

Australian Capital Territory

Residential Tenancies Act 1997

A1997-84

Republication No 8

Effective: 1 September 2004 – 9 January 2005

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Last amendment made by A2004-13

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Residential Tenancies Act 1997* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 September 2004. It also includes any amendment, repeal or expiry affecting the republished law to 1 September 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

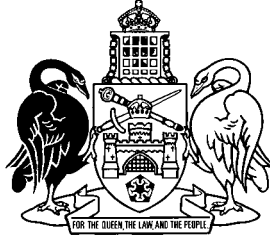
Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Residential Tenancies Act 1997

Contents

	Page
Part 1	Preliminary
1	Short title 2
3	Interpretation 2
4	Application of Act 5
5	Not applicable to certain agreements 7
6	Not applicable to certain premises 7
Part 2	Residential tenancy agreements
Division 2.1	Terms of agreement
7	Standard terms 9
8	Inconsistent terms void 9
9	Terms inconsistent with prescribed terms 9
10	Endorsement—tribunal 9

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Residential Tenancies Act 1997
Effective: 01/09/04-09/01/05

contents 1

Contents

	Page
Division 2.2	Precontractual obligations
11	Compliance 10
11A	Energy efficiency rating—advertising 10
12	Lessor's obligations 11
13	Tenant's obligations 12
14	Agent's obligations 12
Division 2.3	Consideration
15	Rent or a bond only 12
16	Alternative to a bond—guarantee or indemnity 13
17	Alternative to a bond—insurance 14
18	Holding deposits 14
Division 2.4	Lessor's obligations on signing agreement
19	Copy of agreement to be given to tenant 15
Part 3	Bonds
Division 3.1	Payment of bonds
20	Maximum amount payable 16
21	Only 1 bond per residential tenancy agreement 16
22	Successive residential tenancy agreements 16
Division 3.2	Depositing bond
23	Deposit of bond by lessor 16
24	Deposit of bond by tenant 17
25	Notice accompanying deposit 17
26	Acknowledgment of receipt of bond money 18
27	Payment of bond money into trust account 18
28	Interest 19
Division 3.3	Condition of premises and deductions from bond
29	Condition reports 20
30	Evidence of condition of premises 20
31	Deductions from bond 21
Division 3.4	Release of bond money
32	Application for release 22

	Page
33	23
34	23
35	23
Part 4	Termination of residential tenancy agreements
Division 4.1	General
36	25
37	26
38	26
39	27
Division 4.2	Warrants for eviction
40	27
41	28
42	28
Division 4.3	Termination initiated by tenant
43	29
44	30
45	31
46	32
Division 4.4	Termination initiated by lessor
47	32
48	33
49	34
50	35
51	36
52	37
53	37
54	38
55	39
56	39
57	40
Division 4.5	Defective termination notices
58	40

Contents

	Page
59	41
60	42
Division 4.6	Abandonment of premises
61	42
62	43
63	43
Division 4.7	Miscellaneous
64	44
Part 5	Rental rate increases
65	45
66	45
67	46
68	46
69	47
70	48
71	48
Part 6	Resolution of residential tenancy disputes
Division 6.1	Action by registrar
72	50
Division 6.2	Applications
73	50
74	51
75	51
76	52
77	53
78	53
Division 6.3	Preliminary conferences
81	53
82	54
83	54
84	54

	Page
85	55
86	55
87	55
Division 6.4	
Tribunal hearings	
88	55
89	56
90	56
91	56
92	57
93	57
94	57
95	57
96	57
96A	58
97	58
98	59
99	59
100	59
101	59
Division 6.5	
Procedural powers and orders of tribunal	
102	60
103	61
104	62
105	63
106	63
107	64
Division 6.6	
Enforcement	
108	65
109	65
Part 7	
Residential Tenancies Tribunal	
Division 7.1	
Jurisdiction	
110	67

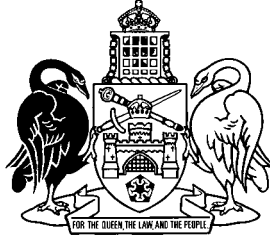
Contents

	Page
111 Constitution	67
112 Membership	67
113 Acting president	68
114 Registrar and deputy registrar	69
115 Jurisdiction	69
Division 7.2 Referees	
116 Referees	70
Division 7.3 Registrar and deputy registrars	
117 Functions and powers	70
118 President's involvement	71
119 Deputy registrars	71
Division 7.4 Other matters about tribunal	
120 Procedure generally	72
121 Informality of procedures	72
122 Contempt in the face of tribunal	72
123 Protection of members etc	73
123A Approved forms—registrar	73
Part 8 Referrals and appeals to Supreme Court	
124 Referral of questions of law	74
125 Referral of applications	74
126 Appeal from decisions of tribunal	75
Part 9 Miscellaneous	
127 Death of 1 of more than 2 tenants	76
128 Purported assignment or subletting	76
129 Admissibility of evidence	76
130 False information	77
131 Proceedings by infants	77
132 Enforcing agreements by or against children	77
133 Approved forms—Minister	78
134 Determined criteria	78
136 Regulation-making power	78

Schedule 1	Prescribed terms	Page 79
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Endnotes

1	About the endnotes	103
2	Abbreviation key	103
3	Legislation history	104
4	Amendment history	106
5	Earlier republications	110



Australian Capital Territory

Residential Tenancies Act 1997

An Act relating to residential tenancies

R8
01/09/04

Residential Tenancies Act 1997
Effective: 01/09/04-09/01/05

page 1

Part 1 Preliminary

1 Short title

This Act may be cited as the *Residential Tenancies Act 1997*.

3 Interpretation

(1) In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

approved mediator means a mediator who is registered under the *Mediation Act 1997*.

bond means an amount paid or payable by a tenant as security for the performance of his or her obligations under a residential tenancy agreement.

commissioner means the commissioner for fair trading.

energy efficiency rating means the energy efficiency rating contained in an energy efficiency rating statement.

energy efficiency rating statement—see the *Energy Efficiency Ratings (Sale of Premises) Act 1997*.

fixed term agreement means a residential tenancy agreement under which a tenant has a right of occupation for a fixed term.

former lessor, in relation to a residential tenancy agreement which has been terminated, means the person who was the lessor while the agreement was in force.

former tenant, in relation to a residential tenancy agreement which has been terminated, means the person who was the tenant while the agreement was in force.

lessor means a person who grants, or proposes to grant, a right of occupation under a residential tenancy agreement, and includes the person's heirs, executors, successors and assigns.

member of the tribunal means—

- (a) the president; and
- (b) when acting as the president under section 113 (2), the acting president; and
- (c) a person in respect of whom an appointment is in force under section 112 (3) or (4).

mobile home means a dwelling (whether on wheels or not) capable of being transferred from place to place and re-erected.

mobile home park means land lawfully used for the purpose of accommodating mobile homes or caravans, and includes a caravan park or camping ground.

party, in relation to a tenancy dispute, means a party to the residential tenancy agreement in dispute.

periodic agreement means a residential tenancy agreement that is not a fixed term agreement.

preliminary conference means a conference held by the registrar in accordance with division 6.3.

premises includes—

- (a) any habitable structure, whether it is affixed to the land or not; and
- (b) part of any premises; and
- (c) any land, buildings or structures belonging to the premises.

prescribed terms means the terms set out in schedule 1.

president means the president of the tribunal.

referee means a referee appointed under section 116.

registrar means the registrar of the tribunal.

residential tenancy agreement means an agreement under which a person grants to another person (the **tenant**) for value a right of occupation of premises for use as a residence by the tenant (whether with or without other persons)—

- (a) whether the agreement is express or implied; or
- (b) whether the agreement is in writing, is oral, or is partly in writing and partly oral; or
- (c) whether the right of occupation is exclusive or not;

and includes such an agreement where the right of occupation is granted together with the right to use facilities, furniture or goods.

retirement village means a complex of residential premises (whether including hostel units or not) established primarily for occupation by persons who are at least 55 years of age under a scheme in which a person makes a payment (including a gift) to the authority administering the scheme in consideration for being admitted as a resident of the complex.

tenancy dispute means a dispute between the parties to a residential tenancy agreement about, relating to or arising from, the agreement, and includes—

- (a) a dispute in relation to which an application may be made under part 4 or 5; and
- (b) an application for compensation under this Act.

tenant means a person who has a right of occupation under a residential tenancy agreement, and includes—

- (a) the person's heirs, executors, successors and assigns; and
- (b) a prospective tenant.

termination and possession order means an order of the tribunal terminating a residential tenancy agreement and granting vacant possession of the relevant premises to the applicant for the order.

termination notice means a notice in the form approved under section 133 (Approved forms—Minister) served on the lessor or tenant giving notice of the intention of the tenant or lessor to terminate the residential tenancy agreement.

tribunal means the Residential Tenancies Tribunal established by section 110.

trust account means the trust bank account maintained by the chief executive of the administrative unit responsible for administering this Act in accordance with the *Financial Management Act 1996*, section 51.

working day means a day other than a Saturday, a Sunday or a public holiday.

- (2) For this Act, a residential tenancy agreement shall be taken to commence on the earliest of the following days:
- (a) the day specified in the agreement;
 - (b) the day by the end of which both parties have signed the agreement and have received a copy of the agreement as so signed;
 - (c) the day on which the tenant takes possession of the premises;
 - (d) the first day on which the lessor receives rent from the tenant.

4 Application of Act

- (1) Subject to sections 5 and 6, this Act (other than division 2.1, sections 43, 47, 48 and 71 (1) (a) (ii)) applies in relation to any residential tenancy agreement, whether commencing before, on or after the commencement day.

- (2) Subject to sections 5 and 6, division 2.1, sections 43, 47, 48 and 71 (1) (a) (ii) apply in relation to—
- (a) any residential tenancy agreement commencing on or after the commencement day; or
 - (b) on and from 1 July 2000—all residential tenancy agreements; whichever is earlier.
- (3) Nothing in subsection (2) prevents division 2.1, sections 43, 47, 48 and 71 (1) (a) (ii) from applying to a residential tenancy agreement before 1 July 2000 where the agreement specifies that the division and sections apply.
- (4) For subsection (2), a fixed term agreement that was in effect immediately before, and continues in effect on or after, the commencement day shall be taken to commence on the day on which—
- (a) the term of the residential tenancy agreement is renewed or extended; or
 - (b) the rights and obligations of a party to the agreement are assigned or otherwise transferred; or
 - (c) a subtenancy of the premises commences.
- (5) For subsection (2), a periodic agreement that was in effect immediately before, and continues in effect on or after, the commencement day shall be taken to commence on the day on which—
- (a) the rental rate under the agreement increases or decreases; or
 - (b) the rights and obligations of a party to the agreement are assigned or otherwise transferred; or
 - (c) a subtenancy of the premises commences.

(6) In this section:

commencement day means 25 May 1998.

5 Not applicable to certain agreements

This Act does not apply in relation to a residential tenancy agreement—

- (a) where the tenant is a party to an agreement entered into in good faith for the sale and purchase of the premises; or
- (b) arising under a mortgage entered into in good faith in respect of the premises; or
- (c) arising under a scheme under which—
 - (i) a group of adjacent premises is owned by a company; and
 - (ii) the tenants who have rights to occupy those premises are persons who jointly have a controlling interest in the company; or
- (d) where the tenant is a boarder or lodger; or
- (e) entered into in good faith for the purpose of providing a right to occupy the premises for a holiday; or
- (f) prescribed by the regulations.

6 Not applicable to certain premises

- (1) This Act does not apply in relation to—
- (a) a caravan or mobile home situated in a mobile home park; or
 - (b) a hotel or motel; or
 - (c) premises used for a club; or
 - (d) premises situated on the campus of an educational institution;
or

- (e) a retirement village; or
 - (f) a nursing home or hostel for aged or disabled persons conducted by an eligible organisation within the meaning of the *Aged or Disabled Persons Homes Act 1954* (Cwlth); or
 - (g) premises prescribed by the regulations.
- (2) Despite anything in subsection (1), this Act applies in relation to premises occupied by a person as his or her place of residence under the person's terms and conditions of employment.

Part 2 Residential tenancy agreements

Division 2.1 Terms of agreement

7 Standard terms

A residential tenancy agreement—

- (a) shall contain, or shall be taken to contain, terms to the effect of the prescribed terms; and
- (b) may contain any other term—
 - (i) that is consistent with the prescribed terms; or
 - (ii) that is inconsistent with a prescribed term if the term has been endorsed by the tribunal under section 10.

8 Inconsistent terms void

Any term of a residential tenancy agreement—

- (a) that is inconsistent with a prescribed term; and
 - (b) that has not been endorsed by the tribunal under section 10;
- is void.

9 Terms inconsistent with prescribed terms

The parties to a residential tenancy agreement may apply in writing to the tribunal for the endorsement of a term of the agreement that is inconsistent with a prescribed term.

10 Endorsement—tribunal

The tribunal shall, after having regard to the determined criteria and whether the inclusion of the term of the residential tenancy agreement that is inconsistent with a prescribed term was obtained by fraud or undue influence, make an order—

- (a) endorsing the term; or
- (b) where there is no equivalent prescribed term—setting aside the term; or
- (c) where there is an equivalent prescribed term—substituting the term with the equivalent prescribed term.

Division 2.2 Precontractual obligations

11 Compliance

- (1) A lessor or tenant, or the agent of a lessor or tenant, shall comply with his or her obligations under this division before the residential tenancy agreement commences.
- (2) A person shall be taken to have complied with an obligation under this division to provide certain information if that information is set out in the residential tenancy agreement being signed by the tenant.

11A Energy efficiency rating—advertising

- (1) A person shall not, without reasonable excuse, publish an advertisement for the lease of premises unless the advertisement contains a statement of any existing energy efficiency rating of the habitable part of the premises.

Maximum penalty: 5 penalty units.

- (2) A person shall not, without reasonable excuse, publish an advertisement for the lease of premises that includes a statement of the energy efficiency rating of the habitable part of the premises that is false or misleading in a material particular.

Maximum penalty: 5 penalty units.

- (3) In this section:

existing energy efficiency rating, in relation to the habitable part of premises, means the energy efficiency rating, or the most recent

energy efficiency rating, ascertained for the purpose of a sale or leasing of those premises.

publish means communicate or disseminate information in such a way or to such an extent that it is available to, or likely to come to the notice of, the public or a section of the public.

12 Lessor's obligations

- (1) The lessor shall give the tenant a copy of the proposed residential tenancy agreement and, if they are not included in the copy of the agreement, the prescribed terms, and allow the tenant a reasonable time to consider the proposed agreement.
- (2) A copy of a residential tenancy agreement provided under subsection (1) that contains a provision that is inconsistent with a prescribed term shall be annotated in such a way as to draw the attention of the tenant to the provision and the fact that it is inconsistent with a prescribed term.
- (3) The lessor shall provide the tenant with the following information:
 - (a) the lessor's full name;
 - (b) an address for service on the lessor and at which the lessor can be contacted by the tenant;
 - (c) in relation to the premises that are the subject of the proposed residential tenancy agreement—
 - (i) if there is an energy efficiency rating statement in relation to the habitable part of the premises—a copy of the statement; or
 - (ii) where—
 - (A) building work under the *Building Act 2004*, section 6 has been carried out on the premises that affects the energy efficiency rating of the habitable part of the premises; and

(B) before that building work was carried out, an energy efficiency rating statement had been prepared in relation to the habitable part of the premises;

a copy of a fresh energy efficiency rating statement in relation to the habitable part of the premises.

13 Tenant's obligations

The tenant shall provide the lessor with his or her full name.

14 Agent's obligations

The agent of a lessor or tenant shall provide the tenant or lessor, as the case requires, with the following information:

- (a) the agent's full name;
- (b) the fact that he or she is the agent of the lessor or tenant, as the case may be;
- (c) if the agent is a company—the name of a company employee who can be contacted in relation to the residential tenancy agreement.

Division 2.3 Consideration

15 Rent or a bond only

- (1) In consideration for giving a tenant a right to occupy premises, a lessor may only require or accept rent or a bond.
- (2) A lessor shall not require or accept any consideration for—
 - (a) agreeing to enter into, extend or renew a residential tenancy agreement; or
 - (b) agreeing to the assignment or transfer of a tenant's rights and obligations under a residential tenancy agreement; or

- (c) consenting to a tenant entering into, extending or renewing a residential tenancy agreement with a subtenant; or
 - (d) vacating premises; or
 - (e) giving a tenant a key to premises; or
 - (f) informing a tenant about the availability of premises for occupation under a residential tenancy agreement.
- (3) For subsection (1), a requirement that a tenant make alterations, improvements or repairs to the premises shall be taken to be consideration.
- (4) In subsection (1), a reference to a *bond* includes a reference to either—
- (a) a guarantee or an indemnity under section 16; or
 - (b) payments in respect of a contract of insurance that are prescribed for section 17 (a).

16 Alternative to a bond—guarantee or indemnity

- (1) Subject to subsection (2), in addition to or in place of a bond, a lessor may accept either a guarantee or an indemnity for the performance of a tenant's obligations under a residential tenancy agreement.
- (2) A guarantee or an indemnity under subsection (1) is only enforceable against the guarantor or indemnifier—
- (a) if it is in addition to a bond—to the extent of the difference between the maximum amount that would have been payable by the tenant as a bond and the amount that is payable by the tenant as a bond; or
 - (b) if it is in place of a bond—to the extent of the maximum amount that would have been payable by the tenant as a bond.

17 Alternative to a bond—insurance

In addition to or in place of a bond, a lessor may accept the payment of amounts in respect of a contract of insurance relating to the performance of a tenant's obligations under a residential tenancy agreement if—

- (a) those payments are prescribed; and
- (b) the amount insured under the contract does not exceed—
 - (i) if the contract is in addition to a bond—the difference between the maximum amount that would have been payable by the tenant as a bond and the amount that is payable by the tenant as a bond; or
 - (ii) if the contract is in place of a bond—the maximum amount that would have been payable by the tenant as a bond.

18 Holding deposits

- (1) A lessor shall not require or accept a holding deposit.
- (2) An agreement to pay a holding deposit is void and any money paid under such an agreement is recoverable as a debt due by the person to whom the money was paid to the person who paid the money.
- (3) In this section:

holding deposit means an amount paid or payable by a tenant to a lessor in consideration for the lessor not entering into a residential tenancy agreement with a third party in respect of premises pending the tenant entering into a residential tenancy agreement with the lessor in respect of those premises.

Division 2.4 Lessor's obligations on signing agreement

19 Copy of agreement to be given to tenant

- (1) After a residential tenancy agreement has been signed by both parties to the agreement, the lessor shall give the tenant a copy of the signed agreement.
- (2) A lessor shall be taken to have complied with subsection (1) only if the lessor gives the copy to the tenant within 21 days after the lessor receives the agreement signed by the tenant.

- (a) the amount of the bond; and
 - (b) a notice in accordance with section 25;
before the expiration of the prescribed period.
- (2) In subsection (1):

prescribed period means—

- (a) the period of 10 working days; or
- (b) if another period is prescribed—that period;
commencing on the day after the lessor receives the bond.

24 Deposit of bond by tenant

- (1) Where the lessor and the tenant agree to the tenant depositing the bond with the Territory, the tenant shall deposit with the Territory—
- (a) the amount of the bond; and
 - (b) a notice in accordance with section 25.
- (2) Unless the lessor and the tenant otherwise agree, the tenant is not entitled to possession of the premises until the tenant has produced to the lessor evidence that the bond has been deposited.
- (3) For subsection (2)—
- (a) production of the original receipt issued by the Territory; or
 - (b) receipt by the lessor from the Territory of a copy of the notice referred to in subsection (1) (b);
- is sufficient.

25 Notice accompanying deposit

A notice under section 23 (1) (b) or 24 (1) (b) must specify—

- (a) the names of and addresses for service on the lessor and the tenant; and

- (b) the address of the premises that are the subject of the residential tenancy agreement; and
- (c) the rent payable under the residential tenancy agreement; and
- (d) the amount of bond being deposited.

Note If a form is approved under s 133 (Approved forms—Minister) for a notice, the form must be used.

26 Acknowledgment of receipt of bond money

- (1) Where the Territory accepts an amount of bond tendered by a lessor under section 23 (1), the Territory shall—
 - (a) issue to the lessor a receipt for that amount; and
 - (b) give the tenant a copy of the notice referred to in section 23 (1) (b).
- (2) Where the Territory accepts an amount of bond tendered by a tenant under section 24 (1), the Territory shall—
 - (a) issue to the tenant a receipt for that amount; and
 - (b) give the lessor a copy of the notice referred to in section 24 (1) (b).

27 Payment of bond money into trust account

- (1) The Territory shall pay all bond money received by it under this part to the credit of the trust account.
- (2) Subject to any order of the tribunal, money paid to the credit of the trust account in accordance with subsection (1) shall be applied only in the payment of bond money in accordance with section 34 or 35 (2).

28 Interest

- (1) Interest received from the investment of any money paid to the credit of the trust account under this part shall—
 - (a) be paid to the departmental bank account of the administrative unit allocated responsibility for administering this Act until an amount so paid is equal to any amount appropriated for this Act; and
 - (b) after an amount referred to in paragraph (a) has been paid in accordance with that paragraph—be applied for a prescribed purpose.
- (2) For subsection (1) (b), the regulations may provide that interest received from the investment of any money paid to the credit of the trust account under this part may be applied for the following purposes:
 - (a) providing lessor and tenant information programs;
 - (b) providing dispute resolution services for residential tenancy disputes;
 - (c) facilitating assistance in the provision of residential accommodation, whether or not that accommodation is provided under this Act;
 - (d) researching issues of concern to lessors and tenants;
 - (e) reimbursing the costs incurred by the commissioner when instituting, defending or taking over proceedings in relation to a tenancy dispute.
- (3) In subsection (1):

departmental bank account—see the *Financial Management Act 1996*, dictionary.

interest—see the *Financial Management Act 1996*, dictionary.

Division 3.3 Condition of premises and deductions from bond

29 Condition reports

- (1) A lessor shall, not later than the day after the tenant takes possession of the premises, give the tenant 3 copies of a report as to the state of repair or general condition of the premises, and of any goods leased with the premises, as at the day on which the tenant is given the report.
- (2) A report under subsection (1) must be signed by the lessor.
- (3) The tenant shall, within 7 working days after receiving the copies of the report mentioned in subsection (1), return 2 of those copies to the lessor, either—
 - (a) signed by the tenant; or
 - (b) endorsed with a statement, signed by the tenant, indicating whether the tenant agrees or disagrees with the whole of the report or with specified parts of it.
- (4) If the tenant returns the copies signed but without further endorsement, the tenant shall be taken to agree with the whole of the report.
- (5) On receipt, the lessor shall give the Territory 1 of the 2 copies mentioned in subsection (3).

Note If a form is approved under s 133 (Approved forms—Minister) for a report, the form must be used.

30 Evidence of condition of premises

- (1) Where section 29 (1) and (3) have been complied with, a statement in a report referred to in section 29 as to the state of repair or general condition of the premises and of any goods leased with the premises (other than a statement in respect of which the tenant, by endorsement, has indicated disagreement) is evidence of that state of

repair or general condition as at the day on which the tenant was given the report.

- (2) Where only section 29 (1) has been complied with, a statement in a report referred to in section 29 as to the state of repair or general condition of the premises and of any goods leased with the premises is evidence of that state of repair or general condition as at the day on which the tenant was given the report.
- (3) Where section 29 (1) has not been complied with, evidence by the tenant as to the state of repair or general condition of the premises and of any goods leased with the premises is evidence of that state of repair or general condition as at the day on which the tenant took possession of the premises.

31 Deductions from bond

A lessor is entitled to deduct from the bond paid under the residential tenancy agreement any of the following:

- (a) the cost of repairs to, or the restoration of, the premises or goods leased with the premises as a result of damage (other than fair wear and tear) caused by the tenant;
- (b) any rent due and payable under the residential tenancy agreement at the time the agreement terminates or is terminated;
- (c) the cost of replacing any fuel (such as gas, oil or wood) supplied to the premises by the lessor at the commencement or during the course of the tenancy;
- (d) any reasonable amount (not being greater than the costs incurred) for the cost of legal fees incurred by the lessor in assigning or transferring a tenant's rights under a residential tenancy agreement;

- (e) any amount expressed in a term of the agreement to be deductible by the lessor from the bond, being a term endorsed by the tribunal under section 10.

Division 3.4 Release of bond money

32 Application for release

- (1) Application to the Territory for payment out of the trust account of an amount of bond paid under a residential tenancy agreement may be made by—
 - (a) the lessor; or
 - (b) the tenant; or
 - (c) the lessor and the tenant jointly.

Note If a form is approved under s 133 (Approved forms—Minister) for an application, the form must be used.

- (2) If an application is made by a person under subsection (1) in relation to a residential tenancy agreement, the person may only make a further application in relation to the same agreement with the registrar's permission.
- (3) An application may be made before the termination of the residential tenancy agreement only if it is—
 - (a) a joint application; or
 - (b) made by the lessor for payment to the tenant, or by the tenant for payment to the lessor, of the total amount of the bond paid under the agreement; or
 - (c) in accordance with an order of the tribunal specifying that money is to be paid from an amount of bond.

33 Notification of application

Where an application (other than a joint application) is made under section 32 by a lessor or a tenant, the Territory shall give notice in writing of the receipt of the application to the tenant or the lessor.

34 Release where no dispute or where order

- (1) Where—
- (a) a joint application is made under section 32; or
 - (b) a tenant or lessor who has been given notice of an application under section 33 does not notify the Territory in writing within 10 working days after being given the notice that he or she disputes the application; or
 - (c) an application is for payment in accordance with an order of the tribunal specifying an amount of money is to be paid from an amount of bond;

the Territory shall pay out of the trust account an amount of bond in accordance with the application.

- (2) The amount paid out of the trust account under subsection (1) in respect of an application shall not exceed the amount of bond paid into the trust account in respect of the residential tenancy agreement.

35 Disputes as to whole or part of bond

- (1) Where a tenant or lessor who has been given notice of an application under section 33 notifies the Territory in writing within 14 working days after being given the notice that he or she disputes the application, the Territory shall, subject to subsection (3), refer the application and notice of dispute to the registrar as a tenancy dispute.
- (2) Where a notice of dispute referred to in subsection (1) relates to only part of an amount of bond claimed, the Territory shall, before referring the application and notice of dispute to the registrar,

release to the appropriate person so much of the amount of the bond as is not in dispute.

- (3) Nothing in subsection (1) requires the Territory to refer an application and notice of dispute to the registrar if the application is in accordance with an order of the tribunal specifying that money is to be paid from an amount of bond.

Part 4 **Termination of residential tenancy agreements**

Division 4.1 **General**

36 **Termination**

Notwithstanding anything to the contrary in any law of the Territory, a residential tenancy agreement shall not terminate or be terminated other than in the following circumstances:

- (a) where a fixed term agreement expires and the tenant vacates the premises on or after the expiration;
- (b) if a tenant notifies the lessor in the form approved under section 133 (Approved forms—Minister) for a termination notice, and vacates the premises in accordance with the notice;
- (c) where the tribunal terminates an agreement under division 4.3 or 4.4;
- (d) where the tribunal makes a termination and possession order in relation to the premises that are the subject of the agreement under division 4.4 or 4.5;
- (e) where the tenant abandons the premises that are the subject of the agreement;
- (f) where a person takes action in accordance with section 64;
- (g) where the tenant and lessor agree in writing to terminate the agreement and the tenant vacates the premises in accordance with the agreement to terminate;
- (h) where the tenant and the lessor are the same person;
- (j) where—
 - (i) a party to the agreement repudiates the agreement; and

- (ii) the other party accepts the repudiation; and
- (iii) the tenant vacates the premises.

37 Entry for eviction purposes

- (1) A person shall not enter premises or any part of premises of which another person has prescribed possession for the purpose of recovering possession of the premises or part except in accordance with a warrant issued by the registrar, an order or a warrant of the tribunal or an order or judgment of the Supreme Court.
- (2) Subject to subsection (3), where a person enters premises in contravention of subsection (1) (the *offender*), the tribunal shall, on application, order the offender to pay to the person who had prescribed possession of the premises such compensation as the tribunal considers appropriate.
- (3) In considering how much compensation is appropriate for subsection (2), the tribunal shall take into consideration whether the lessor reasonably believed that the premises had been abandoned by the tenant.
- (4) Where an offender referred to in subsection (2) is not the lessor but is acting on behalf of a lessor with the lessor's consent, the tribunal shall make any order for compensation that it would otherwise have made against the offender against the lessor.
- (5) For this section, the following possession is prescribed:
 - (a) possession under a residential tenancy agreement;
 - (b) possession as a former tenant continuing to reside in the premises.

38 General duty to mitigate

A person who, but for this section, would be entitled to compensation under this Act is not entitled to the compensation, or

part of it, where the loss, or part of the loss, to be compensated could have been reasonably avoided.

39 Content of termination and possession orders

- (1) Where the tribunal makes a termination and possession order the order shall specify the following:
 - (a) the date on which the tenancy shall terminate;
 - (b) that the tenant shall vacate the premises on or before the date of termination;
 - (c) either that, should the tenant fail to vacate the premises as specified—
 - (i) the lessor may request the registrar to issue a warrant for the eviction of the former tenant; or
 - (ii) the termination and possession order shall have effect as if it were a warrant for eviction.
- (2) Where a termination and possession order specifies that it shall have effect as if it were a warrant for eviction issued by the tribunal under division 4.2, the order shall comply with section 40.

Division 4.2 Warrants for eviction

40 Content

A warrant issued under this part shall—

- (a) authorise the police to take appropriate action to evict a specified person within the period specified in the warrant; and
- (b) require the police to give the person not less than 2 days notice of the proposed eviction.

41 Unconditional orders

On request, the registrar shall issue a warrant for the eviction of a person where—

- (a) the tribunal has made an unconditional termination and possession order; and
- (b) the person continues to reside at the premises in contravention of that order.

42 Conditional orders

(1) On request, where—

- (a) the tribunal has issued a termination and possession order subject to a condition precedent; and
- (b) the applicant satisfies the registrar that the condition precedent has been satisfied; and
- (c) the person to whom the order was directed continues to reside at the premises;

the registrar shall give the person a notice including the following:

- (d) notice of the application for the issue of a warrant;
- (e) a statement to the effect that—
 - (i) the person may, if he or she believes that the condition precedent to which the termination and possession order is subject has not been satisfied, apply to the tribunal within 2 days after the date of the notice; and
 - (ii) should the person not so apply, a warrant for the eviction of the person will issue on or after the expiration of 2 days after the date of the notice.

(2) Where—

- (a) the registrar issues a notice under subsection (1); and

- (b) before the expiration of 2 days after the date of the notice, the person to whom the notice is issued applies to the tribunal for a stay of the eviction proceedings;

the registrar shall list the application with the tribunal for hearing as a matter of urgency and shall not issue a warrant for the eviction of the person.

- (3) Where—
- (a) the registrar issues a notice under subsection (1); and
- (b) the person to whom the notice is issued has not applied to the tribunal for a stay of the eviction proceedings before the expiration of 2 days after the date of the notice;

the registrar shall issue a warrant for the eviction of the person.

- (4) An application under this section for stay of eviction proceedings may be oral or in written or electronic form.

Division 4.3 Termination initiated by tenant

43 Breach of prescribed terms

- (1) On application by a tenant, the tribunal may terminate a residential tenancy agreement if satisfied that—
- (a) the lessor has breached the prescribed terms; and
- (b) the breach of the prescribed terms was not in accordance with a term of the residential tenancy agreement endorsed by the tribunal; and
- (c) the breach justifies the termination of the tenancy.
- (2) Where—
- (a) the tribunal decides to terminate a residential tenancy agreement in accordance with subsection (1); and
- (b) the tribunal is satisfied that—

- (i) the tenant would suffer significant hardship if the agreement were not terminated within 2 weeks after the making of the decision to terminate; and
- (ii) that hardship would be greater than the hardship the lessor would suffer if the tenancy were terminated within 2 weeks after that day;

the tribunal shall order that the agreement be terminated at a specified time within 2 weeks after the making of the decision to terminate the tenancy.

- (3) Where—
 - (a) the tribunal decides to terminate a residential tenancy agreement in accordance with subsection (1); and
 - (b) the tribunal is not satisfied in relation to the matters referred to in subsection (2) (b);

the tribunal shall order that the agreement be terminated at a specified time not less than 2 weeks after the making of the decision to terminate.

44 Significant hardship

- (1) On application by a tenant, the tribunal may terminate a fixed term agreement in accordance with this section if satisfied that—
 - (a) the tenant would suffer significant hardship were the agreement to continue; and
 - (b) the level of hardship is such that it is appropriate and just to terminate the agreement during its fixed term.
- (2) Where—
 - (a) the tribunal decides to terminate a residential tenancy agreement in accordance with this section; and
 - (b) the tribunal is satisfied that—

- (i) the tenant would suffer significant hardship if the agreement were not terminated within 8 weeks after the making of the decision to terminate; and
- (ii) that hardship would be greater than the hardship the lessor would suffer if the agreement were terminated within 8 weeks after that day;

the tribunal shall—

- (c) specify the day, being less than 8 weeks after the making of the decision to terminate, on which the termination is to occur; and
- (d) give the lessor such notice of the proposed termination as is reasonable in the circumstances.

(3) Where—

- (a) the tribunal decides to terminate a residential tenancy agreement in accordance with this section; and
- (b) the tribunal is not satisfied as to the matters referred to in subsection (2) (b);

the tribunal shall—

- (c) taking into consideration the need to comply with paragraph (d)—specify the day, being not less than 8 weeks after the making of the decision to terminate, on which the termination is to occur; and
- (d) give the lessor not less than 8 weeks notice of the proposed termination.

45 Damage, injury or intention to damage or injure

On application by a tenant, the tribunal may terminate a residential tenancy agreement effective immediately if satisfied that the lessor has intentionally or recklessly caused or permitted, or is likely to so cause or permit—

- (a) serious danger to the premises or to property of the tenant; or
- (b) injury to the tenant or a member of the tenant's family.

46 False or misleading statements

On application by a tenant, the tribunal may terminate a residential tenancy agreement if satisfied that the agreement was induced by a false or misleading statement of the lessor.

Division 4.4 Termination initiated by lessor

47 No breach of prescribed terms

- (1) On application by a lessor, the tribunal may make a termination and possession order if satisfied that—
 - (a) a ground for termination exists under the prescribed terms (other than for a breach of the prescribed terms); and
 - (b) the lessor has served a termination notice on the tenant based on that ground; and
 - (c) the tenant has not vacated the premises as required by the termination notice.
- (2) Where—
 - (a) the tribunal makes an order under subsection (1); and
 - (b) the tribunal is satisfied that—
 - (i) were the order not suspended for a specified period of no more than 21 days the tenant would suffer significant hardship; and
 - (ii) that hardship would be greater than the hardship that would be suffered by the lessor if the order were suspended for the specified period;

the tribunal may suspend the operation of the termination and possession order for a specified period of no more than 21 days.

48 Certain breaches of prescribed terms

- (1) On application by a lessor, the tribunal may make a termination and possession order if satisfied that—
 - (a) the tenant has breached the prescribed terms (other than by failing to pay rent due and payable); and
 - (b) the lessor has served a termination notice on the tenant based on that breach; and
 - (c) the tenant did not vacate the premises in accordance with the notice; and
 - (d) the breach of the prescribed terms was not in accordance with a term of the residential tenancy agreement endorsed by the tribunal; and
 - (e) the breach justifies the termination of the tenancy.
- (2) The tribunal may, if satisfied that it is appropriate and just to do so in relation to an application referred to in subsection (1)—
 - (a) refuse to make a termination and possession order where—
 - (i) the tenant has remedied the relevant breach; or
 - (ii) the tenant undertakes to remedy the breach within a reasonable specified period and is reasonably likely to do so; or
 - (b) make a termination and possession order but suspend it for a period of no more than 21 days if satisfied that—
 - (i) were the order not suspended for a specified period of no more than 21 days the tenant would suffer significant hardship; and

- (ii) that hardship would be greater than the hardship that would be suffered by the lessor if the order were suspended for the specified period.

49 Failure to pay rent

- (1) On application by a lessor, the tribunal may make a termination and possession order where—
 - (a) the tenant has failed to pay rent due and payable under the residential tenancy agreement; and
 - (b) the lessor has served a termination notice on the tenant on the basis of the failure to pay rent; and
 - (c) the tenant has not vacated the premises in accordance with the notice.
- (2) Where a lessor has made an application under subsection (1), the tribunal may refuse to make a termination and possession order if—
 - (a) the tenant has paid the rent due and payable and is, in the opinion of the tribunal, reasonably likely to pay rent as it becomes due and payable; and
 - (b) the tribunal considers it just and appropriate to do so.
- (3) Instead of making a termination and possession order under subsection (1), where—
 - (a) the tenant is, in the opinion of the tribunal, reasonably likely to repay the rent due and payable as well as pay rent that becomes due and payable; and
 - (b) the tenant agrees to repay the rent due and payable, and undertakes to pay rent as it becomes due and payable, as required by the tribunal;

the tribunal may order that if the tenant fails to pay the rent due and payable, or rent that becomes due and payable, as required by the tribunal—

- (c) the tenancy shall terminate at a specified hour on the day after the day on which any rent was due and payable and not paid; and
 - (d) the lessor shall become entitled to possession of the premises and all rent due shall be payable immediately.
- (4) Where—
- (a) the tribunal makes an order under subsection (1); and
 - (b) the tribunal is satisfied that—
 - (i) were the order not suspended for a specified period of no more than 21 days the tenant would suffer significant hardship; and
 - (ii) that hardship would be greater than the hardship that would be suffered by the lessor if the order were suspended for the specified period;

the tribunal may suspend the operation of the termination and possession order for a specified period of no more than 21 days.

50 Significant hardship

- (1) On application by a lessor, the tribunal may make a termination and possession order in relation to premises occupied under a fixed term agreement if satisfied that—
- (a) the lessor would suffer significant hardship if the tribunal did not make the order; and
 - (b) that hardship would be greater than the hardship the tenant would suffer if the tribunal made the order.
- (2) Where—
- (a) the tribunal decides to terminate a residential tenancy agreement in accordance with this section; and
 - (b) the tribunal is satisfied that—

- (i) the lessor would suffer significant hardship if the agreement were not terminated within 8 weeks after the making of the decision to terminate; and
- (ii) that hardship would be greater than the hardship the tenant would suffer if the agreement were terminated within 8 weeks after that day;

the tribunal shall—

- (c) specify the day, being less than 8 weeks after the making of the decision to terminate, on which the termination is to occur; and
- (d) give the tenant such notice of the proposed termination as is reasonable in the circumstances.

(3) Where—

- (a) the tribunal decides to terminate a residential tenancy agreement in accordance with this section; and
- (b) the tribunal is not satisfied as to the matters referred to in subsection (2) (b);

the tribunal shall—

- (c) taking into consideration the need to comply with paragraph (d)—specify the day, being no less than 8 weeks after the making of the decision to terminate, on which the termination is to occur; and
- (d) give the tenant no less than 8 weeks notice of the proposed termination.

51 Damage, injury or intention to damage or injure

On application, the tribunal may make a termination and possession order effective immediately if satisfied that the tenant has intentionally or recklessly caused or permitted, or is likely to so cause or permit—

- (a) serious damage to the premises or to other property of the lessor; or
- (b) injury to the lessor or a member of the lessor's family.

52 False or misleading statements

On application by a lessor, the tribunal may make a termination and possession order if satisfied that the residential tenancy agreement was induced by a false or misleading statement of the tenant.

53 Employer-provided accommodation

- (1) On application by a lessor, the tribunal may make a termination and possession order if satisfied that—
 - (a) the residential tenancy agreement was entered into as part of a contract of employment; and
 - (b) the tenant has, since the agreement was entered into, ceased to be employed by the lessor; and
 - (c) the lessor requires the premises to accommodate another employee.
- (2) Where a residential tenancy agreement is entered into between a university and—
 - (a) a visiting academic; or
 - (b) a staff member; or
 - (c) a contract employee; or
 - (d) a postgraduate student; or
 - (e) an undergraduate student; or
 - (f) a person undertaking an approved course of study;

and a person of the kind referred to in paragraphs (a) to (f) ceases to be a person of that kind, on application by the university, the tribunal may make a termination and possession order.

- (3) Where the tribunal makes an order under subsection (1) or (2), the tribunal shall give the tenant no less than 4 weeks notice of the termination of the tenancy.

54 Purported assignment or subletting

- (1) On application by a lessor, the tribunal may make a termination and possession order if satisfied that—
- (a) the tenant purported to assign or sublet the premises in contravention of the prescribed terms; and
 - (b) the purported assignment or subletting was not in accordance with a term of the residential tenancy agreement endorsed by the tribunal; and
 - (c) the lessor served a termination notice on the tenant on the basis of the purported assignment or subletting; and
 - (d) the premises have not been vacated.
- (2) Notwithstanding that the tribunal is satisfied as to the matters referred to in subsection (1) (a), (b) and (c), the tribunal may, if satisfied that it is appropriate to do so—
- (a) if the purported assignee or sublessee vacates the premises—refuse the application for a termination and possession order; or
 - (b) make a termination and possession order contingent on the failure of the purported assignee or sublessee to vacate the premises by a day specified in the order, being a day by which the purported assignee or sublessee has undertaken to vacate the premises; or

- (c) make a termination and possession order but suspend the operation of the order for a specified period of no more than 21 days from the date of making the order if—
 - (i) the purported assignee or sublessee would suffer significant hardship if the tribunal made a termination and possession order that took effect within the specified period after the making of the order; and
 - (ii) that hardship would be greater than the hardship the lessor would suffer if the tribunal made the order and it did not come into effect within that period.

55 Repudiation without vacation

On application by a lessor, the tribunal may make a termination and possession order if—

- (a) the tenant repudiates the residential tenancy agreement in writing; and
- (b) the lessor accepts the repudiation as proposed by the tenant; and
- (c) the tenant fails to vacate the premises on or before the date specified for vacation in the notice of repudiation.

56 Compensation to lessor

If a person to whom a termination and possession order is directed fails to vacate the specified premises in accordance with the order, the tribunal may, on application made within 30 days after the date on which the person was to vacate the premises, order the person to pay to the applicant such of the following as it considers appropriate:

- (a) an amount equal to the rent that would have been payable to the applicant if the premises had been tenanted during the

period for which the person was in possession of the premises after termination of the residential tenancy agreement;

- (b) an amount equal to the reasonable costs incurred by the applicant in applying for a warrant for eviction and having the warrant executed.

57 Retaliatory applications

Notwithstanding anything else in this part, where—

- (a) a lessor has applied for a termination and possession order under this part; and
- (b) the tenant adduces evidence that—
 - (i) the tenant applied to the tribunal for an order in relation to the lessor; or
 - (ii) the tenant complained to a governmental authority in relation to the lessor; or
 - (iii) the tribunal made an order in favour of the tenant against the lessor;

the tribunal shall refuse to make the termination and possession order—

- (c) if satisfied as to the existence of a circumstance referred to in paragraph (b); and
- (d) in the absence of proof to the satisfaction of the tribunal that the lessor was not motivated to apply for a termination and possession order by the relevant circumstance.

Division 4.5 Defective termination notices

58 Lessor's defective notice where tenant vacates

- (1) Where—

- (a) a lessor purports to serve a termination notice on a person;
 - (b) the form is not in the form approved under section 133 (Approved forms—Minister) for a termination notice or served as prescribed under the regulations; and
 - (c) the person vacates the premises in accordance with the notice;
- the residential tenancy agreement terminates on the day on which the person vacates the premises.
- (2) A former tenant who vacated premises in accordance with a termination notice that was not in the form approved under section 133 (Approved forms—Minister) for a termination notice may apply to the tribunal for the following orders:
 - (a) an order for compensation for wrongful eviction;
 - (b) an order for reinstatement as tenant in possession of the premises.
 - (3) The tribunal shall not make an order referred to in subsection (2) (b) unless—
 - (a) the premises are vacant and have not been leased; and
 - (b) the tribunal considers it appropriate to do so.

59 Lessor's defective notice where tenant does not vacate

- (1) Where—
 - (a) a lessor purports to serve a termination notice on a tenant; and
 - (b) the form is not in the form approved under section 133 (Approved forms—Minister) for a termination notice or served as prescribed under the regulations; and
 - (c) the tenant does not vacate the premises;

the lessor may apply to the tribunal for a waiver of the defect in the notice or in the service of the notice and for the making of a termination and possession order.

- (2) The tribunal shall not waive a defect in a termination notice or its service and make a termination and possession order unless satisfied that the defect did not, and is not likely to, place the tenant in a significantly worse position than the tenant would have been in had the notice been in, and served in, accordance with the prescribed terms.

60 Tenant's defective termination notice

- (1) Where a tenant purports to serve a termination notice on a lessor and vacates the premises in accordance with the notice, notwithstanding that the notice is not in the form approved under section 133 (Approved forms—Minister) for a termination notice—
 - (a) the residential tenancy agreement terminates on the vacation of the premises in accordance with the notice; and
 - (b) the former lessor may apply to the tribunal for compensation for the tenant's abandonment of the premises.
- (2) The tribunal shall award compensation to a person who makes an application referred to in subsection (1) (b) unless satisfied that the person was not in a significantly worse position by reason of the defect in the notice than he or she would have been had the notice been in the approved form.

Division 4.6 Abandonment of premises

61 Effect of abandonment

Where a tenant abandons premises which he or she occupies under a residential tenancy agreement, the agreement terminates on the day of abandonment.

62 Abandonment during fixed term

- (1) Where a tenant abandons premises before the expiration of a fixed term agreement, the former lessor may apply to the tribunal for the following compensation:
 - (a) compensation for the loss of the rent which the former lessor would have received had the agreement continued to the end of its term;
 - (b) compensation for the reasonable costs of advertising the premises for lease and of giving a right to occupy the premises to another person.
- (2) On application, the tribunal may award compensation of the kind referred to in subsection (1) (a) and (b).
- (3) The amount of compensation the tribunal may award—
 - (a) under subsection (1) (a) shall not exceed an amount equal to 25 weeks rent; and
 - (b) under subsection (1) (b) shall not exceed an amount equal to 1 week's rent.
- (4) In determining the amount of compensation that may be awarded under subsection (2) in relation to costs, the tribunal shall have regard to when, but for the abandonment of the premises—
 - (a) the agreement would have expired; and
 - (b) the lessor would have incurred the costs referred to in subsection (1) (b).

63 Abandonment during periodic agreement

Where a tenant abandons premises of which he or she has possession under a periodic agreement, the former lessor may claim from the former tenant compensation of an amount equivalent to 3 weeks rent.

Division 4.7 **Miscellaneous**

64 **Successor in title to lessor**

- (1) A person other than a lessor who, but for section 36, would be entitled to possession of premises, may terminate the residential tenancy agreement relating to the premises by—
- (a) notifying the tenant as soon as practicable after becoming so entitled that the person would be entitled to possession but for section 36 and that the person who was lessor is no longer lessor; and
 - (b) giving the tenant not less than 8 weeks notice to vacate the premises.

Note If a form is approved under s 133 (Approved forms—Minister) for a notice, the form must be used.

- (2) Where a person has given notices under subsection (1), the relevant residential tenancy agreement shall terminate on the expiration of the period of 8 weeks after the date of the notice referred to in subsection (1) (b) or on such later date as is specified in the notice.

Part 5 Rental rate increases

65 Waiver of notice requirements

- (1) The tribunal may hear an application for the review of a rental rate increase notwithstanding that the application is made less than 14 days before the day on which the proposed increase is due to come into effect, if the tribunal is satisfied that—
 - (a) the application is late due to special circumstances; and
 - (b) to hear the application will not place the lessor in a significantly worse position than the lessor would have been had the applicant applied as prescribed.
- (2) Where a tenant vacates premises as a result of a rental rate increase but fails to give the lessor notice of intention to vacate premises in the form approved under section 133 (Approved forms—Minister), the tribunal may, on application by the tenant or former tenant, treat the notice as having been given in the approved form if satisfied that—
 - (a) the failure to give notice in the approved form is a result of special circumstances; and
 - (b) to treat notice as having been so given will not put the lessor in a significantly worse position than if notice had been given properly.

66 Freezing rents

Where an application for review of a rental rate increase has been made but not determined no increase in the rental rate shall occur unless allowed by the tribunal.

67 Orders

The tribunal may make the following orders in relation to an application for review of a rental rate increase:

- (a) an order allowing the increase applied for or such other increase as the tribunal considers just;
- (b) an order disallowing the increase;
- (c) an order disallowing part of the increase.

68 Guideline for orders

- (1) The tribunal shall allow a rental rate increase that is in accordance with the prescribed terms unless the increase is excessive.
- (2) For subsection (1)—
 - (a) unless the tenant satisfies the tribunal otherwise, a rental rate increase is not excessive if it is less than 20% greater than any increase in the index number over the period since the last rental rate increase or since the beginning of the lease (whichever is later); and
 - (b) unless the lessor satisfies the tribunal otherwise, a rental rate increase is excessive if it is more than 20% greater than any increase in the index number over the period since the last rental rate increase or since the beginning of the lease (whichever is later).
- (3) Where a tenant or lessor proposes that a rental rate increase is or is not excessive, the tribunal, in considering whether it is satisfied as to the proposal, shall consider the following matters:
 - (a) the rental rate before the proposed increase;
 - (b) if the lessor previously increased the rental rate while the relevant tenant was tenant—

- (i) the amount of the last increase before the proposed increase; and
 - (ii) the period since that increase;
 - (c) outgoings or costs of the lessor in relation to the premises;
 - (d) services provided by the lessor to the tenant;
 - (e) the value of fixtures and goods supplied by the lessor as part of the tenancy;
 - (f) the state of repair of the premises;
 - (g) rental rates for comparable premises;
 - (h) the value of any work performed or improvements carried out by the tenant with the lessor's consent;
 - (j) any other matter the tribunal considers relevant.
- (4) Where the tribunal considers a proposed rental rate increase is excessive but a lesser increase would not be, it may disallow so much of the increase as is excessive.
- (5) In subsection (2):

index number means the Consumer Price Index (Privately-owned dwelling rents expenditure class) for Canberra published from time to time by the Australian Statistician.

69 Effect of orders

- (1) Where the tribunal makes an order under section 67 (a) or (c), the rental rate increase takes effect from the date on which the proposed increase would, but for section 66, have taken place.
- (2) The tribunal may, on application, grant a tenant time to pay rent owed by virtue of the operation of subsection (1).
- (3) Where—

- (a) the tribunal makes an order referred to in section 67 (b) or (c); and
- (b) notwithstanding section 66, the tenant has paid the lessor the full amount of the rental rate increase proposed by the lessor;

the tribunal may order the lessor to pay to the tenant the difference between the amount the tenant paid to the lessor and the amount that was payable.

70 Further increases

Where a proposed rental rate increase has been reviewed by the tribunal, any further purported increase in the rental rate for a period of 12 months after the day on which the proposed increase was to take effect shall be void.

71 Reduction of existing rent

- (1) On application by a tenant, the tribunal shall order a reduction in the rental rate payable under a residential tenancy agreement if it considers that the tenant's use or enjoyment of the premises has diminished significantly as a result of any of the following:
 - (a) the loss or diminished utility of an appliance, furniture, a facility or a service supplied by the lessor with the premises as a result of—
 - (i) the withdrawal of the appliance, furniture, facility or service by the lessor; or
 - (ii) the failure by the lessor to maintain the premises and any appliance, furniture or facility supplied with the premises in a reasonable state of repair, having regard to their condition at the commencement of the residential tenancy agreement; or

- (iii) the failure by the lessor to provide and maintain such locks or other security devices as are necessary to ensure that the premises are reasonably secure;
 - (b) the loss of the use of all or part of the premises;
 - (c) interference with the tenant's quiet enjoyment of the premises or the tenant's ability to use the premises in reasonable peace, comfort and privacy by the lessor or any person claiming through the lessor or having an interest in, or title to, the premises.
- (2) A reduction in the rental rate ordered under subsection (1) shall—
 - (a) take effect from the day on which the tenant's use or enjoyment of the premises diminished, or such later date as the tribunal specifies; and
 - (b) remain in force for such period, not exceeding 12 months, as is specified by the tribunal.
- (3) The tribunal may order a lessor to pay to the tenant the difference between the rent paid and the rent payable as a result of an order for a rental rate reduction.
- (4) Any purported increase in the rental rate in relation to premises for which a reduction order is in force shall be void and any amount paid above and beyond the reduced rental rate in accordance with a purported increase shall be a debt due by the lessor to the tenant.

Part 6 Resolution of residential tenancy disputes

Division 6.1 Action by registrar

72 Assistance with inquiries

The registrar may provide such assistance in relation to an inquiry about a tenancy agreement as the registrar thinks appropriate, including—

- (a) referring the person making the inquiry to services provided by the public or private sector that give advice about residential tenancy matters generally; and
- (b) referring that person to services provided by the public or private sector for the resolution of tenancy disputes; and
- (c) assisting that person to make an application for the resolution of a dispute.

Division 6.2 Applications

73 Applications for resolution of dispute

- (1) A party to a residential tenancy agreement may apply for a resolution of a tenancy dispute.
- (2) An application shall—
 - (a) be in writing; and
 - (b) contain the prescribed particulars; and
 - (c) in the case of an application that relates to a rent increase—subject to section 65 (1), be made not less than 14 days before the date on which the rent increase is proposed to take effect; and

(d) be lodged with the registrar.

Note If a form is approved under s 133 (Approved forms—Minister) for an application, the form must be used.

74 Withdrawal of application

A person may withdraw his or her application for resolution of a tenancy dispute at any time by giving notice in writing to the registrar or tribunal.

75 Action on receiving applications

- (1) On receiving an application in accordance with section 73 the registrar shall, subject to subsection (4), take such action as he or she thinks appropriate to facilitate the resolution of the tenancy dispute.
- (2) For subsection (1), the registrar may do 1 or more of the following:
 - (a) contact anybody relevant to the tenancy dispute to attempt to resolve the dispute;
 - (b) contact anybody relevant to the tenancy dispute to request further information relevant to the dispute;
 - (c) if—
 - (i) the registrar considers that the tenancy dispute is suitable for mediation and that it is reasonably likely that the dispute may be resolved by mediation; and
 - (ii) the parties consent;refer the tenancy dispute to an approved mediator;
 - (d) if the registrar considers that there is a significant chance of resolving the tenancy dispute by agreement without the need for a full tribunal hearing—conduct a preliminary conference or refer the application to a referee to conduct such a conference;

- (e) refer the tenancy dispute to the tribunal for hearing.
- (3) In considering whether there is a significant chance of resolving a tenancy dispute for subsection (2) (d), the registrar shall have regard to whether the parties attended mediation before an application was made under section 73 in relation to the dispute.
- (4) If, in the opinion of the registrar, an application discloses no tenancy dispute, then the registrar shall notify the applicant accordingly and take no further action in relation to the matter.
- (5) A notice under subsection (4) shall—
 - (a) be in writing; and
 - (b) include a statement to the effect that the person notified may, within 7 days after the date of the notice, require the registrar to refer the application to the tribunal.

76 After failed mediation

- (1) Where—
 - (a) the registrar refers a tenancy dispute to an approved mediator; and
 - (b) the parties to the dispute fail to reach agreement in relation to the dispute;the registrar shall—
 - (c) unless he or she has already done so, refer the application to the tribunal; and
 - (d) if appropriate, require the parties to attend a preliminary conference.
- (2) For subsection (1), it is appropriate to require the parties to a tenancy dispute to attend a preliminary conference if, in the opinion of the registrar, a preliminary conference is likely—
 - (a) to resolve the dispute; or

- (b) to narrow the issues in dispute or help to prepare the parties for a tribunal hearing.

77 Considerations for registrar

The registrar, when considering what action to take under section 75 or 76—

- (a) shall have regard to the need to facilitate the hearing and determination of tenancy disputes (if the application is not otherwise resolved) within 28 days after the date of application; and
- (b) may refer a tenancy dispute to an approved mediator or require the parties to attend a preliminary conference notwithstanding that he or she has referred the application to the tribunal.

78 Referral to tribunal

Where, after receiving notice under section 75 (4), an applicant requires the registrar to refer the application to the tribunal, the registrar shall so refer the relevant application.

Division 6.3 Preliminary conferences

81 Nonattendance at preliminary conferences

- (1) Subject to subsection (2), where—
 - (a) the registrar requires the parties to a tenancy dispute to attend a preliminary conference; and
 - (b) the registrar is satisfied that the parties have been given notice of the conference; and
 - (c) on the day and at the time and place fixed for the conference a party fails to attend the conference, either personally or by his or her representative;

the registrar may—

- (d) if neither party attends—strike out the application in relation to the dispute; or
 - (e) if the applicant fails to attend—strike out the application in relation to the dispute; or
 - (f) if the respondent fails to attend—make an order in favour of the applicant.
- (2) The registrar may adjourn a preliminary conference where he or she is satisfied that a party or his or her representative is, for good reason, unable to attend the conference.
- (3) Where the registrar adjourns a conference under subsection (2), the registrar shall notify the parties of the day, time and place fixed for the resumption of the conference.

82 Representation

A party to a preliminary conference may be represented at the conference by a legal practitioner or an agent.

83 Taking evidence

The registrar or a referee may take evidence on oath or affirmation at a preliminary conference and, for that purpose—

- (a) may require a person attending the conference to take an oath or make an affirmation; and
- (b) may administer an oath or affirmation to such a person.

84 Agreement at preliminary conference

- (1) Where a tenancy dispute is resolved at a preliminary conference, the registrar shall arrange for the agreement to be put in writing and signed by or on behalf of the parties.
- (2) The registrar shall, at the expiration of 2 days after the day on which the parties to a tenancy dispute signed an agreement referred to in subsection (1) unless a party to the agreement sooner notifies the

registrar that he or she withdraws from the agreement, file the agreement with the tribunal.

- (3) An agreement filed with the tribunal under subsection (2) may be enforced as if it were an order of the tribunal.

85 Non-agreement at preliminary conference

Where the parties to a tenancy dispute fail to reach agreement at a preliminary conference, the registrar shall, if he or she has not already done so, refer the application to the tribunal.

86 Referral of questions of law

- (1) A referee may, of his or her own motion, refer a question of law arising during a preliminary conference to the tribunal.
- (2) Jurisdiction is vested in the tribunal to hear and determine a question referred to it under subsection (1).

87 Review of decisions of referee

Where a referee makes an order, gives a direction or does any other act in connection with proceedings the tribunal may, on application made by any party to the tenancy dispute, review the order, direction or other act and may make such order by way of confirmation, variation, discharge or otherwise as the tribunal thinks just.

Division 6.4 Tribunal hearings

88 Parties

Each of the following is a party to a tribunal hearing:

- (a) each party to the tenancy dispute;
- (b) any person joined to the proceeding by the tribunal;
- (c) if the commissioner intervenes in accordance with section 89—the commissioner.

89 Intervention by commissioner

- (1) The commissioner may intervene in a tribunal hearing or related proceedings if—
 - (a) the commissioner considers that it would be in the public interest; and
 - (b) the Minister consents.
- (2) Where the commissioner intervenes in any proceedings under subsection (1), it shall be presumed, in the absence of evidence to the contrary, that the Minister has consented to the intervention.

90 Hearings

- (1) The tribunal shall hear each dispute referred to it by the registrar.
- (2) A tribunal hearing shall be in public unless there are exceptional circumstances that, in the opinion of the tribunal, warrant a closed hearing.

91 Procedure in absence of party

Where, at the time fixed for the hearing of a tenancy dispute by the tribunal, a party to the dispute fails to appear, either personally or by his or her representative, the tribunal may—

- (a) order that the dispute be again set down for hearing or that such other steps be taken before the hearing proceeds as the tribunal directs; or
- (b) adjourn the proceedings; or
- (c) if the party is the applicant—dismiss the application; or
- (d) proceed with the hearing *ex parte* generally or as regards any relief claimed in the proceedings.

92 Adjourment of proceedings

The tribunal may, at any time, adjourn the hearing of or the further hearing of a tenancy dispute in such manner and on such terms as the tribunal thinks just.

93 Record of proceedings

The tribunal shall keep a record of its proceedings.

94 Inquiries

For a hearing the tribunal may make such inquiries as it considers appropriate.

95 Representation

A person appearing at a hearing may be represented at the hearing by a legal practitioner or an agent.

96 Witnesses

- (1) For a tribunal hearing, the tribunal may summon a person to appear as a witness before it—
 - (a) to give evidence; or
 - (b) to give evidence and produce any document or thing, specified in the summons, in the possession, custody or control of the person; or
 - (c) to produce any document or thing, specified in the summons, in the possession, custody or control of the person.
- (2) The tribunal may give a party leave to inspect a document produced under a summons.
- (3) A person shall be taken to have complied with a summons under subsection (1) (c) if the person delivers the document to the registrar before the date specified in the summons.

- (4) A summons shall be—
 - (a) in writing; and
 - (b) served on the person named in the summons.
- (5) A person served with a summons under subsection (1) shall not, without reasonable excuse, fail to comply with the summons.

Maximum penalty (subsection (5)): 50 penalty units, imprisonment for 6 months or both.

96A Appearance by audiovisual or audio links

- (1) This section applies where, in relation to a hearing or a part of a hearing (the *relevant hearing*), the tribunal has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings).
- (2) Where this section applies a person who, in a relevant hearing—
 - (a) is required or entitled to appear personally, whether as a party or as a witness; or
 - (b) is entitled to appear for another person;may appear in that hearing and participate or give evidence, as the case requires, in accordance with the direction.
- (3) A person who appears in a relevant hearing in accordance with this section shall be taken to be before the tribunal.

97 Taking evidence

- (1) The tribunal may take evidence on oath or affirmation and, for that purpose, a member of the tribunal—
 - (a) may require a person attending before the tribunal to take an oath or make an affirmation; and
 - (b) may administer an oath or affirmation to such a person.

- (2) A person required to attend before the tribunal to take an oath or make an affirmation under subsection (1) shall not, without reasonable excuse, fail to do so.

Maximum penalty (subsection (2)): 50 penalty units, imprisonment for 6 months or both.

98 Assistance to parties

- (1) The tribunal shall actively assist parties to a hearing to understand the hearing process and present their case.
- (2) The regulations may prescribe particulars of assistance to be given under subsection (1).

99 Amendments

At any stage of a hearing, the tribunal may—

- (a) on application by a party or of its own motion, order that any document in the hearing be amended; or
- (b) with the consent of the parties, give leave to any party to amend any document of that party in the hearing.

100 Costs

The parties to a hearing shall bear their own costs unless the tribunal orders otherwise in accordance with a requirement of the tribunal under section 102 (b).

101 Renewed hearings

- (1) If an order made by the tribunal at the conclusion of a hearing is breached, the party in whose favour the order was made may apply to the tribunal for the renewal of the hearing of the dispute.
- (2) An application under subsection (1) shall be by written notice to the registrar.

- (3) On application under subsection (1), the tribunal may renew its hearing into the dispute.
- (4) This part applies to a renewed hearing of a dispute in the same way as it applies to an original hearing of a dispute.

Division 6.5 Procedural powers and orders of tribunal

102 Procedural powers of tribunal

In addition to any other power specified in this Act, the tribunal may do any of the following:

- (a) if it considers an application is frivolous or vexatious—refuse to hear the application or dismiss it;
- (b) if it considers that a party to an application caused unreasonable delay or obstruction before or during the hearing of the application—require the party to pay the reasonable costs of the other party arising from the hearing;
- (c) hear an application jointly with any other application that arises from the same or similar facts;
- (d) join a person to a proceeding if it considers appropriate;
- (e) vary or set aside an order of the tribunal if appropriate;
- (f) if satisfied that a decision of the tribunal was based on evidence that was fraudulent in a material particular—overturn the decision and rehear the application;
- (g) take any other action that it considers appropriate that is consistent with this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

103 Interim orders

- (1) Where, before a hearing—
- (a) a party to the hearing applies to the tribunal for an interim order under this section; and
 - (b) the tribunal is satisfied that, if an order under this section were not made before the commencement of the hearing, the party applying for the order would suffer detriment;

the tribunal may make such interim order as it considers appropriate to safeguard the position of that party.

Note If a form is approved under s 123A (Approved forms—registrar) for an application, the form must be used.

- (2) An interim order remains in force until—
- (a) the expiration of 14 days after it is made; or
 - (b) the tribunal otherwise orders; or
 - (c) the tribunal makes an order at the conclusion of a hearing;
- whichever is earlier.
- (3) The tribunal may, on application by a party, while an interim order is in force—
- (a) vary the order; or
 - (b) rescind the order; or
 - (c) extend the order for a further 14 days.
- (4) Where a person against whom an interim order is made is not present at the making of the order, the registrar shall cause a copy of the order to be served on the person as soon as practicable after the order is made.

104 Orders

The tribunal may, in addition to any other order it is empowered to make, make the following orders in relation to an application about a tenancy dispute:

- (a) an order restraining any action in breach of a residential tenancy agreement;
- (b) an order requiring performance of a residential tenancy agreement;
- (c) an order requiring the payment of money to the Territory or a person;
- (d) an order requiring the payment of compensation for loss of rent or any other loss caused by the breach of a residential tenancy agreement;
- (e) an order specifying that an amount of money (being an amount not greater than the amount of bond paid into the trust account in relation to the relevant residential tenancy agreement) be paid to the lessor from the trust account;
- (f) an order restoring a residential tenancy agreement and granting the former tenant possession of premises which the person—
 - (i) was evicted from in contravention of this Act; or
 - (ii) vacated in accordance with a termination notice that was not in the form approved under section 133 (Approved forms—Minister) for a termination notice;
- (g) an order requiring payment of all or part of the rent payable under the prescribed terms into the tribunal until the tribunal orders otherwise;
- (h) an order directing payment out of any monies payed into the tribunal as appropriate;

- (j) an order terminating a residential tenancy agreement and granting vacant possession of the relevant premises to the applicant for the order;
- (k) an order correcting a defect in a notice or in the service of a notice;
- (m) such other order as the tribunal considers appropriate.

105 Notice of orders

The tribunal shall give each party to a hearing written notice setting out the terms of any order made under section 104 within 7 days of making such an order.

106 Statement of reasons

- (1) Where—
 - (a) the tribunal makes an order; and
 - (b) within 14 days after the day on which the order is made a party to the hearing requests a statement of reasons for the making of the order;

the tribunal shall provide to the party a written statement of those reasons.

- (2) A statement of reasons shall—
 - (a) set out the tribunal's findings on material questions of fact; and
 - (b) refer to the evidence or other material on which the finding was made; and
 - (c) give the tribunal's reasons for making the order.

107 Notice of intention to vacate—award of compensation

- (1) Where a lessor received a notice of intention to vacate before the expiration of a fixed term agreement, and the date nominated in the notice as the date on which the tenant intends to vacate is a date before the expiration of the agreement, the lessor may—
 - (a) accept the notice; or
 - (b) apply to the tribunal for compensation for—
 - (i) the loss of the rent which the lessor would have received had the agreement continued to the end of its term; and
 - (ii) the reasonable costs of advertising the premises for lease and of giving a right to occupy the premises to another person.
- (2) On application, the tribunal may award compensation of the kind referred to in subsection (1) (b).
- (3) The amount of compensation the tribunal may award—
 - (a) under subsection (1) (b) (i) shall not exceed an amount equal to—
 - (i) 25 weeks rent; or
 - (ii) rent in respect of the unexpired portion of the agreement; whichever is the lesser; and
 - (b) under subsection (1) (b) (ii) shall not exceed an amount equal to 1 week's rent.
- (4) In determining the amount of compensation that may be awarded in relation to the reasonable costs of advertising, the tribunal shall have regard to when, but for the vacation of the premises—
 - (a) the agreement would have expired; and
 - (b) the lessor would have incurred those costs.

Division 6.6 Enforcement

108 Failure to comply

- (1) A party to a hearing shall not, without reasonable excuse, fail to comply with an order of the tribunal.
- (2) Where a person breaches subsection (1), the tribunal may, if it considers it appropriate to do so, order the person to pay a specified amount of money (not exceeding \$5 000) to the Territory.
- (3) Where—
 - (a) a person contravenes subsection (1) (the *first contravention*); and
 - (b) the tribunal makes an order under subsection (2) in relation to the first contravention; and
 - (c) within the period of 12 months immediately following the first contravention, the person again contravenes subsection (1) (the *subsequent contravention*); and
 - (d) the first and subsequent contraventions are not against orders arising from the same proceeding;

the person commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

109 Orders for payment of money

- (1) If an order of the tribunal is for payment of an amount of money (including any amount awarded as costs), the order shall, on the filing of the prescribed documents in the registry of the Magistrates Court, be deemed to be a judgment of that court for the payment of that amount of money in accordance with the order of the tribunal.

- (2) For subsection (1), the prescribed documents are—
 - (a) a copy of the order of the tribunal certified by the registrar to be a true copy; and
 - (b) an affidavit by the person to whom the amount of money was ordered to be paid specifying the amount unpaid under the order and, if the order is to take effect on any default, the nature of the default.
- (3) Where an order sought to be enforced under subsection (1) requires payment to the Territory, the affidavit referred to in subsection (2) (b) in relation to the order may be sworn by the registrar or a person authorised by the Territory for this subsection.
- (4) Notwithstanding anything in any other Act, no fee is payable for the filing of documents under this section.

Part 7 Residential Tenancies Tribunal

Division 7.1 Jurisdiction

110 Establishment

The Residential Tenancies Tribunal is established.

111 Constitution

The tribunal shall consist of—

- (a) a president appointed under section 112 (1); or
- (b) the president and 2 persons appointed by the president under section 112 (3); or
- (c) a person appointed by the president under section 112 (4).

112 Membership

- (1) The president shall be a magistrate appointed by the Minister by instrument.
- (2) The president holds office for the period (not exceeding 5 years) specified in the instrument of appointment but is eligible for reappointment.
- (3) If the president considers it desirable, having regard to the nature and complexity of a particular matter to be determined by the tribunal, he or she shall, by instrument, appoint 2 further members of the tribunal for the hearing from the persons selected under subsection (5).
- (4) If the president considers it desirable, having regard to the nature of a particular matter to be determined by the tribunal, he or she shall, by instrument, appoint a member of the tribunal for the hearing from the persons selected under subsection (5).

- (5) The Minister shall, by instrument, select persons who, in his or her opinion, are qualified, by reason of experience and expertise, to be members of the tribunal.
- (6) The *Legislation Act 2001*, division 19.3.3 (Appointments—Assembly consultation) applies to a selection by the Minister under subsection (5) as if—
 - (a) a reference to the appointment of a person to a statutory office were a reference to a selection by the Minister; and
 - (b) a reference to an appointment were a reference to a selection; and
 - (c) all other necessary changes were made.

113 Acting president

- (1) The Minister may appoint a magistrate to be the acting president.
- (2) The acting president shall act as president—
 - (a) during a vacancy in the office of president, whether or not an appointment has previously been made to that office; or
 - (b) during any period or during all periods when the president is, for any reason, unable to perform the functions of the office.
- (3) Where the acting president is acting in the circumstances referred to in subsection (2) (a), he or she shall not act continuously as president for more than 12 months.
- (4) Anything done in good faith by or in relation to a person purporting to act under subsection (2) is not invalid on the ground that—
 - (a) the appointment was ineffective or had ceased to have effect; or
 - (b) the occasion to act had not arisen or had ceased.

114 Registrar and deputy registrar

- (1) The registrar of the Magistrates Court is the registrar of the tribunal.
- (2) Each deputy registrar of the Magistrates Court is a deputy registrar of the tribunal.
- (3) Subject to any direction of the registrar, a deputy registrar of the tribunal may exercise the powers of the registrar of the tribunal.
- (4) The registrar may, by signed writing, delegate to a public servant all or any of his or her powers under this Act.

115 Jurisdiction

- (1) Subject to this section and the Self-Government Act, section 48A, the tribunal has exclusive jurisdiction to hear and decide any matter that may be the subject of an application to it under this Act or the prescribed terms.

Note The Self-Government Act, s 48A deals with the jurisdiction and powers of the Supreme Court.

- (2) The tribunal does not have jurisdiction to make an order for the payment of an amount, or for work of a value, exceeding \$10 000.
- (3) A claim for payment of an amount, or for work of a value, exceeding \$10 000 may be made in a court competent to hear and determine claims based on contract for the amount claimed.
- (4) Where a claim referred to in subsection (3) may be made—
 - (a) the claimant may also make any other claim related to the relevant tenancy dispute; and
 - (b) the court in which proceedings are brought may exercise the powers of the tribunal under this Act.

Division 7.2 Referees

116 Referees

- (1) The president may appoint persons as referees of the tribunal.
- (2) The president shall not appoint a person as referee unless the person is a legal practitioner and has been for not less than 5 years.
- (3) An appointment under subsection (1) shall be in writing signed by the president.
- (4) An appointment may be revoked by written notice signed by the president and given to the referee.
- (5) A referee may hear and determine an application and, subject to subsection (7), make any order that the tribunal may make.
- (6) Subject to subsection (7), where a referee is hearing and determining an application, divisions 6.5 and 6.6 apply to the hearing as if a reference to the tribunal were a reference to the referee.
- (7) A referee is not authorised to order the payment of—
 - (a) compensation for a breach of the prescribed terms; or
 - (b) any sum of money (other than unpaid rent) which cannot be ascertained by reference to a receipt or statement of account.

Division 7.3 Registrar and deputy registrars

117 Functions and powers

- (1) In addition to the functions conferred on the registrar by or under any other provision of this Act, the registrar has the following functions:
 - (a) to assist persons to make application to the tribunal and provide applicants with information about the tribunal;

- (b) to provide the public with information about the services provided by or through the tribunal for the resolution of residential tenancy disputes;
 - (c) to provide the public with information about, and refer persons to, other services provided by the public and private sectors for the resolution of tenancy disputes;
 - (d) to provide lessors, tenants and the public with information and education about residential tenancies;
 - (e) to consult regularly with relevant bodies in the public and private sectors about residential tenancies and inform the president and the Minister about any issues relating to residential tenancy raised by those bodies;
 - (f) to appoint such deputy registrars of the tribunal as are required;
 - (g) such other functions as are prescribed.
- (2) In addition to the specific powers provided by this Act, the registrar has such powers as are necessary and convenient for the performance of his or her functions.

118 President's involvement

The registrar shall perform his or her functions in consultation with, and subject to any direction of, the president.

119 Deputy registrars

- (1) There may be 1 or more deputy registrars of the tribunal.
- (2) A deputy registrar may perform any function of the registrar, subject to any direction of the registrar.

Division 7.4 Other matters about tribunal

120 Procedure generally

If no procedure is prescribed by this Act in relation to—

- (a) a particular matter in a hearing; or
- (b) any step in proceedings;

the tribunal may determine its own procedure.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

121 Informality of procedures

- (1) In the performance of a function, the tribunal shall have regard to the rules of natural justice.
- (2) Subject to subsection (1), the tribunal—
 - (a) shall proceed with as little formality and technicality and with as much expedition as the requirements of this or any other Act and a proper consideration of the matter permit; and
 - (b) is not bound by rules of evidence but may inform itself of any matter in any manner that it considers appropriate.

122 Contempt in the face of tribunal

- (1) A person shall not—
 - (a) wilfully threaten, disturb or insult the tribunal; or
 - (b) wilfully interrupt, interfere with or obstruct the proceedings of the tribunal; or
 - (c) commit any other act that is a wilful contempt of the tribunal.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) only applies to acts in the face, within the hearing, of the tribunal.

123 Protection of members etc

No action, suit or other civil proceeding lies against a person who is or has been—

- (a) a member of the tribunal; or
- (b) the registrar or a deputy registrar of the tribunal; or
- (c) a referee; or
- (d) acting under the direction or authority of the tribunal; or
- (e) participating in proceedings; or
- (f) a public servant providing administrative assistance to the tribunal;

in relation to an act done or omitted to be done in good faith in the performance or purported performance of a function under this Act.

123A Approved forms—registrar

- (1) The registrar may, in writing, approve forms in relation to proceedings before the tribunal.
- (2) If the registrar approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

Part 8 Referrals and appeals to Supreme Court

124 Referral of questions of law

The tribunal may, of its own motion or on application by a party, refer a question of law to the Supreme Court if it considers that the question raises an issue of public importance.

125 Referral of applications

- (1) The tribunal may, of its own motion or on application by a party, refer an application to the Supreme Court if the tribunal considers it appropriate to do so having regard to the public importance of the matters to which the application relates.
- (2) Where the tribunal refers an application to the Supreme Court of its own motion, the court—
 - (a) may make an order for costs against the Territory to reimburse the parties for costs incurred because the matter was heard in the Supreme Court; and
 - (b) shall not make an order for costs against a party that could not have been made by the tribunal had the application been heard by it.
- (3) Where the tribunal refers an application to the Supreme Court on application by a party, the court—
 - (a) may make an order for costs against the Territory to reimburse the party that did not apply for the referral for costs incurred because the matter was heard in the Supreme Court; and
 - (b) shall not make an order for costs against that party that could not have been made by the tribunal had the application been heard by it.

126 Appeal from decisions of tribunal

- (1) A party to a tribunal hearing may appeal to the Supreme Court on a question of law from a decision of the tribunal in that hearing.
- (2) An appeal by a person under subsection (1) shall be instituted no later than 28 days after the day on which a notice under section 105 is given to the person or within such further time as the Supreme Court (whether on, before or after that day) allows.
- (3) The Supreme Court shall hear and determine the appeal and may make any of the following orders:
 - (a) an order affirming or setting aside the decision of the tribunal;
 - (b) an order remitting the case to be heard and decided again, either with or without the hearing of further evidence, by the tribunal in accordance with the directions of the court;
 - (c) an order for costs;
 - (d) such other order as the court considers appropriate.

Part 9 Miscellaneous

127 Death of 1 of more than 2 tenants

Where 1 of 2 or more tenants who are parties to a residential tenancy agreement dies, the tenancy and the tenancy agreement continue to operate—

- (a) with the remaining tenant as the sole tenant; or
- (b) where there are 2 or more remaining tenants—with those tenants as joint tenants or tenants in common.

128 Purported assignment or subletting

- (1) The purported assignment or subletting of premises in contravention of the prescribed terms is unenforceable and a person to whom premises are so assigned or sublet shall reside in the premises as a licensee only.
- (2) Subsection (1) does not apply to the assignment or subletting of premises in accordance with a term of the residential tenancy agreement endorsed by the tribunal.

129 Admissibility of evidence

- (1) The following evidence is not admissible against a person in criminal proceedings other than prosecutions for an offence against section 122 or 130:
 - (a) evidence given before an approved mediator during mediation, before the tribunal or during a preliminary conference;
 - (b) evidence of any information or thing obtained directly or indirectly as a consequence of evidence referred to in paragraph (a).

- (2) Evidence of any words spoken during mediation before an approved mediator or at preliminary conference shall only be admitted in civil proceedings under this Act if the evidence relates to the making of an order by a referee.

130 False information

A person shall not—

- (a) give the tribunal, the registrar, a referee or a mediator information that the person knows to be false or misleading in a material particular; or
- (b) give the tribunal, the registrar, a referee or a mediator a document containing information that the person knows to be false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

131 Proceedings by infants

- (1) Proceedings under this Act may be instituted by an infant in all respects as if he or she were of full age.
- (2) The *Magistrates Court (Civil Jurisdiction) Act 1982*, sections 96 and 97 apply in relation to proceedings instituted by an infant as if his or her claim were a claim under that Act.

132 Enforcing agreements by or against children

A party to a residential tenancy agreement is not prevented from enforcing the agreement against another party merely because either party has not attained the age of 18 years.

133 Approved forms—Minister

- (1) The Minister may, in writing, approve forms for this Act (other than in relation to proceedings before the tribunal).
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

134 Determined criteria

- (1) For section 10, the Minister shall determine the criteria to be considered by the tribunal.
- (2) A determination under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

136 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may make provision in relation to the following:
 - (a) mediation;
 - (b) preliminary conferences;
 - (c) giving notice to parties before a tribunal hearing;
 - (d) the keeping of records.

Schedule 1 Prescribed terms

(see s 3 (1))

Lessor and tenant must comply with terms of tenancy agreement

- 1 (1) This tenancy agreement is made under the *Residential Tenancies Act 1997* (the *Residential Tenancies Act*).
- (2) The lessor and the tenant may agree to add additional clauses to the tenancy agreement but they must not be inconsistent with, or modify, existing clauses (except where permitted by the Act).
- 2 By signing this tenancy agreement, the lessor and the tenant agree to be bound by its terms during the period of the tenancy it creates.
- 3 A party to this tenancy agreement cannot contract out of it or out of the provisions of the Residential Tenancies Act, except as provided in that Act.
- 4 A fixed term tenancy shall be for the single period specified in the tenancy agreement.
- 5 A periodic tenancy includes a tenancy which is not specified to be for a fixed term, including such a tenancy which commences on the expiration of a fixed term tenancy.
- 6 A reference in this tenancy agreement to a notice to vacate and a notice of intention to vacate shall be taken to be a reference to a termination notice under the Residential Tenancies Act.

Costs and procedures for establishing tenancy agreement

- 7 The lessor shall bear the cost of preparation and execution of this tenancy agreement.
- 8 The tenant shall be responsible for any legal costs that he or she incurs in relation to preparation and execution of this tenancy agreement.
- 9 The lessor shall give a copy of the proposed tenancy agreement to the tenant before the commencement of the tenancy.
- 10 The tenancy agreement shall be signed by the tenant and by the lessor (or by their authorised agents).
- 11 The lessor shall give a copy of the tenancy agreement, signed by each party, to the tenant as soon as possible after it has been signed by each party, but no later than 3 weeks after the tenant has returned a signed copy.
- 12 If the lessor does not return the tenancy agreement to the tenant, as provided by clause 11, the tenancy agreement shall have full effect in the terms signed by the tenant on occupation of the premises or acceptance of rent.

Information

- 13 (1) The lessor shall provide to the tenant a copy of an information booklet concerning residential tenancies authorised by the commissioner of fair trading before the commencement of this agreement.
- (2) If it is not possible to provide the tenant with a booklet, the lessor shall inform the tenant of the booklet and where it may be obtained.
- (3) If the premises are a unit within the meaning of the *Unit Titles Act 2001*, the lessor must give the tenant a copy of the articles of the owners corporation before the commencement of this agreement.

Bond and condition report

Maximum bond

- 14 Payment of a bond is not necessary unless required by the lessor.
- 15 Only 1 bond is payable for the tenancy created by this tenancy agreement.
- 16 The amount of the bond shall not exceed the amount of 4 weeks rent.

Lodgment of the bond with the Office of Rental Bonds

- 17 If the lessor requires a bond, the bond must be lodged with the Office of Rental Bonds.
- 18 Either party may lodge the bond with the Office of Rental Bonds.

If the lessor and tenant agree that the tenant is to lodge the bond

- 19 If the parties agree that the tenant is to lodge the bond, the following applies:
- (a) the tenant shall complete and sign the bond lodgment form provided by the Office of Rental Bonds and the lessor must do the same;
 - (b) the tenant must lodge the bond and bond lodgment form with the Office of Rental Bonds;
 - (i) the tenant must lodge the bond whether or not the lessor signs the bond lodgment form; and
 - (ii) payment of the bond to the Office of Rental Bonds shall be in cash, by bank cheque or by other such means permitted by that office;

- (c) the lessor may require lodgment of the bond before he or she gives possession of the premises to the tenant and if this is the case, the tenant shall be able to take possession of the premises and receive the keys to the premises as soon as the tenant provides the lessor with evidence of lodgment of the bond (such evidence includes the receipt of the Office of Rental Bonds).

If the lessor is to lodge the bond

- 20 If the lessor is to lodge the bond, the following applies:
- (a) on receiving the bond, the lessor must give the tenant a receipt for the bond;
 - (b) the lessor must complete and sign the bond lodgment form and the tenant must do the same;
 - (c) the lessor must lodge the bond and bond lodgment form with the Office of Rental Bonds within 10 days of receiving the bond, or the commencement of the tenancy, whichever date is the later. If the lessor has a real estate agent, the agent has 30 days to lodge the bond;
 - (d) the lessor must lodge the bond whether or not the tenant completes the bond lodgment form.

Condition Report

- 21
- (1) Within 1 day of the tenant taking possession of the premises, the lessor must give 3 copies of a condition report completed by him or her to the tenant.
 - (2) The condition report must be on, or to the effect of, the condition report form published by the Territory.
- 22
- (1) The tenant must examine the report and indicate on the report his or her agreement or disagreement with the items.

- (2) The tenant must return to the lessor 2 copies of the report as completed by him or her within 7 days of receiving it.
- 23 The lessor must keep a record of receipt and lodgment of the condition report.

Rent and other charges

Rent and bond only as payment for the tenancy

- 24 The lessor must not require any payment other than rent or bond for the following:
- (a) the granting, extension, transfer or renewal of a tenancy or subtenancy;
 - (b) vacating of premises;
 - (c) obtaining a key to the premises;
 - (d) information on the availability of tenancies.

Holding deposits

- 25 The Residential Tenancies Act prohibits the taking of holding deposits.

Payment of rent

- 26
- (1) The tenant shall pay the rent on time.
 - (2) The tenant shall not use the bond money to pay the rent for the last week's of the tenancy.
 - (3) The tenant and the lessor may agree to change the way rent is paid (including, for example, where the rent is paid or whether it is to be paid into a nominated bank account or whether it is to be paid in person).
- 27 The lessor must not require the tenant to pay rent by postdated cheque.

Maximum rent in advance

28 The lessor must not require an amount of rent paid in advance greater than 1 calendar month.

Rent receipts

29 If rent is paid in person to the lessor or a real estate agent, a receipt must be given at that time.

30 In other circumstances where rent is paid to the lessor, a receipt must be provided or sent by post within 7 days of its receipt.

- 31
- (1) A receipt for payment of rent shall specify the amount paid.
 - (2) A receipt should specify the following:
 - (a) the date of payment;
 - (b) the period in respect of which the payment is made;
 - (c) the premises in respect of which the payment is made;
 - (d) whether the payment is for bond or rent.
 - (3) If these particulars are not included in the receipt, the lessor shall provide this information to the tenant within 28 days of a request by the tenant.

32 A receipt is not required if the rent is paid by the tenant directly into an account nominated by the lessor or real estate agent.

Rent records

- 33
- (1) The lessor must keep, or cause to be kept, records of the payment of rent.
 - (2) Those records must be retained for a period of not less than 12 months after the end of the tenancy.

Increase in rent

- 34 The amount of rent shall not vary from period to period except as provided by this tenancy agreement and the Residential Tenancies Act.
- 35 The rent may not be increased at intervals of less than 12 months from either the beginning of the tenancy agreement for the first increase, or after that, from the date of the last increase.
- 36 Notwithstanding clause 35, if the commissioner for housing is the lessor under this tenancy agreement and he or she—
- (a) undertakes a review of rent in accordance with the *Housing Assistance Act 1987*, section 15 (3); and
 - (b) as a result of the review, decides to increase the rent;
- then—
- (c) if a previous review of rent has been undertaken—the increase shall not take effect less than 1 year after the date of the last increase of rent in respect of the premises; or
 - (d) if no previous review of rent has been undertaken—the commissioner may increase the rent.
- 37 The restriction on increase in rent shall apply provided the identity of at least 1 of the tenants who occupy the premises remains the same as at the time of the last increase.

Review of excessive rent increases

- 38 The lessor must give the tenant 8 weeks notice in writing of intention to increase the rent and include in the notice the amount of the increase, and the date on which it is proposed to increase the rent.

- 39 (1) The tenant may apply in writing to the tribunal for review of an excessive increase in rent (time limits for applying and the meaning of excessive is set out in the Residential Tenancies Act).
- (2) On such application being made, no increase in rent is payable until so ordered by the tribunal.
- 40 If the tenant remains in occupation of the premises without applying to the tribunal for review, the increase in rent shall take effect from the date specified in the notice.
- 41 If the tenant wishes to vacate the premises before the increase takes effect, he or she must give 3 weeks notice to the lessor.

Lessor's costs

- 42 The lessor shall be responsible for the cost of the following:
- (a) rates and taxes relating to the premises;
 - (b) services for which he or she agrees to be responsible;
 - (c) services for which there is not a separate metering device so that amounts consumed during the period of the tenancy cannot be accurately determined;
 - (d) all services up to the time of measurement or reading at the beginning of the tenancy;
 - (e) all services after reading or measurement at the end of the tenancy providing the tenant has not made any use of the service after the reading.
- 43 (1) The lessor shall pay for any physical installation of services (eg water, electricity, gas).
- (2) The tenant is responsible for the connection of all services which will be supplied in his or her name.

- 44 The lessor shall pay the annual supply charge associated with the supply of water or sewerage.
- 45 If the premises are a unit under the *Unit Titles Act 2001*, the lessor is responsible for all owners corporation charges.

Tenant's costs

- 46 The tenant shall be responsible for all charges associated with the consumption of services supplied to the premises, including electricity, gas, water and telephone.
- 47 The tenant shall not be required by the lessor to connect or continue a telephone service.

Reading of metered services

- 48 (1) The lessor shall be responsible for undertaking or arranging all readings or measurement of services, other than those which are connected in the name of the tenant.
- (2) The lessor shall provide the tenant with an opportunity to verify readings and measurements.
- 49 If the lessor does not arrange reading or measurement of a service connected in the name of the lessor by the day after the date of expiry of notice to vacate given in accordance with this tenancy agreement or the Residential Tenancies Act, he or she shall be responsible for payment of the unread or unmeasured service after the date of the last reading or measurement.
- 50 (1) If the tenant vacates the premises without giving notice prior to departure, the lessor shall arrange a reading or measurement of services connected in the lessor's name within a reasonable time of his or her becoming aware of the departure of the tenant.
- (2) The tenant shall be responsible for payment of services to the date of that reading or measurement.

Tenant's use of the premises without interference

- 51 The lessor guarantees that there is no legal impediment to the use of the premises for residential purposes by the tenant.
- 52 The lessor shall not cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in the use by the tenant of the premises.
- 53 Unless otherwise agreed in writing, the tenant shall have exclusive possession of the premises, as described in the agreement, from the date of commencement of the tenancy agreement provided for in the agreement.

Lessor to make repairs

Lessor to provide premises in a reasonable state at the start of the tenancy

- 54 (1) The lessor shall provide the premises, including furniture, fittings and appliances (unless excluded in writing in the tenancy agreement):
- (a) fit for habitation; and
 - (b) in a reasonable state of repair; and
 - (c) in a reasonable state of cleanliness; and
 - (d) in a reasonably secure condition.
- (2) The lessor or the tenant may change locks (at his or her own cost unless otherwise agreed) with the agreement of the other party (which will not be unreasonably withheld).
- (3) The lessor or the tenant may change locks (at his or her own cost) in an emergency without the agreement of the other party.
- (4) Where a lock is changed, a copy of the key to the changed lock must be provided to the other party as soon as possible.

Lessor to make repairs

- 55 (1) The lessor shall maintain the premises in a reasonable state of repair having regard to their condition at the commencement of the tenancy agreement.
- (2) The tenant shall notify the lessor of any need for repairs.
- 56 The lessor shall not be obliged to repair damage caused by the negligence or wilful act of the tenant.
- 57 Subject to clause 55, the lessor shall make repairs, other than urgent repairs, within 4 weeks of being notified of the need for the repairs (unless otherwise agreed).

Repairs in unit title premises

- 58 If the premises are a unit under the *Unit Titles Act 2001*, and the tenant's use and enjoyment of the premises reasonably requires repairs to the common property, the lessor must take all steps necessary to require the owners corporation to make the repairs as quickly as possible.

Urgent repairs

- 59 The tenant shall notify the lessor (or the lessor's nominee) of the need for urgent repairs as soon as practicable, and the lessor shall, subject to clause 82, carry out those repairs as soon as necessary, having regard to the nature of the problem.
- 60 The following are urgent repairs in respect of the premises, or services or fixtures supplied by the lessor:
- (a) a burst water service;
 - (b) a blocked or broken lavatory system;
 - (c) a serious roof leak;
 - (d) a gas leak;

- (e) a dangerous electrical fault;
- (f) flooding or serious flood damage;
- (g) serious storm or fire damage;
- (h) a failure of gas, electricity or water supply to the premises;
- (j) the failure of a refrigerator supplied with the premises;
- (k) a failure or breakdown of any service on the premises essential for hot water, cooking, heating or laundering;
- (m) a fault or damage that causes the residential premises to be unsafe or insecure;
- (n) a fault or damage likely to cause injury to person or property;
- (o) a serious fault in any door, staircase, lift or other common area which inhibits or unduly inconveniences the tenant in gaining access to and use of the premises.

Tenant may authorise urgent repairs in certain circumstances

- 61 If the lessor (or the lessor's nominee) cannot be contacted, or fails to effect the urgent repairs within a reasonable time, the tenant may arrange for urgent repairs to be effected to a maximum value of up to 5% of the rent of the property over a year.
- 62 The following procedures apply to urgent repairs arranged by the tenant:
- (a) the repairs arranged by the tenant must be made by the qualified tradesperson nominated by the lessor in the tenancy agreement;
 - (b) if the lessor has not nominated a tradesperson, or the nominated tradesperson cannot be contacted or is

otherwise unavailable, the repairs must be performed by a qualified tradesperson of the tenant's choosing;

- (c) where the repairs are arranged by the tenant in accordance with these procedures—the lessor is liable for the cost of repairs and the tradesperson may bill the lessor direct;
- (d) where the tenant does not act in strict compliance with this clause—the tenant is personally liable for the cost of any urgent repairs arranged by him or her.

Tenant to look after the premises

The tenant shall take reasonable care of the premises and keep the premises reasonably clean

63 During the tenancy, the tenant shall—

- (a) not intentionally or negligently damage the premises or permit such damage; and
- (b) notify the lessor of any damage as soon as possible; and
- (c) take reasonable care of the premises and their contents, and keep them reasonably clean, having regard to their condition at the time of the commencement of the tenancy and the normal incidents of living.

64 The tenant shall leave the premises—

- (a) in substantially the same state of cleanliness, removing all his or her belongings and any other goods brought onto the premises during the duration of the tenancy agreement; and
- (b) in substantially the same condition as the premises were in at the commencement of the tenancy agreement, fair wear and tear excepted.

65 The lessor shall not require the tenant to make alterations, improvements or renovations to the premises.

Tenant of unit to observe articles

66 If the premises are a unit under the *Unit Titles Act 2001*, the tenant must comply with the articles of the owners corporation, and with any notice served in accordance with the articles, to the extent that they are not inconsistent with the prescribed terms in this agreement.

Tenant shall make no alterations and shall not add any fixtures or fittings without the consent of lessor

67 The tenant shall not make any additions or alterations to the premises without the written consent of the lessor.

- 68
- (1) The tenant shall not add any fixtures or fittings to the premises without the consent of the lessor.
 - (2) The lessor's consent shall not be unreasonably withheld.
 - (3) The tenant shall make good any damage to the premises on removal of any fixtures and fittings.
 - (4) Any fixtures or fittings not removed by the tenant prior to the tenant leaving the premises shall become the property of the lessor.

Tenant shall not use the premises for illegal purposes and shall not disturb the neighbours

69 Unless otherwise agreed in writing, the tenant shall only use the premises for residential purposes.

70 The tenant shall not:

- (a) use the premises, or permit them to be used, for an illegal purpose to the detriment of the lessor's interest in the premises; or

- (b) cause or permit nuisance; or
- (c) interfere, or permit interference, with the quiet enjoyment of the occupiers of nearby premises.

71 The tenant shall not leave the premises vacant for more than 21 days without notifying the lessor.

Tenant shall not sell, dispose of, or sublet tenancy without consent of lessor

- 72
- (1) The tenant shall not assign or sublet the premises or any part of them without the written consent of the lessor.
 - (2) Consent may be given at any time.
 - (3) No rights in respect of the premises may be created in any third party prior to consent being obtained from the lessor.

Tenant may be responsible for damage or other breach of tenancy agreement by visitors or guests

73 The tenant is personally responsible for the actions or omissions of visitors, guests or other persons on the premises if:

- (a) the action or omission would if performed by the tenant have constituted a breach of this tenancy agreement; and
- (b) the person is on the premises with the permission of the tenant.

74 The tenant is not personally responsible for the actions or omissions of a person who is on the premises:

- (a) at the request of the lessor; or
- (b) to assist the lessor perform any of the duties of the lessor under this tenancy agreement (whether at the request of the lessor or the tenant); or

- (c) without the consent of the tenant.

Lessor's access to premises

Lessor cannot enter premises except as provided in tenancy agreement

- 75 (1) The lessor shall not require access to the premises during the tenancy except as provided by the law, this tenancy agreement, the Residential Tenancies Act, or an order of the tribunal.
- (2) The tenant may permit access to the premises by the lessor at any time.
- (3) If requested, the lessor or the lessor's agent shall provide identification to the tenant.
- 76 The lessor shall not have access to the premises—
- (a) on Sundays; or
- (b) on public holidays; or
- (c) before 8 am and after 6 pm;
- other than—
- (d) for the purpose of carrying out urgent repairs or for health or safety reasons in relation to the premises; or
- (e) with the consent of the tenant.

Access in accordance with tenancy agreement

Routine inspections

- 77 The lessor may inspect the premises twice in each period of 12 months following the commencement of the tenancy.
- 78 In addition to the inspections provided for in the previous clause, the lessor may make an inspection of the premises—
- (a) within 1 month of the commencement of the tenancy; and

- (b) in the last month of the tenancy.
- 79 (1) The lessor must give the tenant 7 days written notice of an inspection.
- (2) The inspection shall take place at a time agreed between the parties with reasonable regard to the work and other commitments both of the tenant and of the lessor (or their agents).
- (3) If the parties are unable to agree on an appropriate time, the lessor or the tenant may apply to the tribunal for an order permitting access at a specified time.

Access for purchasers and new tenants

- 80 The tenant must permit reasonable access to the premises during the period of 21 days preceding the end of the tenancy, on the lessor giving 24 hours notice, in order to allow inspection of the premises by prospective tenants.
- 81 The tenant must permit reasonable access to the premises, on the lessor giving 24 hours notice, in order to allow inspection of the premises by prospective purchasers of the premises provided:
- (a) the lessor intends to sell the premises; and
- (b) the lessor has previously notified the tenant in writing of his or her intention to sell.

Access for making or inspecting repairs

- 82 (1) On giving the tenant 7 days notice (or such other agreed period), the lessor may enter the premises at a reasonable time, having regard to the interests of the tenant and the lessor, for the purpose of making or inspecting repairs.

- (2) In the case of urgent repairs the lessor shall give reasonable notice and enter the premises at a reasonable time having regard to the interests of the tenant and the lessor.

Notice to vacate by lessor

83 The notice to vacate shall be in writing, in the form required by the Residential Tenancies Act, and shall include the following information:

- (a) the address of the premises;
- (b) the ground(s) on which the notice is issued, together with sufficient particulars to identify the circumstances giving rise to the ground(s);
- (c) that the lessor requires the tenant to vacate the premises by the expiry of the required notice period and that the tenancy shall end on the day that the tenant vacates the premises.

Notice of intention to vacate by tenant

84 (1) If the tenant serves a notice of intention to vacate and vacates the premises in accordance with the notice, the tenancy terminates on the date of vacating the premises.

- (2) On receiving a notice of intention to vacate, the lessor may—
- (a) accept the notice and accept that the tenancy shall end on the date nominated in the notice; or
 - (b) apply to the tribunal for confirmation of the tenancy agreement, an order for compensation or both.

85 The notice of intention to vacate must be in the same form and contain the same information as the notice to vacate from the lessor except the notice shall contain the statement that the tenant intends to vacate the premises on a certain date and the tenancy shall terminate on that date.

Termination where premises are not fit for habitation

- 86 The lessor or the tenant may, by written notice, terminate the tenancy on a date specified in the notice on the following grounds:
- (a) the premises are not fit for habitation;
 - (b) the premises are not available or will not be available due to Government action within a period of 4 weeks of the date that notice is given.
- 87
- (1) In either case the lessor must give not less than 1 week's notice of termination of the tenancy, and the rent shall abate from the date that the premises are uninhabitable.
 - (2) The tenant may give 2 days notice of termination of the tenancy.
 - (3) If neither the lessor or the tenant give notice of termination of the tenancy, the rent shall abate for the period that the premises are unable to be used for habitation, but the tenancy shall resume when they are able to be used again.

Termination of tenancy by tenant**Termination on or after end of fixed term**

- 88
- (1) The tenant may give notice to terminate a periodic tenancy by giving the lessor not less than 3 weeks notice of the date on which he or she intends to vacate the premises.
 - (2) The tenancy shall end on the date specified by the tenant.
- 89
- (1) The tenant may give notice to terminate a fixed term tenancy at or after the end of the tenancy by giving 3 weeks notice of the date on which he or she intends to vacate the premises.
 - (2) The tenancy shall end on the date specified by the tenant.

Termination for breach by lessor

- 90 If the lessor breaches the tenancy agreement, and the tenant wishes to terminate the tenancy agreement, the tenant may either—
- (a) apply to the tribunal for an order terminating the tenancy; or
 - (b) give the lessor written notice of intention to terminate the tenancy, in accordance with clause 91.
- 91 If the tenant decides to proceed by way of notice to the lessor, the following procedures apply:
- (a) the tenant must give the lessor a written notice that the lessor has 14 days to remedy the breach if the breach is capable of remedy;
 - (b) if the lessor remedies the breach within that 14 day period—the tenancy shall continue;
 - (c) if the lessor does not remedy the breach within the time specified in the notice, or if the breach is not capable of remedy—the tenant shall give 14 days notice of intention to vacate;
 - (d) the tenancy agreement terminates on the date specified by the tenant;
 - (e) rent is payable to the date specified in the notice or to the date that the tenant vacates the premises, whichever is the later;
 - (f) if the lessor remedies the breach during the period of the notice of intention to vacate, the tenant, at his or her option, may withdraw the notice or may terminate the tenancy agreement on the date specified in the notice by vacating the premises on that date.

Termination of tenancy by lessor

Termination for failure to pay rent

92 The tribunal may order the termination of the tenancy and eviction of the tenant on the ground of nonpayment of rent in the following circumstances:

- (a) rent has been unpaid for 7 days. The first day of this period concludes at midnight on the day on which the unpaid rent was due;
- (b) the lessor has served a notice to remedy on the tenant for the failure to pay the rent, being a notice—
 - (i) served not earlier than 8 days after the day on which the rent was due; and
 - (ii) containing a statement that if the tenant pays the rent outstanding to the date of payment within 7 days of the date of service of the notice to remedy, no further action shall be taken and the tenancy shall continue;
- (c) if all rent is not paid within 7 days of the date of service of the notice to remedy—the lessor may then serve a notice to vacate on the tenant requiring the tenant to vacate the premises within 14 days of service of the notice to vacate;
- (d) no earlier than the date on which the notice to vacate is served, the lessor may apply to the tribunal for an order terminating the tenancy and evicting the tenant;
- (e) the tribunal hearing of the application to terminate and evict shall not be earlier than the expiration of the period specified in the notice to vacate;
- (f) during any tenancy in which the lessor has previously issued 2 notices to remedy, the lessor may serve a notice

to vacate 8 days after the day on which the rent has fallen due without serving a notice to remedy.

Termination of tenancy for breach other than nonpayment of rent

93 The tribunal may order the termination of the tenancy and eviction of the tenant on the ground of breach of the tenancy agreement in the following circumstances:

- (a) the lessor must serve a notice in writing requiring the tenant within 14 days after the day of service to remedy the breach if it is capable of remedy;
- (b) if the breach is not remedied within 14 days after the day of service or if the breach is not capable of remedy—the lessor shall give a notice to vacate the premises within 14 days after the date of service of the notice to vacate;
- (c) if the tenant does not vacate the premises within the period of 14 days after the date of service of a notice to vacate—the lessor may apply to the tribunal for an order terminating the tenancy and for the eviction of the tenant;
- (d) if the tenant breaches the terms of the tenancy on 3 occasions on any ground—on the third occasion the lessor may serve a notice to vacate and need not give the tenant 14 days to remedy the breach.

Termination of tenancy without cause

94 The lessor may serve a notice to vacate during the term of a tenancy requiring the tenant to vacate the premises at the expiration of the notice provided that—

- (a) the notice is for 26 weeks; and
- (b) the notice does not require the tenant to vacate the premises during a fixed term.

- 95
- (1) Where a tenant is required to vacate the premises in accordance with clause 94, the tenant may vacate the premises at any time during the 2 weeks prior to the date specified in the notice to vacate provided he or she gives the lessor 4 days notice of intention to vacate.
 - (2) In this case, the tenancy terminates on the date that the tenant vacates the premises.

Termination of periodic tenancy

- 96
- (1) Where there is a periodic tenancy, the lessor may serve on the tenant a notice to vacate for the following periods on the following grounds:
 - (a) notice of 4 weeks where a lessor or a lessor's immediate relative intends to reside in the premises;
 - (b) notice of 4 weeks where a person not being an immediate relative who has a close family or personal relationship with the lessor and who has a reasonable expectation arising out of that relationship that the lessor would provide accommodation for that person intends to reside in the premises;
 - (c) notice of 8 weeks where the lessor has a bona fide intention to sell the premises;
 - (d) notice of 12 weeks where lessor has a bona fide intention to reconstruct, renovate or make major repairs to the premises which activities cannot reasonably be carried out with the tenant in residence.
 - (2) In this clause:

immediate relative means a son, daughter, son-in-law, daughter-in-law, mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law or sister-in-law.

Schedule 1 Prescribed terms

Clause 97

- 97 (1) Where a tenant is required to vacate the premises in accordance with clause 96, the tenant may vacate the premises at any time during the 2 weeks prior to the date specified in the notice to vacate provided he or she gives the lessor 4 days notice of intention to vacate.
- (2) In this case, the tenancy terminates on the date that the tenant vacates the premises.

Notices of address for service

- 98 (1) At the commencement of the tenancy, the lessor and the tenant shall each give an address for service of notices.
- (2) If such address changes during the tenancy, the lessor or tenant must advise the other party of the new address for service within 14 days of the change.
- 99 On vacating the premises, the tenant must advise the lessor of a forwarding address.
- 100 Where 2 or more people share a tenancy, except where this agreement otherwise provides, they do so as joint tenants.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Residential Tenancies Act 1997 No 84

notified 25 November 1997 (Gaz 1997 No S360)
s 1, s 2 commenced 25 November 1997 (s 2 (1))
remainder commenced 25 May 1998 (s 2 (3))

as amended by

Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1

notified 1 December 1997 (Gaz 1997 No S380)
s 1, s 2 commenced 1 December 1997 (s 2 (1))
sch 1 commenced 1 June 1998 (s 2 (2))

Residential Tenancies (Amendment) Act 1997 No 122

notified 24 December 1997 (Gaz 1997 No S420)
ss 1-3 commenced 24 December 1997 (s 2 (1))
remainder commenced 31 March 1999 (s 2 (2))

Residential Tenancies (Amendment) Act 1998 No 5

notified 25 May 1998 (Gaz 1998 No S150)
s 4, s 8 commenced 1 July 1998 (s 2 (2))
remainder commenced 25 May 1998 (s 2 (1))

Courts and Tribunals (Audio Visual and Audio Linking) Act 1999 No 22 pt 12

notified 14 April 1999 (Gaz 1999 No S16)
s 1, s 2 commenced 14 April 1999 (s 2 (1))
pt 12 commenced 1 September 1999 (s 2 (2) and Gaz 1999 No 35)

Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3

notified 10 November 1999 (Gaz 1999 No 45)
sch 3 commenced 10 November 1999 (s 2)

Justice and Community Safety Legislation Amendment Act 2000 No 1 sch

notified 9 March 2000 (Gaz 2000 No 10)
s 1, s 2 commenced 9 March 2000 (s 2 (1))
amnds commenced 9 September 2000 (s 2 (3))

**Justice and Community Safety Legislation Amendment Act 2000
(No 3) No 17 sch 1**

notified 1 June 2000 (Gaz 2000 No 22)
commenced 1 June 2000 (s 2)

Unit Titles Consequential Amendments Act 2001 No 17 sch 2

notified 5 April 2001 (Gaz 2001 No 14)
s 1, s 2 commenced 5 April 2001 (IA s 10B)
sch 2 commenced 5 October 2001 (s 2)

Legislation (Consequential Amendments) Act 2001 No 44 pt 332

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 332 commenced 12 September 2001 (s 2 and see Gaz 2001
No S65)

Legislation Amendment Act 2002 No 11 pt 2.42

notified LR 27 May 2002
s 1, s 2 commenced 27 May 2002 (LA s 75)
pt 2.42 commenced 28 May 2002 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2002
No 27 pt 13**

notified LR 9 September 2002
s 1, s 2 commenced 9 September 2002 (LA s 75)
pt 13 commenced 7 October 2002 (s 2 (2))

Statute Law Amendment Act 2002 No 30 pt 3.61

notified LR 16 September 2002
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))
pt 3.61 commenced 17 September 2002 (s 2 (1))

**Evidence (Miscellaneous Provisions) Amendment Act 2003 A2003-48
sch 2 pt 2.12**

notified LR 31 October 2003
s 1, s 2 commenced 31 October 2003 (LA s 75 (1))
sch 2 pt 2.12 commenced 30 April 2004 (s 2 and LA s 79)

Endnotes

4 Amendment history

Construction Occupations Legislation Amendment Act 2004 A2004-13 sch 2 pt 2.24

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 2 pt 2.24 commenced 1 September 2004 (s 2 and see
Construction Occupations (Licensing) Act 2004 A2004-12, s 2 and
CN2004-8)

4 Amendment history

Commencement

s 2 om R1 LA

Interpretation

s 3 def **approved mediator** sub 1998 No 5 s 4
def **director** sub 1999 No 66 sch 3
om 2000 No 17 sch 1
def **energy efficiency rating** ins 1997 No 122 s 4
def **energy efficiency rating statement** ins 1997 No 122 s 4
def **registrar** sub 1999 No 66 sch 3
def **termination notice** am 2001 No 44 amdt 1.3632

Terms of agreement

div 2.1 hdg (prev pt 2 div 1 hdg) renum R2 LA

Precontractual obligations

div 2.2 hdg (prev pt 2 div 2 hdg) renum R2 LA

Energy efficiency rating—advertising

s 11A ins 1997 No 122

Lessor's obligations

s 12 am 1997 No 122; A2004-13 amdt 2.89

Consideration

div 2.3 hdg (prev pt 2 div 3 hdg) renum R2 LA

Lessor's obligations on signing agreement

div 2.4 hdg (prev pt 2 div 4 hdg) renum R2 LA

Payment of bonds

div 3.1 hdg (prev pt 3 div 1 hdg) renum R2 LA

Depositing bond

div 3.2 hdg (prev pt 3 div 2 hdg) renum R2 LA

Notice accompanying deposit

s 25 am 2001 No 44 amdt 1.3633, amdt 1.3634

Interest

s 28 am 2000 No 17 sch 1; 2002 No 27 s 62

Condition of premises and deductions from bond

div 3.3 hdg (prev pt 3 div 3 hdg) renum R2 LA

Condition reports

s 29 am 2001 No 44 amdt 1.3635, amdt 1.3636

Release of bond money

div 3.4 hdg (prev pt 3 div 4 hdg) renum R2 LA

Application for release

s 32 am 1999 No 66 sch 3; 2001 No 44 amdt 1.3637, amdt 1.3638;
R2 LA

Release where no dispute or where order

s 34 am 1999 No 66 sch 3

General

div 4.1 hdg (prev pt 4 div 1 hdg) renum R2 LA

Termination

s 36 am 2001 No 44 amdt 1.3639

Warrants for eviction

div 4.2 hdg (prev pt 4 div 2 hdg) renum R2 LA

Termination initiated by tenant

div 4.3 hdg (prev pt 4 div 3 hdg) renum R2 LA

Significant hardship

s 44 am 2002 No 30 amdt 3.662

Termination initiated by lessor

div 4.4 hdg (prev pt 4 div 4 hdg) renum R2 LA

No breach of prescribed terms

s 47 am 2001 No 44 amdt 1.3640

Certain breaches of prescribed terms

s 48 am 2001 No 44 amdt 1.3640

Failure to pay rent

s 49 am 2001 No 44 amdt 1.3640

Purported assignment or subletting

s 54 am 2001 No 44 amdt 1.3640

Defective termination notices

div 4.5 hdg (prev pt 4 div 5 hdg) renum R2 LA

Lessor's defective notice where tenant vacates

s 58 am 2001 No 44 amdt 1.3641, amdt 1.3642

Endnotes

4 Amendment history

Lessor's defective notice where tenant does not vacate

s 59 am 2001 No 44 amdt 1.3643

Tenant's defective termination notice

s 60 am 2001 No 44 amdt 1.3644, 1.3646

Abandonment of premises

div 4.6 hdg (prev pt 4 div 6 hdg) renum R2 LA

Abandonment during fixed term

s 62 am 1998 No 5

Miscellaneous

div 4.7 hdg (prev pt 4 div 7 hdg) renum R2 LA

Successor in title to lessor

s 64 am 1998 No 5; 2001 No 44 amdts 1.3646-1.3648

Waiver of notice requirements

s 65 am 2001 No 44 amdts 1.3649-1.3651

Action by registrar

div 6.1 hdg (prev pt 6 div 1 hdg) renum R2 LA

Applications

div 6.2 hdg (prev pt 6 div 2 hdg) renum R2 LA

Applications for resolution of dispute

s 73 am 1998 No 5; 2000 No 1 sch; 2001 No 44 amdt 1.3652, amdt 1.3653

Mediators

div 3 hdg om 1998 No 5

Approved mediators

s 79 om 1998 No 5

List of approved mediators

s 80 om 1998 No 5

Preliminary conferences

div 6.3 hdg (prev pt 6 div 4 hdg) renum R2 LA

Tribunal hearings

div 6.4 hdg (prev pt 6 div 5 hdg) renum R2 LA

Parties

s 88 am 2000 No 17 sch 1

Intervention by commissioner

s 89 hdg am 2000 No 17 sch 1

s 89 am 2000 No 17 sch 1

Appearance by audiovisual or audio links

s 96A ins 1999 Act No 22 s 34
am 2000 No 17 sch 1; A2003-48 amdt 2.17

Procedural powers and orders of tribunal

div 6.5 hdg (prev pt 6 div 6 hdg) renum R2 LA

Procedural powers of tribunal

s 102 am 2001 No 44 amdts 1.3654-1.3656

Interim orders

s 103 am 2001 No 44 amdts 1.3657-1.3659

Orders

s 104 am 2001 No 44 amdt 1.3660

Enforcement

div 6.6 hdg (prev pt 6 div 7 hdg) renum R2 LA

Residential tenancies tribunal

div 7.1 hdg (prev pt 7 div 1 hdg) renum R2 LA

Membership

s 112 am 2002 No 11 amdt 2.87

Registrar and deputy registrar

s 114 sub 1999 No 66 sch 3

Jurisdiction

s 115 am 1999 No 66 sch 3

Referees

div 7.2 hdg (prev pt 7 div 2 hdg) renum R2 LA

Referees

s 116 am 1997 No 96 sch 1

Registrar and deputy registrars

div 7.3 hdg (prev pt 7 div 3 hdg) renum R2 LA

Other matters about tribunal

div 7.4 hdg (prev pt 7 div 3 hdg) renum R1 LRA
renum R2 LA

Procedure generally

s 120 am 2001 No 44 amdt 1.3661, amdt 1.3662

Approved forms—registrar

s 123A ins 2001 No 44 amdt 1.3663

Approved forms—Minister

s 133 sub 2001 No 44 amdt 1.3664
(4)-(7) exp 12 September 2002 (s 133 (7))

Endnotes

5 Earlier republications

Determined fees

s 135 om 2000 No 1 sch

Regulation-making power

s 136 am 2001 No 44 amdt 1.3665, amdt 1.3666

Prescribed terms

sch 1 hdg (prev sch hdg) renum R2 LA

sch 1 cl 13 am 1999 No 66 sch 3; 2000 No 17 sch 1; 2001 No 17 amdt 2.17

sch 1 cl 55 (2) om R1 LA

sch 1 cl 45 sub 2001 No 17 amdt 2.18

sch 1 cl 58 sub 2001 No 17 amdt 2.19

sch 1 cl 66 sub 2001 No 17 amdt 2.20

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 2000 No 17	14 November 2000
2	Act 2001 No 44	4 February 2002
3	Act 2002 No 11	30 May 2002
4	<u>Act 2002 No 27</u>	13 September 2002
5	Act 2002 No 30	3 October 2002
6*	A2002-30	7 October 2002
7	<u>A2004-13</u>	30 April 2004

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