

**1993**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN  
CAPITAL TERRITORY**

**LANDLORD AND TENANT (AMENDMENT) BILL 1993**

**EXPLANATORY MEMORANDUM**

**Circulated by Authority of the Minister for Housing and  
Community Services**

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## LANDLORD AND TENANT (AMENDMENT) BILL 1993

The *Landlord and Tenant Act 1949* (the Principal Act) regulates the relationship between lessors (landlords) and lessees (tenants) by controlling rents and other payments in connection with leased premises and by providing mechanisms for the recovery of possession of premises. The Principal Act also provides an arrangement for the protection of moneys paid by lessees to lessors as a bond.

The Landlord and Tenant (Amendment) Bill 1993 amends the Principal Act to make minor modifications to, and clarify some aspects of, the way in which bond moneys are dealt with under the Act. The Bill also amends the Principal Act to provide a method of dealing with bond moneys that become "frozen" following proceedings being unable to proceed any further in the Small Claims Court. The language of the Principal Act is also renovated by the Bill so as to render it less gender offensive.

### **Financial implications**

The Bill has no financial implications.

### **Formal matters**

*Clauses 1, 2 and 3* are formal clauses that provide for the method of citation of the Bill once enacted and its commencement and identify the Principal Act.

### **Extension of certain time periods**

*Clause 4* amends section 62AF of the Principal Act to extend the time allowed for the lessee to return to the lessor a condition report as to the state of repair or general condition of the premises. The lessor is required to provide a condition report to the lessee when the lessee takes possession of the premises. The lessee checks the condition report against the premises and signs the report to indicate that they either agree or disagree with the report or with certain parts of the report. The time allowed in subsection 62AF(3) for the lessee to do this is extended to 7 days as it has been found that the 3 days allowed under the Principal Act is not adequate.

*Subclause 7(a)* amends section 62AP of the Principal Act to extend the time allowed for a party to notify the Director of Rental Bonds of a dispute in respect of a claim for

bond moneys. Where a party to lease makes an application for payment out of the Trust Fund of an amount of bond money held in respect of the lease, the Director is required to notify the other party to the lease of the first party's application. Under the Principal Act the other party has 10 days after this notification by the Director in which to notify the Director that she or he disputes the first party's application. If the Director receives no notification of a dispute then the Director will pay out the bond moneys in accordance with the application. The time allowed in subsection 62AP(1) for the other party to notify the Director of a dispute is extended to 14 days or such other period as may be prescribed by regulation as it has been found that the 10 days allowed under the Principal Act is not always adequate.

#### **Applications and payments prior to the end of a tenancy**

*Clause 5* amends section 62AM of the Principal Act to insert a new subsection (1A). This new subsection provides that an application for the payment out of the Trust Fund of bond moneys held in respect of a lease may be made prior to the end of a tenancy only if the application is a joint application of the lessee and the lessor or if one of the parties is directing that the total amount of money held in respect of the lease be paid to the other party. This new subsection is designed to ensure that one of the parties to the lease cannot take advantage of the absence of the other party to obtain the whole of the bond moneys from the Trust Fund. The other party may, for example, be overseas and not receive the notification of the application in time to notify the Director of a dispute.

*Subclause 7(b)* makes an amendment to subsection 62AP(3) so that Director will cause a payment out of the Trust Fund of the amount of bond money in the case of a joint application made under either subsection 62AM(1) at the end of a lease agreement, or under new subsection 62AM(1A) before the termination of the lease agreement.

#### **Clarifications**

*Clause 6* amends section 62AN of the Principal Act to clarify that the Director is not required to go through the notification procedures where the application is a joint application. Obviously, where there is a joint application, both parties are in agreement and such notification is superfluous.

*Subclause 7(c)* inserts a new subsection (4) at the end of section 62AP. New subsection 62AP(4) is intended to clarify that the Director cannot pay out of the Trust Fund an amount of bond money that is greater than the amount that was

originally paid into the Trust Fund or where no bond money was paid into the Trust Fund.

### **Proceedings in the Small Claims Court**

*Subclause 8(a)* amends subsection 62AS(2) of the Principal Act to ensure that bond moneys do not become "frozen". That is, the Director is notified of a dispute and one of the parties subsequently files a claim with the Small Claims Court through the processes in Part IIAA of the Principal Act but the other party cannot be located in order to serve a notice of the first party's claim. Where this occurs, the Small Claims Court cannot proceed to determine the claim if it is doubtful that notice of the claim came to the knowledge of the second party. The Director is not able to pay moneys out of the Trust Fund until the dispute is resolved and hence the bond moneys are effectively in limbo unless or until the second party can be served with a notice of the claim under the *Small Claims Act 1974*.

Specifically, section 50 of the *Small Claims Act 1974* provides that where a document is served by a method other than personal service and the Court is satisfied that the document did not come, or there is doubt that the document came, to the knowledge of the party served within a reasonable time then the Court will not allow any fresh step to the proceedings.

The amendment to subsection 62AS(2) is intended to overcome this problem by modifying the *Small Claims Act 1974* so that section 50 of that Act does not apply for the purposes of Part IIAA of the Principal Act. The Court will simply proceed to making the order which will in turn be served on the Director in accordance with section 62AU of the Principal Act.

*Subclause 8(b)* amends section 62AS of the Principal Act to remove subsection (3) which provides that the Director is a nominal respondent in proceedings in the Small Claims Court that are instituted as a result of the operation of Part IIAA of the Principal Act. The Director is bound by section 62AU of the Principal Act to give effect to the orders of the Court in respect of bond moneys.

### **Sexist language**

*Clause 9* provides that the Principal is amended as set out in the Schedule. The amendments detailed in the Schedule amend the Principal Act so that it is expressed in gender neutral language.