifying a provision under subsection (1), the Minister must arrange for consultation with, and invite submissions from, persons and organisations who or that in the opinion of the Minister have an interest in the proposal being considered by the Minister.

- (4) Before making an exemption or modifying a provision under subsection (1), the Minister must give notice in a newspaper circulating in the Territory:
 - (a) that a proposal for an exemption or modification is being considered by the Minister; and
 - (b) inviting members of the public to make written submissions within the period of not less than 21 days specified in the notice.
- (5) Sections 31, 32, 37, 39(1) and (2), 42 and 112(5)(b) or (c) and Part 10 of this Act do not apply in relation to a tenancy or proposed tenancy under the *Housing Act*.
- (6) Subsection (5) does not prevent a tenancy or proposed tenancy under the *Housing Act* being the subject of an exemption or modification under subsection (1).

8 Persons 16 years of age may enter into tenancy agreements

Despite any other law in force in the Territory:

- (a) a person who has attained the age of 16 years may enter into a tenancy agreement as a tenant and may enforce the agreement in accordance with this Act; and
- (b) a tenancy agreement may be enforced in accordance with this Act against a person who has attained the age of 16 years but has not attained the age of 18 years unless, in the opinion of a court, the agreement is harsh or unconscionable.

Division 2 Liability for actions

9 Vicarious liability of landlord for agent and agent's employees

- (1) For the purposes of this Act, including a prosecution for an offence against this Act:
 - (a) conduct engaged in on behalf of a landlord by an employee or agent of the landlord within the scope of the employee or agent's actual or apparent authority is to be taken to have been engaged in also by the landlord; and
 - (b) conduct engaged in on behalf of a landlord's agent by an employee or agent of the landlord's agent is, if the conduct was within the scope of the employee or agent's actual or apparent authority, to be taken to have been engaged in also by the landlord's agent and the landlord.

- (2) A landlord may be prosecuted for and found guilty of an offence by virtue of subsection (1)(a) whether or not the employee or agent has been prosecuted or found guilty of the offence.
- (3) A landlord or a landlord's agent may be prosecuted for and found guilty of an offence by virtue of subsection (1)(b) whether or not the employee or agent has been prosecuted or found guilty of the offence.
- (4) It is a defence to a prosecution for an offence committed by virtue of subsection (1) if the landlord or landlord's agent establishes that:
 - (a) the act or omission that constituted the offence took place without the landlord's or the landlord's agent's authority, permission or consent;
 - (b) the landlord or the landlord's agent did not know, and ought not reasonably be expected to have known, the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence or a similar offence; or
 - (c) the landlord or the landlord's agent could not by the exercise of reasonable diligence have prevented the commission of the offence by the person who committed the offence.
- (5) For the purposes of this section, a reference to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

10 Body corporate, partner's liability for actions of employee etc.

- (1) If in proceedings for an offence against this Act it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the relevant state of mind.
- (2) For the purposes of a prosecution for an offence against this Act, conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken to have been engaged in also by the body corporate.

- (3) If a partner commits an offence against this Act, every other partner in the partnership is to be taken to have committed the same offence.
- (4) If a person commits an offence against this Act while engaging in conduct on behalf of an unincorporated association, each member of the committee of management of the association is to be taken to have committed the same offence.
- (5) It is a defence to a prosecution for an offence committed by virtue of subsection (1), (2), (3) or (4) if the defendant establishes that:
 - (a) the person who committed the offence would have been able to establish a defence available to the person;
 - (b) the act or omission that constituted the offence took place without the defendant's authority, permission or consent;
 - (c) the defendant did not know, and ought not reasonably be expected to have known, the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence or a similar offence; or
 - (d) the defendant could not by the exercise of reasonable diligence have prevented the commission of the offence by the person who committed the offence.
- (6) A person may be prosecuted for and found guilty of an offence by virtue of subsection (1), (2), (3) or (4) whether or not the person whose offence he or she is to be taken to have committed by virtue of that subsection has been proceeded against or found guilty of an offence against the provision.
- (7) For the purposes of this section, a reference to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

11 Director may be liable for offence of body corporate

- (1) If a body corporate commits an offence against this Act, every person who is a director of or who is concerned in the management of the body corporate is to be taken to have committed the same offence.
- (2) It is a defence to a prosecution for an offence committed by virtue of subsection (1) if the defendant establishes that:
 - (a) the body corporate would have been able to establish a defence available to it;

- (b) the act or omission that constituted the offence took place without the defendant's authority, permission or consent;
 - (c) the defendant did not know, and ought not reasonably be expected to have known, that the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence; or
 - (d) the defendant could not by the exercise of reasonable diligence have prevented the commission of the offence by the body corporate.
- (3) A person may be prosecuted for and found guilty of an offence by virtue of subsection (1) whether or not the body corporate has been prosecuted for or found guilty of the offence.

12 Vicarious liability of tenant

- (1) It is a term of a tenancy agreement that if a person (other than a co-tenant) who, while on the tenant's premises with the consent of the tenant, performs or omits to perform an act that, if it had been an act or omission of the tenant, would have been a breach of the agreement, the tenant is responsible under the agreement for the act or omission for the purposes of this Act.
- (2) Nothing in subsection (1) is to be taken to make a tenant criminally responsible for an act or omission of another person.
- (3) Subsection (1) does not apply if:
- (a) the person who performs an act that, if it had been an act of the tenant, would have been a breach of the tenancy agreement, is in a domestic relationship within the meaning of the *Domestic Violence Act* with the tenant;
 - (b) the act is an act referred to in section 4 of the *Domestic Violence Act*; and
 - (c) it is reasonable in all the circumstances, including but not limited to the number of times that an act referred to in section 4 of the *Domestic Violence Act* has been performed by the person in the premises to which the tenancy agreement relates, for the tenant not to be taken to be responsible under the agreement for the act for the purposes of this Act.

Part 3 Commissioner of Tenancies

13 Commissioner of Tenancies

- (1) The Commissioner of Consumer Affairs as defined in the *Consumer Affairs and Fair Trading Act* is the Commissioner of Tenancies, except during the period of an appointment under subsection (2).
- (2) The Minister may, by notice in the *Gazette*, appoint a person to be the Commissioner of Tenancies for the period of not more than 3 years specified in the notice.
- (3) The Commissioner has the following functions:
 - (a) investigating and researching matters affecting the interests of parties to tenancy agreements;
 - (b) publishing reports and information to parties to tenancy agreements;
 - (c) providing information to the public about this Act and residential tenancies, including but not limited to:
 - (i) general rent levels in the Territory; and
 - (ii) the procedure by which the Commissioner reviews rents to determine whether they are excessive and the matters the Commissioner is to have regard to in determining if a rent is excessive;
 - (d) investigating suspected infringements of this Act or the Regulations and taking appropriate action to ensure the enforcement of this Act and the Regulations;
 - (e) reporting to the Minister on questions referred to the Commissioner by the Minister and other questions of importance affecting the administration of this Act;
 - (f) producing model tenancy agreements for viewing or sale;
 - (g) other functions conferred on him or her under this or any other Act.
- (4) The Commissioner has the powers necessary to enable him or her to carry out his or her functions or exercise his or her powers under this or any other Act.

14 Delegation by Commissioner

- (1) The Commissioner may, in writing, delegate to a specified person or a person from time to time holding, acting in or performing the duties of a specified office, designation or position any of his or her powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, is to be taken to have been exercised or performed by the Commissioner.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.

15 Annual report

- (1) The Commissioner must, on or before 31 October in each year, prepare and forward to the Minister a report on the administration of this Act for the year ending on the previous 30 June.
- (2) The Minister must, within 6 sitting days of the Legislative Assembly after receiving a report under subsection (1), lay a copy of the report before the Assembly.
- (3) A report under subsection (1) may be included in a report prepared by the Commissioner under the *Consumer Affairs and Fair Trading Act*.
- (4) If a report under subsection (1) is included in a report prepared by the Commissioner under the *Consumer Affairs and Fair Trading Act*, subsection (2) does not apply to the report.

16 Tenancy Trust Account

- (1) The Minister primarily responsible for the administration of the *Agents Licensing Act* may determine that part of the Fund established under that Act, or a proportion of the contributions into that Fund, is to be paid into the Tenancy Trust Account for the purposes of:
 - (a) meeting the costs of administering and enforcing this Act, including the operating costs of the Commissioner; and
 - (b) educating landlords, landlord's agents and tenants about their statutory and contractual rights and obligations.

- (2) The Minister referred to in subsection (1) may only make a determination under that subsection after consulting:
 - (a) organisations that in the opinion of the Minister represent the interests of landlords;
 - (b) organisations that in the opinion of the Minister represent the interests of tenants; and
 - (c) the Agents Licensing Fidelity Guarantee Fund.
- (3) The Accountable Officer within the meaning of the *Financial Management Act* of the Agency allotted the administration of this Act under an Administrative Arrangements Order must:
 - (a) maintain within his or her Agency Operating Account a fund to be known as the Tenancy Trust Account; and
 - (b) pay an amount into the Tenancy Trust Account in accordance with a determination under subsection (1).

17 Immunity from liability

The Commissioner, a delegate of the Commissioner or a person authorised by the Commissioner is not liable for an act or omission done in good faith in the exercise or purported exercise of a power or the performance of a function under this Act.

18 Commissioner is enforcement agency for purposes of TINES

The Commissioner is an enforcement agency for the purposes of Division 2A of Part IV of the *Justices Act*.

Part 4 Tenancy agreements

19 Tenancy agreements to be written

- (1) If a landlord enters into a written tenancy agreement the agreement is to:
 - (a) contain the name of the tenants and the name and address for service of the landlord's agent, if any;
 - (b) contain the full name and address for service of the landlord;
 - (c) clearly identify the premises to which the agreement relates;
 - (d) contain each term, or a term to the same effect as each term, that is specified by or under this Act to be a term of a tenancy agreement;

- (e) include terms as to the amount of rent payable and how the rent is to be payable; and
 - (f) if the agreement is for a fixed term tenancy – specify the duration of the agreement.
- (2) If a landlord who has invited a tenant to sign a written tenancy agreement or a document containing its terms has signed the agreement or document, the landlord must give a copy to the tenant when the tenant signs it.

Penalty: 20 penalty units.

- (3) If a landlord who has invited a tenant to sign a written tenancy agreement or a document containing its terms has not signed the agreement or document, the landlord must give a copy to the tenant for signature by the tenant, sign the document when the tenant returns it and give to the tenant a copy of the document as signed by both parties within 7 days after the tenant returns it.

Penalty: 20 penalty units.

- (4) If a tenancy agreement is not in accordance with subsection (1) or is not signed by all parties to the agreement, a tenancy agreement, if any, prescribed for the purposes of this section is to be taken to be the agreement between the parties for the purposes of this Act.

20 Contract to avoid Act prohibited

- (1) An agreement or arrangement that is inconsistent with this Act or the Regulations or purports to exclude, modify or restrict the operation of this Act or the Regulations, is void to the extent of the inconsistency.
- (2) Subsection (1) does not apply in relation to an inconsistency, exclusion, modification or restriction expressly permitted by or under this Act.
- (3) A purported waiver of a right under this Act is void.
- (4) A landlord must not enter into an agreement or arrangement:
- (a) to exclude, modify or restrict the operation of this Act (directly or indirectly); or
 - (b) that purports to exclude, modify or restrict the operation of this Act (directly or indirectly).

Penalty: 100 penalty units.

21 Tenant not to give false information

It is a term of a tenancy agreement that a tenant must not give a landlord:

- (a) information about a tenant's identity that is material to a landlord's decision to enter into the tenancy agreement and that is, to the knowledge of the tenant, false; or
- (b) any other information, required by or under this Act to be given in relation to the tenancy agreement, that is, to the knowledge of the tenant, false.

22 Harsh or unconscionable terms

- (1) A court may, on the application of a tenant, make an order rescinding or varying a term of a tenancy agreement (other than a term that is specified under this Act to be a term of an agreement) if it is satisfied that the term is harsh or unconscionable.
- (2) On making an order under subsection (1), the court may make consequential changes to the tenancy agreement or another related document, including an ancillary agreement.

23 Landlord cannot charge tenant for cost of preparing agreement

A landlord must not require or receive from a tenant a payment for the preparation of a tenancy agreement.

Penalty: 20 penalty units.

24 Landlord cannot impose extra charges or liabilities

- (1) A landlord must not require or receive from a tenant a payment, other than rent, a security deposit or both, for a tenancy or the renewal or extension of a tenancy.

Penalty: 20 penalty units.

- (2) An amount paid as consideration for an option to enter into an agreement for premises is a payment for the purposes of subsection (1).

- (3) A landlord must not require a tenant to enter into a contract of insurance, guarantee or other agreement, other than by way of a bond, in relation to a tenancy or the renewal or extension of a tenancy.

Penalty: 20 penalty units.

Part 5 Bonds and condition reports

Division 1 Condition reports may be provided at beginning of tenancy

25 Landlord may provide condition report

- (1) A landlord may, within 3 business days after a tenant takes possession of premises to which a tenancy agreement relates, fill out and sign 2 copies of a condition report and give both copies to the tenant.
- (2) A condition report is to:
 - (a) specify the condition of walls, floors and ceilings in each room in the premises to which the tenancy agreement relates;
 - (b) itemise, and specify the condition of, any fixture or chattel that is ancillary property; and
 - (c) contain other prescribed information, if any.
- (3) The landlord is to fill out the condition report under subsection (1) in the presence of the tenant or a representative of the tenant (who is not the landlord or the landlord's agent) unless it is not practical to do so or the tenant or the tenant's representative does not appear at the agreed time.

26 Alteration or acceptance of condition report

- (1) Within 5 business days after receiving the copies of the condition report under section 25, the tenant may:
 - (a) accept the report by signing both copies and returning one of the copies to the landlord; or
 - (b) mark the modifications the tenant thinks fit on both copies of the condition report, initial the modifications and return both copies to the landlord.
- (2) If a tenant does not take action under subsection (1) within the time specified in that subsection, the tenant is to be taken to have accepted the condition report.

- (3) Within 5 business days after receiving the copies of the condition report modified by the tenant under subsection (1)(b), the landlord may:
 - (a) accept the report as modified by the tenant by initialling the modifications made by the tenant and returning both copies, without making modifications, to the tenant; or
 - (b) mark the modifications the landlord thinks fit on both copies of the condition report, initial the modifications and any modifications that the tenant has made under subsection (1)(b) that the landlord accepts and return both copies to the tenant.
- (4) If a landlord does not take action under subsection (3) within the time specified in that subsection, the landlord is to be taken to have accepted the condition report as modified by the tenant.
- (5) After receiving the copies of the condition report from the landlord under subsection (3):
 - (a) if the landlord accepted the tenant's modifications under subsection (3)(a), the tenant may, within 5 business days, accept the condition report by signing both copies and returning one of the copies to the landlord;
 - (b) if the landlord made modifications under subsection (3)(b), the tenant may, within 5 business days, accept the condition report by initialling the modifications made by the landlord under subsection (3)(b), signing both copies of the condition report and returning one copy to the landlord; or
 - (c) in either case, the tenant or the landlord may:
 - (i) attempt to reach agreement as to the contents of the condition report and accept the condition report by having both parties initial all modifications to the report that are accepted by them and having the tenant sign both copies of the report and return one to the landlord; or
 - (ii) apply to the Commissioner under section 27.

27 Condition report dispute may be referred to Commissioner

- (1) If, within 7 business days after 2 copies of the condition report have been given to a tenant under section 26(3), both parties have not accepted the report, the landlord or the tenant may apply to the Commissioner to prepare a condition report in respect of the premises.

- (2) The Commissioner may, on receipt of an application under subsection (1), prepare a condition report in respect of the premises and the ancillary property to which a tenancy agreement relates.
- (3) The landlord and the tenant are, for the purposes of this Act, to be taken to have accepted a condition report prepared by the Commissioner under subsection (2).

28 Condition report conclusive of condition at beginning of tenancy

If a condition report is or is to be taken to have been accepted under this Division by the landlord and the tenant, the condition report is (insofar as it relates to the beginning of the tenancy) conclusive evidence of the condition of the premises and of the provision of and the condition of any ancillary property referred to in the condition report at the beginning of the tenancy, unless the Commissioner determines otherwise in a particular case.

Division 2 Bonds and security deposits

29 Bonds

- (1) Subject to section 30, a landlord must not:
 - (a) require more than one bond or security deposit in relation to the same tenancy agreement; or
 - (b) require the payment of a security deposit of an amount greater than the money payable under the agreement for 4 weeks rent.

Penalty: 20 penalty units.

- (2) Subject to section 30, for the purposes of subsection (1)(b), the money payable under the agreement for 4 weeks rent is the lowest amount payable for a week's rent under the agreement at the time it was made (not including an amount payable as a rent rebate) multiplied by 4.
- (3) Money paid to a landlord as a security deposit is, subject to this section, to be held by the landlord in trust for the tenant.
- (4) The landlord must pay money paid to the landlord as a security deposit into an account established for the purposes of section 50 of the *Agents Licensing Act* or an account kept by the landlord at:
 - (a) a bank;
 - (b) a building society or credit union; or

- (c) a statutory corporation of the Territory or of the Commonwealth.

Penalty: 20 penalty units.

- (5) If a landlord who holds money in trust for a tenant under subsection (3) intends to leave the Territory for a period of more than 14 days, the landlord must, before leaving the Territory:

- (a) pay the money to a real estate agent or to a person approved in writing by the Commissioner; and
- (b) notify the tenant of the name of the real estate agent or person.

Penalty: 20 penalty units.

- (6) If money is paid under subsection (5) to a real estate agent or to a person approved in writing by the Commissioner:

- (a) subsection (3) ceases to apply to the landlord;
- (b) subject to this section, the money is to be held by the real estate agent or person in trust for the tenant;
- (c) subsection (4), section 32 and Part 12 apply to the real estate agent or person as if he or she were the landlord; and
- (d) if the money has not been returned to the tenant under Part 12, the real estate agent or person must, at the request of the landlord under subsection (7), return the money to the landlord.

- (7) The landlord may, within 14 days after he or she returns to the Territory, request the real estate agent or person holding the money under subsection (6) to return the money to the landlord.

- (8) If money is returned to the landlord under subsection (6)(d):

- (a) subsections (3) and (4) apply to the landlord; and
- (b) subsection (6) ceases to apply in relation to the real estate agent or person.

30 Increase in security deposit

- (1) If rent in relation to a tenancy agreement has been increased under this Act, the landlord may by written notice require the tenant to pay an amount by way of security deposit that will increase the total of all amounts paid by the tenant as a security deposit in relation to

the tenancy to not more than the amount payable for a week's rent at the increased rate multiplied by 4.

- (2) Subsection (1) only applies if the notice is given after 2 years after a security deposit was given or a security deposit was last increased under this section in relation to the tenancy agreement.
- (3) If the security deposit payable under a tenancy agreement is increased under this section, the terms of the bond are varied accordingly.

31 Receipt to be provided for security deposit

- (1) If a person has paid an amount by cash, cheque or credit card as a security deposit to the landlord, the landlord must immediately give a receipt in accordance with subsection (3) to the person who paid it or the tenant on whose behalf the payment was received.

Penalty: 20 penalty units.

- (2) If a person has paid an amount as security otherwise than by cash, cheque or credit card to the landlord, the landlord must within 2 business days after receiving the amount give a receipt in accordance with subsection (3) to the person who paid it or the tenant on whose behalf the payment was received.

Penalty: 20 penalty units.

- (3) A receipt for the purposes of subsection (1) or (2) is to be signed by the person who received the security deposit to which it relates and is to specify:
 - (a) the date the amount was received;
 - (b) the name of the tenant on whose behalf the payment was received;
 - (c) the amount paid; and
 - (d) the address of the premises to which the payment relates.

32 Statement of security deposit details to be given to tenant

A landlord must, at the written request of a tenant, give to the tenant a written statement of the following details in relation to the account in which is held the security deposit paid in relation to the tenant:

- (a) the name of the account;

- (b) whether or not the account is an account established under section 50 of the *Agents Licensing Act*;
- (c) if the account is not an account established under section 50 of the *Agents Licensing Act* – the name of the financial institution where the account is held and the rate of interest;
- (d) the amount of the security deposit in relation to the tenant that was paid into the account;
- (e) the day on which the security deposit was paid into the account.

Penalty: 20 penalty units.

33 Proportioning of security deposit between co-tenants

- (1) A bond may specify the proportions of the security deposit paid in relation to each tenant under the tenancy agreement to which it relates.
- (2) If a bond does not specify the proportions of the security deposit paid in relation to each tenant under the tenancy agreement to which it relates, the security deposit is to be taken to have been paid in equal proportions by all the tenants.
- (3) Subsection (2) does not apply if:
 - (a) the Commissioner has determined otherwise; or
 - (b) all the tenants agree in writing with the proportions paid as security deposit in relation to each tenant,

and the landlord has been notified accordingly.

34 Security deposit may be transferred to new agent

If a person licensed as a real estate agent under the *Agents Licensing Act* (in this section referred to as the **former agent**) transfers his or her real estate business, the security deposit held on behalf of a tenant by the former agent and transferred with the business is assigned to the person to whom the business is transferred as if he or she were the former agent.

Part 6 Rent

Division 1 Payment of rent

35 How and where rent to be paid

It is a term of a tenancy agreement that the tenant must pay the rent specified in or under the agreement in the manner and at the place:

- (a) specified in the tenancy agreement; or
- (b) agreed in writing between the landlord and the tenant.

36 Landlord to keep proper records of rent

- (1) A landlord must keep a written record, which may be in an electronic form, of each instalment of rent received.

Penalty: 20 penalty units.

- (2) The record is to consist of:

- (a) the amount of rent paid;
- (b) the date on which the rent was received;
- (c) the period of the tenancy to which the rent relates; and
- (d) the address of the premises to which the rent relates.

- (3) For the purposes of subsection (2)(c), the period of the tenancy is to be presumed to be the next period for which rent is payable unless the person paying the rent or on whose behalf the rent is paid specifies otherwise.

- (4) A person must not:

- (a) make a false entry of a record of rent received under a tenancy agreement; or
- (b) falsify the record in any other way.

Penalty: 100 penalty units.

- (5) The landlord must, at the request of a tenant, permit the tenant to examine the record of rent received under the tenancy agreement.

Penalty: 20 penalty units.

37 Landlord to give receipt for rent

- (1) A landlord must, immediately after receipt of a cash payment for rent, give to a tenant a receipt in accordance with subsection (5).

Penalty: 20 penalty units.

- (2) If rent is paid in cash to a landlord by a person on behalf of a tenant, the landlord must give to the tenant a receipt before the end of the next business day after the day on which the cash was received.

Penalty: 20 penalty units.

- (3) If rent is paid by cheque by or on behalf of a tenant, the landlord must, at the request of the tenant, give to the tenant a receipt in accordance with subsection (5) within 3 business days after the date of the request.

Penalty: 20 penalty units.

- (4) A landlord is not required to give a receipt if rent is directly credited or otherwise paid into an account kept by the landlord at:

- (a) a bank;
- (b) a building society or credit union; or
- (c) a statutory corporation of the Territory or of the Commonwealth.

- (5) A receipt for the purposes of this section is to be signed by the person receiving the rent to which it relates and is to specify:

- (a) the date on which the rent was received;
- (b) the name of the person paying the rent;
- (c) the amount paid;
- (d) the period of the tenancy to which the payment relates; and
- (e) the address of the premises to which the payment relates.

38 Tenant's goods cannot be seized to pay rent

A person must not seize or dispose of goods of a tenant for non-payment of the rent payable under a tenancy agreement, except in accordance with section 109.

Penalty: 100 penalty units.

Division 2 Amount of rent payable

39 Rent in advance

- (1) The landlord must not require the payment of more than one rental payment period's rent under a tenancy agreement before the end of the first rental payment period of the tenancy.

Penalty: 20 penalty units.

- (2) If rent has been paid under a tenancy agreement, the landlord must not require from the tenant a further payment of rent until the end of the last rental period for which rent has been paid.

Penalty: 20 penalty units.

- (3) A landlord must not require another person to give a post dated cheque or other post dated negotiable instrument in payment of rent under a tenancy agreement.

Penalty: 20 penalty units.

40 How rent accrues

The rent payable under a tenancy agreement accrues from day to day.

41 Increases in rent

- (1) A landlord may increase the rent payable under a tenancy agreement only if:

- (a) the right to increase the rent; and
- (b) the amount of the increase in rent or the method of calculation of the increase in rent,

is specified in the agreement.

- (2) A proposal to increase the rent payable under a tenancy agreement is of no effect unless at least 30 days written notice is given to the tenant of:

- (a) the amount of the increase; and
- (b) the date from which the increase is to take effect.

- (3) The date fixed for an increase in rent in relation to a tenancy must not be earlier than 6 months after:

- (a) the day on which the tenancy agreement commences; or

- (b) if there has been a previous increase of rent under this section in relation to one or more of the same tenants and the same premises – the last increase.
- (4) If the rent payable under a tenancy agreement is increased under this section, the terms of the agreement are varied accordingly.
- (5) Subsections (2), (3) and (4) do not apply in relation to:
 - (a) a provision of a tenancy agreement in relation to a tenancy under which the rent payable changes automatically at stated intervals on a basis set out in the agreement or by a determination under the *Housing Act* by the minister administering that Act; or
 - (b) an increase in the amount of rent payable by a tenant because of the cancellation or adjustment of a rent rebate.

42 Commissioner may declare rent excessive

- (1) The Commissioner may, on the application of the tenant, declare that the rent payable under a tenancy agreement is excessive.
- (2) The Commissioner must not make a declaration under subsection (1) unless he or she:
 - (a) has given 14 days notice to the landlord of the application;
 - (b) has invited the landlord to make submissions to the Commissioner in relation to the application before the date specified in the notice; and
 - (c) has considered any submissions made by the landlord.
- (3) The Commissioner may only make a declaration under subsection (1) if the rent paid in respect of the tenancy agreement is, in the opinion of the Commissioner, excessive:
 - (a) having regard to the general level of rents for comparable premises in the same or similar localities and the cost of any services provided in connection with the tenancy agreement by the landlord or the tenant; or
 - (b) because the level of services provided under the agreement has, in the opinion of the Commissioner, been reduced to a significant extent, having regard to the cost of any services provided in connection with the tenancy agreement by the landlord or the tenant.

- (4) If the Commissioner makes a declaration under subsection (1), he or she may by order:
 - (a) specify the rent payable for the premises and vary the agreement by reducing the rent payable under the agreement accordingly;
 - (b) specify a date (which is not to be before the date of the application) from which the variation takes effect; and
 - (c) specify the period of not more than 12 months that the order is to remain in force.
- (5) The Commissioner may, on the application of the landlord, vary or revoke an order under this section as the Commissioner thinks fit.
- (6) While an order remains in force under this section, the landlord must not ask for or receive rent exceeding the amount fixed by the order.

Penalty: 20 penalty units.

43 Repayment of rent paid in advance

- (1) If rent is paid in advance and the tenancy is terminated before the end of the period for which rent has been paid, the landlord must, as soon as reasonably possible, refund to the tenant the appropriate proportion of the amount paid as rent in advance.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply in relation to rent, or a part of rent, paid in advance that may be applied towards other liabilities of the tenant to the landlord in accordance with this Act.
- (3) The Commissioner may, on the application of the tenant, order the landlord to refund to the tenant the proportion of the amount paid as rent in advance (not being money for which the tenant is liable under this Act to pay to the landlord as rent or otherwise) that the Commissioner thinks fit.

44 Accelerated rent and liquidated damages prohibited

- (1) A landlord must not enter into, or offer to enter into, a tenancy agreement a term of which is to the effect that, on breach by the tenant of a term of the agreement (including a term as to rent), the tenant is liable to pay:
 - (a) all or any part of the rent remaining payable under the agreement;

- (b) rent of an increased amount;
- (c) an amount by way of penalty that is not reasonably proportional to the actual loss that is suffered as a consequence of the breach; or
- (d) an amount by way of liquidated damages that is not reasonably proportional to the actual loss that may be suffered as a consequence of the breach.

Penalty: 20 penalty units.

- (2) A provision of a kind referred to in subsection (1) is void.
- (3) This section does not apply in relation to an increase in the amount of rent payable by a tenant because of the cancellation or adjustment of a rent rebate.

45 Commissioner may determine if penalty or liquidated damages

- (1) The Commissioner may, on the application of a landlord or a tenant, determine whether:
 - (a) a method of calculating rent (whether or not specified in the tenancy agreement) is intended to enable genuine reductions in rent rather than to function as a penalty provision; or
 - (b) an amount by way of penalty or liquidated damages specified in the tenancy agreement is reasonably proportional to the actual loss that may be suffered as a consequence of the breach.
- (2) If the Commissioner makes a determination under subsection (1) that:
 - (a) a method of calculating rent (whether or not specified in the tenancy agreement) is intended to enable genuine reductions in rent rather than to function as a penalty provision; or
 - (b) an amount by way of penalty or liquidated damages specified in the tenancy agreement is reasonably proportional to the actual loss that may be suffered as a consequence of the breach,

the term to which the determination relates is not a provision to which section 44(1) relates.

- (3) The Commissioner must notify the landlord and the tenant of a determination under subsection (1).

46 Reductions in rent by agreement

- (1) The rent payable under a tenancy agreement may be reduced:
 - (a) under a provision of a tenancy agreement under which the rent payable changes automatically at stated intervals on a basis set out in the agreement; or
 - (b) by mutual agreement between the tenant and the landlord.
- (2) A reduction of rent may be made on a temporary basis so that, at the end of a specified period, the rent reverts to the level that the rent would have been before the temporary reduction.
- (3) If the rent payable under a tenancy agreement is reduced by mutual agreement between the tenant and the landlord, the terms of the agreement are varied accordingly.

Part 7 Repairs and maintenance

Division 1 Landlord's responsibilities

47 Premises not to be let unless habitable and safe

A landlord must not enter into, or offer to enter into, a tenancy agreement unless the premises and ancillary property to which the agreement relates or would relate:

- (a) are habitable; and
- (b) meet all health and safety requirements specified under an Act that apply to residential premises or ancillary property.

Penalty: 100 penalty units.

48 Premises to be clean and suitable for habitation

- (1) It is a term of a tenancy agreement that the landlord must ensure that the premises and ancillary property to which the agreement relates:
 - (a) are habitable;
 - (b) meet all health and safety requirements specified under an Act that apply to residential premises or the ancillary property; and
 - (c) are reasonably clean when the tenant enters into occupation of the premises.

- (2) It is not a breach of the term specified in subsection (1) if the failure to comply with the term is caused by:
- (a) an act or omission of the tenant; or
 - (b) the tenant's failure to notify the landlord of repairs required to the premises.

49 Premises to be secure

- (1) It is a term of a tenancy agreement that the landlord will take reasonable steps to provide and maintain the locks and other security devices that are necessary to ensure the premises and ancillary property are reasonably secure.
- (2) It is a term of a tenancy agreement that the landlord will not:
- (a) alter or remove a lock or security device on the premises or ancillary property; or
 - (b) add a lock or security device to the premises or ancillary property,
- without the consent of the tenant.
- (3) It is a term of a tenancy agreement that, if the landlord:
- (a) alters a lock or security device on the premises or ancillary property; or
 - (b) adds a lock or security device to the premises or ancillary property,
- without the consent of the tenant, the landlord will provide to the tenant a key to the lock or security device as soon as practicable after the alteration or the addition, unless the tenant consents to the landlord doing otherwise.

50 Landlord must not change locks

- (1) A landlord must not, without reasonable excuse:
- (a) alter or remove a lock or security device on the premises or ancillary property; or
 - (b) add a lock or security device to the premises or ancillary property,
- without the consent of the tenant.

Penalty: 100 penalty units.

- (2) A landlord who has altered or added a lock or security device on premises or ancillary property must immediately after the alteration or addition provide to a tenant a key to the lock or security device.

Penalty: 100 penalty units.

Division 2 Tenant's responsibilities

51 Cleanliness and damage

- (1) It is a term of a tenancy agreement that a tenant:
- (a) will not maintain the premises and ancillary property in an unreasonably dirty condition, allowing for reasonable wear and tear;
 - (b) must notify the landlord of any damage or apparent potential damage to the premises or ancillary property, other than damage of a negligible kind;
 - (c) must not intentionally or negligently cause or permit damage to the premises or ancillary property; and
 - (d) if the premises are a unit within the meaning of the *Unit Titles Act* – must not intentionally or negligently cause or permit damage to the common property within the meaning of that Act.
- (2) It is a term of a tenancy agreement that at the end of the tenancy the tenant must give the premises and ancillary property back to the landlord:
- (a) in reasonable state of repair; and
 - (b) in a reasonably clean condition,
- allowing for reasonable wear and tear.
- (3) A tenant is not in breach of the term of the agreement specified in subsection (1) or (2) if:
- (a) the breach is caused by the landlord's failure to repair or maintain the premises or ancillary property; and
 - (b) the landlord had notice that the repairs or maintenance were required.

- (4) In deciding whether premises or ancillary property are in reasonable condition or in a reasonably clean condition, a landlord, the Commissioner or a court must take into account:
- (a) the condition of the premises or ancillary property when the tenant took possession of them as determined by a condition report, if any, accepted under Part 5 by the landlord and the tenant;
 - (b) if the tenancy agreement has terminated or the tenant has, in the opinion of the landlord, apparently abandoned the premises: the condition of the premises or ancillary property as determined by a condition report, if any, accepted under Part 12 by the landlord and the tenant; and
 - (c) the effect of reasonable wear and tear during the tenancy.
- (5) If a condition report was not accepted by the landlord and the tenant in relation to the premises or ancillary property under Part 5:
- (a) the tenant is to be taken to have complied with the term of the agreement specified in subsection (1); and
 - (b) if the tenancy agreement has terminated or the tenant has, in the opinion of the landlord, apparently abandoned the premises – the premises or ancillary property are to be taken to have been at the time when the tenant took possession of the premises under the tenancy agreement, in the condition they are at the end of the tenancy agreement.

52 Tenant's responsibility for security

- (1) It is a term of a tenancy agreement that the tenant will not, without reasonable excuse:
- (a) alter or remove a lock or security device on the premises or ancillary property; or
 - (b) add a lock or security device to the premises or ancillary property,
- without the consent of the landlord.
- (2) It is a term of a tenancy agreement that, if the tenant:
- (a) alters a lock or security device on the premises or ancillary property; or
 - (b) adds a lock or security device to the premises or ancillary property,

without the consent of the landlord, the tenant will provide to the landlord a key to the lock or security device as soon as practicable after the alteration of the addition, unless the landlord consents to the tenant doing otherwise.

53 Tenant must not alter locks

(1) A tenant must not, without reasonable excuse:

- (a) alter or remove a lock or security device on the premises or ancillary property; or
- (b) add a lock or security device to the premises or ancillary property,

without the consent of the landlord.

Penalty: 100 penalty units.

(2) A tenant who has altered or added a lock or security device on premises or ancillary property must, within 2 business days after the alteration or addition, provide to the landlord a key to the lock or security device.

Penalty: 20 penalty units.

54 No illegal conduct or nuisance on premises etc.

It is a term of a tenancy agreement that a tenant must not:

- (a) use the premises or ancillary property, or cause the premises or ancillary property to be used, for an illegal purpose;
- (b) cause or permit a nuisance on the premises, ancillary property or on land adjacent to or opposite the premises; or
- (c) cause or permit ongoing or repeated interference with the reasonable peace or privacy of another person in the other person's use of premises or land in the immediate vicinity of the premises to which the agreement relates.

55 Alteration of premises or ancillary property

(1) It is a term of a tenancy agreement that the tenant must not, without the landlord's written consent or otherwise than in accordance with this Act, make an alteration or addition to the premises or ancillary property.

- (2) A tenant may remove a fixture affixed to the premises by a tenant unless its removal would cause damage to the premises or ancillary property.
- (3) It is a term of a tenancy agreement that if the tenant causes damage to the premises or ancillary property by removing or installing a fixture, the tenant must:
 - (a) notify the landlord; and
 - (b) at the option of the landlord, have the damage repaired or compensate the landlord for the reasonable cost of repairing the damage.

56 Tenant to notify if premises to be vacant for more than 30 days

It is a term of a tenancy agreement that the tenant is to notify the landlord before premises to which the agreement relates are left unoccupied for more than 30 days.

Division 3 Repairs

57 Landlord's obligation to repair

- (1) Subject to this Part, it is a term of a tenancy agreement that the landlord:
 - (a) must ensure that the premises and ancillary property are in a reasonable state of repair when a tenant enters into occupation of the premises; and
 - (b) must maintain the premises and ancillary property in a reasonable state of repair, having regard to their age, character and prospective life.
- (2) A landlord is not in breach of the term specified under subsection (1) unless he or she:
 - (a) has notice of the defect requiring repair; and
 - (b) fails to act with reasonable diligence to have the defect repaired.
- (3) A landlord is not in breach of the term specified under subsection (1) if:
 - (a) the repairs were known to the tenant to be required at the time of entering into the residential premises agreement;

- (b) the repairs are not emergency repairs within the meaning of section 63;
 - (c) the tenant has, in writing, waived the right to have the particular repairs made; and
 - (d) the premises are habitable and meet all health and safety requirements specified under any Act.
- (4) For the purposes of this section, **ancillary property** includes gardening or watering equipment or other chattels provided in relation to a garden but does not include vegetation, other than a tree that poses a risk to a person's safety.

58 Tenant to notify landlord if repairs required

- (1) It is a term of a tenancy agreement that if premises or ancillary property require repair or maintenance, other than repair or maintenance of a negligible kind, a tenant is, as soon as reasonably practicable after becoming aware of the need for the repairs or maintenance, to notify the landlord orally or in writing of the requirement.
- (2) Subsection (1) does not apply in relation to repairs if the tenant has waived the right to have the repairs made under section 57(3).
- (3) If the landlord requests the tenant to put the notice in writing, the tenant is not to be taken to have given notice under subsection (1) unless it is given to the landlord in writing.
- (4) For the purposes of this section, **ancillary property** includes gardening or watering equipment or other chattels provided in relation to a garden but, unless the tenancy agreement specifies otherwise, does not include vegetation, other than a tree that poses a risk to a person's safety.

59 Maximum amount tenant may claim from landlord for repairs

- (1) A tenant is not entitled to receive, or to request the landlord to pay to a repairer (and the landlord is not required to pay), an amount under section 61 greater than the amount payable under the tenancy agreement for 2 weeks rent.
- (2) For the purposes of subsection (1):
- (a) if the rent fluctuates during a tenancy agreement – the amount payable under the agreement for 2 weeks rent is to be taken to be the lowest rent payable for a 2 week period under the agreement; or

- (b) if the rent increases under section 41 – the amount payable under the agreement for 2 weeks rent is to be taken to be the increased rent payable for a 2 week period under the agreement.

60 When tenant may make repairs

A tenant may have premises or ancillary property repaired if:

- (a) the premises are uninhabitable, the premises and ancillary property are unsafe or if the repairs are not made there is a reasonable possibility:
 - (i) of damage occurring to the premises or ancillary property or to property of the tenant; or
 - (ii) that the premises or ancillary property are likely to become unsafe, uninhabitable or insecure;
- (b) the premises or ancillary property are in a state of disrepair that does not arise from contravention of the tenancy agreement by the tenant;
- (c) the tenant has under section 58 notified the landlord in writing of the requirement for the repairs to be made; and
- (d) either the repairs have not been made within 7 business days after receipt of a notice under section 58 or:
 - (i) the landlord has not, within 7 business days after receipt of a notice under section 58, made arrangements for the repairs to be made and notified the tenant accordingly; and
 - (ii) the repairs have not been made within 21 days after the date of the notice.

61 When and how tenant may claim money for repairs

- (1) A tenant may recover from the landlord the cost of having repairs made under section 60 only if:
 - (a) the tenant has notified the landlord of the cost of the repairs;
 - (b) the tenant has complied with section 62; and
 - (c) the tenant has given to the landlord appropriate documents proving the costs incurred.

- (2) A tenant may request the landlord:
 - (a) to pay the costs directly to the repairer; or
 - (b) if the tenant has paid the cost of repair – to pay the amount to the tenant or to deduct the amount from rent payable by the tenant.
- (3) Costs payable by a landlord under this section are to be paid:
 - (a) in accordance with the tenant's request under subsection (2);
 - (b) in the manner agreed between the landlord and the tenant; or
 - (c) as determined by the Commissioner under subsection (4) on the application of the tenant.
- (4) Subject to this Division, the Commissioner may, on the application of a landlord or tenant, order either party to pay for the cost of permitted repairs incurred or purporting to be incurred under this Division.

62 Tenant to use nominated repairers

- (1) A landlord may, in a tenancy agreement or by notice in writing to the tenant, nominate a person (including the landlord) to be a nominated repairer for a type of repairs.
- (2) If a tenant is permitted under section 60 to have repairs made (in this section referred to as the ***permitted repairs***) and the landlord has specified a nominated repairer who may make repairs of that type, the tenant must take all reasonable steps to engage that repairer to make the permitted repairs.
- (3) If the landlord has nominated a person under subsection (1), a tenant may have permitted repairs made by a person other than the nominated repairer only if:
 - (a) the tenant cannot, despite reasonable attempts to do so, engage the nominated repairer to make the permitted repairs within a reasonable time;
 - (b) the tenant has obtained quotations for cost from 2 repairers who are appropriately qualified to make the repairs; and
 - (c) the tenant has chosen the repairer offering the lowest quotation, unless the repairer offering the lowest quotation would not be able to make the permitted repairs within a reasonable time.

63 Emergency repairs may be ordered by Commissioner

- (1) The Commissioner may, on the application of a tenant, order the landlord to ensure that specified repairs are made in a specified period to premises or ancillary property if:
- (a) the repairs required are emergency repairs;
 - (b) the premises or ancillary property are in a state of disrepair that does not arise from contravention of the tenancy agreement by the tenant;
 - (c) the tenant has, under section 58, notified the landlord in writing of the requirement for the repairs to be made; and
 - (d) either the repairs have not been made within 5 business days after receipt of a notice under section 58 or:
 - (i) the landlord has not, within 5 business days after receipt of a notice under section 58, made arrangements for the repairs to be made and notified the tenant accordingly; and
 - (ii) the repairs have not been made within 14 days after the date of the notice.
- (2) For the purposes of this section, **emergency repairs** means work needed to repair:
- (a) a water service that provides water to the premises that has burst;
 - (b) a blocked or broken lavatory system on the premises;
 - (c) a serious roof leak;
 - (d) a gas leak;
 - (e) a dangerous electrical fault;
 - (f) flooding or serious flood damage;
 - (g) serious storm, fire or impact damage;
 - (h) a failure or breakdown of the gas, electricity or water supply to the premises;
 - (j) a failure or breakdown of an essential service or appliance on premises for water or cooking;
 - (k) a fault or damage that makes premises unsafe or insecure;

- (m) a fault or damage likely to injure a person, damage property or unduly inconvenience a resident of premises; or
- (n) a serious fault in a staircase or lift or other area of premises that unduly inconveniences a resident in gaining access to or using the premises.

Part 8 Tenant's right to enjoy property without disturbance

64 Vacant possession etc.

- (1) It is a term of a tenancy agreement that a tenant is entitled to vacant possession of the premises on and from the day the tenancy begins.
- (2) Subsection (1) does not apply in relation to a part of the premises in respect of which a right to exclusive possession is not given by the agreement.
- (3) It is a term of a tenancy agreement that there is no legal impediment to the tenant's occupation of the premises as a place of residence for the period of the tenancy that the landlord knew of, or ought to have known of, when entering the agreement.

65 Tenant to be able to use and enjoy property

It is a term of a tenancy agreement that:

- (a) a tenant is entitled to quiet enjoyment of the premises without interruption by the landlord or a person claiming under the landlord or with superior title to the landlord's title; and
- (b) the landlord will not cause an interference with the reasonable peace or privacy of a tenant in the tenant's use of the premises.

66 Landlord not to interfere with tenant's enjoyment of premises

- (1) A landlord must not cause interference with the reasonable peace or privacy of a tenant in the tenant's use of the premises, except in accordance with this Act.

Penalty: 100 penalty units.

- (2) A landlord must not force, or attempt to force, a tenant to vacate the premises:
 - (a) except in accordance with this Act; or

(b) in circumstances that amount to harassment of a tenant.

Penalty: 100 penalty units.

67 Tenant's right of association

(1) A landlord must not:

(a) refuse to renew a tenancy agreement in relation to premises (whether or not the right to renew was a condition of the agreement); or

(b) purport to exercise a power or right to terminate a tenancy agreement in relation to premises,

for the reason that the tenant has joined or is or was a member of a body or association:

(c) of tenants, the objects of which include the advancement or preservation of their mutual interests, whether or not exclusively in relation to the premises to which the agreement relates; or

(d) that provides services to tenants, the objects of which include the advancement or preservation of tenants' interests.

Penalty: 100 penalty units.

(2) A landlord must not threaten or otherwise indicate that he or she will refuse to renew a tenancy agreement if the tenant joins or becomes a member of, or makes use of the services of, a body or association of a kind referred to in subsection (1).

Penalty: 100 penalty units.

(3) A term of a tenancy agreement in relation to premises which is to the effect that the agreement is or may be terminated or that the tenant will suffer any other detriment under the agreement if:

(a) the tenant joins or becomes a member of a body or association of a kind referred to in subsection (1); or

(b) the tenant makes use of the services of such a body or association,

is void, whether that tenancy agreement was entered into before or after the commencement of this section.

Part 9 Landlord's right to enter premises during tenancy

68 Entry only permitted in accordance with Act

- (1) It is a term of a tenancy agreement that the landlord may only enter the premises or ancillary property in accordance with this Act.
- (2) This Part does not apply to a part of the premises or ancillary property that a tenant uses in common with the landlord or a tenant, under another tenancy agreement, of the landlord.

69 Collection of rent

- (1) A landlord or a person authorised by an agent of the landlord may enter the premises or ancillary property for the purpose of collecting the rent.
- (2) Subsection (1) only applies if the entry is made:
 - (a) between 7 am and 9 pm at a time previously arranged with the tenant not less than 7 days before the entry is made; and
 - (b) not earlier than 7 days after the last time entry was made under this section.
- (3) Despite subsection (2), if a tenant is in arrears with rent, the landlord or a person authorised by an agent of the landlord may enter the premises or ancillary property for the purpose of collecting the rent if the entry is made not earlier than 7 days after the last time entry was made under this section.
- (4) If:
 - (a) a tenant is in arrears with an instalment of rent;
 - (b) the landlord has not been able to contact the tenant for the purpose of arranging a time for entry for the purpose of collecting the instalment and has made a reasonable number of attempts to do so; and
 - (c) the landlord has engaged a commercial agent within the meaning of the *Commercial and Private Agents Licensing Act* who holds a licence under that Act permitting the collecting of debts, or requesting the payment of debts, on behalf of another person, to collect the instalment,

subsection (2) does not apply in relation to an entry by the commercial agent for the purpose of collecting the instalment.

70 Inspection of premises

- (1) The landlord may enter the premises or ancillary property for the purpose of inspecting the premises or ancillary property.
- (2) Subsection (1) only applies if the entry is made:
 - (a) between 7 am and 9 pm at a time previously arranged with the tenant not less than 7 days before the entry is made; and
 - (b) after:
 - (i) 3 months after the last entry was made to the premises for the purposes of this paragraph; or
 - (ii) if a longer period is specified in the agreement as the interval during which an entry for the purpose of inspecting the premises or ancillary property is not to be made – that longer period.

71 Repairs and maintenance

- (1) The landlord or a person authorised by an agent of the landlord may enter the premises or ancillary property for the purpose of:
 - (a) carrying out necessary repairs or maintenance, but only if the landlord has been notified by the tenant that the repairs or maintenance are necessary or the repairs or maintenance have been observed by the landlord or his or her agent, including during an inspection under section 70; or
 - (b) determining if necessary repairs and maintenance (including repairs and maintenance required by the landlord to be performed by a tenant) have been satisfactorily performed or completed.
- (2) Subsection (1) only applies if the entry is made:
 - (a) between 7 am and 9 pm; and
 - (b) at a time of which the tenant has been given not less than 24 hours written or oral notice.

72 Emergency or significant damage caused or threatened

The landlord may enter the premises or ancillary property without notice:

- (a) in an emergency; or

- (b) if the landlord has reasonable grounds to suspect that significant damage has been, is being, or is about to be, caused to the premises or to ancillary property.

73 Preparation of condition report

The landlord may enter the premises or ancillary property in order to prepare a condition report in accordance with section 25 or 110 if the entry is made:

- (a) between 7 am and 9 pm; and
- (b) at a time of which the tenant has not less than 24 hours written or oral notice.

74 Inspection by prospective tenants or purchasers

- (1) The landlord may enter the premises or ancillary property for the purpose of showing the premises or ancillary property to prospective tenants if the entry is made:

- (a) between 7 am and 9 pm;
- (b) during the 28 days before the termination of the agreement; and
- (c) at a time of which a tenant has been given not less than 24 hours written or oral notice.

- (2) The landlord may enter the premises or ancillary property for the purpose of showing the premises or ancillary property to prospective purchasers if the entry is made:

- (a) between 7 am and 9 pm; and
- (b) at a time of which the tenant has been given not less than 24 hours written or oral notice.

- (3) The landlord may enter the premises or ancillary property for the purposes specified in subsection (1) or (2) on no more than a reasonable number of occasions.

75 Entry with consent

The landlord may, with the consent of a tenant given at or immediately before the time of entry, enter the premises or ancillary property between 7 am and 9 pm.

76 Tenant to be present at entry

- (1) An entry into or inspection of premises or ancillary property under this Part must be carried out in the presence of the tenant.
- (2) Subsection (1) does not apply if:
 - (a) the tenant has refused, other than on reasonable grounds, to be present at the time specified for the inspection;
 - (b) the tenant has, in writing, waived the right to appear or to be represented at the inspection;
 - (c) the tenant is not at the premises at the time specified for inspection; or
 - (d) the entry is made for the purposes of section 72.

77 Commissioner may order tenant to let landlord enter premises

- (1) If a tenant unreasonably impedes, or fails to permit, the lawful entry of the landlord or a person authorised by an agent of the landlord to the premises or ancillary property, the Commissioner may, on the application of the landlord, make an order permitting the landlord to enter the premises or ancillary property.
- (2) If a landlord or a person authorised by an agent of the landlord has entered premises or ancillary property in accordance with this Act, the tenant must not unreasonably impede him or her in carrying out the purpose for which entry lawfully occurred.

Part 10 Change of landlord or tenant**78 Assignment or sublease of premises permitted with consent**

- (1) Subject to this Part, it is a term of a tenancy agreement that the tenant may assign the tenant's interest in the agreement or sublet the premises to a person with the oral or written consent of the person.
- (2) It is a term of a tenancy agreement that the tenant must not assign the tenant's interest in the agreement or sublet the premises unless:
 - (a) the landlord gives his or her written consent; or
 - (b) the landlord is to be taken under section 79 to have consented to the assignment.

- (3) If the landlord consents or is to be taken to consent to an assignment or a subletting after the assignment or subletting occurs, the tenant is not to be taken to be or to have been in breach of subsection (2).

79 Consent to assignments and subletting

- (1) A tenant may apply to the landlord for consent to an assignment of the tenant's interest in the agreement or to sublet premises by providing to the landlord:
- (a) the name of the person to whom it is proposed to assign the interest in the agreement or sublet the premises; and
 - (b) the same information in relation to the person specified under paragraph (a) that the tenant was requested to give to the landlord in relation to the tenant's application to enter into the agreement.
- (2) A landlord is to be taken to have consented to an assignment or sublease if:
- (a) the landlord has unreasonably refused to consent to the assignment or subletting; or
 - (b) the landlord has been notified under subsection (1) but has not given notice to the tenant within the period specified under subsection (3).
- (3) The landlord may, within 28 days after the landlord first became aware of the assignment or subletting, notify the tenant who assigned the interest in the agreement or sublet the premises to another person, that the landlord does not consent to the assignment or subletting.
- (4) The Commissioner may, on the application of the landlord or the tenant, declare that the consent of the landlord to an assignment or subletting was reasonably or unreasonably refused.

80 Security deposit if lease assigned

If a landlord consents, or is to be taken under section 79 to have consented, to the assignment by the tenant of his or her interest under a tenancy agreement to another tenant under the same agreement, the tenant must also assign to that other tenant his or her interest in the security deposit paid under the agreement.

81 Unreasonable charges not to be made for assignment etc.

- (1) A landlord must not require the tenant to pay to the landlord a charge for consenting or considering an application for consent to an assignment or subletting that is more than the landlord's reasonable expenses in relation to the assignment or subletting.

Penalty: 20 penalty units.

- (2) The Commissioner may, on the application of a tenant:
- (a) declare that a charge required by a landlord for consenting or considering an application for consent to an assignment or subletting is more than the landlord's reasonable expenses in relation to the assignment or subletting; and
 - (b) order that the amount charged or part of that amount be refunded to or is not payable by the tenant.

Part 11 Termination of agreement

Division 1 When termination occurs

82 When termination occurs

- (1) A tenancy is only terminated:
- (a) if the landlord or tenant terminates the tenancy under this Act;
 - (b) if a court or the Commissioner terminates the tenancy under this Act;
 - (c) if the premises are abandoned before the end of the agreement – on and from the date on which rent was due and payable in relation to the premises or the date specified in a declaration under section 108 as the date on which the premises were abandoned, whichever is sooner;
 - (d) if a person with superior title to the landlord's title becomes entitled to possession of the premises under an order of the Commissioner or a court;
 - (e) if a sole tenant dies without leaving in occupation of the premises a spouse, de facto partner, or dependants, of whose occupation and relationship to the sole tenant the landlord has been notified before the death;
 - (f) if a tenant gives up possession of the premises with the landlord's consent; or

- (g) if the interests of all tenants merge with another estate or interest in the premises.
- (2) Despite subsection (1)(e), if the sole tenant in relation to a tenancy that is a tenancy within the meaning of the *Housing Act* dies, the tenancy is terminated whether or not a spouse, de facto partner or dependant of the sole tenant is left in occupation of the premises.

83 Fixed term tenancy becomes periodic if not terminated

A fixed tenancy agreement continues to apply to the premises on the same terms on which it applied immediately before the day the term ends, but as a periodic tenancy, if:

- (a) the tenancy agreement does not provide for the continuance of the tenancy after the day the term ends;
- (b) a notice of termination has not been given under this Act in relation to the premises; and
- (c) the tenant remains in occupation of the premises after the day the term ends.

84 Commissioner may declare purported termination to be of no effect

The Commissioner may, on the application of the tenant or the landlord, declare that a purported termination of a tenancy under this Part is of no effect.

85 Termination of periodic tenancy effective despite inadequate notice

A notice terminating a periodic tenancy under this Act has effect even though:

- (a) the period of notice is less than would, apart from this Act, have been required by law; or
- (b) the date, stated in the notice, on which the tenancy is to end is not the last day of a period of the tenancy.

Division 2 Termination by landlord

86 If premises flooded, unsafe or uninhabitable

A landlord may terminate a tenancy by 2 days notice in writing to the tenant in accordance with section 101 if:

- (a) access to the premises to which the tenancy relates has not been available for more than 3 days because of flooding;
- (b) continued occupation of the premises by the tenant is a threat to the health or safety of the tenant or members of the public or a threat to the safety of the landlord's property; or
- (c) the premises have become uninhabitable.

87 Rent not paid after notice given

- (1) If a tenant breaches a tenancy agreement by failing to pay rent and the rent has been in arrears for not less than 14 days, the landlord may give the tenant a notice in accordance with subsection (2).
- (2) A notice is to be signed by the landlord and is to specify:
 - (a) the address of the premises to which the notice relates;
 - (b) the amount of rent that is outstanding and the period for which it has been outstanding; and
 - (c) that if the amount is not paid before a day specified in the notice (in this section called the **rent payment day**) that is more than 7 days after the date the notice is given:
 - (i) the tenancy is terminated on the day, later than rent payment day, specified in the notice as the day on which the tenancy terminates (in this section called **termination day**); and
 - (ii) the tenant is to give up vacant possession of the premises to the landlord on termination day.
- (3) If the rent is not paid by the rent payment day, the tenancy is terminated on the termination day.
- (4) A notice under subsection (1) has effect despite the failure of the landlord to make a previous formal demand for payment of the rent.
- (5) If notice is given under subsection (1) in respect of a tenancy agreement that creates a fixed term tenancy, the notice has effect even if the termination day is earlier than the last day of the term.

- (6) A demand for, an application to the Commissioner for the recovery of, or an acceptance of, rent by a landlord after the landlord:
- (a) has notice of a breach of the tenancy agreement by the tenant; or
 - (b) has given the tenant a notice of termination,
- does not operate as a waiver of that breach or that notice.

88 Breach, other than failure to pay rent, not remedied after notice

- (1) If a tenant breaches (otherwise than by failing to pay rent) a term of a tenancy agreement that:
- (a) is a term of the agreement by virtue of this Act; or
 - (b) is specified to be a term a breach of which permits the landlord to terminate the agreement,
- the landlord may give the tenant a notice in accordance with subsection (2).
- (2) A notice under subsection (1) is to be signed by the landlord and is to specify:
- (a) the address of the premises to which the notice relates;
 - (b) the breach; and
 - (c) that if:
 - (i) the breach is not remedied before a day specified in the notice (in this section called the **compliance day**) that is more than 7 days after the day the notice is given; or
 - (ii) steps to the satisfaction of the landlord are not taken to remedy the breach by the compliance day,then:
 - (iii) the tenancy is terminated from the day specified in the notice as the day on which the tenancy will terminate (in this section called the **termination day**); and
 - (iv) the tenant is to give up vacant possession of the premises to the landlord on the termination day.
- (3) The termination day is not to be sooner than 7 days after the compliance day.

- (4) If the breach is not remedied by the compliance day, the tenancy is terminated on the termination day.
- (5) If notice is given under this section in respect of a tenancy agreement that creates a fixed term tenancy, the notice has effect even though the termination day is earlier than the last day of that term.

89 Periodic tenancy, other than for breach

A landlord may terminate a periodic tenancy without specifying a ground for the termination by 42 days notice to the tenant in accordance with section 101.

90 Fixed term tenancy

A landlord may terminate a fixed term tenancy that is due under the tenancy agreement to terminate on a particular day by 14 days notice to the tenant in accordance with section 101 of termination on that day.

91 Employment related tenancy

- (1) A landlord may, by notice to the tenant in accordance with section 101, terminate the tenancy on and from the time and date specified in the notice if:
 - (a) the tenant has entered into a tenancy agreement as a condition or benefit associated with employment;
 - (b) the employer has terminated or purported to terminate the employment of the tenant; and
 - (c) the employer has notified the tenant of the termination of the tenant's employment.
- (2) The time and date specified in the notice for the purposes of subsection (1) is not to be sooner than:
 - (a) if the employment of the tenant was terminated for breach of an employment agreement – 2 days after the notice is given; or
 - (b) in any other case – 14 days after the notice is given or, if a period for notice of termination of the employment agreement is specified in the employee's conditions of employment, the end of that period.
- (3) This section has effect subject to the *Workplace Relations Act 1996* of the Commonwealth.

Division 3 Termination by tenant

92 If premises flooded, unsafe or uninhabitable

A tenant may terminate a tenancy by 2 days notice in writing to the landlord in accordance with section 101 if:

- (a) access to the premises to which the tenancy relates has not been available for more than 3 days because of flooding;
- (b) continued occupation of the premises by the tenant is a threat to the health or safety of the tenant or members of the public or a threat to the safety of the landlord's property; or
- (c) the premises have become uninhabitable.

93 Breach not remedied after notice

- (1) If the landlord breaches a term of the tenancy agreement that:
 - (a) is a term of the agreement by virtue of this Act; or
 - (b) is specified to be a term a breach of which permits the tenant to terminate the agreement,

the tenant may give the landlord a notice in accordance with subsection (2).

- (2) A notice for the purposes of subsection (1) is to be signed by the tenant and is to specify:
 - (a) the address of the premises subject to the tenancy;
 - (b) the breach; and
 - (c) that if:
 - (i) the breach is not remedied before a day specified in the notice (in this section called the **compliance day**) that is more than 7 days after the day the notice is given; or
 - (ii) steps to the satisfaction of the tenant are not taken to remedy the breach by the compliance day,

then:

- (iii) the tenancy is terminated from the day specified in the notice as the day on which the tenancy will terminate (in this section called the **termination day**); and

- (iv) the tenant will give up vacant possession of the premises to the landlord on the termination day.
- (3) The termination day specified is not to be sooner than 7 days after the compliance day.
- (4) If the breach is not remedied by the compliance day, the tenancy is terminated on the termination day.

94 Periodic tenancy, other than for breach

A tenant may terminate a periodic tenancy without specifying a ground for the termination by 14 days notice to the landlord in accordance with section 101.

95 Fixed term tenancy

A tenant may terminate a fixed term tenancy that is due under the tenancy agreement to terminate on a particular day by 14 days notice to the landlord in accordance with section 101 of termination on that day.

96 If public housing found

A tenant may terminate a tenancy by 14 days notice to the landlord in accordance with section 101 if:

- (a) the tenant had applied for residential accommodation under the *Housing Act* before entering the tenancy agreement;
- (b) the tenant, before signing the tenancy agreement, advised the landlord of his or her application; and
- (c) an offer of residential accommodation has been made to the tenant under the *Housing Act* and has been accepted by the tenant.

Division 4 Termination by court

97 Serious breach by tenant

- (1) A court may, on the application of a landlord, terminate a tenancy and make an order for possession of the premises on or after the date specified in the order, being a date not less than 7 days after the date of the order, if satisfied that:
 - (a) the tenant has breached the tenancy agreement; and

- (b) the breach is sufficiently serious to justify termination of the tenancy otherwise than in accordance with Division 2 of this Part.
- (2) A court may, on the application of a landlord, terminate a tenancy and make an order for immediate possession of the premises if the tenant or a person while on the premises with the consent of the tenant, has, intentionally or recklessly, caused or permitted or is likely to cause or permit:
- (a) serious damage to the premises;
 - (b) personal injury to:
 - (i) the landlord; or
 - (ii) a person in the vicinity of the premises.

98 Serious breach by landlord

A court may, on the application of a tenant, terminate a tenancy and make an order for possession of the premises on or after a date specified in the order, being a date that is not less than 7 days after the date of the order, if satisfied that:

- (a) the landlord has committed a breach of the tenancy agreement; and
- (b) the breach is sufficiently serious to justify termination of the tenancy otherwise than in accordance with Division 3 of this Part.

99 Hardship

- (1) A court may, on the application of the landlord or a tenant, terminate a tenancy agreement and make an order for possession of the premises if satisfied that:
- (a) the continuation of the tenancy would result in undue hardship to the landlord or tenant; and
 - (b) the circumstances of hardship had not arisen before the time of entering into the agreement.
- (2) If the court terminates a tenancy and makes an order for possession under this section, it is to specify in the order the date on and from which the order is to have effect.

100 Conduct of tenant unacceptable

- (1) A court may, on the application of a landlord, terminate a tenancy and make an order for possession of the premises if satisfied that the tenant has:
 - (a) used the premises, or caused or permitted the premises to be used, for an illegal purpose;
 - (b) repeatedly caused a nuisance on or from the premises or repeatedly permitted a nuisance to be caused on or from the premises; or
 - (c) repeatedly caused or repeatedly permitted an interference with the reasonable peace or privacy of another person who resides in the immediate vicinity of the premises.
- (2) If the court terminates a tenancy and makes an order for possession under this section, the court is to specify on the order the date on and from which the order is to have effect.

Division 5 Notice of termination

101 Form of notice of termination

- (1) A notice of termination under this section by a landlord is to be signed by the landlord and is to specify:
 - (a) the address of the premises subject to the tenancy;
 - (b) the date on which the tenant is required to give up vacant possession of the premises to the landlord;
 - (c) the prescribed information, if any; and
 - (d) the ground of termination, if any.
- (2) A notice of termination under this section by a tenant is to be signed by the tenant or, if there is more than one tenant, by each of them and is to specify:
 - (a) the address of the premises subject to the tenancy;
 - (b) the date on which the tenant is to give up vacant possession of the premises to the landlord;
 - (c) the prescribed information, if any; and
 - (d) the ground of termination, if any.

- (3) A notice of termination that does not comply with this section is of no effect.

102 Notice may be withdrawn

A notice of termination under this Act may be withdrawn if a notice of the withdrawal is signed by the person who gave the notice and the person to whom the notice was given.

Division 6 Repossession of premises

103 Tenant to give vacant possession

If a notice of termination is given to a tenant in accordance with this Act and is not withdrawn or declared to be of no effect under section 84, the tenant ceases to be entitled to possession of the premises on the date specified in the notice as the date on which the tenancy terminates.

104 Commissioner or court may make order for possession

- (1) If a tenancy is terminated under this Act, the landlord may apply to the Commissioner or a court for an order for possession of the premises.
- (2) If the Commissioner or the court is satisfied that the tenancy is terminated, the Commissioner or the court may make an order for possession of the premises.
- (3) The order for possession has effect on a date specified in the order, being not later than 5 business days after the date of the order, unless the operation of the order for possession is suspended under section 105.

105 Commissioner or court may suspend order for possession

- (1) If the Commissioner or a court is satisfied that the landlord is entitled to an order for possession of the premises but that the making of an order for immediate possession of the premises would cause severe hardship to the tenant, the Commissioner or the court may:
- (a) suspend the operation of the order for up to 90 days; and
- (b) extend the operation of the tenancy agreement until the landlord obtains vacant possession of the premises from the tenant or the tenant fails to pay rent within 7 days after the rent is due.

- (2) The Commissioner or a court may only make an order under subsection (1):
 - (a) if the following matters are taken into account:
 - (i) whether the tenant has, during the tenancy, caused a nuisance or threatened or harassed neighbouring residents or visitors within the locality of the premises to which the tenancy relates or caused damage to their property;
 - (ii) incidents relating to the tenancy that have occurred during the period of the tenancy agreement;
 - (iii) the seriousness of the breach entitling the landlord to the order for possession;
 - (iv) whether an unacceptable risk would be posed to neighbouring residents or visitors within the locality of the premises to which the tenancy relates, or the property of the residents or visitors, if the order for possession was to be suspended; and
 - (b) if satisfied that there are no circumstances that make it likely that the tenant will be unable to pay all outstanding and future rent in relation to the premises.
- (3) In extending the operation of the tenancy agreement, the Commissioner or the court may make modifications to the agreement that the Commissioner or the court thinks fit, other than modifications that reduce the tenant's financial obligations under the agreement.
- (4) If a tenancy has been extended under this section and a tenant fails to pay rent within 7 days after the rent is due, the landlord may give not less than 7 days notice of termination to the tenant.
- (5) A tenant who receives a notice under subsection (4) must, on the date specified in the notice, give up possession of the premises to the landlord.

106 Repossession of premises

A landlord must not enter premises for the purpose of taking possession of the premises unless:

- (a) the premises are abandoned or the tenant voluntarily gives up possession of the premises; or

- (b) the landlord is authorised to take possession under an order of the Commissioner or a court.

Penalty: 100 penalty units.

107 Right to possession not lost by forfeiture of head tenancy

- (1) A person is not entitled, whether under a contract for the purchase of residential premises or a mortgage or otherwise than under this Act, to take possession of residential premises subject to a tenancy agreement so as to defeat the tenant's right to possession under the tenancy agreement, unless an order for possession of the premises is made by the Commissioner or a court.
- (2) An order for possession of premises under subsection (1) may not be made in respect of a tenancy agreement that is for:
 - (a) a period of less than 12 months; or
 - (b) if a longer period is prescribed – the longer period.
- (3) If a person is entitled to possession of residential premises as against a person granted a tenancy, a court before which proceedings for possession of the premises are brought may, on the application of an interested person, vest the landlord's interest under the tenancy agreement in the person who would, but for the agreement, be entitled to possession of the premises so that the tenant holds the premises directly from that person as landlord.
- (4) An order may be made under subsection (3) on the terms and conditions the court thinks fit.

Division 7 Abandoned premises and goods

108 Abandoned premises

- (1) If the landlord has reasonable grounds for believing that premises to which a tenancy relate have been abandoned and rent is outstanding in relation to the premises, the landlord may take possession of the premises.
- (2) The Commissioner may, on the application of the landlord:
 - (a) declare that the premises were abandoned on a date stated in the declaration; and
 - (b) make an order for immediate possession of the premises.

- (3) If a declaration is made under subsection (2), the tenant is to be taken to have abandoned the premises on the date stated in the declaration.

109 Abandoned goods

- (1) If goods are left on premises that were subject to a tenancy that is terminated under this Act, the landlord must store the goods in a safe place and manner until:
- (a) the goods are reclaimed under subsection (5); or
 - (b) the goods are auctioned under subsection (6).

Penalty: 50 penalty units.

- (2) Despite subsection (1), if the goods:
- (a) are perishable foods or have perished; or
 - (b) are of a value less than a fair estimate of the cost of their removal, storage and sale,

the landlord may remove, and destroy or dispose of, the goods.

- (3) The landlord must, within 14 days after first storing goods under subsection (1), give notice in the prescribed form of the storage of the goods to:
- (a) if the tenant has left a forwarding address – the tenant; and
 - (b) if another person has, to the knowledge of the landlord, an interest in the goods and the person's name and address are known to, or reasonably ascertainable by, the landlord – that person.

Penalty: 20 penalty units.

- (4) The landlord must, within 14 days after first storing goods under subsection (1), publish in a newspaper circulating generally throughout the Territory notice, in the prescribed form, of the storage of the goods.

Penalty: 20 penalty units.

- (5) A person who is entitled to possession of goods stored under this section may reclaim the goods by paying to the landlord:
- (a) the reasonable costs of their removal and storage; and
 - (b) the cost of publishing the notice under subsection (4).

- (6) If the goods are not reclaimed within 30 days after the date on which the landlord took possession of the premises, the landlord must, as soon as practicable after the end of that period, cause the goods to be sold by public auction.

Penalty: 20 penalty units.

- (7) On the sale of the goods by public auction, the landlord may retain out of the proceeds of sale:

- (a) the reasonable costs of removing, storing and selling the goods;
- (b) the reasonable costs of giving notice under subsection (4); and
- (c) any amounts owed to the landlord under the tenancy agreement.

- (8) The landlord must pay the balance of the amount remaining after he or she has retained the amounts permitted to be retained under subsection (7):

- (a) to the owner of the goods; or
- (b) if the identity and address of the owner are not known to, or reasonably ascertainable by, the landlord – to the Commissioner for the credit of the Tenancy Trust Account to be held on trust for the owner.

Penalty: 20 penalty units.

- (9) If goods are sold by public auction under this section, the purchaser acquires a good title to the goods that defeats:

- (a) a tenant's interest in the goods; and
- (b) another person's interests in the goods unless the purchaser has actual notice of the interest before purchasing the goods.

- (10) If a dispute arises between a landlord and tenant about the exercise of powers conferred by this section, the Commissioner may, on the application of either party to the dispute, make orders resolving the matters in dispute.

Part 12 Return of bond at end of tenancy

Division 1 Condition reports

110 Condition reports

- (1) A landlord may, within 3 business days after a tenant has given up vacant possession of premises to which a tenancy agreement relates, fill out and sign 2 copies of a condition report and give both copies to the tenant.
- (2) The landlord is to fill out the condition report under subsection (1) in the presence of the tenant or a representative of the tenant (who is not the landlord or the landlord's agent) unless it is not practical to do so or the tenant or the tenant's representative does not appear at the agreed time.
- (3) A landlord may, within 3 business days after forming the opinion that a tenant has apparently abandoned the premises to which a tenancy agreement relates:
 - (a) fill out and sign 2 copies of a condition report;
 - (b) give notice to the tenant at the last known address of the tenant (which may be the residential premises) specifying the place where the copies may be obtained; and
 - (c) at the request of a tenant made within 7 business days after giving notice under paragraph (b), give both copies to the tenant.
- (4) A condition report is to:
 - (a) specify the condition of walls, floors and ceilings in each room in the premises to which the tenancy agreement relates;
 - (b) itemise, and specify the condition of, any fixture or chattel that is ancillary property; and
 - (c) contain other prescribed information, if any.
- (5) A tenant or tenant's representatives may:
 - (a) accept a condition report given to him or her under subsection (1) or (3) by signing both copies of the report and returning one to the landlord; or
 - (b) if the parties are unable to agree as to the contents of the condition report – refuse to accept the condition report.

- (6) If, within 7 business days after 2 copies of the condition report have been given to a tenant under subsection (3), both parties have not accepted the report, the landlord or the tenant may apply to the Commissioner to prepare a condition report in respect of the premises.
- (7) The Commissioner may, on receipt of an application under subsection (6), prepare a condition report in respect of the premises and the ancillary property to which a tenancy agreement relates.
- (8) The landlord and the tenant are, for the purposes of this Act, to be taken to have accepted a condition report prepared by the Commissioner under subsection (7).

111 Condition report conclusive of condition of premises at end of tenancy

If a condition report is accepted or is to be taken to have been accepted under this Division by the landlord and a tenant, the condition report is (insofar as it relates to the end of the tenancy) conclusive evidence of:

- (a) the condition of the premises to which the tenancy agreement relates; and
- (b) the condition of any ancillary property referred to in the condition report at the end of the tenancy,

unless the Commissioner determines otherwise in a particular case.

Division 2 Return of security deposit and interest

112 When landlord may keep security deposit

- (1) Subject to this section, a tenant is entitled to have his or her security deposit reimbursed at the end of the tenancy agreement.
- (2) The landlord must, within 7 business days after the tenant gave up vacant possession of the premises or has, in the opinion of the landlord, apparently abandoned the premises, reimburse to the tenant the amount of the security deposit, other than an amount that the landlord is entitled to retain under this section.

Penalty: 20 penalty units.

- (3) At the end of a tenancy agreement the landlord is entitled to retain so much of the security deposit paid by the tenant as is necessary to:
- (a) make good damage (other than reasonable wear and tear) to the premises or to ancillary property that occurred during the tenancy and that was caused by a tenant or a person for whose actions a tenant is liable under section 12;
 - (b) replace ancillary property lost or destroyed by the tenant or by a person for whose actions the tenant is liable under section 12;
 - (c) clean the premises or ancillary property left unreasonably dirty by the tenant or by a person for whose actions the tenant is liable under section 12;
 - (d) replace locks altered, removed or added by the tenant without the consent of the landlord;
 - (e) pay for unpaid rent or for unpaid charges for electricity, gas or water payable by the tenant under section 117;
 - (f) pay an amount required to be paid under section 121; or
 - (g) pay money ordered by the Commissioner or a court to be paid by a tenant but not paid.
- (4) The landlord is not entitled to retain some or all of the amount of a security deposit for a purpose referred to in subsection (3)(a), (b) or (c) unless:
- (a) a condition report in relation to the premises was accepted by the tenant under Part 5; and
 - (b) if the tenant:
 - (i) has given up vacant possession of the premises – a condition report has been provided to the tenant under section 110; or
 - (ii) has, in the opinion of the landlord, apparently abandoned the premises – notice has been given to the tenant in accordance with section 110(3) and, if the tenant demanded copies of the condition report within 7 days after notice was given to the tenant under that section, those copies have been given to the tenant.

- (5) Subject to section 113(2), the landlord is not entitled to retain part or all of a security deposit unless, within 7 business days after the tenant gave up vacant possession of the premises or has, in the opinion of the landlord, apparently abandoned the premises, the landlord has:
- (a) given written notice in the prescribed form, if any, of his or her intention to retain so much of the security deposit as is specified in the notice for the purpose specified in the notice;
 - (b) attached a copy of a statutory declaration in the prescribed form, if any, attesting to the truth of the claim that the retention of the security deposit is required for the purpose specified in the notice;
 - (c) attached a copy of a statutory declaration attesting that the receipts, invoices or other documents attached to the declaration relate to:
 - (i) the matters in respect of which part or all of the security deposit is being withheld from the tenant; or
 - (ii) the amount of unpaid rent owing under the agreement or money owing under section 121;
 - (d) in the case of damage or unreasonably dirty premises or ancillary property – attached copies of receipts, invoices or other documents, including orders of the Commissioner or a court, specifying the amount required to make good the damage or clean the premises or ancillary property; and
 - (e) returned to the tenant the proportion of security not claimed by the landlord.

113 Commissioner may deal with disputes relating to security deposits

- (1) A tenant may apply to the Commissioner for the return of some or all of the money paid as a security deposit and the return of the interest to which the tenant is entitled under section 114:
- (a) after the tenant has received a notice from the landlord under section 112(5); or
 - (b) if the tenant has not received notice under section 112(5) within 7 business days after the tenant gave up vacant possession of the premises or, in the opinion of the landlord, apparently abandoned the premises.

- (2) Despite section 112(5), the Commissioner may permit a landlord to retain an amount of a security deposit for a purpose specified in section 112(3)(d), (e), (f) or (g), although the landlord has not given the tenant a notice under section 112(5) for that purpose, if the Commissioner is satisfied that the circumstances of the failure to give the notice are such that the landlord ought, despite the failure, be permitted to retain such an amount.

114 Interest on security deposit

If interest accrues in relation to an amount paid as a security deposit held in an interest bearing trust account, other than an account established under section 50 of the *Agents Licensing Act*, the landlord must ensure that the interest is paid:

- (a) to the person specified in the tenancy agreement as the person to whom the interest is to be paid; or
- (b) if a tenancy agreement does not specify to whom the interest must be paid – to the parties to the tenancy agreement who, at the end of the tenancy, are entitled under this Act to receive the greater part of the amount paid as the security deposit.

115 Claims on behalf of co-tenants

- (1) A tenant who is authorised in writing to do so by another tenant under the same tenancy agreement (in this section called a **co-tenant**) may claim that co-tenant's proportion of the security deposit on that co-tenant's behalf.
- (2) A landlord must return to a tenant authorised by a co-tenant under subsection (1) the proportion of the security deposit the co-tenant is entitled to have returned to him or her.

116 If person owed security cannot be found

- (1) Subject to section 34, if all or part of a security deposit to which a tenant is entitled under this Act has not been returned by the landlord to the tenant within 6 months after the date of termination of the tenancy, the landlord must ensure that, within 28 days after that period expires, the money is placed in the Tenancy Trust Account to be held on trust for the tenant.
- (2) Subject to section 34, if all or part of a security deposit that is being held by a landlord's agent and to which a landlord is entitled under this Act has not been given to the landlord by the agent within 6 months after the date of termination of the tenancy to which the deposit relates, the landlord's agent must ensure that, within 28 days after that period expires, the money is placed in the Tenancy Trust Account to be held on trust for the landlord.

- (3) The Commissioner may, on the application of a tenant or a landlord in relation to whom a security deposit is placed in the Tenancy Trust Account under this section, determine:
 - (a) the proportion of the security deposit paid into the Tenancy Trust Account to which the landlord or tenant is entitled; and
 - (b) the person to whom interest on the security deposit is payable in accordance with this Act and the amount of the interest, which is to be determined as prescribed.
- (4) The Accountable Officer within the meaning of the *Financial Management Act* of the Agency allotted the administration of this Act is to pay to the tenant or the landlord the amount determined by the Commissioner or the court in accordance with subsection (3).

Part 13 Financial liabilities

Division 1 Rates and charges

117 Payment of electricity, gas or water charges

A landlord must not require a tenant to pay for charges, levies, rates or taxes, other than a charge payable by the owner or occupier of premises for electricity, gas or water supplied to the premises.

Penalty: 20 penalty units.

118 No charges payable unless specified in agreement

- (1) A tenant is only required to pay the landlord for a charge payable by the owner or occupier of premises for electricity, gas or water supplied to the premises during the tenancy:
 - (a) if the tenant is required to do so under the tenancy agreement;
 - (b) if the owner would be liable, including by way of a statutory charge or overriding statutory charge within the meaning of the *Real Property Act*, to pay for the charge if it were not paid by the tenant; and
 - (c) if the premises to which the agreement relates are individually metered for the service or facility to which the charge relates or the agreement states:
 - (i) the service or facility for which the charges are payable;

- (ii) the method of determining the apportionment of the charge; and
 - (iii) how the charge may be recovered by the landlord from the tenant.
- (2) A landlord must not request from a tenant an amount for a charge payable by the owner or occupier of premises for electricity, gas or water supplied to the premises unless the amount is calculated in accordance with the tenancy agreement.

Penalty: 20 penalty units.

- (3) A landlord who receives money from a tenant for electricity, gas or water supplied to the premises must pay the money to the person to whom the money is owing by the tenant unless the landlord has already paid the money owing.

Penalty: 20 penalty units.

119 Commissioner may determine charges payable

The Commissioner may, on the application of a landlord or tenant:

- (a) determine the proportion of a charge that is payable by the owner or occupier of premises for electricity, gas or water supplied to the premises and that the tenant is required to pay to the landlord in accordance with this Act and the tenancy agreement; and
- (b) order that money be paid or refunded to the tenant accordingly.

Division 2 Compensation

120 Duty of mitigation

The rules of the law of contract about mitigation of loss or damage on breach of a contract apply to a breach of a tenancy agreement.

121 Compensation if tenant fails to vacate premises

- (1) If a tenant fails to hand over vacant possession of premises after he or she is required by or under this Act to do so, the landlord is entitled to receive from the tenant:
 - (a) compensation for any loss or expense incurred by the landlord by the failure; and

- (b) an amount equivalent to the rent that would have been payable by the tenant for the premises for the period the tenant remains in possession after termination of the agreement.
- (2) The Commissioner may, on the application of a landlord, make an order requiring a tenant to pay to the landlord the amount the Commissioner considers is payable under subsection (1).

122 Compensation and civil penalties

- (1) Subject to subsection (2), the Commissioner may, on the application of a landlord or the tenant under a tenancy agreement, order compensation for loss or damage suffered by the applicant be paid to the applicant by the other party to the agreement because:
- (a) the other party has failed to comply with the agreement or an obligation under this Act relating to the tenancy agreement; or
 - (b) the applicant has paid to the other party more than the applicant is required to pay to that other party in accordance with this Act and the agreement.
- (2) A party may not apply under subsection (1) for:
- (a) compensation payable under section 121; or
 - (b) loss or damage suffered by reason of a breach of the landlord's duty to repair, unless notice under 58(1) has been given.
- (3) In determining whether to order the payment of compensation to a party, the Commissioner must take into account:
- (a) whether the person from whom the compensation is claimed has taken all reasonable steps to comply with his or her obligations under this Act and the tenancy agreement, being obligations in respect of which the claim is made;
 - (b) in the case of a breach of a tenancy agreement – whether the applicant has consented to the failure to comply with obligations in respect of which the claim is made;
 - (c) whether money has been paid to or recovered by the applicant by way of compensation, including any money recovered or entitled to be recovered from the security deposit paid under the tenancy agreement;

- (d) whether a reduction or refund of rent or other allowance has been made to or by the applicant in respect of the tenancy agreement;
 - (e) whether an action was taken by the applicant to mitigate the loss or damage;
 - (f) any tender of compensation; and
 - (g) if the claim is made in respect of damages to the premises to which the tenancy agreement relates – any action taken by the person from whom the compensation is claimed to repair the damage at his or her own expense.
- (4) If a party to a tenancy agreement is found guilty of an offence against this Act by a court, that court or another court may, on the application of the other party to the agreement, order the person convicted to pay to the applicant compensation for any loss or damage suffered by the applicant because of the commission of the offence.
- (5) The Commissioner is not to make an order under this section:
- (a) for the payment of compensation in respect of death, physical injury, pain or suffering; or
 - (b) in respect of a failure to pay rent unless:
 - (i) the rent has been unpaid for at least 14 days after it is due and payable; or
 - (ii) the tenant has failed on at least 2 previous occasions to pay rent under the same agreement within 14 days after it was due and payable.

Part 14 Dispute resolution

Division 1 Preliminary

123 Definitions

In this Part, unless the contrary intention appears:

application means an application under this Act to the Commissioner.

conference means a preliminary conciliation conference or a conciliation conference.

proceedings means any of the following:

- (a) a preliminary conciliation conference;
- (b) a conciliation conference;
- (c) an inquiry.

124 Jurisdiction of Commissioner

- (1) Subject to this Act, the Commissioner has jurisdiction to hear and determine an application.
- (2) Despite subsection (1), the Commissioner is not to hear and determine an application for a monetary claim if the amount claimed exceeds \$10,000, unless the parties to the proceedings consent to the application being heard and determined by the Commissioner.
- (3) Consent given under subsection (2) is irrevocable.

125 Jurisdiction of court

- (1) If a monetary claim in relation to a tenancy exceeds \$10,000, proceedings in relation to the claim and any other claims related to the same tenancy may be brought in:
 - (a) if the claim would, as a claim founded on contract, be within the jurisdiction of the Local Court – the Local Court; or
 - (b) if the claim would, as a claim founded on contract, be within the jurisdiction of the Supreme Court – the Supreme Court.
- (2) A court in which proceedings are brought under subsection (1) may exercise the powers of the Commissioner under this Act in addition to any other powers it may have.
- (3) If the plaintiff in proceedings brought in a court under this section recovers less than \$10,000, the plaintiff is not entitled to costs unless the court is satisfied that there were reasonable grounds for the plaintiff to believe that the plaintiff was entitled to \$10,000 or more.

126 Application to Commissioner

- (1) Subject to this Act, a landlord or tenant may apply to the Commissioner if:
 - (a) a breach of the tenancy agreement or of a provision of this Act is alleged to have occurred;

- (b) a provision of this Act permits the application to be made to the Commissioner; or
 - (c) a tenancy dispute has arisen between the parties to a tenancy agreement or between tenants.
- (2) An application under this Act is to:
- (a) be in writing;
 - (b) contain a brief summary of the matter to which the application relates;
 - (c) contain the prescribed particulars, if any; and
 - (d) be accompanied by the fee prescribed under section 127.
- (3) Notice of an application under this Act is to be given by the Commissioner to the other parties to the application.
- (4) An application under this Act to the Commissioner may be withdrawn at any time by notice in writing to the Commissioner and to the other parties to the application.

127 Fees for application

- (1) The Minister may, by notice in the *Gazette*, prescribe the fees payable under this Act in relation to an application.
- (2) The Commissioner may waive a fee payable under this Act in relation to an application and, if a fee is so waived, the person to whom the waiver relates is not required to pay the fee.

128 Commissioner to determine appropriate proceedings

If the Commissioner receives an application, he or she is to determine:

- (a) if a preliminary conciliation conference may assist in resolving the matter the subject of the application;
- (b) if a conciliation conference may assist in resolving the matter the subject of the application (whether or not the Commissioner is of the opinion that a preliminary conciliation conference will assist in resolving the matter); or
- (c) if an inquiry should be held without first holding a preliminary conciliation conference or a conciliation conference.

129 Conduct of proceedings on Commissioner's behalf

- (1) The Commissioner or a delegate of the Commissioner under section 14 is to conduct a proceeding.
- (2) The Commissioner is to ensure that, in relation to an application, the same person does not personally conduct more than one of the following:
 - (a) a preliminary conciliation conference;
 - (b) a conciliation conference;
 - (c) an inquiry.
- (3) If a conciliation conference is to be conducted by a person other than the Commissioner, the Commissioner is to ensure that, wherever practicable, the person has the prescribed qualifications.
- (4) If an inquiry is to be conducted by a person other than the Commissioner, the Commissioner is to ensure that, wherever practicable, the person has been enrolled as a legal practitioner of the High Court, or of the Supreme Court of a State or Territory of the Commonwealth, for not less than 10 years.
- (5) A conference or an inquiry in relation to a matter is not to be conducted by a person who has conducted or taken part in an investigation for the purposes of determining whether an offence against this Act has been committed in relation to the matter by a party to the matter.

130 Notice of proceedings to be given

If the Commissioner determines that a preliminary conciliation conference, a conciliation conference or an inquiry is to take place under this Part, the Commissioner is to:

- (a) give the applicant notice in writing setting out the time and place at which it is to take place; and
- (b) give to the other parties to the application:
 - (i) notice in writing setting out the time and place at which it is to take place; and
 - (ii) notice of the nature of the application as the Commissioner thinks fit.

Division 2 Conferences

131 Preliminary conciliation conferences

- (1) The following persons are entitled to attend a preliminary conciliation conference:
 - (a) the applicant;
 - (b) any other party to the application;
 - (c) a representative of a party to the application permitted to attend under section 148;
 - (d) the Commissioner.
- (2) At a preliminary conciliation conference, the Commissioner is to:
 - (a) give information to ensure that the parties to the dispute are fully aware of their rights and obligations under this Act;
 - (b) encourage full, open communication between the parties about the dispute on a without prejudice basis; and
 - (c) encourage the parties to attempt to determine the relevant facts and to propose solutions to, and resolve by agreement between the parties, the matters at issue between the parties.

132 Conciliation conferences

- (1) The following persons are entitled to attend a conciliation conference:
 - (a) the applicant;
 - (b) any other party to the application;
 - (c) a representative of a party to the application permitted to attend under section 148;
 - (d) the Commissioner.
- (2) At a conciliation conference, the parties to the application are, between themselves with the assistance of the Commissioner, to attempt to achieve a negotiated settlement.

133 Procedure for conferences

- (1) Unless the person conducting a conference determines otherwise, conferences are to be held in private.

- (2) The person conducting a conference may exclude from the conference a person other than the parties and the representatives, if any, permitted under section 148 to attend.
- (3) A settlement to which a party agrees at a conference is binding on the party.
- (4) The person conducting a conference may refer for determination a question of law arising at a conference to a legal practitioner approved by the Minister.
- (5) The person conducting a conference may record a settlement reached at a conference and may make a declaration or order to give effect to the settlement.
- (6) A declaration or order made under subsection (5) has effect as if it were an order made at an inquiry under this Part.

134 Restriction on evidence

Evidence of anything said or done in the course of a conference is inadmissible in other proceedings under this Part or before a court, except with the consent of all parties to the proceedings.

135 Confidentiality

A person who conducts a conference must not disclose to another person, including the Commissioner, information obtained in the course of the conference, except with the consent of all parties to the conference or in the course of his or her duties under this Act.

Penalty: 100 penalty units.

Division 3 Inquiries

136 Inquiries

- (1) The Commissioner may conduct an inquiry in relation to a matter the subject of an application.
- (2) The Commissioner must conduct an inquiry in relation to the matter the subject of the application if:
 - (a) he or she has not referred the matter to a conference; or
 - (b) the matter has not been settled between the parties at or after a conference.

137 Inquiries generally to be open to public

- (1) Subject to subsection (2), an inquiry of the Commissioner is to be open to the public.
- (2) The Commissioner may, if he or she thinks fit, order that an inquiry be held in private.

138 Powers of Commissioner at inquiry

At an inquiry the Commissioner may do any of the following:

- (a) declare that all or part of money paid by a tenant as a security deposit, as excess rent or under section 121, be returned to the tenant or may be retained by a landlord;
- (b) order that an amount for rent, or payable under section 121, be paid by a tenant;
- (c) require payment of rent, or money payable under section 121, to the Commissioner until conditions stipulated by the Commissioner have been complied with;
- (d) require that rent, or money under section 121, paid to the Commissioner be paid out and applied as directed by the Commissioner;
- (e) order that particular repairs or maintenance be carried out by a landlord in accordance with the conditions specified in the order;
- (f) declare that at a date specified in the declaration premises were abandoned by a tenant;
- (g) declare that a tenancy has, or has not, been validly terminated;
- (h) require a tenant to give up the possession of premises to the landlord or require a landlord to give up the possession of premises to a tenant;
- (j) make orders to give effect to rights and liabilities arising from the assignment of a tenancy agreement or a subtenancy;
- (k) exercise any other power conferred on the Commissioner under this Act;
- (m) require a person to comply with a requirement of this Act;

- (n) do anything else necessary or desirable to resolve a matter to which an application relates.

139 Reasons for decisions

The Commissioner must state in writing the reasons for a determination, decision or order made by him or her during an inquiry under this Act.

Division 4 Powers of Commissioner

140 Commissioner's powers to gather evidence

- (1) For the purpose of proceedings under this Part, the Commissioner may do any of the following:
 - (a) by summons, require a person to attend before the Commissioner;
 - (b) by summons, require the production of books, papers or documents;
 - (c) inspect books, papers or documents produced before the Commissioner, retain them for a reasonable period and make copies of them or of their contents;
 - (d) take evidence on oath or affirmation and for that purpose may:
 - (i) require a person appearing before the Commissioner to take an oath or affirmation; and
 - (ii) administer an oath;
 - (e) require a person appearing before the Commissioner, whether summoned to appear or not, to answer relevant questions put by the Commissioner or a person appearing before the Commissioner.
- (2) A person must not:
 - (a) without reasonable excuse, fail to comply with a summons under subsection (1);
 - (b) refuse or fail to comply with a requirement of the Commissioner under subsection (1); or

- (c) misbehave before the Commissioner, wilfully insult the Commissioner or interrupt proceedings before the Commissioner.

Penalty: 100 penalty units.

141 Procedural powers of Commissioner

- (1) In proceedings under this Part, the Commissioner may do any of the following:
 - (a) hear an application in the manner he or she thinks fit;
 - (b) decline to consider an application or adjourn an inquiry until conditions fixed by the Commissioner are fulfilled, with a view to promoting the settlement of matters in dispute between the parties;
 - (c) decline to consider an application if he or she thinks it is frivolous or vexatious;
 - (d) proceed to hear and determine an application in the absence of a party;
 - (e) extend a period prescribed by or under this Act within which an application or other step in respect of proceedings is to be made or taken, whether or not the period has expired;
 - (f) adjourn a conference or inquiry to a time or place or to a time and place to be fixed;
 - (g) allow the amendment of an application;
 - (h) hear an application jointly with another application;
 - (j) receive in evidence a transcript of evidence in proceedings before a court and draw conclusions of fact from that evidence;
 - (k) generally give directions and do all things that he or she thinks necessary or expedient in the proceedings.
- (2) Proceedings before the Commissioner are to be conducted with the minimum of formality.
- (3) In the exercise of the Commissioner's jurisdiction, the Commissioner is not bound by evidentiary rules but may inform himself or herself as he or she thinks fit.

142 Entry and inspection of property

- (1) The Commissioner may:
 - (a) enter land or a building; or
 - (b) authorise, in writing, a person to enter land or a building.
- (2) The Commissioner or a person authorised under subsection (1) may:
 - (a) carry out an inspection the Commissioner considers relevant to a proceeding before the Commissioner;
 - (b) take photographs, including video recordings, or make sketches or other records of land or a building or things on or in land or a building;
 - (c) inspect and take copies of a document within the meaning of the *Evidence Act*;
 - (d) open a container, cupboard, box, package or carton for the purpose of inspecting the contents; or
 - (e) ask questions of a person on the land or request him or her to provide assistance in carrying out an investigation of the land or building.
- (3) A person must not obstruct the Commissioner or a person authorised by the Commissioner in exercising a power of entry or inspection under this Act.

Penalty: 50 penalty units.

- (4) The Commissioner must take reasonable steps to ensure that:
 - (a) at least 24 hours notice of the inspection is given to the landlord and the tenant; and
 - (b) an inspection carried out under subsection (1) takes place at a time and in circumstances that are as convenient as practicable for the Commissioner, the landlord and the tenant.

143 Procedural rules

The Commissioner may make rules relevant to the practice and procedure of the Commissioner or to assist in the effective and efficient handling of matters by the Commissioner.

Division 5 Proceedings generally

144 Times and places of proceedings

- (1) The Commissioner may conduct proceedings at any time, including a day that is not a business day.
- (2) The Commissioner may conduct proceedings at any place.

145 Duty to act quickly

The Commissioner must ensure that proceedings before the Commissioner in relation to an application are concluded within 28 days after receipt of the application by the Commissioner or as soon after that as is reasonably practicable.

146 Enforcement of orders

- (1) An order of the Commissioner that is registered under this section is to be taken to be an order of the Local Court and may be enforced accordingly.
- (2) A Registrar within the meaning of the *Local Court Act* may, on the application of the Commissioner or a party to a proceeding to which an order of the Commissioner relates, register the order as an order of the Local Court.

147 Costs not generally to be ordered by Commissioner

- (1) Subject to subsection (2), the Commissioner must not make an order requiring a party to a proceeding before the Commissioner to pay an amount by way of costs.
- (2) If the Commissioner is of the opinion that an application to the Commissioner was frivolous or vexatious or brought otherwise than in good faith, he or she may order the applicant to pay an amount by way of costs to another person appearing at a conference or an inquiry.
- (3) The person in whose favour an order is made under subsection (2) may recover the amount specified in the order from the person against whom it is made as a debt due and payable.

148 Limits on lawyers etc. representing parties

- (1) A person is not to be represented before the Commissioner by a legal practitioner within the meaning of the *Legal Practitioners Act*, an articulated clerk or a person who holds or has held legal qualifications under the law of the Territory or another place, except:
- (a) with the agreement of the other party to the tenancy agreement to which the proceeding relates; and
 - (b) if the Commissioner is of the opinion that neither party will be disadvantaged by permitting such representation.
- (2) A party to a tenancy dispute may be represented by a person who is not a legal practitioner within the meaning of the *Legal Practitioners Act* if:
- (a) the party is a body corporate and the representative is an officer or employee of the body corporate;
 - (b) the party is a landlord and the representative is an agent appointed by the landlord to manage the premises on the landlord's behalf and the Commissioner is satisfied that it will not unfairly disadvantage an unrepresented party;
 - (c) all parties to the proceedings agree to the representation and the Commissioner is satisfied that:
 - (i) it will not unfairly disadvantage an unrepresented party; or
 - (ii) if appropriate information or assistance or both were to be provided by the Commissioner to the unrepresented party, that party would not be unfairly disadvantaged; or
 - (d) the Commissioner is satisfied that the party is unable to present the party's case properly without assistance.

149 Payment of lawyers, translators etc. for proceedings

A person must not ask for or receive a fee for representing a party to a tenancy dispute in proceedings before the Commissioner unless the person:

- (a) is a translator or interpreter and the fees relate to work as a translator or interpreter;
- (b) is a legal practitioner or an articulated clerk employed by a legal practitioner;

- (c) is an officer or employee of a body corporate who represented the body corporate in the proceedings; or
- (d) is an agent within the meaning of the *Agents Licensing Act* acting on behalf of a landlord.

Penalty: 20 penalty units.

Part 15 Appeals

150 Appeal may be made to Local Court

- (1) A landlord or a tenant may appeal to the Local Court against an order, determination or decision of the Commissioner in relation to the landlord or tenant.
- (2) An appeal is to be an appeal de novo but the court may re-hear evidence taken before the Commissioner or take further evidence.
- (3) In an appeal, the court is not bound by the rules of evidence and may inform itself in any manner it thinks fit.
- (4) On an appeal, the court may do one or more of the following:
 - (a) confirm, vary or quash the order, determination or decision of the Commissioner;
 - (b) make an order that should have been made in the first instance by the Commissioner;
 - (c) make incidental and ancillary orders.
- (5) Subject to subsection (6), an application for appeal may be lodged:
 - (a) before 14 days after the date of the order, determination or decision appealed against, unless the court allows an extension of time; or
 - (b) if the Commissioner does not give reasons for the order, determination or decision at the time of making it – within 14 days after the parties are given the reasons.
- (6) If the reasons of the Commissioner are not given in writing at the time of making an order, determination or decision and the appellant then requests the Commissioner to state the Commissioner's reasons in writing, the time for commencing the appeal runs from the time when the appellant receives the written statement of the reasons.

- (7) Nothing in this section prevents the Supreme Court from hearing an appeal against a decision of the Local Court under this Act.

151 Notice of appeal to be given to Commissioner

- (1) If a court receives a notice of appeal under this Part, a copy of the notice is to be sent to the Commissioner by the Registrar of the court.
- (2) If the Commissioner receives a copy of a notice of appeal under this Part:
- (a) the Commissioner; or
 - (b) if the order, determination or decision to which the appeal relates was made by his or her delegate – the delegate,

is to provide to the court all information in his or her possession relating to the order, determination or decision, other than matters to which section 134 relates.

152 Stay of proceedings

- (1) If an order, determination or decision has been made by the Commissioner and the Commissioner or a court is satisfied that an appeal against the order, determination or decision has been commenced, the Commissioner or the court may suspend the operation of the order, determination or decision until the determination of the appeal.
- (2) If the Commissioner suspends the operation of an order, determination or decision, the Commissioner may terminate the suspension.
- (3) If a court or the Commissioner suspends the operation of an order, determination or decision, the court may terminate the suspension.

153 Power to intervene

- (1) The Commissioner may intervene in proceedings before a court arising under this Act.
- (2) If the Commissioner intervenes in proceedings, the Commissioner becomes a party to the proceedings and has all the rights, including rights of appeal, of a party to the proceedings.

Part 16 Notices**154 Service of notices**

Unless otherwise provided by or under this Act, a notice required by or under this Act to be given to a person may be delivered personally to the person or sent by post addressed:

- (a) in the case of an individual – to the person's last known place of business or residence; and
- (b) in the case of a corporation – to its registered office in the Territory or otherwise as provided by the Corporations Law.

155 Notice to one tenant or landlord sufficient

If 2 or more persons are the landlords or tenants under a tenancy agreement, a notice or other document is duly given if given to any one of them.

156 Right to be notified of change of landlord's name or address

- (1) If a name or address that a landlord or a landlord's agent is required under section 19 to specify in a tenancy agreement changes, he or she must ensure that the tenant is notified in writing of the change of the new name or address within 14 days after the change.

Penalty: 20 penalty units.

- (2) Within 14 days after a person succeeds another as the landlord under a tenancy agreement, the new landlord must ensure that the tenant is notified in writing of the full name and address for service of:
 - (a) the new landlord or, if an agent has been engaged to act on behalf of the new landlord in respect of the residential premises, the full name and address of the agent; and
 - (b) any person with superior title to the new landlord.

Penalty: 20 penalty units.

157 Notice or payment to landlord's agent sufficient

If under this Act a tenant is required to give notice or a document to a landlord or to pay money to a landlord, it is sufficient if the tenant:

- (a) gives notice or the document to, or pays the money to, the landlord's agent; or

- (b) if the tenant has no notice of a new landlord – gives notice or the document to, or pays the money to, the last known landlord.

Part 17 Regulations

158 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may:
 - (a) prescribe that provisions of this Act do not apply to a specified class of tenancy agreements or a specified class of premises;
 - (b) modify specified provisions of this Act in their application to a specified class of tenancy agreements or a specified class of premises;
 - (c) prescribe terms that are to be implied, or expressly included, in tenancy agreements or a class of tenancy agreements;
 - (d) prescribe a penalty of not more than 20 penalty units for breach of a regulation;
 - (e) prescribe an offence against the Regulations to be a regulatory offence;
 - (f) provide for the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act or regulations made under this Act and for the service of a notice relating to payment of the amount on a person alleged to have committed the offence and the particulars to be included in that notice; and
 - (g) prescribe the service of notices on persons alleged to have infringed this Act or the Regulations and particulars to be included in such notices.

Part 18 Application of former Tenancy Act

159 Definitions

In this Part, unless the contrary intention appears:

commencement day means the day on which this Act commences.

Commissioner has the meaning it had under the *Tenancy Act*.

lease, lessee and **lessor** have the meanings they had under the *Tenancy Act*.

security deposit has the meaning it had under the *Tenancy Act*.

Tenancy Act means the *Tenancy Act* as in force immediately before the commencement day.

160 Continued application of former *Tenancy Act*

- (1) Subject to this Part, nothing in this Act applies to or in relation to a lease that was in force immediately before the commencement day.
- (2) Subject to this Part, the *Tenancy Act* continues to apply to and in relation to a lease that was in force immediately before the commencement day as if the amendments to the *Tenancy Act* effected by the *Residential Tenancies (Consequential Amendments) Act* had never come into operation.
- (3) Subject to this Part, a reference in the *Tenancy Act* to the Commissioner is, in relation to a lease, to be taken to be a reference to the Commissioner within the meaning of this Act.

161 Dispute resolution and appeals to take place under this Act

- (1) Subject to this Part, Part 14 of this Act applies to and in relation to a lease that was in force immediately before the commencement day as if a reference in Part 14 to a tenancy agreement were a reference to a lease and a reference in that Part to a tenant or a landlord were a reference to a lessee or a lessor respectively.
- (2) If after the commencement day a matter relating to the reimbursement of a security deposit in relation to a lease is referred to the Commissioner under section 39(6) of the *Tenancy Act*, the matter is to be dealt with by the Commissioner as if it were an application under section 126 of this Act, except that the Commissioner may only make an order of the kind specified in section 39(8) of the *Tenancy Act*.

(3) Subject to this Part:

- (a) Part 15 of this Act applies to an order, determination, decision or variation made by the Commissioner under the *Tenancy Act* before or after the commencement day as if a reference to a tenant or a landlord were a reference to a lessee or a lessor respectively; and
- (b) Part III of the *Tenancy Act* does not apply in relation to the order, determination, decision or variation.

162 Transitional matters relating to security deposits

- (1) If before the commencement day a lessee had demanded under the *Tenancy Act* the reimbursement of a security deposit in relation to a lease and the matter had not been referred to the Commissioner under section 39 of that Act:
 - (a) the lessor is to refer the matter to the Commissioner within the meaning of this Act; and
 - (b) the matter is to be dealt with by the Commissioner within the meaning of this Act as if the reference was an application under section 126 of this Act, except that the Commissioner may only make an order of the kind specified in section 39(8) of the *Tenancy Act*.
- (2) If before the commencement day a matter relating to the reimbursement of a security deposit in relation to a lease had been referred to the Commissioner under section 39(6) of the *Tenancy Act* and not finally determined, the matter is to be dealt with by the Commissioner as if this Act and the amendments to that Act had never come into operation.

163 Transitional matters relating to determinations and appeals

- (1) If before the commencement day a person had applied to the Commissioner under Part II or Part V of the *Tenancy Act*, the Commissioner is to determine the application as if this Act and the amendments to the *Tenancy Act* effected by the *Residential Tenancies (Consequential Amendments) Act* had never come into operation.
- (2) If before the commencement day a person had applied under section 19 of the *Tenancy Act* to the Local Court but the appeal had not been heard or been determined, the appeal is to be heard and determined in accordance with that Act as if this Part and the amendments to that Act effected by the *Residential Tenancies (Consequential Amendments) Act* had never come into operation.

- (3) If immediately before the commencement day a person had a right to appeal to the Local Court under section 19 of the *Tenancy Act*, the application may be made under that Act as if this Part and the amendments to that Act effected by the *Residential Tenancies (Consequential Amendments) Act* had never come into operation.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Residential Tenancies Act 1999 (Act No. 45, 1999)

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