New South Wales

Residential Tenancies Amendment (Social Housing) Act 1998 No 126

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Act No 126, 1998

An Act to amend the *Residential Tenancies Act 1987* with respect to social housing tenancies. [Assented to 26 November 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Residential Tenancies Amendment (Social Housing) Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Residential Tenancies Act 1987 No 26

The *Residential Tenancies Act 1987* is amended as set out in Schedule 1.

Schedule 1   Amendments

(Section 3)

[1]   Section 3 Definitions

Insert in alphabetical order in section 3 (1):

rent rebate means an amount waived or remitted, in accordance with a scheme established under any Act, from rent payable to a social housing provider.

social housing premises means residential premises let by a social housing provider under a residential tenancy agreement (otherwise than in the circumstances, if any, prescribed by the regulations).

social housing provider means any of the following:

(a)   the New South Wales Land and Housing Corporation,

(b)   the New South Wales Department of Housing,

(c)   the Office of Community Housing of the Department of Urban Affairs and Planning,

(d)   the Aboriginal Housing Office,

(e)   an organisation for the time being registered with the Office of Community Housing, or under Part 5 of the *Aboriginal Housing Act 1998*,

(f)   an organisation prescribed by the regulations.

[2]   Section 23 Use of premises by tenant

Insert at the end of section 23:

(2)   The tenant under a residential tenancy agreement entered into in respect of social housing premises is taken to have breached a term of the agreement if the tenant, or any person who, although not a tenant, is occupying (or jointly occupying) the residential premises with the consent of the tenant:

(a)   intentionally or negligently causes or permits damage to any property adjoining or adjacent to the premises (including any property available for use by the tenant in common with others), or

(b)   uses any property adjoining or adjacent to the premises (including any property that is available for use by the tenant in common with others) for the purposes of the manufacture or sale of any prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*.

[3]   Section 44 Application of Division

Insert at the end of section 44:

(2)   An increase in the amount payable by a tenant because of the cancellation or reduction of a rent rebate is not a rent increase for the purposes of this Division, and such a cancellation or reduction does not constitute a withdrawal of goods, services or facilities as mentioned in section 47.

[4]   Section 64 Application to Tribunal by landlord for termination and order for possession

Omit section 64 (4). Insert instead:

(4)   Without limiting the obligations of the Tribunal under subsection (2), in considering the circumstances of a case concerning social housing premises, the Tribunal, in addition to having regard to the circumstances of the tenant and other circumstances of the case, is to have regard to such of the following matters as may be relevant:

(a)   any serious adverse effects the tenancy has had on neighbouring residents or other persons,

(b)   whether the breach of the residential tenancy agreement was a serious one (and, in particular, whether it was one to which subsection (6) applies), and whether, given the behaviour or likely behaviour of the tenant, a failure to terminate the agreement would subject, or continue to subject, neighbouring residents or any persons or property to unreasonable risk,

(c)   the landlord's responsibility to its other tenants,

(d)   whether the tenant, wilfully or otherwise, is or has been in breach of an order of the Tribunal,

(e)   the history of the tenancy concerned.

(5)   If the Tribunal makes an order terminating a residential tenancy agreement under this section, it must make a further order for possession of the residential premises, specifying the day on which the order takes effect.

(6)   If the residential premises concerned are social housing premises, an order for possession made under this section is to be expressed to take effect immediately if the breach of the agreement:

(a)   involves the use of the premises, or any property adjoining or adjacent to the premises (including any property available for use by the tenant in common with others), for the purposes of the manufacture or sale of any prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*, or

(b)   subjects persons or property to unreasonable risk,

unless the Tribunal considers that it would be unjust to do so.

(7)   Nothing in this section affects the operation of section 68.

[5]   **Section 68 Tribunal may terminate residential agreement where tenant causes serious damage or injury**

Insert after section 68 (2):

(3)   In the case of a tenancy of social housing premises, a reference in subsection (1) (a) to the residential premises is taken to include a reference to any property adjoining or adjacent to the premises (including any property available for use by the tenant in common with others).

[6]   **Section 73 Enforcement of orders for possession**

Insert after section 73 (6):

(7)   A delay on the part of an applicant who is a social housing provider in making an application under this section is not to be regarded by the Tribunal as good cause to refuse to grant the application, to the extent that the delay is attributable to bona fide attempts by the applicant to reach agreement with the tenant for reinstatement of the tenancy.

[Minister's second reading speech made in—
    Legislative Assembly on 15 October 1998
    Legislative Council on 10 November 1998]

BY AUTHORITY