

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Residential Tenancies Amendment Bill 2018 (No 2)

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Residential Tenancies Amendment Bill 2018 (No 2)

A Bill for

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:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Residential Tenancies Amendment Act 2018 (No 2)*.

4 **2 Commencement**

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

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

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

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

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

16 **3 Legislation amended**

17 This Act amends the *Residential Tenancies Act 1997* and the
18 *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

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

2 N is the number worked out as follows:

3
$$\frac{\text{break fee}}{\text{weekly rent payable at the time the tenant ends the agreement}}$$

4 **5 Termination**
5 **Section 36 (1) (d)**

6 *omit*

7 or division 4.5

8 *substitute*

9 , division 4.5, division 6.5 or division 6.5A

10 **6 New sections 64B and 64C**

11 *insert*

12 **64B Limitation on rent increases**

13 (1) A lessor may increase the rental rate under a residential tenancy
14 agreement by an amount that is more than the amount prescribed by
15 regulation only if—

16 (a) the residential tenancy agreement allows the lessor to increase
17 the rental rate by the amount; or

18 (b) after the lessor gives notice under subsection (2), the tenant
19 agrees, in writing, to the increase; or

20 (c) the lessor obtains the ACAT's prior approval.

21 (2) For subsection (1) (b), the lessor must give the tenant a written notice
22 stating—

23 (a) the day the proposed increase takes effect (being a day at least 8
24 weeks after the day the notice is given); and

25 (b) the amount of the proposed increase; and

- 1 (c) whether the amount of the proposed increase is more than the
2 amount prescribed under subsection (1); and
- 3 (d) if the proposed increase is more than the amount prescribed
4 under subsection (1)—that if the tenant does not agree to the
5 increase, the lessor may only make the proposed increase with
6 the prior approval of the ACAT.

7 **64C Tenant may apply for review**

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

12 **7 Orders**
13 **Section 67**

14 *omit*

15 for review of

16 *substitute*

17 to allow or to review

18 **8 Section 67 (as amended)**

19 *relocate as section 68A*

20 **9 Guideline for orders**
21 **Section 68 (1) and (2)**

22 *substitute*

23 (1) This section applies if an application is made to the ACAT under
24 section 64B (1) (c) or section 64C (1) in relation to a rental rate
25 increase.

Section 10

1 (1A) The ACAT must allow a rental rate increase if the increase is allowed
2 under the residential tenancy agreement and is not excessive.

3 (2) For subsection (1A)—

4 (a) unless the tenant satisfies the ACAT otherwise, a rental rate
5 increase is not excessive if it is equal to or less than the amount
6 prescribed by regulation; and

7 (b) unless the lessor satisfies the ACAT otherwise, a rental rate
8 increase is excessive if it is more than the amount prescribed by
9 regulation.

10 **10 Section 68 (5)**

11 *omit*

12 **11 Effect of orders**
13 **Section 69 (1)**

14 *omit*

15 section 67 (a) or (c)

16 *substitute*

17 section 68A (a) or (c)

18 **12 Section 69 (3) (a)**

19 *omit*

20 section 67 (b) or (c)

21 *substitute*

22 section 68A (b) or (c)

13 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;

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

3 (vi) any other reason prescribed by regulation.

4 **Examples—subpar (i)**

5 furniture anchors, child safety gates or fittings, swimming pool fencing

6 **Examples—subpar (ii)**

7 access ramps, safety rails

8 **Examples—subpar (v)**

9 deadlocks, security doors, security alarms

10 **71AB Process for tenant seeking consent—modifications**
11 **generally**

12 (1) This section applies if, under a residential tenancy agreement, the
13 tenant is required to obtain the lessor's consent to renovate, or make
14 an alteration or addition to, the premises.

15 (2) The tenant may apply, in writing, to the lessor for the lessor's consent.

16 (3) The lessor—

17 (a) for a special modification—may refuse consent only if the lessor
18 obtains the ACAT's prior approval; and

19 (b) in any other case—must not unreasonably refuse consent.

20 (4) The lessor may impose a reasonable condition on consent.

21 **Example**

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

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

- 1 **71AC Lessor to apply to ACAT for refusal—special**
2 **modifications**
- 3 (1) A lessor may apply to the ACAT for an order approving the lessor's
4 refusal of the tenant's application under section 71AB (2) for consent
5 to a special modification.
- 6 (2) The ACAT must—
- 7 (a) approve the lessor's application; or
8 (b) refuse the lessor's application; or
9 (c) order that the lessor consent to the tenant's application but
10 impose stated conditions on the consent.
- 11 **Example—par (c)**
12 the work be undertaken by a qualified tradesperson
- 13 (3) The ACAT may make an order under subsection (2) (a) or (c) if
14 satisfied—
- 15 (a) the lessor would suffer significant hardship; or
16 (b) the special modification would be contrary to a territory law; or
17 (c) the special modification is likely to require modifications to
18 other residential premises or common areas; or
19 (d) the special modification would result in additional maintenance
20 costs for the lessor; or
21 (e) of any other matter prescribed by regulation.
- 22 **71AD Tenant may apply to ACAT for review of refusal—other**
23 **modifications**
- 24 (1) This section applies if—
- 25 (a) a tenant makes an application under section 71AB (2) for the
26 lessor's consent to renovate, or make an alteration or addition
27 to, premises; and

- 1 (b) the renovation, alteration or addition is not a special
2 modification; and
- 3 (c) the lessor refuses to consent to the application.
- 4 (2) The tenant may apply to the ACAT for an order that the lessor
5 unreasonably refused to consent to the application.
- 6 (3) The ACAT must—
- 7 (a) approve the tenant’s application; or
8 (b) refuse the tenant’s application; or
9 (c) order that the lessor consent to the tenant’s application but
10 impose stated conditions on the consent.
- 11 **Example—par (c)**
12 the work be undertaken by a qualified tradesperson
- 13 (4) In making a decision under subsection (3), the ACAT must
14 consider—
- 15 (a) whether the modification—
- 16 (i) would cause the lessor to suffer significant hardship; and
17 (ii) would be contrary to a territory law; and
18 (iii) is likely to require modifications to other residential
19 premises or common areas; and
20 (iv) would result in additional maintenance costs for the lessor;
21 and
22 (v) is otherwise reasonable in the circumstances; and
23 (b) any other matter prescribed by regulation.

1 **71AE Process for tenant seeking consent—animals**

2 (1) This section applies if, under a residential tenancy agreement, the
3 tenant is required to obtain the lessor’s consent to keep an animal on
4 the premises.

5 (2) The tenant may apply, in writing, to the lessor for the lessor’s consent.

6 (3) The lessor may refuse consent only if the lessor obtains the ACAT’s
7 prior approval.

8 (4) The lessor may impose a condition on consent—

9 (a) if the condition is a reasonable condition about—

10 (i) the number of animals kept on the premises; or

11 (ii) the cleaning or maintenance of the premises; or

12 (b) with the prior approval of the ACAT.

13 *Note* A tenant may apply to the ACAT to resolve a tenancy dispute,
14 including a dispute about whether a condition imposed under
15 s (4) (a) is a reasonable condition (see pt 6).

16 (5) The lessor is taken to consent to the tenant’s application under
17 subsection (2) unless, within 14 days of receiving the application, the
18 lessor applies to the ACAT under section 71AF.

19 **71AF Lessor to apply to ACAT for refusal—animals**

20 (1) A lessor may apply to the ACAT for an order approving—

21 (a) the lessor’s refusal of the tenant’s application under
22 section 71AE (2) to keep an animal on the premises; or

23 (b) a condition on the lessor’s consent to the tenant’s application.

24 (2) The ACAT must—

25 (a) approve the lessor’s application; or

26 (b) refuse the lessor’s application; or

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

13 **71AG Limitation on lessor's liability**

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

16 **14 New tenancy agreement—family violence and protection**
17 **orders**
18 **Section 85A (2)**

19 *omit*
20 *either*
21 *substitute*
22 *any*

15 New section 85A (2) (c)

2 *insert*

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

**16 Standard residential tenancy terms
Schedule 1, clause 67**

8 *substitute*

- 9 67 (1) The tenant must not, without the lessor's written consent, make
10 any renovation, alteration or addition to the premises (time limits
11 for the lessor to refuse consent to special modifications are set
12 out in the Residential Tenancies Act).
- 13 (2) The lessor may give consent subject to a reasonable condition,
14 including a requirement that the tenant use a suitably qualified
15 tradesperson to undertake—
- 16 (a) the renovation, alteration, or addition; and
17 (b) any restoration at the end of the tenancy.
- 18 (3) Unless otherwise agreed, the tenant is liable for the cost of any
19 renovation, alteration or addition to the premises.
- 20 (4) Unless otherwise agreed, at the end of the tenancy the tenant is
21 responsible for restoring the premises to substantially the same
22 condition as the premises were in at the commencement of the
23 residential tenancy agreement, fair wear and tear excepted.
- 24 (5) The lessor and tenant may agree that any renovation, alteration
25 or addition to the premises remains in place at the end of the
26 residential tenancy agreement.

- 1 **17 Schedule 1, new clauses 74A and 74B**
- 2 *after schedule 1, clause 74, insert*
- 3 **Keeping animals on premises**
- 4 74A (1) The tenant may keep an animal, or allow an animal to be kept,
5 on the premises.
- 6 (2) The residential tenancy agreement may require the tenant to
7 obtain the lessor's prior written consent to keep an animal, or
8 allow an animal to be kept, on the premises (time limits for the
9 lessor to refuse consent are set out in the Residential Tenancies
10 Act).
- 11 74B The tenant is responsible for any repairs or additional
12 maintenance to the premises required as a consequence of
13 keeping an animal on the premises.
- 14 **18 Schedule 1, clause 95**
- 15 *substitute*
- 16 95 (1) If the lessor serves a notice on the tenant under clause 94
17 requiring the tenant to vacate the premises at the end of the
18 notice, the tenant may vacate the premises before that day
19 without breaching the residential tenancy agreement by giving
20 the lessor a notice of intention to vacate—
- 21 (a) if the term of the tenancy ends in less than 2 weeks—at
22 least 4 days before vacating the premises; and
- 23 (b) in any other case—at least 3 weeks before vacating the
24 premises.
- 25 (2) If subclause (1) applies, the tenancy terminates on the day the
26 tenant vacates the premises.

1 **19 Dictionary, note 2**

2 *insert*

- 3 • health practitioner
4 • territory law

5 **20 Dictionary, new definitions of *minor modification* and**
6 ***special modification***

7 *insert*

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

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

12 **21 Dictionary, definition of *termination and possession***
13 ***order***

14 *omit*

15 applicant for the order

16 *substitute*

17 lessor

1 **Part 3 Residential Tenancies**
2 **Regulation 1998**

3 **22 New section 5A**

4 *insert*

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

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

7
$$PI + \frac{PI}{10}$$

8 (2) In this section:

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

12 *PI* means the percentage increase in the index number over the period
13 since the last rental rate increase or since the beginning of the
14 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 2018.

3 Republications of amended laws

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

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