



NORTHERN TERRITORY OF AUSTRALIA

No. 19 of 1982

AN ACT

To amend the *Tenancy Act*

[Assented to 27 April 1982]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Tenancy Amendment Act 1982*.

2. PRINCIPAL ACT

The *Tenancy Act* is in this Act referred to as the Principal Act.

3. INTERPRETATION

Section 4(1) of the Principal Act is amended -

- (a) by inserting in the definition of "Registrar" after "an application" the words "or matter";
- (b) by inserting in the definition of "rent" after "premises" the words "or premises and goods";
- (c) by inserting after the definition of "rent" the following:

"'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);";

and
- (d) by omitting the definition of "tenant".

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4. NEW SECTION

The Principal Act is amended by inserting after section 6 the following:

"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."

5. COMMISSIONER MAY DETERMINE FAIR RENTS

Section 7 of the Principal Act is amended -

- (a) by inserting in paragraph (a) after "premises" the words "or premises and goods"; and
- (b) by inserting in paragraph (c) after "premises" the words "or premises and goods".

6. LESSEE MAY APPLY FOR DETERMINATION

Section 8 of the Principal Act is amended -

- (a) by omitting from sub-section (1)(e) "lessee" and substituting "lessor";
- (b) by omitting from sub-section (2) "a notice setting" and substituting " a notice setting out"; and
- (c) by adding at the end the following:

"(6) An application made under sub-section (1) shall not be withdrawn without the consent of the Commissioner."

7. MATTERS TO BE CONSIDERED IN REACHING A DETERMINATION

Section 9 of the Principal Act is amended -

- (a) by inserting in sub-section (2) after "a fair rent" the words "or a fair and just price";
- (b) by inserting in sub-section (2) after "the fair rent" the words "or the fair and just price"; and

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- (c) by omitting sub-section (3) and substituting the following:

"(3) Where the Commissioner is of the opinion that to determine a fair rent or a fair and just price in accordance with sub-section (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 sub-section (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 sub-section (2).".

8. DATE OF EFFECT OF DETERMINATION

Section 10 of the Principal Act is amended by omitting "Subject to section 18(1), a determination" and substituting "A determination".

9. DETERMINATIONS FOR CARAVANS, &c.

Section 12 of the Principal Act is amended by omitting "Where an application made under this Act is or includes an application for the determination of a fair and just price for the use of land in connexion with the use of a caravan or demountable building or for the hiring of a caravan or demountable building" and substituting "In determining a fair and just price for the use of land in connexion with the use of a caravan or demountable building".

10. REPEAL

Section 18 of the Principal Act is repealed.

11. NEW SECTION

The Principal Act is amended by inserting after section 30 the following:

"30A. TRIBUNAL MAY ORDER COSTS

"Upon an application or matter the Tribunal shall not observe any rule that costs follow the event, and may, in its discretion, make or refuse to make an order for costs, and if an order is made, it may be in such amount as the Tribunal thinks fit.".

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12. PARTY MAY APPEAL TO TRIBUNAL

Section 32 of the Principal Act is amended -

- (a) by omitting sub-section (1) and substituting the following:

"(1) Where the Commissioner has made a determination of a fair rent or 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 Tribunal against the determination or variation within 28 days after it is made.";

- (b) by inserting in sub-section (2) after "the premises" the words "which are the subject of the appeal";
- (c) by inserting in sub-section (3) after "determination" the words "or variation"; and
- (d) by omitting from sub-section (4) all words after "a date" and substituting "for consideration of the appeal by the Tribunal, and shall give notice of that date to the applicant and to all persons directly affected by the determination or variation.".

13. HEARING OF APPEAL

Section 33 of the Principal Act is amended -

- (a) by inserting in sub-section (2) after "his determination" the words "or variation"; and
- (b) by inserting in sub-section (3) after "the determination" the words "or variation".

14. REPEAL

Section 34 of the Principal Act is repealed.

15. PREMIUMS, &c., NOT TO BE DEMANDED OR PAID

Section 37 of the Principal Act is amended -

- (a) by inserting after "premises" in sub-section (1)(a)(iv) "other than reasonable expenses that are incidental to the giving of the consent"; and
- (b) by adding after sub-section (2) the following:

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"(3) Nothing in this section prevents a lessee demanding or receiving a premium from a sub-lessee 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 interest on the capital used in the development works."

16. SECURITY DEPOSITS

Section 38 of the Principal Act is amended -

- (a) by omitting from sub-section (1) "a sum of money, not exceeding the amount limited by sub-section (2), as security" and substituting "a security deposit"; and
- (b) by omitting from sub-section (1)(b) "a tenant" and substituting "a lessee"; and
- (c) by omitting sub-section (2) and substituting the following:

"(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."

17. SECURITY DEPOSITS MAY BE PAID TO LAND AGENT, &c.

Section 39 of the Principal Act is amended -

- (a) by omitting from sub-section (1) "an amount of money as security in accordance with this Part" and substituting "a security deposit";
- (b) by inserting in sub-section (1)(b) after "a land agent" the words "nominated by the lessor";
- (c) by omitting from sub-section (2) "a bank account so entitled" and substituting "a separate trust account in a bank or a building society approved by the Minister for that purpose";
- (d) by omitting from sub-section (4) "any money held by the lessor, a land agent or other person as security" and substituting "his security deposit";

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- (e) by omitting from sub-section (5) "any money held by the lessor, a land agent or other person as security" and substituting "his security deposit";
- (f) by omitting from sub-section (5)(a) "or";
- (g) by omitting sub-section (5)(b) and substituting the following:
 - "(b) the land agent or other person referred to in sub-section (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.";
- (h) by omitting sub-section (6) and substituting the following:

"(6) Where any of the circumstances referred to in sub-section (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.";
- (j) by omitting sub-section (7) and substituting the following:

"(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.";
- (k) by omitting from sub-section (8) "Where the Commissioner receives notice" and substituting "Where a matter has been referred to the Commissioner in accordance with this section"; and
- (m) by adding after sub-section (8) the following:

"(9) Where -

 - (a) the Commissioner makes an order under sub-section (8) and no appeal from that order has been lodged within the time allowed by this Act; or
 - (b) the Tribunal makes a decision under section 33 concerning the security deposit,

the order of the Commissioner or the decision of the Tribunal is deemed to be an order of a Local Court for the purposes of the *Local Courts Act*."

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18. REPEAL AND SUBSTITUTION

Sections 42 and 43 of the Principal Act are repealed and the following substituted:

"42. NO ENTRY WITHOUT ORDER

"A person shall not, except in accordance with an order of the Tribunal or 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: \$1,000 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."

19. NOTICE TO QUIT PREMISES NOT BEING A DWELLING-HOUSE

Section 46 of the Principal Act is amended by omitting from sub-section (1) "which is a periodical lease" and substituting "and there is a periodical tenancy".

20. NOTICE TO QUIT PREMISES BEING A DWELLING-HOUSE

Section 47 of the Principal Act is amended -

(a) by omitting sub-section (1) and substituting the following:

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"(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.";
- (b) by omitting sub-section (2)(a) and substituting the following:
 - "(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;"
 - (c) by omitting sub-section (2)(i) and substituting the following:
 - "(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;"
 - (d) by omitting from sub-section (2)(j) "3 months" and substituting "60 days".

21. NEW SECTIONS

The Principal Act is amended by inserting after section 47 the following:

"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.

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"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 sub-section (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 sub-section (2) nothing in this section shall prevent the notice operating so as to terminate the tenancy in respect of which it was given."

22. APPLICATION FOR A WARRANT OF EJECTMENT

Section 48 of the Principal Act is amended -

(a) by omitting sub-section (1) and substituting:

"(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 Tribunal for a warrant authorizing the ejectment of the lessee.";

(b) by omitting from sub-section (4) "given or";

(c) by omitting from sub-section (7) "terminating the agreement and an order for possession of the premises" and substituting "for the issue of a warrant of ejectment";

(d) by omitting from sub-section (7)(a) "or lessee to the other" and substituting "to the lessee";

(e) by omitting sub-section (7)(b) and substituting the following:

"(b) where the notice was given by the lessor upon a particular ground prescribed by this Act, that the ground has been established and, in the case of a notice given upon the ground of a breach by the lessee of a term of the lease, that breach is in the circumstances of the case such as to justify termination of the lease"; and

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- (f) by inserting in sub-section (8)(b) after "by the lessor" the words "or his agent".

23. WARRANT NOT TO OPERATE AFTER 7 DAYS

Section 49 of the Principal Act is amended by omitting "for possession of premises" and substituting "for the issue of a warrant of ejectment".

24. NEW SECTION

The Principal Act is amended by inserting in Part VII after section 51 the following:

"51A. TERMINATION OF LEASE ON LESSEE'S APPLICATION

"(1) The Tribunal may, on an application by a lessee of a dwelling-house, make an order terminating the lease of the dwelling-house and requiring the lessee to give up possession of the dwelling-house if the Tribunal is satisfied that -

- (a) the lessor has failed to perform or observe a term or condition of the lease; and
- (b) the failure is, in the circumstances, sufficient to justify terminating the lease.

"(2) An application under sub-section (1) -

- (a) may be in or to the effect of Form 6 in Schedule 3;
- (b) shall be forwarded to the Registrar; and
- (c) shall be served on the lessor.

"(3) Where the Tribunal makes an order under sub-section (1), it shall specify in the order the day on which the lease is terminated and on which the lessee shall deliver up possession, that day being not more than 7 days after the day on which the order is made.

"(4) Where a lessee fails to deliver up possession on the day specified in an order made under sub-section (1) terminating a lease the Tribunal may, on the application of the lessor or his agent authorized in writing, issue a warrant authorizing the ejectment of the lessee from the premises."

25. REPEAL

Section 52 of the Principal Act is repealed.

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26. REPEAL AND SUBSTITUTION

Section 54 of the Principal Act is repealed and the following substituted:

"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."

27. IMPLIED TERMS

Section 55 of the Principal Act is amended by omitting "Every lease" and substituting "Other than a lease, or proposed form of lease, approved under section 55A, every lease".

28. NEW SECTION

The Principal Act is amended by inserting after section 55 the following:

"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."

29. TRIBUNAL MAY ISSUE WARRANT

Section 63 of the Principal Act is amended -

- (a) by omitting from sub-section (4) "and make, if he is satisfied" and substituting "and, if it is satisfied"; and
- (b) by omitting sub-section (5).

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30. RECORDS OF RENT

Section 67 of the Principal Act is amended by omitting sub-section (5) and substituting the following:

"(5) A person who keeps a record showing rent received under sub-section (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 made under sub-section (5) may be made orally or in writing.

Penalty for an offence against this section: \$500."

31. NEW SECTION

The Principal Act is amended by inserting after section 67 the following:

"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."

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32. NEW FORM

The Principal Act is amended by adding at the end of Schedule 3 to the Principal Act the form in Schedule 1 to this Act.

33. FURTHER AMENDMENTS

The Principal Act is further amended as set out in Schedule 2.

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SCHEDULE 1

Section 32

"Form 6

Tenancy Act

Section 51A(2)

APPLICATION FOR ORDER OF TERMINATION OF LEASE

1. I,
of
in the Northern Territory, being the lessee of prem-
isesin the Northern Territory
of which
of
is the lessor, hereby apply for an order of the Tri-
bunal terminating the lease of the premises and
ordering myself to give up possession of the premises.
2. My grounds for making this application are as follows:
.....
.....
.....
.....

Dated this day of , 19 .

(Signed)".

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SCHEDULE 2

Section 33

Provision	Amendment	
	omit	substitute
Section 13	", either by post or personally,"	
Section 22	"of a proceeding"	"of an application or matter"
Section 23	"of a proceeding"	"of an application or matter"
	"of the Northern Territory of Australia"	
Section 27	"the proceeding"	"the application or matter"
Section 51 (1)(b)	"the tenant"	"the lessee"
Section 51(1)	"terminate the agreement"	"make an order terminating the lease"
Section 51 (1)(c)	"paragraph (a)"	"paragraph (b)"
Section 51 (1)(d)	"the tenant" (wherever occurring)	"the lessee"
Section 51(2)	"terminates a lease"	"makes an order terminating a lease"
Section 51(2)	"make an order for possession of the premises"	"issue a warrant authorizing the ejectment of the lessee from the premises"
Section 60	"the tenant"	"the lessee"
Section 66(4)	"tenant" (wherever occurring)	"lessee"

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Provision	Amendment	
	omit	substitute
Schedule 3 Form 2	"tenant"	"lessee"
Schedule 4 clause (2)(d)	"Commissioner of Consumer Affairs"	"Commissioner of Tenancies"