

THE NORTHERN TERRITORY OF AUSTRALIA

TENANCY ACT
No. 43 of 1979
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THE NORTHERN TERRITORY OF AUSTRALIA

No. 43 of 1979

AN ACT

Relating to tenancies and to the control of rents

[Assented to 27 April 1979]

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:

PART I - PRELIMINARY

1. This Act may be cited as the Tenancy Act 1979.

Short title

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

Commencement

3.(1) The Ordinances specified in Schedule 1 are repealed.

Repeals and savings

(2) The law of the State of South Australia specified in Schedule 2 ceases to apply in the Territory as a law of the Territory.

(3) All rents fixed or determined under the Ordinances repealed by this section cease upon the commencement of this Act to be the maximum rents chargeable for the premises in respect of which they were fixed or determined and applications for a determination or the variation of a determination of the fair rent of any premises lapse upon the commencement of this Act.

(4) Proceedings commenced in a court for the recovery of possession of premises prescribed under the repealed Ordinances before the commencement of this Act may be continued as though the Ordinances repealed by this section had not been repealed.

(5) Where, before the commencement of this Act, a notice to quit that complied with the provisions of the repealed Ordinances had been given by a lessor to a lessee within the meaning of those Ordinances, proceedings for the recovery of the premises the subject of the notice to quit may be commenced and

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determined as though the Ordinances repealed by this section had not been repealed.

Interpreta-
tion

4.(1) In this Act unless the contrary intention appears -

"Commissioner" means the Commissioner of Consumer Affairs for the Northern Territory appointed under the Consumer Protection Act;

"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 sub-lease;

"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;

"Local Court" means a Local Court of full jurisdiction;

"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

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- (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 industry;
- (h) a caravan park;
- (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 Clerk of the Local Court that has jurisdiction in the area where the premises, the subject of an application before the Tribunal, are situated;

"rent" means the amount of money payable under a lease for the right to occupy or use premises 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;

"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;

"tenant" includes a lessee;

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"Tribunal" means the Tenancy Tribunal established by section 19;

"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.

Act not to bind the Crown

5. 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.

Administration

6. The Commissioner, subject to the direction of the Minister, is responsible for the administration of this Act.

PART II - RENT OF PREMISES

Commissioner may determine fair rents

7. Subject to this Act, the Commissioner may -

- (a) determine the fair rent of premises;
- (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 connexion with the leasing of premises;
- (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.

Lessee may apply for a determination

8.(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 connexion 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

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- (e) a fair and just price for the hiring of a caravan or demountable building for siting on land of the lessee.

(2) Upon the receipt of an application under sub-section (1), the Commissioner shall serve upon the lessor of the premises the subject of the application, a notice setting -

- (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 sub-section (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 sub-section (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.

9.(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 sub-section (4).

Matters to be considered in reaching a determination

(2) Where the Commissioner proceeds to a determination of a fair rent in the manner provided by sub-section (1), he shall ensure that in determining the fair rent 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

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(c) the cost of any services provided by the lessor or the lessee in connexion with the lease.

(3) Where the Commissioner is of the opinion that to determine a fair rent or fair and just price in accordance with sub-section (2) would not achieve justice between the parties, he shall determine the rent or fix the price by having regard to the rents of comparable premises and the locality of the premises that are the subject of the application provided that -

(a) he does not have regard to the rent of any comparable premises the fair rent of which he has previously determined; and

(b) the rent of the comparable premises upon which his determination is based is adjusted so as to reflect any difference in the incidence on the comparable premises from the subject premises of the costs and allowances specified in sub-section (2).

(4) For the purposes of sub-section (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 sub-section (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.

Date of
effect of
determina-
tion

10.(1) Subject to section 18(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 sub-section (1) shall expire 6 months after the date on which it takes effect.

Fair rent is
maximum rent

11. 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.

Determinations
for caravans,
&c.

12. 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

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

Determinations
to be served

14. 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.

Determination
varies
contractual
rights

15.(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.

Payments in
excess recover-
able

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(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.

Determination to apply to lease made after determination

16. 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 connexion 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.

Offence to let at excessive rent, &c.

17. 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 connexion 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: \$1,000 or imprisonment for 6 months.

Transitional

18.(1) Where during a period of 12 months after the date of the commencement of this Act a lessee makes an application under this Act for a determination of fair rent or fair and just price of the premises, the Commissioner may, at the time of service upon the lessor of the notice under section 8(2), make a provisional determination fixing the fair rent of or the fair and just price of the premises at an amount of the lawful rent payable on the day prior to the commencement of this Act plus an amount not exceeding 10 per cent of that rent.

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(2) A provisional determination made under sub-section (1) -

- (a) is not subject to appeal;
- (b) ceases to have effect on the making of a determination under this Act; and
- (c) is not a determination for the purpose of any provision of this Act other than this section and sections 13, 14, 15 and 16.

(3) Where a provisional determination has been made, upon the making of a final determination upon the lessee's application, the Commissioner may, if, in his opinion, the time which has elapsed between the making of the application and the making of the final determination has occasioned injustice to the lessor or to the lessee, order that the final determination takes effect from a date prior to the making of the final determination.

(4) Where the Commissioner -

- (a) has made an order under sub-section (3); and
- (b) is satisfied that the immediate payment of the difference between the total amount of rent paid under the provisional determination and the amount payable under the final determination during the period during which the provisional determination was in force could cause hardship,

he may order that the amount of the difference be paid in such instalments as he determines.

(5) Where an order has been made under sub-section (4), the lessor or the lessee may not take legal proceedings to recover from the other party an amount in excess of the amount of any instalments with respect to the payment of which the other party is in default.

(6) A person shall not demand or receive as rent or as the price for the use of premises an amount which exceeds the amount specified in a provisional order made under this section.

Penalty: \$1,000 or imprisonment for 6 months.

PART III - TENANCY TRIBUNAL

19.(1) There shall be a Tribunal, to be known as the Tenancy Tribunal.

Tenancy
Tribunal

(2) Each Magistrate appointed or holding office under the Magistrates Act shall, by virtue of his office, be a member of the Tribunal.

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(3) The Chief Magistrate appointed under the Magistrates Act shall, by virtue of his office, be President of the Tribunal.

Powers of
Tribunal

20.(1) The Tribunal has power to hear and determine such matters as may be referred to it under this Act.

(2) The Tribunal may, in writing under the hand of a member of the Tribunal, summon a person to attend at the Tribunal at a time and place mentioned in the summons and then and there to give evidence and to produce any books, documents and other papers in his custody or control as he is required by the summons to produce.

(3) A summons under sub-section (2) shall be served on the person to whom it is addressed by delivering it to him personally or by leaving it with some apparently responsible person for him at his last or most usual place of abode.

Sittings of
the Tribunal

21.(1) The Tribunal may sit at such times as are necessary to conduct the business of the Tribunal.

(2) Hearings before the Tribunal shall be before at least one member of the Tribunal, however more than one member may sit on the hearing of an application or matter before the Tribunal.

(3) Members of the Tribunal may sit and may exercise powers and may perform the functions of the Tribunal notwithstanding that other members of the Tribunal are at the time sitting and exercising those powers and performing those functions.

Procedure of
the Tribunal

22. At the hearing of a proceeding -

(a) the procedure of the Tribunal is, subject to this Act, within the discretion of the Tribunal;

(b) the Tribunal is not bound to act in a formal manner and is not bound by rules of evidence but may inform itself on any matter in such manner as it thinks fit; and

(c) the Tribunal shall act without regard to technicalities and legal forms.

Represent-
ation of
parties

23. At the hearing of a proceeding a party may appear personally or may be represented by a legal practitioner having the right to practice in the Supreme Court of the Northern Territory of Australia or by any other person authorized in writing by the party.

Admission
of evidence

24. The Tribunal may receive such evidence, including hearsay evidence, in such manner and in such form as the Tribunal sees fit.

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25.(1) The Clerk of each Local Court shall be a Registrar of the Tribunal and his office shall be a registry of the Tribunal. Registrar of the Tribunal

(2) The Clerk of the Local Court situated at Darwin shall be the Principal Registrar of the Tribunal.

26.(1) The Clerk of the Local Court situated nearest to a place where the Tribunal sits shall act as secretary to the Tribunal for the purpose of that sitting. Registrar to act as secretary

(2) Each Registrar shall keep and maintain a register in a form approved by the President in which the Registrar shall cause to be entered particulars of proceedings instituted in his registry.

(3) Each Registrar of the Tribunal, other than the Principal Registrar, shall, as soon as practicable, forward to the Principal Registrar a copy of each entry made in the register kept and maintained by him in pursuance of sub-section (2).

(4) The Principal Registrar shall keep and maintain a register, in a form approved by the President of the Tribunal, in which the Principal Registrar shall cause to be entered particulars of all proceedings instituted in any registry compiled from -

(a) entries made in the register kept and maintained by him in pursuance of sub-section (2); and

(b) copies of entries forwarded to him pursuant to sub-section (3).

27. Where the Tribunal makes an order under this Act, the Registrar of the Tribunal in whose registry the proceeding was instituted shall, upon the application by or on behalf of a party to the proceeding and upon payment of the prescribed fee (if any), issue to or for that person, a certificate in the prescribed form of the order and shall make a minute or memorandum of the issue. Recording of orders

28. A person served with a summons to attend at the Tribunal shall not, after a reasonable sum for his expenses of attendances has been paid or tendered to him, without reasonable excuse, fail to attend the Tribunal or produce any books, documents or other papers in his custody or control that he is required by the summons to produce. Persons summoned to attend

Penalty: \$500.

29.(1) Subject to sub-section (2), a person appearing as a witness before the Tribunal shall not refuse to be sworn or to make an affirmation or to give sworn evidence. Witness to give sworn evidence

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answer a question relevant to the proceeding put to him by the Tribunal.

Penalty: \$500.

(2) A person appearing as a witness before the Tribunal shall not be compellable to answer a question tending to criminate himself.

Offence to give false evidence

30. A witness before the Tribunal shall not knowingly give false testimony touching any matter material to the proceeding.

Penalty: Imprisonment for one year.

Offence to hinder, &c., Tribunal

31. A person shall not hinder, obstruct, deceive or mislead a member of the Tribunal in the discharge of his duties, the exercise of the powers or the performance of his functions under this Act.

Penalty: \$1,000 or imprisonment for 6 months.

PART IV - APPEALS

Party may appeal to Tribunal

32.(1) Where the Commissioner has made a determination under this Act, a person directly affected by the determination may appeal against the determination within 21 days of the service upon him of a notice under section 13.

(2) An appeal under this section is commenced by delivering a notice of appeal to the Registrar of the Tribunal for the area in which the premises are situated.

(3) Where the Registrar receives a notice of appeal under sub-section (2), he shall register the notice and cause a copy to be served on all persons affected by the determination.

(4) Upon the registration of a notice of appeal, the Registrar shall fix a date, and shall give notice of that date to the applicant and to all persons directly affected by the determination.

Hearing of appeal

33.(1) The Tribunal shall hear an appeal on the date on which it is set down for consideration under section 32 or upon a date to which it is adjourned for hearing.

(2) An appeal under this Part shall be by way of rehearing and, in its determination of the appeal, the Tribunal is bound to observe all such considerations and duties as the Commissioner under this Act was bound to observe in making his determination.

(3) A decision by the Tribunal upon an appeal shall take effect from such date as is determined by the Tribunal, not being a date earlier than the date

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upon which the determination of the Commissioner took effect.

34. Upon an appeal to the Tribunal from a determination of the Commissioner, 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 or to be assessed in accordance with the rules.

Tribunal may order costs

PART V - VARIATION OF DETERMINATION

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

Party may apply for variation

(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. 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 -

Restrictions on application for variation

- (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
- (c) 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 VI - PAYMENTS OTHER THAN RENT

37.(1) Subject to this Part a person shall not, whether as principal, agent or in any other capacity -

Premiums, &c., not to be demanded or paid

- (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 -

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- (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; 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: \$1,000 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.

Security
deposits

38.(1) Nothing in section 37 prohibits the taking by a lessor of a sum of money, not exceeding the amount limited by sub-section (2), as security 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 tenant; and
- (c) the payment of any unpaid rent.

(2) A sum of money taken in pursuance of sub-section (1) shall not exceed twice the amount of rent for the term of the tenancy where the term of the tenancy is less than one month or rent for 4 weeks where rent is payable at stated intervals of time.

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39.(1) Where a lessor requires a lessee to pay an amount of money as security in accordance with this Part, the lessee may pay the money to -

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

- (a) the lessor;
- (b) a land agent; 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 sub-section (1) shall be held in trust for the lessee and shall be paid into a bank account so entitled 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: \$1,000 or imprisonment for 6 months.

(3) Where a lessor who is holding money in trust for a lessee pursuant to sub-section (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 sub-section (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 sub-section (1).

Penalty: \$1,000 or imprisonment for 6 months.

(4) Subject to this section, a lessee is entitled to demand and receive reimbursement of any money held by the lessor, a land agent or other person as security upon the termination of the tenancy.

(5) Where a lessee demands reimbursement of any money held by a lessor, a land agent or other person as security the holder of that money shall pay it to the lessee unless -

- (a) the lessor objects; or
- (b) the land agent or other person, as the case may be, receives an objection by the lessor within 7 days of service of a notice of intention to pay upon the lessor.

(6) Where a land agent or other person is the holder of any money as security under this Part and a lessor objects to the payout of a security in accordance with sub-section (5), the land agent or other person, as the case may be, shall hold the security until the Commissioner has made a determination under this section.

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(7) Where the lessor is the holder of any money as security under this Part and he receives a demand from the lessee for reimbursement of that money, the lessor shall -

- (a) return the money to the lessee; or
- (b) refer the matter to the Commissioner for determination in accordance with this section.

(8) Where the Commissioner receives notice under this section, he shall inquire into the matter and may order that such amount (if any) as he considers appropriate having regard to the condition of the premises at the termination of the lease be paid to the lessor and may order the refund of the balance (if any) to the lessee.

Interest on
security
deposit

40. Any interest which may accrue on a security deposit shall be credited to the account with the bank 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 VII - REPOSSESSION OF PREMISES

Interpreta-
tion

41. 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 connexion 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.

Notice to
terminate to
comply with
Part

42.(1) A person shall not, except in accordance with the order of the Tribunal, take possession of or eject a person from premises without the consent, either expressed or implied, of the lessee or occupier.

(2) A person shall not give notice to terminate a tenancy unless the notice complies with the provisions of this Part.

Penalty: \$1,000 or imprisonment for 6 months.

Tenancy

43.(1) Notice to quit given by a lessor or an agent authorized in writing and a notice of intention to quit given by a lessee may expire at any time if the period of the 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 the last day of the period of a tenancy.

Notice may
expire on
any date

(2) A notice of intention to quit premises by a lessee shall be for the duration of a period of the tenancy or for such greater period or shorter period as may be agreed upon between the parties to the lease.

44. Where notice to quit premises has been given -

Certain
matters not
to affect
notice

- (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. 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.

Defective
notice

46.(1) Subject to the terms of a lease where a lease relates to premises, not being a dwelling-house, which is a periodical lease, the lessor is not required to specify in the notice to quit any ground for giving of the notice.

Notice to quit
premises not
being a dwell-
ing house

(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.

Tenancy

Notice to
quit premises
being a
dwelling-
house

47.(1) A notice to quit premises, being a dwelling-house, may not be issued except that it is issued on a ground prescribed in this section and is given for not less than the period prescribed in this section.

(2) The grounds and the length of period of a notice required by sub-section (1) are -

- (a) that the lessee has failed to pay rent for the term or, in the case of a periodical lease, for a period of the lease 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 14 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 convicted 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 -

Tenancy

- (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 which ever 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 and are reasonably required for the personal occupation in consequence of that contract of employment with some other person employed or about to be employed by the lessor in the place of the lessee 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 3 months;
 - (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 sub-sections (2)(h), (i) or (k).

48.(1) Where a lessor or an agent authorized in writing has given to a lessee a notice to quit which complies with this Part, he may, at any time within 60 days after the expiring of the term of the notice, apply to the Tribunal for a warrant authorizing the ejection of the lessee.

Application for
for a warrant
of ejection

Tenancy

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

- (a) may be in or to the effect of Form 1 of Schedule 3;
- (b) shall be forwarded to the Registrar; and
- (c) shall be served on the lessee.

(3) Where the Registrar receives an application under sub-section (2) he shall register the application and appoint a date for hearing of the application by the Tribunal.

(4) The Registrar shall cause notice to be given or served on the lessee of the date appointed for the hearing of the application.

(5) On the date appointed under sub-section (4) for the hearing of the application -

- (a) if the lessee does not appear, the Tribunal may, upon proof of due service of the notice to quit, the application and the notice of the date appointed for the hearing of the application, issue a warrant authorizing the ejectment of the lessee from the premises; or
- (b) if the lessee appears the Tribunal may proceed to hear and determine the application,

or in either case may adjourn the application to a later date or time.

(6) A warrant authorizing the ejectment of a lessee shall be as in Form 2 of Schedule 3.

(7) Where the Tribunal proceeds to hear and determine an application in accordance with sub-section (5), the Tribunal shall make an order terminating the agreement and an order for possession of the premises if it is satisfied -

- (a) that notice to quit was given by the lessor or lessee to the other and that it complied with and was given in accordance with this Act; and
- (b) where the notice was given by the lessor upon a particular ground prescribed by this Act that the lessor has established that ground and, in the case of a notice given upon the ground of a breach by the tenant of a term of the agreement, that breach is in the circumstances of the case such as to justify termination of the agreement.

(8) Notwithstanding the provisions of sub-section (7) the Tribunal may -

Tenancy

- (a) suspend the operation of orders made under sub-section (7) for a period not exceeding 90 days if it is satisfied that it is desirable to do so having regard to the relative hardship that would be caused to the lessor or to the lessee; or
- (b) refuse to make orders under that sub-section if it is satisfied that in the case of notice given by the lessor upon the grounds of a breach by the lessee that the lessee has remedied the breach.

49. Subject to this Part, where the Tribunal makes an order for possession of premises under section 48(7), the Tribunal shall specify the day as from which the order shall operate not being more than 7 days after the day on which the order is made.

Warrant not to operate for 7 days

50. The Tribunal 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.

Tribunal may make orders for outstanding rent, &c.

51.(1) The Tribunal may, upon an application of a lessor of a dwelling-house made -

Immediate warrant in certain circumstances

- (a) at the time of an application under section 48(1); or
- (b) at any time where written notice of intention to make the application has been given to the tenant,

terminate the agreement if it is satisfied that -

- (c) in a case referred to in paragraph (a) - the notice is sufficient in the circumstances; and
- (d) in any case -
 - (i) the tenant has intentionally or recklessly caused damage to the dwelling-house;
 - (ii) the tenant has permitted damage to be caused to the dwelling-house;
 - (iii) the tenant is likely, intentionally or recklessly, to cause damage to the dwelling-house;
 - (iv) the tenant has caused or is likely to cause injury to the lessor, his agent or a person in occupation of or permitted on adjacent premises; or
 - (v) the tenant has established a pattern of failure to pay rent under the lease or under any other lease of a dwelling-house.

Tenancy

(2) Where the Tribunal terminates a lease of a dwelling-house under this section the Tribunal shall also make an order for possession of the premises of immediate effect.

(3) An application under this section shall not require notice to quit to be served upon the lessee but may be instituted upon an application in writing given to the Registrar by the lessor.

(4) An application under sub-section (1) may be made by a lessor ex parte to a member of the Tribunal.

PART VIII - MISCELLANEOUS

Interpreta-
tion

52. In this Part unless the contrary intention appears the word "premises" includes all premises leased for business or residential purposes.

Distress
for rent
abolished

53. After the commencement of this Act a person shall not levy or make distress for rent of premises or for a sum of money for the use of premises.

Rent in
advance
limited

54. 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; or

(b) where the tenancy is a periodical tenancy, one period of that tenancy.

Implied terms

55. Every lease of premises, written or otherwise, shall be read as including as terms of that lease the terms set out in Schedule 4.

Mitigation
of damages
for breach of
lease

56. 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.

Premises may
be sub-let

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

(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.

Lessee to be
given a copy
of a written
lease

58.(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;

Tenancy

(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: \$200.

(2) If a lessor fails to comply with sub-section (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. 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.

Lessor to
supply
Inventory

Penalty: \$200.

60. 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 tenant is liable to pay -

Certain terms
void

- (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.(1) Subject to sub-section (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.

Periodical
tenancy

(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.

Tenancy

Application for a warrant to evict a trespasser 62.(1) The owner of premises or his agent authorized in writing may apply to the Tribunal for the issue of a warrant authorizing the ejection of a trespasser from the premises.

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

(a) may be made ex parte to a member of the Tribunal in chambers; and

(b) may be made in or to the effect of Form 3 in Schedule 3.

(3) The Crown is an owner of premises for the purpose of this section and section 63.

Tribunal
may issue
warrant

63.(1) Where, upon the sworn evidence of the owner or his agent, the Tribunal is satisfied -

(a) that, prima facie, an applicant under section 62 has a right to the immediate possession of the premises; and

(b) that there are reasonable grounds for believing that a person is a trespasser on the premises,

the Tribunal may issue a warrant in the effect of form 5 in Schedule 3 or a notice requiring the person named therein to appear and show cause on a day after the expiration of 7 days from the date of the notice why a warrant should not issue authorizing his ejection from the premises.

(2) A notice issued under sub-section (1) may be in or to the effect of Form 4 in Schedule 3 and shall be served on the person to whom it is directed.

(3) If a person to whom a notice is directed in pursuance of sub-section (1) fails to appear before the Tribunal in accordance with the notice, the Tribunal may, upon proof that the notice was served on that person, issue a warrant in or to the effect of Form 5 in Schedule 3 authorizing the ejection of that person.

(4) If a person to whom a notice is directed in pursuance of sub-section (1) appears to answer a notice, the Tribunal shall hear the evidence presented by the owner of the premises or his agent and by the person to whom the notice is directed and make, if he is satisfied that the owner is entitled to the immediate occupation of the premises and that the person to whom the notice was directed is a trespasser, issue a warrant in or to the effect of Form 5 in Schedule 3 authorizing the ejection from the premises of the person to whom the notice was directed and any other person who is unable to satisfy the member of the Police Force executing the warrant that he has a lawful reason for being in those premises.

Tenancy

(5) Upon the hearing of an application under section 62 the Tribunal may make such order for costs as it thinks fit and shall make an order for the payment of costs by an owner or his agent where he refuses to grant a warrant and is satisfied that the owner improperly proceeded under this Part instead of proceeding under Part VII.

64.(1) A person who -

Offences
generally

- (a) does an act or a 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 that provision otherwise provides that he is guilty of an offence against this Act, guilty of an offence against this Act by virtue of this sub-section.

(2) A person who is guilty of an offence against this Act by virtue of sub-section (1) is punishable, upon conviction, by a penalty not exceeding \$500.

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

Powers of
entry and
inspection

66.(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.

Refusal to let
dwelling-house
to applicant
with family
prohibited

(2) In any prosecution for an offence arising under sub-section (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 tenant of the dwelling-house whether -

Tenancy

- (a) the prospective tenant has any children; or
- (b) it is intended that a child shall live in the dwelling-house if it is let to that prospective tenant.

(5) In any prosecution for an offence arising under sub-section (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: \$1,000 or imprisonment for 6 months.

Records of
rent

67.(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.

(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 request under this section may be made orally or in writing.

Regulations

68. 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.

Tenancy

SCHEDULE 1

Section 3(1)

REPEALED ORDINANCES

Landlord and Tenant (Control of Rents) Ordinance 1949
(No. 16, 1949)

Landlord and Tenant (Control of Rents) Ordinance 1953
(No. 3, 1953)

Landlord and Tenant (Control of Rents) Ordinance 1954
(No. 21, 1953)

Landlord and Tenant (Control of Rents) Ordinance 1963
(No. 5, 1964)

Landlord and Tenant (Control of Rents) Ordinance 1965
(No. 50, 1965)

Landlord and Tenant (Control of Rents) Ordinance 1968
(No. 45, 1968)

Landlord and Tenant (Control of Rents) Ordinance 1969
(No. 21, 1969)

Landlord and Tenant (Control of Rents) Ordinance 1970
(No. 14, 1970)

Landlord and Tenant (Control of Rents) Ordinance 1972
(No. 28, 1972)

Landlord and Tenant (Control of Rents) Ordinance 1973
(No. 83, 1973)

Landlord and Tenant (Control of Rents) Ordinance 1974
(No. 8, 1974)

Landlord and Tenant (Control of Rents) Ordinance 1976
(No. 6, 1976)

Landlord and Tenant (Control of Rents) Ordinance 1978
(No. 42, 1978)

Tenancy

SCHEDULE 2

REPEALED ACT

Landlord and Tenant Act, No. 580 of 1893 of the State
of South Australia

SCHEDULE 3

Form 1

Tenancy Act

Section 48(1)

Application for Warrant of Ejectment

I, _____ of _____
in the Northern Territory, being the lessor (or the authorized
agent of the lessor, as the case may be,) of premises at _____
_____ in the Northern Territory
of which _____ of _____
_____ is the lessee, having duly
given on the _____ day of _____, 19____
to the said lessee a notice to quit the said premises, which
notice complies in all respects with the Tenancy Act and has now
expired, hereby apply for a warrant authorizing the ejectment of
the said _____ from the
said premises.

Dated this _____ day of _____, 19____

(Signed)

Tenancy

Form 2

Tenancy Act

Section 48(6)

Warrant of Ejectment

To: All members of the Police Force.

Whereas _____ of _____
applied on the _____ day of _____, 19 ____ to
the Tenancy Tribunal for a warrant authorizing the ejectment of

_____ formerly a tenant of premises at _____
and whereas on the _____ day of _____, 19 ____ the
Tenancy Tribunal heard the said application and ordered that a
warrant authorizing the ejectment of the said _____
from the said premises should issue.

Now you are authorized and commanded on the _____
day of _____, 19 ____ or thereafter but before the
day of _____, 19 ____ between the hours of 9 o'clock
in the forenoon and 4 o'clock in the afternoon with or without
the aid of the said _____
to enter (by force if necessary) the said premises and to eject
the said _____ therefrom
and deliver to the said _____
full and peaceable possession of the said premises and for so
doing this shall be your sufficient warrant.

Dated this _____ day of _____, 19 ____

Tribunal Member

Tenancy

Form 3

Tenancy Act

Section 62(2)(b)

Application for Warrant

I, _____ of _____
in the Northern Territory apply in respect of premises situate at _____
for a Warrant authorizing
the ejection from those premises of _____
a trespasser.
The grounds upon which I claim that the said _____
is a trespasser are:-

Dated this _____ day of _____, 19 _____

(Signed)

Form 4

Tenancy Act

Section 63(2)

Notice to Show Cause

Whereas _____ of _____
has applied to me _____ a Member of
the Tenancy Tribunal for a warrant authorizing your ejection from premises at _____

And Whereas he claims to be entitled to immediate possession of those premises;

Now therefore take notice that unless you appear before me at _____
o'clock in the _____ noon on _____
at the Court House at _____ and satisfy me
that you are entitled to immediate possession of the said premises
or that he is not entitled to immediate possession of the said
premises, a warrant will be issued authorizing your ejection
from the said premises by force if necessary.

Dated this _____ day of _____, 19 _____

Tribunal Member

Tenancy

Form 5

Tenancy Act

Section 63(3), (4)

Warrant of Possession

To: All members of the Police Force.

Whereas _____ of
applied on the _____ day of _____
19 _____ for a warrant authorizing the ejection of _____
from premises at _____
on the ground that the said
was a trespasser on those
premises:

And Whereas notice calling on the said
to show cause why a warrant authorizing the ejection of the
said _____ from the premises
should not issue was duly served on the said _____
on the _____ day of _____
, 19 _____ :

And Whereas I am satisfied that the said
is entitled to the immediate possession of the said premises:

Now you are authorized and commanded on the
day of _____, 19 _____ or thereafter but before the
_____ day of _____, 19 _____ between the hours
of 9 o'clock in the forenoon and 4 o'clock in the afternoon with
or without the aid of the said _____ to enter (by
force if necessary) the said premises and to eject the said
therefrom and deliver
to the said
full and peaceable possession of the premises and for so doing
this shall be your sufficient warrant.

Dated this _____ day of _____, 19 _____

Tribunal Member

Tenancy

SCHEDULE 4

Section 55

IMPLIED COVENANTS AND CONDITIONS

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;

Tenancy

- (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 Consumer Affairs 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.
-