



Australian Capital Territory

Residential Tenancies Amendment Act 2020

A2020-1

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J2019-696

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Residential Tenancies Amendment Act 2020

A2020-1

An Act to amend the *Residential Tenancies Act 1997*

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

1 Name of Act

This Act is the *Residential Tenancies Amendment Act 2020*.

2 Commencement

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)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

3 Legislation amended

This Act amends the *Residential Tenancies Act 1997*.

4 Standard residential tenancy terms Section 8 (1) (a)

substitute

- (a) is taken to contain the standard residential tenancy terms mentioned in schedule 1—
- (i) for a fixed term agreement—as in force on the day the parties enter the agreement; or
 - (ii) for a periodic agreement—as in force from time to time; and

5 New section 8 (1A) and (1B)

insert

- (1A) Despite subsection (1) (a) (i), an amendment of this Act (other than schedule 1) that affects the operation of schedule 1 applies to a fixed term agreement.
- (1B) To remove any doubt, subsection (1) (a) (ii) applies to a periodic agreement that commences on expiry of a fixed term agreement, on the day the periodic agreement commences.

**6 Disputes about all or part of bond
New section 35 (2A)**

insert

- (2A) The referral of the application and notice of dispute is taken to be an application to the ACAT about a tenancy dispute.

**7 Termination
New section 36 (1) (ba)**

insert

- (ba) if a tenant terminates an agreement under section 46A because the tenant has accepted aged care or social housing accommodation;

8 New sections 46A and 46B

in division 4.3, insert

46A Termination of agreement for aged care or social housing needs

- (1) This section applies if a tenant under a residential tenancy agreement accepts accommodation in—
 - (a) a residential aged care facility; or
 - (b) a social housing dwelling.
- (2) The tenant may, by written notice to the lessor, terminate the agreement.
- (3) The tenant must give the lessor at least 14 days notice of the termination.
- (4) The tenancy ends on the date stated in the notice.

Note The tenant is not liable to pay compensation for the early termination of the agreement (see s 84 (4A)).

- (5) In this section:

registered community housing provider—see the *Community Housing Providers National Law (ACT)*, section 4 (1).

Note The *Community Housing Providers National Law (ACT) Act 2013*, s 7 applies the Community Housing Providers National Law set out in the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW), appendix as if it were an ACT law called the *Community Housing Providers National Law (ACT)*.

residential aged care facility means a residential facility that provides residential care within the meaning of the *Aged Care Act 1997* (Cwlth), section 41-3 (Meaning of *residential care*) to residents at the facility.

social housing dwelling means—

- (a) premises managed by the housing commissioner; or
- (b) premises provided by a registered community housing provider.

46B Termination of fixed term agreements if premises for sale

- (1) This section applies in relation to a tenant of premises that are the subject of a fixed term agreement, if the lessor offers the premises for sale and—
 - (a) the sale offer is made within 6 months after the start of the agreement and the lessor did not disclose the intended sale before entering into the agreement; or
 - (b) the lessor requires the tenant to permit access to the premises to allow inspections by a prospective buyer (a ***buyer inspection request***) and—
 - (i) the lessor makes more than 1 buyer inspection request; and
 - (ii) a subsequent buyer inspection request is made more than 8 weeks after the day the lessor made the first buyer inspection request.
- (2) The tenant may, by written notice to the lessor, terminate the agreement.
- (3) The tenant must give the lessor at least 14 days notice of the termination.
- (4) The tenancy ends on the date stated in the notice.

Note The tenant is not liable to pay compensation for the early termination of the agreement (see s 84 (4A)).

**9 Certain breaches of standard residential tenancy terms
New section 48 (3) and (4)**

insert

- (3) For subsection (1) (a) (i), if the application is about the use of premises for an illegal purpose, the ACAT must also be satisfied that—
 - (a) the tenant has used the premises, or permitted the premises to be used, for an illegal purpose; and
 - (b) the illegal use justifies the termination of the tenancy.
- (4) For subsection (3), the matters the ACAT may consider include the following:
 - (a) the nature of the illegal use;
 - (b) any previous illegal use;
 - (c) the previous history of the tenancy.

**10 Failure to pay rent—payment order
Section 49A (2) and (3)**

substitute

- (2) Instead of making a termination and possession order, the ACAT may make an order (a **payment order**) requiring the tenant to pay 1 or both of the following:
 - (a) the rent, or a stated part of the rent, that has become payable;
 - (b) future rent as it becomes payable.
- (3) The ACAT must not make a payment order unless satisfied—
 - (a) the tenant is reasonably likely to make the payments required under the order; and

- (b) if the payment order is an order mentioned in subsection (2) (b)—
- (i) the lessor has made more than 3 applications for a termination and possession order under section 49 (2) in the 12-month period immediately before the day the ACAT makes the order; and
 - (ii) it is in the interests of justice to do so.

**11 Abandonment during periodic agreement
Section 63 (2)**

omit

**12 Meaning of *tenancy dispute*
New section 72 (2) (aa)**

insert

- (aa) a referral of an application and notice of dispute taken to be an application about a tenancy dispute under section 35 (2A); and

**13 Orders by ACAT
New section 83 (l)**

insert

- (l) any other order the ACAT considers appropriate including declaratory orders in relation to a matter in this Act.

14 New section 83 (2)

before note 1, insert

- (2) The ACAT may make an order under subsection (1) (k) only if satisfied that the defect did not, and is not likely to, place the person receiving the notice in a significantly worse position than the person would have been in had the notice, or service of the notice, not been defective.

**15 Notice of intention to vacate—award of compensation
New section 84 (4A)**

insert

- (4A) No compensation may be awarded to the lessor if the agreement is lawfully terminated under the following sections:
- (a) section 46A (Termination of agreement for aged care or social housing needs);
 - (b) section 46B (Termination of fixed term agreements if premises for sale);
 - (c) section 64AA (Termination—affected residential premises);
 - (d) section 64AB (Termination—eligible impacted property).

**16 Applications under s 85A—ACAT orders
Section 85B (2) (b)**

omit

any other tenants (other than the respondent)

substitute

the protected person, the respondent and any other tenants,

17 Section 85B (2) (c) (i)

omit

or the protected person's dependent children

substitute

, or the dependent children of the protected person or of any other person mentioned in the application,

18 New section 85B (6)

insert

- (6) The ACAT may suspend the operation of an order for a stated period of up to 3 weeks if satisfied that—
- (a) the protected person would suffer significant hardship if the order were not suspended for the stated period; and
 - (b) the hardship would be greater than the hardship the lessor would suffer if the order were suspended for the stated period.

**19 Regulation-making power
New section 136 (2) (d), (3) and (4)**

insert

- (d) minimum standards for premises made available for occupation under a residential tenancy agreement, including in relation to the following matters:
- (i) physical accessibility;
 - (ii) energy efficiency;
 - (iii) safety and security;
 - (iv) sanitation;
 - (v) amenity.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (3) A regulation made under subsection (2) (d) may apply, adopt or incorporate a law or instrument as in force from time to time.

Note A reference to an instrument includes a reference to a provision of an instrument (see [Legislation Act](#), s 14 (2)).

- (4) The [Legislation Act](#), section 47 (5) and (6) does not apply in relation to a law or instrument applied, adopted or incorporated under subsection (3).

Note A law or instrument applied, adopted or incorporated under s (3) does not need to be notified under the [Legislation Act](#) because s 47 (5) and (6) do not apply (see [Legislation Act](#), s 47 (7)).

**20 Standard residential tenancy terms
Schedule 1, clause 28**

omit

1 calendar month

substitute

2 weeks or a longer period nominated by the tenant

21 Schedule 1, clause 60 (j)

after

heating

insert

, cooling

22 Schedule 1, clause 70 (a)

substitute

- (a) use the premises, or permit them to be used, for an illegal purpose; or

Note The ACAT must not make a termination and possession order for a breach of this term unless satisfied of certain matters (see Residential Tenancies Act, s 48 (3) and (4)).

23 Schedule 1, clause 81

substitute

- 81 The tenant must permit reasonable access to the premises, on the lessor giving 48 hours notice, to allow inspection of the premises by prospective purchasers of the premises, but only if—
- (a) the lessor intends to sell the premises; and
 - (b) the lessor has previously notified the tenant in writing of the lessor's intention to sell.
- 81A
- (1) The tenant must not unreasonably refuse an inspection of the premises by a prospective purchaser.
 - (2) However, a tenant is not required to agree to more than 2 inspections a week.
 - (3) The inspection must 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).
 - (4) 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 stated time.

24 Schedule 1, clause 96 (1) (a) to (c)

omit

4 weeks

substitute

8 weeks

25 Dictionary, new definition of *periodic agreement*

insert

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 26 September 2019.

2 Notification

Notified under the [Legislation Act](#) on 25 February 2020.

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 2020, which originated in the Legislative Assembly as the Residential Tenancies Amendment Bill 2019 and was passed by the Assembly on 13 February 2020.

Acting Clerk of the Legislative Assembly

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