



AUSTRALIAN CAPITAL TERRITORY

Landlord and Tenant (Amendment) Act 1991

No. 24 of 1991

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No. 24 of 1991

An Act to amend the *Landlord and Tenant Act 1949*

[Notified in ACT Gazette S 44: 4 June 1991]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Landlord and Tenant (Amendment) Act 1991*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Landlord and Tenant Act 1949*.¹

Long title

4. The title of the Principal Act is amended by omitting all the words after “Act” and substituting “relating to the leasing of residential premises”.

Interpretation

5. Section 8 of the Principal Act is amended by inserting in subsection (1) the following definition:

“ ‘Director’ means the Director of Rental Bonds appointed under section 62AB;”.

Certain payments prohibited

6. Section 36 of the Principal Act is amended by inserting after subsection (5) the following subsection:

“(5A) Subsection (1) does not apply in relation to the Director in respect of an act or thing done by the Director in his or her capacity as the Director.”.

Repayment of excess bond money

7. Section 41 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) all the words from and including “the person” to and including “acted,” and substituting “the lessee”;
- (b) by omitting from subsection (1) “the person who paid the bond may, by notice in writing, require the lessor of those premises” and substituting “the lessee may apply in writing to the Director”; and
- (c) by omitting subsection (2) and substituting the following subsections:

“(2) The Director may approve or refuse to approve an application under subsection (1).

“(2A) Where the Director is satisfied of the existence of the matters referred to in paragraphs (1) (a) and (b), the Director shall—

- (a) pay to the lessee an amount of bond in accordance with paragraph (1) (c) or (d), as the case requires; and

- (b) notify the lessor in writing of the amount of the payment and date on which it was made.

“(2B) Where the Director refuses to approve an application under subsection (1), the Director shall notify the lessee in writing of the decision.

“(2C) A notice under subsection (2A) or (2B) shall contain a statement to the effect that the lessor or lessee, as the case requires, may file a claim in the Court if he or she wishes to dispute the decision of the Director.

“(2D) In subsection (2C)—

‘Court’ has the same meaning as in Part IIAA.”.

Insertion

- 8. After section 62 of the Principal Act the following Part is inserted:

“PART IIAA—RENTAL BONDS

Interpretation

“62AA. (1) In this Part—

‘approved mediator’ means a person approved under section 62AD to be a mediator for the purposes of this Part;

‘Court’ means the Magistrates Court when, as the Small Claims Court, that Court is exercising jurisdiction under this Part;

‘movable dwelling’ means—

- (a) any caravan or other portable device (whether on wheels or not), used for human habitation; or
- (b) any conveyance, structure or thing constructed on and transportable, in one or more parts, by means of its own chassis;

‘Trust Fund’ means the separate account called the Trust Fund kept under section 82 of the *Audit Act 1989*.

“(2) A reference in this Part to prescribed premises is to be read as including a reference to a movable dwelling, or the site on which a movable dwelling is situated or is intended to be situated (or both the movable dwelling and the site), if the movable dwelling is used or intended for use as a place of residence.

Director of Rental Bonds

“62AB. The Minister may appoint a public servant to be the Director of Rental Bonds.

Delegation

“62AC. The Director may delegate in writing to a public servant all or any of his or her powers under this Part.

Approved mediator

“62AD. The Minister may, by instrument, approve persons to be mediators for the purposes of this Part.

Deposit of rental bonds with Director

“62AE. (1) Where, before the commencement of the *Landlord and Tenant (Amendment) Act 1991*, a lessor under a lease or proposed lease of prescribed premises received a deposit or payment of money that, if it had been received after that commencement, would have been a bond and the money or its equivalent, as at that commencement—

- (a) has not been refunded or become refundable;
- (b) has not become the property of that lessor; or
- (c) is not subject to proceedings in a court;

that lessor shall, notwithstanding the terms of any agreement, any rule of law or the provisions of any other Act, deposit with the Director, within the period of 3 months after that commencement—

- (d) an amount of money equivalent to the amount deposited or paid; and
- (e) a notice in accordance with subsection (5).

“(2) Where, after the commencement of the *Landlord and Tenant (Amendment) Act 1991*, a lessor receives a bond for a lease or proposed lease of prescribed premises, that lessor shall, notwithstanding the terms of any agreement, rule of law or the provisions of any other Act, deposit with the Director—

- (a) an amount of money equivalent to the amount of that bond; and
- (b) a notice in accordance with subsection (5);

before the expiration of the prescribed period after—

- (c) the date of receipt of the bond; or

- (d) the date on which the lease became, or the proposed lease becomes, binding on the parties;

whichever is the later date.

“(3) Subsection (1) does not apply to a bond—

(a) that—

- (i) is refunded or becomes refundable;
- (ii) becomes the property of a lessor; or
- (iii) becomes subject to proceedings in a court;

during the period referred to in subsection (1); or

- (b) that is refundable within 14 days after the end of the period referred to in subsection (1).

“(4) In subsection (2)—

‘prescribed period’ means—

- (a) the period of 10 days; or
- (b) if another period is prescribed—that period.

“(5) A notice under paragraph (1) (e) or (2) (b) shall be in a form approved by the Director and shall specify—

- (a) the name and address of the lessor and the lessee;
- (b) the address of the premises the subject of the lease in respect of which the amount was tendered;
- (c) the amount of rent payable under the lease in respect of a week; and
- (d) the amount of the bond paid by the lessor or proposed lessor to the Director.

“(6) A person who, without reasonable excuse, contravenes subsection (1) or (2) is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000.

Condition of premises

“62AF. (1) Where a lessor receives payment of a bond by a lessee, the lessor shall, not later than the day next after the lessee has taken possession of the premises to which the bond relates, give to the lessee 3 copies of a report signed by or on behalf of the lessor as to the state of repair or general condition of the premises and of any goods leased with the premises the subject of the lease as at that day.

“(2) A report under subsection (1) shall be in a form approved by the Director.

“(3) A lessee who receives copies of the report referred to in subsection (1) shall, within 3 days after receiving the copies, return 2 of the copies to the lessor, either—

- (a) signed by or on behalf of the lessee; or
- (b) bearing an endorsement, signed by or on behalf of the lessee, that indicates whether the lessee agrees or disagrees with the report, as a whole or as to specified parts of it.

“(4) Where a report is signed by or on behalf of a lessee, without further endorsement, it shall be taken that the lessee agrees with all matters stated in the report.

“(5) Upon receipt from a lessee of 2 copies of a report referred to in subsection (1) the lessor shall give one of the copies to the Director.

“(6) A person who, without reasonable excuse, contravenes subsection (1) or (5) is guilty of an offence punishable, on conviction, by a fine not exceeding \$500.

“(7) A person is not liable to be prosecuted for a contravention of subsection (3).

Evidentiary provision concerning condition of premises

“62AG. (1) Where the provisions of subsections 62AF (1) and (3) have been complied with, a statement in a copy of a report referred to in section 62AF (other than a statement in respect of which the lessee has, by endorsement on the copy, indicated his or her disagreement as to the state of repair or general condition of the premises and of any goods leased with the premises to which the lease relates), is evidence of that state of repair or general condition as at the day on which the report was given to the lessee.

“(2) Where—

- (a) subsection 62AF (1) has been complied with; and
- (b) subsection 62AF (3) has not been complied with;

a statement in a copy of a report referred to in section 62AF as to the state of repair or general condition of the premises and of any goods leased with the premises to which the lease relates, is evidence of that state of repair or general condition as at the day on which the report was given to the lessee.

“(3) Where the provisions of subsection 62AF (1) have not been complied with, evidence by a lessee as to the state of repair or general condition of the premises and of any goods leased with the premises to which the lease relates is evidence of that state of repair or general condition as at the day on which the lessee obtained possession of the premises.

“(4) Subsections (1), (2) and (3) apply only for the purposes of proceedings in the Court.

“(5) Subsection (1) does not apply in relation to a lack of repair or condition of premises or goods, or a part of those premises or goods, that could not have been discovered on a reasonable inspection of the premises or goods.

Notice of receipt of bond money

“62AH. Where the Director accepts an amount of bond tendered under subsection 62AE (1) or (2), the Director shall give the lessee a copy of a notice referred to in paragraph 62AE (1) (e) or (2) (b).

Bonds paid in instalments

“62AJ. Where a bond is paid by instalments to a person as lessor, section 62AE applies in relation to each instalment paid as if the instalment were the bond.

Payment of bond money into Trust Fund

“62AK. (1) The Director shall pay all bond money received by the Director under this Part to the credit of the Trust Fund.

“(2) Money paid under subsection (1) standing to the credit of the Trust Fund (other than interest on that money) shall, subject to section 62AV, be applied only in the payment of bond money in accordance with section 41 and this Part.

Interest

“62AL. (1) Interest received from the investment of any money paid to the credit of the Trust Fund under this Part shall—

- (a) be paid to the Consolidated Revenue Fund until an amount so paid is equal to any amount appropriated for the purposes of this Part; and
- (b) after an amount referred to in paragraph (a) has been paid into the Consolidated Revenue Fund—be applied for a prescribed purpose.

“(2) For the purposes of paragraph (1) (b), the regulations may provide that interest received from the investment of any money paid to the credit of the Trust Fund under this Part may be applied for the purposes of—

- (a) the provision of landlord and tenant information programs; or
- (b) facilitating assistance in the provision of residential accommodation, whether or not that accommodation is provided pursuant to this Act.

Requests for payment of bond money

“62AM. (1) Application may be made by a lessor or a lessee, or jointly by a lessor and a lessee, to the Director for payment out of the Trust Fund of an amount of bond money in respect of a lease.

“(2) An application shall be in writing in a form approved by the Director.

Notification of application

“62AN. (1) Where an application is made under section 62AM by a lessor, the Director shall give notice in writing of the receipt of that application to the lessee.

“(2) Where an application is made under section 62AM by a lessee, the Director shall give notice in writing of the receipt of that application to the lessor.

Payments where no dispute

“62AP. (1) If a lessee to whom notice has been given under subsection 62AN (1) does not, within 10 days after the date on which the notice was given, notify the Director in writing that he or she disputes the lessor’s claim, the Director shall cause the amount of bond money to which the lessor is entitled to be paid out of the Trust Fund to the lessor in accordance with the relevant application.

“(2) If a lessor to whom notice has been given under subsection 62AN (2) does not, within 10 days after the date on which the notice was given, notify the Director in writing that he or she disputes the lessee’s claim, the Director shall cause the amount of bond money to which the lessee is entitled to be paid out of the Trust Fund to the lessee in accordance with the relevant application.

“(3) If a joint application is made under subsection 62AM (1) the Director shall, subject to this Part, cause payment out of the Trust Fund of an amount of bond money to be made in accordance with that application.

Procedure on dispute

“62AQ. (1) Where the Director is notified in writing by a lessor or lessee that he or she disputes the claim of the lessee or lessor, respectively, under section 62AN (wholly or in part), the Director shall forthwith refer the dispute to an approved mediator.

“(2) An approved mediator to whom a dispute is referred under subsection (1) shall, as soon as practicable—

- (a) invite the parties to the dispute to confer with him or her in an endeavour to resolve the dispute;
- (b) endeavour to make arrangements with the parties regarding a time and place for a conference; and
- (c) if both parties attend, conduct the conference.

Partial dispute

“62AR. Where—

- (a) an application is made under section 62AM by a lessor or lessee in relation to an amount of bond money; and
- (b) either has notified the Director under 62AQ (1) about a dispute in relation to part only of the other’s claim;

the amount by which the amount of bond money exceeds the amount that is the subject of dispute shall be dealt with in accordance with subsection 62AP (1) or (2), as the case requires.

Proceedings

“62AS. (1) The Court has jurisdiction to hear and determine a claim by a lessor or lessee in relation to an amount of bond money standing to the credit of the Trust Fund.

“(2) The *Small Claims Act 1974* applies in relation to proceedings on a claim referred to in subsection (1) as if those proceedings were proceedings under that Act.

“(3) The Director shall be the respondent to proceedings under this Part and, in the application of the *Small Claims Act 1974* by virtue of subsection (2), references in that Act to the defendant shall, in relation to those proceedings, be read as references to the respondent.

“(4) Where proceedings under this Part have been instituted, the Court shall not proceed to conduct an inquiry into the matters at issue in those proceedings unless the claimant has filed with the Clerk of the Court a certificate by the relevant approved mediator to the effect that the mediator has invited the parties to the relevant dispute to a conference pursuant to section 62AQ.

Conference without prejudice

“62AT. In proceedings under this Part, evidence shall not be given, and statements shall not be made, concerning any words spoken or act done at a conference held under section 62AQ if the words spoken or act done related to any question to be determined by the Court in the proceedings.

Payment following proceedings

“62AU. (1) Where, in proceedings under this Part, the Court has given judgment or made an order for the payment of an amount of bond money, the Clerk of the Court shall cause a copy of that judgment or order to be served on the Director.

“(2) On receiving a copy of a judgment or order pursuant to subsection (1), the Director shall cause the amount of bond money specified in the judgment or order to be paid out of the Trust Fund in accordance with the judgment or order.

Unclaimed bond money

“62AV. Where bond money paid into the Trust Fund under this Part has stood to the credit of the Trust Fund for a continuous period of not less than 6 years after the date of termination of the lease in respect of which the money was paid, without any application having been made under section 62AM, and the purpose for which that money is being held is no longer capable of being fulfilled, that money shall for the purposes of section 62AL be taken to be interest received from money standing to the credit of the Fund.

Annual report

“62AW. The Director shall furnish to the Minister for presentation to the Legislative Assembly a report relating to the activities of the Director during each financial year.”.

Offences

9. Section 96 of the Principal Act is amended by omitting “\$500” and substituting “\$5,000”.

Insertion

10. After section 96 of the Principal Act the following section is added:

Regulations

“97. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.”.

Application

11. Section 62AF of the Principal Act, as amended by this Act, does not apply in relation to a lease or proposed lease entered into before the commencement of this Act.

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NOTE

1. Ordinance No. 6, 1949 as amended by No. 10, 1952; No. 3, 1957; No. 19, 1966; No. 36, 1972; Nos. 18, 33 and 51, 1973; No. 67, 1976; Commonwealth Act No. 74, 1981; Nos. 18 and 76, 1984; No. 67, 1985; No. 31, 1986; Nos. 21 and 38, 1989.

[Presentation speech made in Assembly on 2 May 1991]

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