

c2018-122
GRNS--The Greens

LEGISLATIVE COUNCIL

Residential Tenancies Amendment (Review) Bill 2018

First print

Proposed amendments

JPM
26/9/18

No. 1 Occupants in shared households

Page 3, Schedule 1. Insert after line 24:

[2] Section 10 Application of Act to occupants in shared households

Omit the section.

No. 2 Termination of residential tenancy agreements

Page 3, Schedule 1. Insert after line 24:

[2] Section 14 Landlord's obligation to ensure written residential tenancy agreement

Omit section 14 (3). Insert instead:

- (3) If a landlord fails to comply with this section, the rent under the residential tenancy agreement must not be increased during the first 6 months of the tenancy.

No. 3 Terms prohibiting pets

Page 3, Schedule 1. Insert before line 25:

[2] Section 19 Prohibited terms

Insert after section 19 (2) (e):

- (f) that the tenant is not entitled to keep a pet on the residential premises.

No. 4 Rent increases

Page 4, Schedule 1 [9], lines 34 and 35. Omit all words on those lines. Insert instead:

- (1B) The rent payable by a tenant for residential premises may not be increased more than once in a period of 12 months.

No. 5 Rent increases

Page 4, Schedule 1 [9]. Insert before line 36:

- (1C) The rent payable by a tenant for residential premises may not be increased so that it is more than the indexed rent in a period of 12 months.

(1D) The indexed rent is to be calculated in accordance with the following formula:

$$A = \frac{R \times B}{C}$$

where:

A is the indexed rent.

R is the amount of the current rent.

B is the Sydney CPI number for March in the current financial year.

C is the Sydney CPI number for March in the financial year during which the rent was last increased.

(1E) In this section:

Sydney CPI number means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

No. 6 **Habitable premises**

Page 4, Schedule 1 [10]. Insert after line 40:

(a) are safe and secure, and

No. 7 **Habitable premises**

Page 5, Schedule 1 [10], line 1. Insert "and are free from mould, vermin infestation and biotoxins" after "ventilation".

No. 8 **Habitable premises**

Page 5, Schedule 1 [10]. Insert after line 1:

(d) have adequate insulation, and

No. 9 **Habitable premises**

Page 5, Schedule 1 [10], line 5. Insert ", waterproofing" after "plumbing".

No. 10 **Habitable premises**

Page 5, Schedule 1 [10]. Insert after line 9:

(g) contain a kitchen or food preparation area, and

No. 11 **Habitable premises**

Page 5, Schedule 1 [10], line 11. Omit "user.". Insert instead:

user, and

(i) provide for access to adequate laundry facilities.

No. 12 **Access to premises by landlord**

Page 5, Schedule 1 [12], lines 36–46. Omit all words on those lines.

No. 13 **Maintenance records**

Page 6, Schedule 1. Insert after line 28:

[14] Section 63 Landlord's general obligation

Insert after section 66 (3):

(3A) The landlord must keep, and retain for a period of not less than 3 years, a record of maintenance requests made by a tenant and of maintenance carried out by or on behalf of the landlord on the residential premises.

No. 14 **Minor alterations to residential tenancy agreements**

Page 10, Schedule 1. Insert after line 19:

[19] Section 66 Tenant must not make alterations to premises without consent

Insert “, including minor alterations to improve accessibility such as handrails in bathrooms” after “nature” in section 66 (2).

No. 15 **Employer or caretaker residential tenancy agreements**

Page 10, Schedule 1 [20], lines 28–31. Omit all words on those lines.

No. 16 **Termination of residential tenancy agreements**

Page 10, Schedule 1. Insert after line 31:

[21] Section 82 Termination notices

Omit “84, 85,” from section 82 (1) (c).

[22] Sections 84–85A

Omit the sections. Insert instead:

84 End of residential tenancy at end of fixed term tenancy

- (1) A landlord may, at any time before the end of the fixed term of a fixed term agreement, give a termination notice for the agreement that is to take effect on or after the end of the fixed term on one of the following grounds:
 - (a) the landlord requires the residential premises for the landlord’s own use, or the use of a member of the landlord’s family, for a period of not less than 12 months,
 - (b) the landlord wishes to carry out renovations or repairs to the residential premises that will render the premises uninhabitable for a period of not less than 4 weeks,
 - (c) the residential premises are to be used in a way, or subject to circumstances, that will render the premises not able to be used as a residence for a period of not less than 6 months.
- (2) The termination notice must specify a termination date that is on or after the end of the fixed term and not earlier than 90 days after the day on which the notice is given.
- (3) The Tribunal must, on application by a landlord, make a termination order if it is satisfied that:
 - (a) a termination notice was given in accordance with this section, and
 - (b) the landlord has established the ground on which the notice was given, and
 - (c) the termination is appropriate in the circumstances of the case, and
 - (d) the tenant has not vacated the premises as required by the notice.
- (4) This section does not apply to a residential tenancy agreement if the tenant has been in continual possession of the same residential premises for a period of 20 years or more and the fixed term of the original fixed term agreement has ended.
- (5) In this section:

member of the landlord’s family means:

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- (a) the landlord's spouse or de facto partner, or
 - (b) a child of the landlord or the landlord's spouse or de facto partner, or
 - (c) a parent or step-parent of the landlord or the landlord's spouse or de facto partner, or
 - (d) another person who ordinarily resides with the landlord and is substantially dependent on the landlord.

85 Termination of periodic agreement

- (1) A landlord may, at any time, give a termination notice for a periodic agreement on one of the following grounds:
 - (a) the landlord requires the residential premises for the landlord's own use, or the use of a member of the landlord's family, for a period of not less than 12 months,
 - (b) the landlord wishes to carry out renovations or repairs to the residential premises that will render the premises uninhabitable for a period of not less than 4 weeks,
 - (c) the residential premises are to be used in a way, or subject to circumstances, that will render the premises not able to be used as a residence for a period of not less than 6 months.
- (2) The termination notice must specify a termination date that is not earlier than 90 days after the day on which the notice is given.
- (3) The Tribunal must, on application by a landlord, make a termination order if it is satisfied that:
 - (a) a termination notice was given in accordance with this section, and
 - (b) the landlord has established the ground on which the notice was given, and
 - (c) the termination is appropriate in the circumstances of the case, and
 - (d) the tenant has not vacated the premises as required by the notice.
- (4) This section does not apply to a residential tenancy agreement if the tenant has been in continual possession of the same residential premises for a period of 20 years or more.
- (5) In this section:
member of the landlord's family means:
 - (a) the landlord's spouse or de facto partner, or
 - (b) a child of the landlord or the landlord's spouse or de facto partner, or
 - (c) a parent or step-parent of the landlord or the landlord's spouse or de facto partner, or
 - (d) another person who ordinarily resides with the landlord and is substantially dependent on the landlord.

85A Wrongful termination of fixed term agreement

- (1) This section applies if a residential tenancy agreement for residential premises is terminated under section 84 or 85.
- (2) A landlord or a person who obtains possession of the residential premises following the termination must not use, or permit the premises to be used, other than for a use that is in accordance with the grounds on which the notice was given.

Maximum penalty: 100 penalty units.

- (3) The Tribunal may, on application by the tenant under the residential tenancy agreement, if satisfied that the landlord has contravened subsection (2), make an order:
- (a) directing the landlord to cause the premises to cease to be used other than in accordance with the grounds on which the notice was given, and
 - (b) if the Tribunal considers it appropriate in the circumstances to do so, deeming the premises to be subject to a residential tenancy agreement between the landlord and the tenant for a term, and on the terms, specified by the Tribunal.
- (4) Without limiting section 187 (1) (d), the Tribunal may, on application by the tenant under the residential tenancy agreement, if satisfied that the landlord has contravened subsection (2), make an order that the landlord pay compensation to the tenant for wrongful termination of the residential tenancy agreement.
- (5) A tenant may make an application to the Tribunal under this section before the termination date and within the period prescribed by the regulations after the termination notice is given to the tenant.

No. 17 **Employer or caretaker residential tenancy agreements**

Page 10, Schedule 1 [21], lines 33–41. Omit all words on those lines.

No. 18 **Retaliatory evictions**

Page 16, Schedule 1. Insert after line 47:

[35] Section 115 Retaliatory evictions

Omit “may” from section 115 (1) and (2) wherever occurring. Insert instead “must”.

[35] Section 115 (2)

Insert “, or any other reason the Tribunal considers relevant” after “following reasons”.

[36] Section 115 (2A)

Insert after section 115 (2):

- (2A) Despite making a finding under subsection (2), the Tribunal is not required to make an order under subsection (1) if the landlord establishes to the satisfaction of the Tribunal that the termination notice was not given in retaliation.

[37] Section 115A

Insert after section 115:

115A Limitation on no grounds termination

- (1) A landlord must not give a termination notice to a tenant under section 85 within 12 months after the Tribunal has made an order under section 115 in relation to a termination notice given by the landlord to the tenant.

Maximum penalty: 20 penalty units.

- (2) A termination notice that contravenes this section has no effect.

No. 19 **Rental Bond Interest Account**

Page 17, Schedule 1 [35], line 3. Insert “related to rents and tenancy matters” after “other consumer protection purposes”.

No. 20 **Review of Act**

Page 17, Schedule 1. Insert after line 27:

[40] Section 227 Review of Act

Omit “from the date of assent to this Act” from section 227 (2):

Insert instead “from the date of assent to the *Residential Tenancies Amendment (Review) Act 2018*”.