



Australian Capital Territory

Residential Tenancies Amendment Act 2019

A2019-5

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Legislation amended 2
Part 2	Residential Tenancies Act 1997
4	Standard residential tenancy terms Section 8 (2), definition of <i>break lease clause</i> , new subclauses (3) and (4) 3
5	New section 11AA 4

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Contents

	Page	
6	Termination	
	Section 36 (1) (d)	5
7	New sections 64B and 64C	5
8	Orders	
	Section 67	6
9	Section 67 (as amended)	6
10	Guideline for orders	
	Section 68 (1) and (2)	6
11	Section 68 (5)	7
12	Effect of orders	
	Section 69 (1)	7
13	Section 69 (3) (a)	7
14	New part 5AA	8
15	New tenancy agreement—family violence and protection orders	
	Section 85A (2)	13
16	New section 85A (2) (c)	14
17	Standard residential tenancy terms	
	Schedule 1, clause 67	14
18	Schedule 1, new clauses 74A and 74B	15
19	Schedule 1, clause 95	15
20	Schedule 1, new clause 96 (1A)	16
21	Dictionary, note 2	16
22	Dictionary, new definitions of <i>minor modification</i> and <i>special modification</i>	16
23	Dictionary, definition of <i>termination and possession order</i>	16
Part 3	Residential Tenancies Regulation 1998	
24	New section 5A	17



Australian Capital Territory

Residential Tenancies Amendment Act 2019

A2019-5

An Act to amend the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998*

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

Part 1 Preliminary

1 Name of Act

This Act is the *Residential Tenancies Amendment Act 2019*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.

- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998*.

Part 2 Residential Tenancies Act 1997

4 Standard residential tenancy terms Section 8 (2), definition of *break lease clause*, new subclauses (3) and (4)

insert

- (3) However, the lessor and tenant agree that if, within the defined period after the tenant vacates the premises, the lessor enters into a residential tenancy agreement with a new tenant, the amount payable by the tenant is limited to—
- (a) the amount of the break fee under subclause (1) less the amount of rent payable by the new tenant for the defined period; and
 - (b) if the tenant vacates the premises more than 4 weeks before the end of the fixed term—the lessor’s reasonable costs (not exceeding the defined cost limit) of advertising the premises for lease and of giving a right to occupy the premises to another person.

- (4) In this clause:

defined cost limit means—

- (a) if half or more than half of the fixed term has expired—an amount equal to $\frac{2}{3}$ of 1 week’s rent; or
- (b) if less than half of the fixed term has expired—an amount equal to 1 week’s rent.

defined period means—

- (a) if subclause (1) (a) (i) applies—6 weeks; or
- (b) if subclause (1) (a) (ii) applies—4 weeks; or

(c) if subclause (1) (b) applies— N weeks.

N is the number worked out as follows:

$$\frac{\text{break fee}}{\text{weekly rent payable at the time the tenant ends the agreement}}$$

5 New section 11AA

insert

11AA Certain special conditions must be advertised

A person commits an offence if—

- (a) the person publishes an advertisement for the lease of residential premises; and
- (b) the proposed residential tenancy agreement for the premises—
 - (i) contains a term endorsed by the ACAT under section 10 (Endorsement of inconsistent tenancy terms by ACAT); or
 - (ii) requires the lessor's consent to keep an animal on the premises; and
- (c) the advertisement does not—
 - (i) if paragraph (b) (i) applies—state that the term applies; and
 - (ii) if paragraph (b) (ii) applies—
 - (A) state that consent is required; and
 - (B) if the lessor has prior approval from the ACAT under section 71AF to impose a condition on consent—state that a condition applies.

Maximum penalty: 5 penalty units.

**6 Termination
Section 36 (1) (d)**

omit

or division 4.5

substitute

, division 4.5, division 6.5 or division 6.5A

7 New sections 64B and 64C

insert

64B Limitation on rent increases

- (1) A lessor may increase the rental rate under a residential tenancy agreement by an amount that is more than the amount prescribed by regulation only if—
 - (a) the residential tenancy agreement allows the lessor to increase the rental rate by the amount; or
 - (b) after the lessor gives notice under subsection (2), the tenant agrees, in writing, to the increase; or
 - (c) the lessor obtains the ACAT's prior approval.
- (2) For subsection (1) (b), the lessor must give the tenant a written notice stating—
 - (a) the day the proposed increase takes effect (being a day at least 8 weeks after the day the notice is given); and
 - (b) the amount of the proposed increase; and
 - (c) whether the amount of the proposed increase is more than the amount prescribed under subsection (1); and

- (d) if the proposed increase is more than the amount prescribed under subsection (1)—that if the tenant does not agree to the increase, the lessor may only make the proposed increase with the prior approval of the ACAT.

64C Tenant may apply for review

- (1) A tenant may apply to the ACAT for review of a proposed rental rate increase.
- (2) An application must be made not less than 2 weeks before the day on which the proposed increase is to come into effect.

**8 Orders
Section 67**

omit

for review of

substitute

to allow or to review

9 Section 67 (as amended)

relocate as section 68A

**10 Guideline for orders
Section 68 (1) and (2)**

substitute

- (1) This section applies if an application is made to the ACAT under section 64B (1) (c) or section 64C (1) in relation to a rental rate increase.
- (1A) The ACAT must allow a rental rate increase if the increase is allowed under the residential tenancy agreement and is not excessive.

- (2) For subsection (1A)—
- (a) unless the tenant satisfies the ACAT otherwise, a rental rate increase is not excessive if it is equal to or less than the amount prescribed by regulation; and
 - (b) unless the lessor satisfies the ACAT otherwise, a rental rate increase is excessive if it is more than the amount prescribed by regulation.

11 Section 68 (5)

omit

**12 Effect of orders
Section 69 (1)**

omit

section 67 (a) or (c)

substitute

section 68A (a) or (c)

13 Section 69 (3) (a)

omit

section 67 (b) or (c)

substitute

section 68A (b) or (c)

14 New part 5AA

before part 5A, insert

Part 5AA Lessor's consent in certain matters

71AA Definitions—pt 5AA

In this part:

minor modification, to premises under a residential tenancy agreement, means—

- (a) a renovation, alteration or addition that can be removed or undone so that the premises are restored to substantially the same condition as the premises were in at the commencement of the agreement, fair wear and tear excepted; or
- (b) a modification prescribed by regulation.

special modification, to premises under a residential tenancy agreement, means—

- (a) a minor modification; or
- (b) a renovation, alteration or addition for 1 of the following reasons:
 - (i) the safety of the tenant or other people on the premises;
 - (ii) on written recommendation of a health practitioner—to assist a tenant in relation to the tenant's disability;
 - (iii) to improve the energy efficiency of the premises;
 - (iv) to allow access to telecommunications services;

(v) the security of the premises, or the tenant or other people on the premises;

(vi) any other reason prescribed by regulation.

Examples—subpar (i)

furniture anchors, child safety gates or fittings

Examples—subpar (ii)

access ramps, safety rails

Examples—subpar (v)

deadlocks, security doors, security alarms

71AB Process for tenant seeking consent—modifications generally

- (1) This section applies if, under a residential tenancy agreement, the tenant is required to obtain the lessor's consent to renovate, or make an alteration or addition to, the premises.
- (2) The tenant may apply, in writing, to the lessor for the lessor's consent.
- (3) The lessor—
 - (a) for a special modification—may refuse consent only if the lessor obtains the ACAT's prior approval; and
 - (b) in any other case—must not unreasonably refuse consent.
- (4) The lessor may impose a reasonable condition on consent.

Example

requiring the proposed renovation, alteration or addition to be done in a stated way to minimise damage to the premises

- (5) For an application under subsection (2) in relation to a special modification, the lessor is taken to consent to the tenant's application unless, within 14 days of receiving the application, the lessor applies to the ACAT under section 71AC.

71AC Lessor to apply to ACAT for refusal—special modifications

- (1) A lessor may apply to the ACAT for an order approving the lessor's refusal of the tenant's application under section 71AB (2) for consent to a special modification.
- (2) The ACAT must—
 - (a) approve the lessor's application; or
 - (b) refuse the lessor's application; or
 - (c) order that the lessor consent to the tenant's application but impose stated conditions on the consent.

Example—par (c)

the work be undertaken by a qualified tradesperson

- (3) The ACAT may make an order under subsection (2) (a) or (c) if satisfied—
 - (a) the lessor would suffer significant hardship; or
 - (b) the special modification would be contrary to a territory law; or
 - (c) the special modification is likely to require modifications to other residential premises or common areas; or
 - (d) the special modification would result in additional maintenance costs for the lessor; or
 - (e) of any other matter prescribed by regulation.

71AD Tenant may apply to ACAT for review of refusal—other modifications

- (1) This section applies if—
 - (a) a tenant makes an application under section 71AB (2) for the lessor's consent to renovate, or make an alteration or addition to, premises; and

- (b) the renovation, alteration or addition is not a special modification; and
 - (c) the lessor refuses to consent to the application.
- (2) The tenant may apply to the ACAT for an order that the lessor unreasonably refused to consent to the application.
- (3) The ACAT must—
- (a) approve the tenant's application; or
 - (b) refuse the tenant's application; or
 - (c) order that the lessor consent to the tenant's application but impose stated conditions on the consent.

Example—par (c)

the work be undertaken by a qualified tradesperson

- (4) In making a decision under subsection (3), the ACAT must consider—
- (a) whether the modification—
 - (i) would cause the lessor to suffer significant hardship; and
 - (ii) would be contrary to a territory law; and
 - (iii) is likely to require modifications to other residential premises or common areas; and
 - (iv) would result in additional maintenance costs for the lessor; and
 - (v) is otherwise reasonable in the circumstances; and
 - (b) any other matter prescribed by regulation.

71AE Process for tenant seeking consent—animals

- (1) This section applies if, under a residential tenancy agreement, the tenant is required to obtain the lessor's consent to keep an animal on the premises.
- (2) The tenant may apply, in writing, to the lessor for the lessor's consent.
- (3) The lessor may refuse consent only if the lessor obtains the ACAT's prior approval.
- (4) The lessor may impose a condition on consent—
 - (a) if the condition is a reasonable condition about—
 - (i) the number of animals kept on the premises; or
 - (ii) the cleaning or maintenance of the premises; or
 - (b) with the prior approval of the ACAT.

Note A tenant may apply to the ACAT to resolve a tenancy dispute, including a dispute about whether a condition imposed under s (4) (a) is a reasonable condition (see pt 6).
- (5) The lessor is taken to consent to the tenant's application under subsection (2) unless, within 14 days of receiving the application, the lessor applies to the ACAT under section 71AF.

71AF Lessor to apply to ACAT for refusal—animals

- (1) A lessor may apply to the ACAT for an order approving—
 - (a) the lessor's refusal of the tenant's application under section 71AE (2) to keep an animal on the premises; or
 - (b) a condition on the lessor's consent to the tenant's application.
- (2) The ACAT must—
 - (a) approve the lessor's application; or
 - (b) refuse the lessor's application; or

- (c) order that the lessor consent to the tenant's application but impose stated conditions on the consent.
- (3) The ACAT may make an order under subsection (2) (a) or (c) if satisfied—
- (a) the premises are unsuitable to keep the animal; or
 - (b) keeping the animal on the premises would result in unreasonable damage to the premises; or
 - (c) keeping the animal on the premises would be an unacceptable risk to public health or safety; or
 - (d) the lessor would suffer significant hardship; or
 - (e) keeping the animal on the premises would be contrary to a territory law.

71AG Limitation on lessor's liability

The lessor has no additional duty of care to a person arising from any consent given or required under section 71AE (5).

**15 New tenancy agreement—family violence and protection orders
Section 85A (2)**

omit

either

substitute

any

16 New section 85A (2) (c)*insert*

- (c) an order terminating a residential tenancy agreement or occupancy agreement and granting vacant possession of the relevant premises to the lessor.

**17 Standard residential tenancy terms
Schedule 1, clause 67***substitute*

- 67
- (1) The tenant must not, without the lessor's written consent, make any renovation, alteration or addition to the premises (time limits for the lessor to refuse consent to special modifications are set out in the Residential Tenancies Act).
 - (2) The lessor may give consent subject to a reasonable condition, including a requirement that the tenant use a suitably qualified tradesperson to undertake—
 - (a) the renovation, alteration, or addition; and
 - (b) any restoration at the end of the tenancy.
 - (3) Unless otherwise agreed, the tenant is liable for the cost of any renovation, alteration or addition to the premises.
 - (4) Unless otherwise agreed, at the end of the tenancy the tenant is responsible for restoring the premises to substantially the same condition as the premises were in at the commencement of the residential tenancy agreement, fair wear and tear excepted.
 - (5) The lessor and tenant may agree that any renovation, alteration or addition to the premises remains in place at the end of the residential tenancy agreement.

18 Schedule 1, new clauses 74A and 74B

after schedule 1, clause 74, insert

Keeping animals on premises

- 74A (1) The tenant may keep an animal, or allow an animal to be kept, on the premises.
- (2) The residential tenancy agreement may require the tenant to obtain the lessor's prior written consent to keep an animal, or allow an animal to be kept, on the premises (time limits for the lessor to refuse consent are set out in the Residential Tenancies Act).
- 74B The tenant is responsible for any repairs or additional maintenance to the premises required as a consequence of keeping an animal on the premises.

19 Schedule 1, clause 95

substitute

- 95 (1) If the lessor serves a notice on the tenant under clause 94 requiring the tenant to vacate the premises at the end of the notice, the tenant may vacate the premises before that day without breaching the residential tenancy agreement by giving the lessor a notice of intention to vacate—
- (a) if the term of the tenancy ends in less than 2 weeks—at least 4 days before vacating the premises; and
- (b) in any other case—at least 3 weeks before vacating the premises.
- (2) If subclause (1) applies, the tenancy terminates on the day the tenant vacates the premises.

20 Schedule 1, new clause 96 (1A)

insert

- (1A) If the lessor serves a notice to vacate on the ground of an intention or belief mentioned in subclause (1) (a), (b) or (c), the lessor must also give the tenant a statutory declaration about the intention or belief.

21 Dictionary, note 2

insert

- health practitioner
- territory law

22 Dictionary, new definitions of *minor modification* and *special modification*

insert

minor modification, to premises under a residential tenancy agreement, for part 5AA—see section 71AA.

special modification, to premises under a residential tenancy agreement, for part 5AA—see section 71AA.

23 Dictionary, definition of *termination and possession order*

omit

applicant for the order

substitute

lessor

Part 3 Residential Tenancies Regulation 1998

24 New section 5A

insert

5A Rent increase threshold—Act, s 64B and s 68

- (1) The prescribed amount is the amount worked as follows:

$$PI + \frac{PI}{10}$$

- (2) In this section:

index number means the rents component of the housing group of the Consumer Price Index for Canberra published from time to time by the Australian statistician.

PI means the percentage increase in the index number over the period since the last rental rate increase or since the beginning of the residential tenancy agreement (whichever is later).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 1 November 2018.

2 Notification

Notified under the [Legislation Act](#) on 4 March 2019.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Residential Tenancies Amendment Bill 2019, which originated in the Legislative Assembly as the Residential Tenancies Amendment Bill 2018 (No 2) and was passed by the Assembly on 21 February 2019.

Clerk of the Legislative Assembly

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