

# NORTHERN TERRITORY OF AUSTRALIA

## TENANCY ACT

As in force at 1 July 1996

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 July 1996

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## TENANCY ACT

### An Act relating to tenancies and to the control of rents

#### Part 1 Preliminary

##### 1 Short title

This Act may be cited as the *Tenancy Act*.

##### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

##### 4 Interpretation

(1) In this Act unless the contrary intention appears:

**Commissioner** means the Commissioner of Tenancies appointed under section 6.

**demountable building** means a building, other than a caravan, designed to be moved from site to site and not permanently attached to the land.

**dwelling-house** includes a caravan and a demountable building.

**land agent** means a person licensed as a land agent under the *Land and Business Agents Act*.

**lease** means an agreement or contract under which premises are let or hired to a person, whether that agreement is oral or written or arises by implication out of the acts of parties and includes a tenancy and a sublease.

**lessee** means a tenant or the party to a lease to whom premises are leased.

**lessor** means the party to a lease who makes premises available for occupation by a lessee or who, being an owner of premises, permits a person to occupy those premises in exchange for rent.

**periodical tenancy** means a periodical tenancy within the meaning of section 61.

**premises** includes:

- (a) residences of all kinds, whether they are complete in themselves or are shared accommodation;
- (b) caravans and demountable buildings leased for residential purposes;
- (c) the land upon which a residence is built or upon which a caravan or demountable building is sited;
- (d) any other land leased with a residence, caravan or demountable building; and
- (e) any land with respect to which a right of user is given by a lease or hiring agreement which relates to the leasing or hiring of a residence, caravan or demountable building;

but does not include:

- (f) a guest house, hotel, motel or boarding house;
- (g) premises used in the tourist agency;
- (j) premises leased principally for business purposes whether or not the premises may be used for residence or residences permitted under the lease.

**Registrar** means the Registrar of the Local Court.

**rent** means the amount of money payable under a lease for the right to occupy or use premises or premises and goods for a period of time and includes any rates or taxes payable by the lessee but, where in the lease:

- (a) it is provided that a reduced amount shall be accepted by the lessor as rent upon the performance of a condition by the lessee; or
- (b) provision is made for a rebate, discount, allowance or other reduction of rent,

the amount payable after such reduction is made shall, for the purposes of this Act, be the rent payable under the lease.

**security deposit** means the sum of money paid or payable by a lessee as security for the matters referred to in section 38(1)(a), (b) and (c).

**shared accommodation** means premises leased for the purpose of residence which form part of other premises but does not include any premises forming a complete residence in themselves.

**sub-lease** means a lease which depends for its performance upon possession given to the sub-lessor under a head lease (not being a Crown lease).

**sub-let** means to take premises available under a sub-lease.

**to lease** means to make premises available under a lease.

- (2) For the purposes of this Act, **lessee** includes a person who remains in possession of premises after determination of a lease of those premises to him and the word **lessor** is used correlatively.
- (3) Notwithstanding the definition of **premises** in subsection (1), this Act shall not apply to:
  - (a) caravans and demountable buildings used for residential purposes; or
  - (b) the land upon which a caravan or demountable building is sited,

where the Commissioner considers that the person occupying the caravan or demountable building is a tourist or a short term tenant.

## **5 Act not to bind Crown**

This Act does not bind the Crown but the Crown may proceed under this Act with respect to any premises of the Crown and, if it does so, shall be subject to the provisions of this Act in relation to those premises in that case.

## **6 Appointment of Commissioner of Tenancies**

The Minister may appoint a Chief Executive Officer or employee, as defined in the *Public Sector Employment and Management Act*, to be the Commissioner of Tenancies.

### **6A Delegation by Commissioner**

- (1) The Commissioner may, by instrument in writing, delegate to a person any of his 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, shall, for the purpose of this Act, be deemed 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.

## **Part 2                      Rent of premises**

### **7                      Commissioner may determine fair rents**

Subject to this Act, the Commissioner may:

- (a) determine the fair rent of premises or premises and goods;
- (b) require a lessor to justify the rent charged by him under a lease of premises or of premises and goods;
- (c) determine a fair and just price for the supply of any services in connection with the leasing of premises or premises and goods;
- (d) determine a fair and just price for the use of land for the siting of caravans or demountable buildings; and
- (e) where the owner of land hires a caravan or demountable building for siting on his land, determine a fair and just price for the hiring of the caravan or demountable building.

### **8                      Lessee may apply for a determination**

- (1) A lessee may apply to the Commissioner for a determination of:
  - (a) a fair rent for specified premises;
  - (b) a fair rent of specified premises and goods;
  - (c) a fair and just price for the supply of a service supplied in connection with the leasing of premises or of premises together with goods;
  - (d) a fair and just price for the use of land for the siting of caravans or demountable buildings; or
  - (e) a fair and just price for the hiring of a caravan or demountable building for siting on land of the lessor.

- (2) Upon the receipt of an application under subsection (1), the Commissioner shall serve upon the lessor of the premises the subject of the application, a notice setting out:
  - (a) the terms of the application; and
  - (b) a requirement that the lessor, within a time specified in the notice, justify the rent or price payable under the lease of the premises.
- (3) If the lessor fails to comply within the time limited by a notice given under subsection (2) with the requirement of that notice, the Commissioner shall forthwith proceed to determine the fair rent or a fair and just price for the use of the premises, the use of the premises and goods or the supply of the service.
- (4) Upon the expiry of the time fixed by subsection (2), the Commissioner shall proceed to determine the fair rent of the premises or the premises and goods leased therewith or the fair and just price for the supply of the service.
- (5) The Commissioner is not limited in his determination of an application by the submissions of the lessor or the lessee, but may take into account all information which he is satisfied is reliable, whether or not the information would be admissible as evidence in court.
- (6) An application made under subsection (1) shall not be withdrawn without the consent of the Commissioner.

## **9 Matters to be considered in reaching a determination**

- (1) Subject to this section, in determining a fair rent of premises or of premises and goods or a fair and just price for the supply of a service, the Commissioner shall be guided by the need to provide a reasonable return to a lessor having regard to the market value of the premises and, in an appropriate case, of the goods, at the date of the application and the rate or rates of interest fixed under subsection (4).
- (2) Where the Commissioner proceeds to a determination of a fair rent or a fair and just price in the manner provided by subsection (1), he shall ensure that in determining the fair rent or the fair and just price he makes allowance for:
  - (a) annual rates, including water and sewerage rates, and insurance premiums paid or payable in respect of the premises and, in an appropriate case, of the goods;

- (b) the estimated cost of repairs and maintenance of the premises and the fixtures thereon and, in the appropriate case, of the goods, but only where liability to repair or maintain is the liability of the lessor; and
  - (c) the cost of any services provided by the lessor or the lessee in connection with the lease.
- (3) Where the Commissioner is of the opinion that to determine a fair rent or a fair and just price in accordance with subsection (2) would not achieve justice between the parties, he shall determine the rent or price by having regard to the rent of comparable premises or the price of comparable services, if any, including comparable premises or services the fair rent or price of which he has previously determined, and the locality of the premises that are the subject of the application.
- (3A) Where the Commissioner has regard to the rents of comparable premises or the price of comparable services under subsection (3), he shall ensure that the rent or price upon which his determination is based is adjusted to reflect any difference in the incidence on the comparable premises or the comparable services from the subject premises or services of the costs and rates referred to in subsection (2).
- (4) For the purposes of subsection (1), the rate or rates of interest shall be fixed from time to time by the Minister by notice in the *Gazette*.
- (5) In fixing rates of interest under subsection (4) the Minister may fix different rates of interest to be applied to the market value of goods and to the market value of premises.

## **10 Date of effect of determination**

- (1) A determination of the fair rent of or a fair and just price for specified premises, specified premises and goods, the supply of a service or the use of land for the hiring of a caravan or a demountable building has effect from the date of the application made under section 8 or such later date as is specified in the determination.
- (2) A determination referred to in subsection (1) shall expire 6 months after the date on which it takes effect.

## **11 Fair rent is maximum rent**

The fair rent of or the fair and just price for premises, premises and goods, the supply of a service, the use of land for the hiring of a caravan or demountable building determined under this Act is the maximum rent or price that may be charged and received in respect



of those premises, those premises and goods, the supply of that service, the use of that land or the hiring of that caravan or demountable building.

## **12 Determinations for caravans, &c.**

In determining a fair and just price for the use of land in connection with the use of a caravan or demountable building the Commissioner need not have regard to the market value of the land but may take into consideration:

- (a) the number of caravans or demountable buildings on any lot of land;
- (b) whether any other buildings are on or are in use on the land;
- (c) the extent of the land and the nature of the rights which the lease permits with respect to the land and the use of which it is granted under the lease;
- (d) the extent of the services provided to the person who occupies the caravan or the demountable building by the owner of the land without separate charge;
- (e) any charges made by the owner of the land for any service provided or for the use of sanitary, laundry, or washing facilities or the supply of electricity, gas, water or fuel;
- (f) the amount of any cost or expense, rates or taxes paid or payable by the owner of the land which are appropriate to the land the use of which is permitted under the lease or hiring agreement of the caravan or the demountable building; and
- (g) any other use to which the land is put,

and in his discretion may determine a fair and just price for the use of the land or a fair and just price for the leasing of the caravan or demountable building.

## **13 Determinations to be served**

The Commissioner shall cause a copy of each determination which he makes under this Act to be served on the applicant and on every other person, including a mortgagee, who, to his knowledge, may be affected by the determination.

## **14 Determination varies contractual rights**

Where a determination is made under this Act, the contractual rights and obligations of the parties to a lease or other agreement to

which the determination is relevant, are, by force of the determination and to the extent to which they are at variance with the determination, varied so as to comply with the determination and the lease or other agreement may be enforced only in the terms of the lease or other agreement as varied by the determination.

## **15 Payments in excess recoverable**

- (1) Subject to this section, all payments made that exceed the amount determined in accordance with this Act in respect of premises or the service with respect to the determination may be recovered in any court of competent jurisdiction by the person making the same.
- (2) The Commissioner may, upon the application of the lessor or the lessee, order that any payment that exceeds the amount determined in accordance with this Act in respect of premises may be set off in part or in whole against future payments of rent and in the event of such an order those moneys shall not be recovered in any other manner unless the Tribunal otherwise orders.

## **16 Determination to apply to lease made after determination**

A determination shall apply to any lease of premises or of premises and goods or any agreement relating to the use of land to be used in connection with the use of a caravan or demountable building or with the hiring of a caravan or demountable building or the supply of a service which is made after the date of the determination, whether or not all or any of the parties to the lease were parties to the lease or agreement relating to the premises at the time when the determination was made.

## **17 Offence to let at excessive rent, &c.**

A person shall not:

- (a) let premises or premises with goods at a rent exceeding the fair rent determined with respect to those premises or those premises and those goods;
- (b) supply a service at a price exceeding the fair and just price determined under this Act;
- (c) agree or permit the use of land to be used in connection with the use of a caravan or demountable building at a price exceeding the fair and just price determined under this Act; or

- (d) demand or receive as rent of premises or as the price for the use of premises and land permitted to be used therewith an amount in excess of the fair rent or the fair and just price determined under this Act with respect to those premises.

Penalty: \$2,000 or imprisonment for 6 months.

## **Part 3 Proceedings in Local Court**

### **19 Appeal to Local Court**

- (1) If the Commissioner has made a determination of a fair rent or of a fair and just price, has varied such a determination under Part V or has made a determination under section 39 in relation to a security deposit, a person directly affected by such a determination or variation may appeal to the Local Court against the determination or variation within 28 days after it is made.
- (2) An appeal shall be conducted in accordance with the Rules of the Court.

### **20 Hearing of appeal**

- (1) An appeal under section 19 shall be by way of rehearing and, in its determination of the appeal, the Court is bound to observe all the considerations and duties as the Commissioner was, under this Act, bound to observe in making his or her determination or variation.
- (2) A decision by the Court on an appeal takes effect from the day determined by the Court, being not earlier than the day on which the Commissioner's determination or variation took effect.

### **21 Appeals by infants**

Proceedings may be instituted by an infant as if he or she were an adult.

### **22 Court not bound by rules of evidence**

In an appeal, the Court is not bound by the rules of evidence and may inform itself in any manner it thinks fit.

## **Part 5 Variation of determination**

### **35 Party may apply for variation**

- (1) A person directly affected by a determination may make an application to the Commissioner for a variation of the determination.

- (2) Subject to this Part, the Commissioner shall proceed upon the application and shall have the same powers and shall consider the same factors as though it were an application under section 8 for a determination.

### **36 Restrictions on application for variation**

An application for variation of a determination may not be made within 6 months of the date of the determination or of the last variation of the determination unless:

- (a) by error or omission, injustice has been occasioned by the determination or the last variation of the determination;
- (b) the lessor has failed to maintain or repair the premises or any goods leased with the premises;
- (c) there has been a substantial alteration in the terms and conditions on which the premises have been leased;
- (d) by reason of fire or a natural disaster the premises have deteriorated; or
- (e) substantial alterations or additions have been made to the premises or to the goods leased therewith since the determination or the last variation of the determination was made.

## **Part 6 Payments other than rent**

### **37 Premiums, &c. not to be demanded or paid**

- (1) Subject to this Part a person shall not, whether as principal, agent or in any other capacity:
- (a) require, give or receive, or offer, promise or agree to give or receive any bonus, premium or sum of money (other than rent) or require a purchase or exchange of any goods or goodwill in consideration or in association with:
    - (i) the grant, acceptance, assignment or transfer of the lease of premises;
    - (ii) the renewal or extension of the lease of premises;
    - (iii) an agreement for a lease or for the renewal, extension, assignment or transfer of the lease of premises;

- (iv) a consent to a sub-lease of a lease of premises other than reasonable expenses that are incidental to the giving of the consent; or
  - (v) the vacating of premises; or
- (b) pay, give or receive or offer, promises or agree to pay or to give or receive any sum of money or other consideration:
  - (i) for obtaining or making available a key to premises;
  - (ii) for information as to a tenancy or as to the possibility or likelihood of obtaining a tenancy of premises; or
  - (iii) for any bond or agreement, whether in writing, partly in writing and partly oral or oral whereby a person pays or agrees to pay a sum of money as evidence of that person's agreement to forbear from any act or conduct in relation to premises.

Penalty: \$2,000 or imprisonment for 6 months.

- (2) Nothing in this section prevents an assignment or transfer of premises pursuant to the bona fide sale of those premises.
- (3) Nothing in this section prevents a lessee demanding or receiving a premium from a sub-lessee or his assignee for the cost of development works including subdivision works, roads, water supply, drainage, electricity reticulation and such works as are approved by the Commissioner as development works and reasonable return on the funds involved in the development works.

### **38 Security deposits**

- (1) Nothing in section 37 prohibits the taking by a lessor of a security deposit to be retained by the lessor and applied at the termination of the tenancy to:
  - (a) making good any damage to the premises or to the goods occasioned during the tenancy;
  - (b) the cleaning of the premises left unreasonably dirty by a lessee; and
  - (c) the payment of any unpaid rent.
- (2) A person shall not:
  - (a) require the payment of, or receive, more than one security deposit in relation to any lease; or

- (b) require the payment of, or receive, a security deposit of an amount exceeding 4 weeks rent under the lease in relation to which it is required or received.

**39 Security deposits may be paid to land agent, &c.**

- (1) Where a lessor requires a lessee to pay a security deposit, the lessee may pay the money to:
  - (a) the lessor;
  - (b) a land agent nominated by the lessor; or
  - (c) such other person as the Commissioner, in writing, may approve for that purpose,

who, on receiving the money, shall give to the lessee a receipt for the full amount paid.

- (2) Subject to this Part, all moneys paid in pursuance of subsection (1) shall be held in trust for the lessee and shall be paid into a separate trust account in a bank or a building society approved by the Minister for that purpose in the Territory not later than 7 days after they are received by the lessor, land agent or other person, as the case may be.

Penalty: \$2,000 or imprisonment for 6 months.

- (3) Where a lessor who is holding money in trust for a lessee pursuant to subsection (2) intends to leave the Territory for a period of more than 14 days, he shall, before leaving the Territory, pay the money so held to a land agent or other person referred to in subsection (1) who shall deal with that money, in the lessee's name, as if it were paid to him by the lessee in pursuance of subsection (1).

Penalty: \$2,000 or imprisonment for 6 months

- (4) Subject to this section, a lessee is entitled to demand and receive reimbursement of his security deposit upon the termination of the tenancy.
- (5) Where a lessee demands reimbursement of his security deposit the holder of that money shall pay it to the lessee unless:
  - (a) the lessor objects;
  - (b) the land agent or other person referred to in subsection (1) is a donee under a power of attorney given by the lessor and the land agent or the person objects; or

- (c) the lessor is out of the Territory and has not formally devolved a power of attorney on another person.
- (6) Where any of the circumstances referred to in subsection (5) occur, the lessor, the land agent or person holding the security deposit shall immediately refer the matter to the Commissioner for determination under this section and shall hold the security deposit until the matter is determined by the Commissioner.
- (7) Where an inconsistency exists between this Part and the *Land and Business Agents Act*, this Part shall prevail to the extent of the inconsistency.
- (8) Where a matter has been referred to the Commissioner in accordance with this section, he shall inquire into the matter and may order that such amount (if any) as he considers appropriate having regard to:
  - (a) the cost of making good any damage to the premises or to the goods occasioned during the tenancy;
  - (b) the cost of the cleaning of the premises left unreasonably dirty by the lessee; and
  - (c) any unpaid rent,be paid to the lessor and may order the refund of the balance (if any) to the lessee.
- (9) Where the Commissioner makes an order under subsection (8) and no appeal from that order has been lodged within the time allowed by this Act, the order of the Commissioner may be enforced as if it were an order of the Court for the payment of money.

#### **40 Interest on security deposit**

Any interest which may accrue on a security deposit shall be credited to the account with the bank or building society in which it is deposited and may be retained by the land agent, the lessor or person referred to in section 39(1)(c), as the case may be, as the fee for holding the security deposit.

## **Part 7                      Repossession of premises**

### **41                      Interpretation**

In this Part unless the contrary intention appears:

***premises*** includes all premises leased for residential or business purposes.

***dwelling-house*** means all premises the use of which ordinarily includes residence and includes a caravan or a demountable building equipped as a residence where it is leased together with land in connection with which it is used.

***lessee*** includes a person in possession of premises under an assignment of a lease or a sub-lease where the assignment or the grant of a sub-lease has been made or given without the consent of the lessor and that consent was required under the terms of the lease whether expressed or implied.

### **42                      No entry without order**

A person shall not, except in accordance with an order of a court, enter premises of which a person has possession as a lessee under a lease, or as a former lessee holding over after termination of a lease, for the purpose of recovering possession of the premises, whether entry is effected peaceably or otherwise.

Penalty:            \$2,000 or imprisonment for 6 months.

### **42A                    Notice to quit to be in writing**

A notice to quit given by a lessor shall be in writing and signed by the lessor, or his agent authorized in writing.

### **43                      Expiration of notices**

- (1) A notice to quit given by a lessor under section 42A, and a notice of intention to quit given by a lessee may expire at any time specified in the notice if the period of notice required by this Act is given, notwithstanding that the expiration of the period of the notice does not coincide with a day prior to a rent day or a day prior to the last day of the tenancy.
- (2) A notice of intention to quit given by a lessee shall be for:
  - (a) if the lease is for a fixed term – the unexpired duration of the term; or



(b) in any other case – 14 days,

or for such longer or shorter period as is agreed upon between the parties to the lease.

#### **44 Certain matters not to affect notice**

Where notice to quit premises has been given:

- (a) a demand by the lessor for payment of rent or a sum of money as rent;
- (b) the institution of proceedings by the lessor for recovery of rent or a sum of money as rent; or
- (c) the acceptance by the lessor of rent or a sum of money as rent,

in respect of a period within 6 months after the giving of the notice shall not, of itself, constitute evidence of a tenancy or operate as a waiver of the notice to quit.

#### **45 Defective notice**

A notice to quit which does not comply with the provisions of this Part does not operate so as to terminate the tenancy in respect of which the notice was given.

#### **46 Notice to quit premises not being a dwelling-house**

- (1) Subject to the terms of a lease where a lease relates to premises, not being a dwelling-house, and there is a periodical tenancy, the lessor is not required to specify in the notice to quit any ground for giving of the notice.
- (2) Subject to the terms of a lease, where a lease relates to premises other than a dwelling-house which was granted for a fixed term the lessor shall specify as a ground for the giving of a notice to quit:
  - (a) that the lessee has breached or failed to comply with a covenant, condition or provision of the lease and that the breach or failure to comply was such that the lessor was justified as treating the lease as at an end; or
  - (b) that the term of the lease has expired.
- (3) The period of a notice to quit premises other than a dwelling-house is such period as is fixed by the lease or, where the rent is payable at regular intervals, the period of one such interval.

**47 Notice to quit premises being a dwelling-house**

- (1) Subject to section 47A, a notice to quit premises, being a dwelling-house, shall:
  - (a) be issued on a ground prescribed in this section and specify that ground;
  - (b) be given for not less than the period prescribed in this section and specify the day on which the premises are to be delivered up; and
  - (c) specify the premises to which it relates.
- (2) The grounds and the length of period of a notice required by subsection (1) are:
  - (a) that the lessee has failed to pay rent, or any part of the rent, for not less than 14 days before the notice was given and the length of the prescribed period is 7 days;
  - (b) that the lessee has failed to perform or observe a term or condition of the lease other than a covenant to pay rent and the performance or observance of that term or condition has not been waived or excused by the lessor and the length of the prescribed period is 1 days;
  - (c) that the lessee has wilfully damaged the premises or any goods leased there with them and the length of the prescribed period is 2 days;
  - (d) that the lessee has failed to take reasonable care of the premises or of goods leased there with or has committed waste and the length of the prescribed period is 14 days;
  - (e) the lessee has been guilty of conduct which is a nuisance or annoyance to occupiers of adjoining premises or properties and the length of the prescribed period is 7 days;
  - (f) that the lessee or another person has been found guilty during the currency of the lease of an offence arising out of the use of the premises for an illegal purpose or that a court has found or declared that the premises have during the currency of the lease been used for an illegal purpose and the length of the prescribed period in either case is 2 days;
  - (g) that the lessee has given notice of his intention to vacate the premises and in consequence of that notice the lessor has agreed to sell or let the premises or has taken other steps as a result of which he would be seriously prejudiced if he could not

obtain possession at the expiration of the notice given by the lessee and the length of the prescribed period is 7 days after the expiration of the notice given by the lessee;

- (h) that the premises being the dwelling-house are reasonably required by the lessor for occupation by himself and the length of the prescribed period is:
    - (i) where the rent is payable weekly, 42 days; or
    - (ii) where the rent is payable at intervals greater than one week, 3 times the period of the interval between payments of rent or 8 weeks whichever is the lesser;
  - (i) that the premises have been occupied or are occupied in consequence of a contract of employment by a person in the employ of the lessor, or an agent of the lessor approved by the Commissioner, and are reasonably required for the personal occupation in consequence of a contract of employment with some other person employed or about to be employed by the lessor, or the agent, and the length of the prescribed period is 14 days;
  - (j) that the premises are reasonably required by the lessor for reconstruction or demolition and the length of the prescribed period is 60 days;
  - (k) that the lessor has agreed to sell the premises by an agreement which requires the purchaser to pay not less than a quarter of the purchase money within 12 months from the date thereof and by which the purchaser is entitled to vacant possession of the premises and the premises are reasonably required by the purchaser for occupation by himself and the length of the prescribed period is 4 weeks;
  - (l) that the lessee has become the lessee of premises by virtue of an assignment or transfer that under the lease required the consent or approval of the lessor which consent or approval has not been given and the length of the prescribed period is 14 days; or
  - (m) that the lessee has sub-let the premises or some part of the premises by sub-lease that under the lease required the consent or approval of the lessor which consent or approval has not been given and the length of the prescribed period is 14 days.
- (3) Where a lease of a dwelling-house is expressed to be for a term certain, a notice to quit may not be given upon the grounds specified in subsection (2)(h), (i) or (k).

**47A Notice to quit without grounds**

- (1) Where a lease is not for a fixed term, a lessor may give a notice to quit premises, being a dwelling-house, without specifying any grounds for the issue of the notice.
- (2) Where a lessor gives notice to quit under this section, the period of notice specified in the notice to quit shall be 60 days.

**47B Notice to quit not to operate in certain circumstances**

- (1) Subject to this section, where a lessor, after he has received a notice under section 8(2) or where there is a determination of a fair rent or of a fair and just price in force, gives a notice to quit, the notice to quit does not operate so as to terminate the tenancy in respect of which it was given.
- (2) The Commissioner may, upon application by a lessor, authorize the lessor to give a notice to quit in the circumstances set out in subsection (1) if the Commissioner is satisfied that the application for the determination, or the determination, of a fair rent or of a fair and just price has not wholly or partly motivated the lessor to give the notice to quit.
- (3) Where the Commissioner authorizes a notice to quit under subsection (2) nothing in this section shall prevent the notice operating so as to terminate the tenancy in respect of which it was given.

**48 Application for a warrant of ejectment**

- (1) Where a lessor has given to a lessee a notice to quit which complies with this Part, the lessor or an agent authorized in writing may, at any time within 60 days after the expiration of the term of the notice, apply to the Local Court for a warrant of possession.
- (2) The Court shall specify the day on which an order for the issue of a warrant of possession takes effect.

**50 Court may make orders for outstanding rent, &c.**

The Court may in giving an order under this Part make such further orders as to payment of any outstanding rent or damage to premises or goods leased with premises that may be established by the lessor.

**51 Proceedings by lessor for summary recovery of dwelling-house**

- (1) The lessor of a dwelling-house or agent authorized in writing may apply to the Court for an order terminating the lease:
  - (a) at the time of an application under section 48(1) for the order; or
  - (b) at any time after the lessor gives to the lessee written notice of the lessor's intention to apply for the order.
- (2) The Court may make a termination order if the Court is satisfied that:
  - (a) the lessee has:
    - (i) intentionally or recklessly caused damage; or
    - (ii) permitted damage to be caused,to the dwelling-house or is likely, intentionally or recklessly to cause, or is likely to permit, such damage;
  - (b) the lessee has caused or is likely to cause injury to the lessor, to his or her agent or to a person in occupation of or permitted on adjacent premises;
  - (c) the lessee has established a pattern of failure to pay rent under the lease or under any other lease of a dwelling-house; or
  - (d) having regard to the circumstances, the notice under subsection (1)(b) is sufficient.
- (3) If the Court makes a termination order, it shall make an order for possession which shall have immediate effect.

**51A Termination by lessee of lease of dwelling-house**

- (1) The lessee of a dwelling-house may apply to the Court for an order of termination of the lease.
- (2) The Court may make a termination order if the Court is satisfied that:
  - (a) the lessor has failed to perform or observe a term or condition of the lease; and

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- (b) having regard to the circumstances, the failure to perform or observe a term or condition of the lease is sufficient to justify the termination.
  - (3) The Court shall, in an order, specify a day, being not more than 7 days after the day the order is made, as the day of the termination and the day on which the lessee must deliver up possession.
  - (4) If a lessee fails to deliver up possession on the specified day, the Court may, on the application of the lessor or the lessor's agent authorized in writing, issue a warrant of possession.

## **Part 8                      Miscellaneous**

### **54                      Rent in advance limited**

- (1) A lessor may require the payment of rent for premises in advance, but not for any greater period than:
  - (a) where the term of the tenancy is less than 4 weeks, the term of the tenancy;
  - (b) where the tenancy is a periodical tenancy, one period of that tenancy; or
  - (c) where the tenancy is for a fixed term, 2 weeks.
- (2) Where a lease is terminated the lessor shall not use or retain any rent paid in advance for the purpose of:
  - (a) making good any damage to the premises or grounds occasioned during the tenancy; or
  - (b) cleaning of the premises left unreasonably dirty by a lessee.

### **55                      Implied terms**

Other than a lease, or proposed form of lease, approved under section 55A, every lease of premises, written or otherwise, shall be read as including as terms of that lease the terms set out in Schedule 4.

### **55A                    Approved form of lease**

The Commissioner may, as he thinks fit, approve a written lease or proposed form of written lease where the terms of the lease are contrary to the terms set out in Schedule 4.

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**55B Lessee's right of association**

(1) A lessor who refuses to:

- (a) renew a lease of premises (whether or not the right to renew was a condition of the lease); or
- (b) who purports to exercise a power or right to terminate a lease of premises,

for the reason that the lessee has joined or is or was a member of:

- (c) in the case of premises leased principally for business purposes – a body or association of persons the objects of which include the mutual advancement of their business interests, whether in relation to that business carried on those premises or elsewhere; and
- (d) in the case of premises leased for residential purposes – a body or association of tenants, the objects of which include the advancement or preservation of their mutual interests, whether or not exclusively in relation to those premises,

or who threatens or otherwise indicates that he will refuse to renew a lease of those premises if the lessee joins or becomes a member of such a body or association, is guilty of an offence.

Penalty: In relation to premises referred to in paragraph (a) – \$100,000.

In relation to premises referred to in paragraph (b) – \$10,000.

- (2) A condition of a lease of premises which provides that the lease is or may be terminated, or that the lessee will suffer any other detriment under the lease, if he joins or becomes a member of a body or association of a kind referred to in subsection (1), whether that lease was entered into before or after the date on which this section came into operation, is void and of no effect.

**56 Mitigation of damages for breach of lease**

The rules under the law of contract relating to mitigation of loss or damage upon breach of a contract apply to and in relation to a breach of a lease of premises.

**57 Premises may be sub let**

- (1) Premises held under a lease may be sub-let with the prior consent of the lessor.

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- (2) The consent of a lessor to a sub-lease of any premises may not be unreasonably withheld.
  - (3) A lessor shall not make or require any payment or advantage for giving his consent to a sub-lease other than his actual expenses that are reasonably incidental to the giving of that consent.

**58 Lessee to be given a copy of written lease**

- (1) A lessor who has required or invited a lessee to sign a written lease shall:
  - (a) provide the lessee with a copy of the document at the time at which it is signed by the lessee;
  - (b) if the document delivered in pursuance of paragraph (a) is unsigned by the lessor, deliver to the lessee within 21 days of the signing by the lessee a copy of the lease executed by the lessor.

Penalty: \$2,000.

- (2) If a lessor fails to comply with subsection (1)(b) acceptance of rent by the lessor shall give to the unexecuted document provided to the lessee the same effect in law as it would have had if it had been executed.
- (3) Any costs incurred in the preparation of a lease instrument in relation to premises let for residential purposes shall be borne by the lessor.

**59 Lessor to supply inventory**

Where a furnished dwelling-house is leased to a person, the lessor shall, at the time of leasing it to the lessee, supply to the lessee a complete inventory of the furniture and other household effects leased with the dwelling-house.

Penalty: \$2,000.

**60 Certain terms void**

Where a lease of premises provides that, upon breach by the lessee of the term to pay rent or any other term of the lease or breach of this Act or any other Act the lessee is liable to pay:

- (a) all or any part of the rent remaining payable under the lease;
- (b) rent of an increased amount;



- (c) any amount by way of penalty; or
  - (d) any amount by way of liquidated damages,
- the provision is to that extent void and of no effect.

#### **61 Periodical tenancy**

- (1) Subject to subsection (2), a lease which requires the payment of rent at stated intervals of time and is not expressed to be for a stated term creates a periodical tenancy and persists as a lease from period to period until lawfully terminated.
- (2) A lease which is expressed to be for a fixed term but which requires rent to be paid at stated intervals of term does not create a periodical tenancy.
- (3) Where, upon the expiry of a lease for a fixed term, the lessee holds over and the lessor accepts rent, the parties are deemed to have entered into a periodical tenancy on the same terms and conditions, other than those relating to the term of the lease, as those upon which the lease was granted.

#### **64 Offences generally**

- (1) A person who:
  - (a) does an act or thing that he is forbidden to do by or under a provision of this Act;
  - (b) does not do an act or thing that he is required or directed to do by or under a provision of this Act; or
  - (c) otherwise contravenes or fails to comply with a provision of this Act,is, unless the provision otherwise provides that he is guilty of an offence against this Act, guilty of an offence against this Act by virtue of this subsection.
- (2) A person who is guilty of an offence against this Act by virtue of subsection (1) is punishable, upon being found guilty, by a penalty not exceeding \$500.

#### **65 Powers of entry and inspection**

The Commissioner may, for the purposes of this Act, enter on and inspect any land or premises.

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**66 Refusal to let dwelling-house to applicant with family prohibited**

- (1) A person shall not refuse, or procure any person to refuse, to let a dwelling-house to any person on the ground that it is intended that a child shall live in the dwelling-house.
- (2) In any prosecution for an offence arising under subsection (1), where all the facts and circumstances constituting the contravention, other than the ground of the refusal, are proved, it shall lie upon the defendant to prove that the ground of refusal was not the ground alleged in the charge.
- (3) A person shall not:
  - (a) instruct any other person not to let; or
  - (b) state his intention, whether by advertisement or otherwise, not to let,a dwelling-house to any person if it is intended that a child shall live in the dwelling-house.
- (4) A person shall not, for the purpose of determining whether or not he will let a dwelling-house, inquire from any prospective lessee of the dwelling-house whether:
  - (a) the prospective lessee has any children; or
  - (b) it is intended that a child shall live in the dwelling-house if it is let to that prospective lessee.
- (5) In any prosecution for an offence arising under subsection (4), where all the facts and circumstances constituting the contravention, other than the purpose of the inquiry, are proved, it shall lie upon the defendant to prove that the purpose of the inquiry was not the purpose alleged in the charge.

Penalty: \$2,000 or imprisonment for 6 months.

**67 Records of rent**

- (1) The person receiving any payment of rent of premises or of any premises together with goods shall, at the time of receiving the payment, give or cause to be given, to the person making the payment, a receipt for the payment, specifying the date of the payment, the amount paid, the period in respect of which the payment is made and the premises in respect of which the payment is made.

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- (2) A lessor shall, by himself or his agent, keep or cause to be kept a record showing the rent received in respect of premises and of premises together with goods leased by him.
  - (3) The lessor shall, by himself or his agent, produce the records at the hearing of any proceedings under this Act and the records shall at the hearing be evidence of the contents thereof.
  - (4) A lessor or his agent shall not knowingly make, or allow to be retained, in any such record any entry false in a material particular.
  - (5) A person who keeps a record showing rent received under subsection (2) shall, at the request of a person who has paid rent in respect of which the record is kept, make the record available for inspection by the person who has paid the rent.
  - (6) A request under subsection (5) may be made orally or in writing.

Penalty for an offence against this section: \$2,000.

#### **67A Service of notice**

- (1) Subject to this Act, where a notice or document is required or authorized to be served on or given to a person, it may be served or given:
  - (a) by handing or tendering it to the person or by posting it by pre-paid mail to the person at his last known address; or
  - (b) if the person is a company – by leaving it at or posting it by pre-paid mail to the registered office of the company.
- (2) Where a notice or document is required or authorized to be served on or given to a lessee under a lease it shall be deemed to have been handed to the lessee if it is handed or tendered:
  - (a) to a person apparently over the age of 16 years apparently residing in the premises the subject of the lease; or
  - (b) to the person who ordinarily pays the rent under the lease.
- (3) Where a notice is required or authorized to be served or given to a lessor under a lease it shall be deemed to have been handed to the lessor if it is handed or tendered to the agent of the lessor or to the person who ordinarily receives the rent under the lease.

**68        Regulations**

The Administrator may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **Schedule 4 Implied covenants and conditions**

section 55

1 On the part of the lessor:

- (a) to allow the lessee during the tenancy quiet enjoyment of the premises and fixtures, fittings, goods and chattels leased therewith;
- (b) to provide and, during the tenancy, maintain the premises in good tenantable repair and in a condition fit for human occupation;
- (c) during the tenancy to maintain fixtures, fittings, goods and chattels, including appliances and furniture let therewith;
- (d) to comply with all lawful requirements as to standards to be observed in regard to buildings, health and safety with respect to the premises;
- (e) in the case of shared accommodation or where the premises include more than one caravan or demountable building, to keep any common area in a clean and safe condition; and
- (f) to permit the lessee to remove a fixture that he has affixed to the premises during the period that he has been in possession of the premises unless the removal of the fixture would cause irreparable damage to the premises.

2 On the part of the lessee:

- (a) to care for the premises, fixtures, fittings, goods and chattels leased therewith in the manner of a reasonable lessee;
- (b) to repair, within a reasonable time, damage to the premises, fixtures, fittings, goods or chattels, including appliances and fixtures leased therewith, caused by the wilful or negligent conduct of the lessee or of persons coming into the premises with his consent;
- (c) to conduct himself and to ensure that other persons in the premises with his consent conduct themselves in a manner that will not cause a disturbance or be a nuisance or an annoyance to adjoining or neighbouring occupiers;
- (d) to pay the rent agreed upon or as varied or as determined by the Commissioner of Tenancies at the times agreed upon;

- (e) on the expiry or sooner determination of the lease to deliver up possession of the premises in good order and condition; and
- (f) to pay for or make good any damage caused by him by the removal of any fixtures affixed by him to the premises during the period during which he has been in possession

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

***Tenancy Act 1979 (Act No. 43, 1979)***

Assent date	27 April 1979
Commenced	7 September 1979

***Tenancy Act (No. 2) 1979 (Act No. 131, 1979)***

Assent date	15 October 1979
Commenced	15 October 1979

***Tenancy Amendment Act 1982 (Act No. 19, 1982)***

Assent date	27 April 1982
Commenced	27 April 1982

***Tenancy Amendment Act (No. 2) 1982 (Act No. 37, 1982)***

Assent date	28 June 1982
Commenced	28 June 1982

***Tenancy Amendment Act 1983 (Act No. 37, 1983)***

Assent date	3 October 1983
Commenced	3 October 1983

***Local Court (Consequential Amendments) Act 1990 (Act No. 14, 1989)***

Assent date	5 June 1989
Commenced	s 6: 5 June 1989 (s 2(1), s 2 <i>Small Claims Amendment Act 1988</i> (Act No. 43, 1988) and Gaz G17, 3 May 1989, p 2); rem: 1 January 1991 (s 2(2), s 2 <i>Local Court Act 1989</i> (Act No. 31, 1989) and Gaz G49, 12 December 1990, p 2)

***Local Court (Consequential Amendments) Act 1990 (Act No. 31, 1990)***

Assent date	11 June 1990
Commenced	s 5: 11 June 1990 (s 2(1)); rem: 1 January 1991: (s 2(2), s 2 <i>Local Court Act 1989</i> (Act No. 31, 1989) and Gaz G49, 12 December 1990, p 2)

**Statute Law Revision Act 1991 (Act No. 31, 1991)**

Assent date	25 June 1991
Commenced	25 June 1991

**Statute Law (Miscellaneous Amendments) Act 1991 (Act No. 77, 1991)**

Assent date	16 December 1991
Commenced	16 December 1991

**Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)**

Assent date	30 June 1993
Commenced	1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993</i> (Act No. 11, 1993) and Gaz S53, 29 June 1993)

**Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)**

Assent date	19 April 1996
Commenced	s 7: 19 April 1996 (s 2(2)); rem: 1 July 1996 (s 2(1), s 2 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and Gaz S15, 13 June 1996)

**3 LIST OF AMENDMENTS**

s 3	rep No. 31, 1990, s 7
s 4	amd No. 131, 1979, s 2; No. 19, 1982, s 3; No. 37, 1982, s 3; No. 14, 1989, s 7; No. 31, 1990, s 7
s 6	sub No. 131, 1979, s 3
s 6A	amd No. 28, 1993, s 3
s 7	ins No. 19, 1982, s 4
s 8	amd No. 19, 1982, s 5
s 8	amd No. 19, 1982, s 6
s 9	amd No. 19, 1982, s 7
s 10	amd No. 19, 1982, s 8
s 12	amd No. 19, 1982, s 9
s 13	amd No. 19, 1982, s 33
s 17	amd No. 31, 1990, s 7
s 18	rep No. 19, 1982, s 10
pt 3 hdg	sub No. 31, 1990, s 6
ss 19 – 21	sub No. 31, 1990, s 6
s 22	amd No. 19, 1982, s 33
	sub No. 31, 1990, s 6
s 23	amd No. 19, 1982, s 33
	rep No. 31, 1990, s 6
ss 24 – 26	rep No. 31, 1990, s 6
s 27	amd No. 19, 1982, s 33
	rep No. 31, 1990, s 6
ss 28 – 30	rep No. 31, 1990, s 6
s 30A	ins No. 19, 1982, s 11
	rep No. 31, 1990, s 6
s 31	rep No. 31, 1990, s 6
pt 4 hdg	rep No. 31, 1991, s 14
s 32	amd No. 19, 1982, s 12
	rep No. 31, 1991, s 14
s 33	amd No. 19, 1982, s 13
	rep No. 31, 1991, s 14
s 34	rep No. 19, 1982, s 14
s 37	amd No. 19, 1982, s 15; No. 37, 1982, s 4; No. 31, 1990, s 7



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s 38	amd No. 19, 1982, s 16
s 39	amd No. 19, 1982, s 17; No. 37, 1982, s 5; No. 37, 1983, s 2; No. 31, 1990, ss 6 and 7
s 40	amd No. 37, 1983, s 3
s 42	sub No. 19, 1982, s 18 amd No. 31, 1990, s 7
s 42A	ins No. 19, 1982, s 18
s 43	sub No. 19, 1982, s 18
s 46	amd No. 19, 1982, s 19
s 47	amd No. 19, 1982, s 20; No. 17, 1996, s 6
ss 47A – 47B	ins No. 19, 1982, s 21
s 48	amd No. 19, 1982, s 22; No. 31, 1990, s 7; No. 19, 1982, s 22
s 49	amd No. 19, 1982, s 23 rep No. 31, 1990, s 7
s 50	amd No. 31, 1990, s 7
s 51	amd No. 19, 1982, s 33 sub No. 31, 1990, s 6 amd No. 77, 1991, s 13
s 51A	ins No. 19, 1982, s 24 sub No. 31, 1990, s 6
s 52	rep No. 19, 1982, s 25
s 53	rep No. 31, 1990, s 7
s 54	sub No. 19, 1982, s 26
s 55	amd No. 19, 1982, s 27
s 55A	ins No. 19, 1982, s 28
s 55B	ins No. 37, 1982, s 6
ss 58 – 59	amd No. 31, 1990, s 7
s 60	amd No. 19, 1982, s 33
s 62	rep No. 31, 1990, s 7
s 63	amd No. 19, 1982, s 29 rep No. 31, 1990, s 7
s 64	amd No. 17, 1996, s 6
s 66	amd No. 19, 1982, s 33; No. 31, 1990, s 7
s 67	amd No. 19, 1982, s 30; No. 31, 1990, s 7
s 67A	ins No. 19, 1982, s 31
sch 1 – 2	rep No. 31, 1990, s 7
sch 3	amd No. 19, 1982, s 32 rep No. 31, 1990, s 7
sch 4	amd No. 19, 1982, s 33