

Serial 261
Residential Tenancies Amendment Bill 2004
Dr Toyne

**A BILL
for
AN ACT**

to amend the *Residential Tenancies Act*

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NORTHERN TERRITORY OF AUSTRALIA
RESIDENTIAL TENANCIES AMENDMENT ACT 2004

No. of 2004

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

AN ACT

to amend the *Residential Tenancies Act*

[Assented to 2004]
[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Residential Tenancies Amendment Act 2004*.

2. Commencement

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

3. Principal Act amended

This Act amends the *Residential Tenancies Act*.

4. Amendment of section 4 (Definitions)

Section 4 –

insert (in alphabetical order)

"condition report" has the meaning in section 24A(1);

5. Amendment of section 16 (Tenancy Trust Account)

- (1) Section 16(1)(a) –

omit

Commissioner; and

substitute

Commissioner;

- (2) Section 16(1)(b) –

omit

obligations.

substitute

obligations; and

- (3) After section 16(1)(b) –

insert

(c) providing tenants with advisory and legal services (including advocacy).

6. Amendment of section 24 (Landlord cannot impose extra charges or liabilities)

After section 24(2) –

insert

(2A) Subsection (1) does not prevent a landlord from requiring or receiving from a tenant payment of a debt, owed in respect of a tenancy, as a condition of the granting, renewal or extension of a tenancy.

7. Amendment of Part 5, Division 1 heading

Part 5, Division 1 heading –

omit

may be provided at beginning of tenancy

8. New section 24A

Before section 25 in Part 5, Division 1 –

insert

24A. Condition reports generally

(1) A condition report is a report about the condition of residential premises that is made –

- (a) entirely in writing, in the manner and containing the information required under this Act;
- (b) partly in writing and partly by using images; or
- (c) entirely by using images.

(2) The Regulations may provide for matters relevant to the making of a condition report partly or entirely by using images.

(3) The Regulations may modify specified provisions of this Act in their application to condition reports made partly or entirely by using images.

(4) An image used in making a condition report may be recorded in a photograph, on video or film or by any other mechanical, electronic, digital or similar method of making a visual record.

9. Amendment of section 25 (Condition report at beginning of tenancy)

Section 25(1) –

omit, substitute

(1) No later than 3 business days after a tenant takes possession of premises to which a tenancy agreement relates, the landlord may give the tenant a signed condition report.

10. Amendment of section 26 (Acceptance of condition report with or without modifications)

(1) Section 26(1) –

omit

the copies of the

substitute

a

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- (2) Section 26(1)(a) –

omit

both copies and returning one of the copies

substitute

it and returning it

- (3) Section 26(1)(b) –

omit

both copies of the condition report, initial the modifications and return both copies

substitute

the report, initial the modifications and return the report

- (4) Section 26(3), (4) and (5) –

omit, substitute

(3) Within 5 business days after a landlord receives a condition report modified by the tenant under subsection (1)(b), the landlord may –

(a) accept the report as modified by the tenant by initialling the modifications and, without making further modifications, return a copy of the report to the tenant;

(b) reach agreement with the tenant as to the contents of the report and accept the report by having both parties initial all modifications to the report that are accepted by them; or

(c) apply to the Commissioner under section 27.

(4) If, within the period referred to in subsection (3), the landlord does not take action under that subsection and the tenant does not apply to the Commissioner under section 27, the landlord is taken to have accepted the condition report as modified by the tenant.

11. Amendment of section 27 (Commissioner may prepare condition report if no agreement)

Section 27(1) –

omit, substitute

(1) If a landlord and tenant are unable to reach agreement under section 26(3)(b), either party may, within 5 business days after the landlord receives the condition report modified by the tenant, apply to the Commissioner to prepare a condition report.

12. Repeal of sections 87 and 88

Sections 87 and 88 –

repeal

13. Amendment of section 88A (Where drug premises order made)

After section 88A(3) –

insert

(4) An agreement referred to in subsection (2) includes a lease in relation to which the *Tenancy Act* continues to apply by virtue of section 160(2).

14. Repeal of section 93

Section 93 –

repeal

15. New Part 11, Division 3A

After section 96 –

insert

Division 3A – Notice of intention to terminate for failure to remedy breach

96A. Tenant's failure to pay rent

(1) This section applies if a tenant breaches a term of a tenancy agreement by failing to pay rent and the rent has been in arrears for not less than 14 days.

(2) The landlord may give the tenant a notice, signed by the landlord, stating the following:

- (a) the address of the premises to which the tenancy agreement relates;
- (b) the tenant is in breach of the tenancy agreement by failing to pay rent in accordance with the agreement and the rent is in arrears;
- (c) the amount of rent payable by the tenant in order to remedy the breach and any prescribed information relevant to that amount;

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- (d) the tenant is required to remedy the breach before the date specified in the notice (which must be more than 7 days after the notice is given);
 - (e) if the tenant does not remedy the breach as required, the landlord intends to apply to the Commissioner or a court for an order for termination of the tenancy and possession of the premises.
- (3) The notice has effect even if the landlord has not previously made a formal demand for payment of the rent.
- (4) If any of the following occurs after the landlord becomes aware of the tenant's breach or has given the tenant the notice, the occurrence does not operate as a waiver of the breach or notice:
- (a) a demand by the landlord for payment of rent;
 - (b) an application by the landlord to the Commissioner for recovery of rent;
 - (c) an acceptance by the landlord of a payment of rent.
- (5) If the tenant does not remedy the breach as required by the notice, the landlord may apply under section 100A for an order for termination of the tenancy and possession of the premises.
- (6) The landlord must make the application no later than 14 days after the date specified in the notice under subsection (2)(d).
- (7) For subsection (2)(c), the Regulations may prescribe information that must be given in the notice, including information about any of the following:
- (a) the method of calculation of rent arrears;
 - (b) the method of calculation of the amount of rent payable in order to remedy the breach;
 - (c) the date on which rent was last paid;
 - (d) the date on which rent will next be payable after the breach is remedied.

96B. Other breach by tenant

- (1) This section applies if a tenant breaches a term of a tenancy agreement (other than a term relating to payment of rent) that –
- (a) is a term of the agreement by virtue of this Act; or

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- (b) is specified to be a term a breach of which permits the landlord to terminate the agreement.

(2) The landlord may give the tenant a notice, signed by the landlord, stating the following:

- (a) the address of the premises to which the tenancy agreement relates;
- (b) the tenant is in breach of the tenancy agreement;
- (c) the nature of the breach;
- (d) the tenant is required to remedy the breach, or take steps to the landlord's satisfaction to do so, before the date specified in the notice (which must be more than 7 days after the notice is given);
- (e) if the tenant does not remedy the breach or take steps to the landlord's satisfaction to do so, as required, the landlord intends to apply to the Commissioner or a court for an order for termination of the tenancy and possession of the premises.

(3) If the tenant does not remedy the breach or take steps to the landlord's satisfaction to do so, as required by the notice, the landlord may apply under section 100A for an order for termination of the tenancy and possession of the premises.

(4) The landlord must make the application no later than 14 days after the date specified in the notice under subsection (2)(d).

96C. Breach by landlord

(1) This section applies if a landlord breaches a term of a tenancy agreement that –

- (a) is a term of the agreement by virtue of this Act; or
- (b) is specified to be a term a breach of which permits the tenant to terminate the agreement.

(2) The tenant may give the landlord a notice, signed by the tenant, stating the following:

- (a) the address of the premises to which the tenancy agreement relates;
- (b) the landlord is in breach of the tenancy agreement;
- (c) the nature of the breach;

- (d) the landlord is required to remedy the breach, or take steps to the tenant's satisfaction to do so, before the date specified in the notice (which must be more than 7 days after the notice is given);
- (e) if the landlord does not remedy the breach or take steps to the tenant's satisfaction to do so, as required, the tenant intends to apply to the Commissioner or a court for an order for termination of the tenancy and permitting the tenant to give up possession of the premises.

(3) If the landlord does not remedy the breach or take steps to the tenant's satisfaction to do so, as required by the notice, the tenant may apply under section 100A for an order terminating the tenancy and permitting the tenant to give up possession of the premises.

(4) The tenant must make the application no later than 14 days after the date specified in the notice under subsection (2)(d).

16. Amendment of Part 11, Division 4 heading

Part 11, Division 4 heading, after "*court*" –

insert

or Commissioner

17. New section 100A

After section 100 in Part 11, Division 4 –

insert

100A. Failure to remedy breach after notice given

(1) The Commissioner or a court may, on the application of a landlord, terminate a tenancy and make an order for possession if satisfied that the tenant –

- (a) has been given a notice in accordance with section 96A or 96B; and
- (b) has failed to remedy the breach as required by the notice.

(2) The Commissioner or a court may, on the application of a tenant, make an order terminating a tenancy and permitting the tenant to give up possession of the premises if satisfied that the landlord –

- (a) has been given a notice in accordance with section 96C; and
- (b) has failed to remedy the breach as required by the notice.

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(3) An order for possession has effect on the date specified in the order, which must be no later than 5 business days after the date of the order, unless the operation of the order is suspended under section 105.

18. Amendment of section 104 (Commissioner or court may make order for possession)

Section 104(1) –

omit

under this Act

substitute

by a notice of termination under section 101

19. Amendment of section 107 (Right to possession not lost by forfeiture of head tenancy)

Section 107(1)

omit

the Commissioner or

20. Amendment of section 110 (Condition report at end of tenancy)

(1) Section 110(1) –

omit

2 copies of a condition report and give both copies

substitute

a condition report and give it

(2) Section 110(3) –

omit

all the words from and including "relates –" to and including "tenant."

substitute

relates, fill out and sign a condition report and give it to the tenant by posting it to the last known residential, business or postal address of the tenant.

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- (3) Section 110(5)(a) –

omit

both copies of the report and returning one

substitute

the report and returning it

- (4) Section 110(6) –

omit

2 copies of the condition report have been given to a tenant under subsection (3)

substitute

the condition report has been given to a tenant under subsection (1) or (3)

21. Amendment of section 112 (When landlord may keep security deposit)

Section 112(4)(b) –

omit, substitute

- (b) if the tenant has given up vacant possession of the premises or has, in the opinion of the landlord, apparently abandoned the premises – a condition report has been given to the tenant under section 110.

22. Amendment of section 129 (Conduct of proceedings on Commissioner's behalf)

Section 129(4) –

omit

10

substitute

5

23. Amendment of section 138 (Powers of Commissioner at inquiry)

After section 138(g) –

insert

(ga) order that a tenancy is terminated;

24. Amendment of section 154 (Service of notices)

Section 154(a), after "residence" –

insert

or postal address

25. Amendment of section 160 (Continued application of *Tenancy Act*)

Section 160(1) –

omit

Part

substitute

Part and section 88A

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