

Residential Tenancies Act 2010

The *Residential Tenancies Act 2010* has been passed by Parliament. The Act is **not yet law**. It will not come into effect until later in 2010, after the necessary supporting regulations have been made. Until this happens the existing laws continue to apply.

Background to the Act

The Government has completed a comprehensive review of the existing tenancy laws which have remained largely the same since they were first introduced more than 20 years ago. More than 2000 submissions were received from individual tenants, landlords, agents, and key interest groups in the three rounds of public consultation held during the course of the review. These ideas and opinions have helped shape the final direction of the Act.

What are the main objectives of the Act?

The Act aims to:

1. Fairly balance the rights and obligations of tenants and landlords.
2. Modernise and update the law in line with current practices.
3. Reduce the level of disputes, by providing greater clarity and certainty in the legislation.

NSW Fair Trading has examined the tenancy laws in place in other States and Territories to identify best practice approaches that have been successful elsewhere, and these have been adopted in the Act in a range of different areas.

What are the main reforms in the Act?

The key changes in the Act when compared to the existing law are explained below.

'No grounds' termination notices

The Act increases the notice given to tenants who are no longer in a fixed term lease from 60 days to 90 days. It also gives landlords certainty of recovering possession through the Tribunal where a tenant does not move out in accordance with a 'no grounds' notice.

Rent arrears evictions

The Act will shorten the time it takes for a landlord to get their application heard by the Tribunal where the tenant is behind in rent. It also gives a guarantee to tenants that their tenancy can continue if their rent arrears are paid or if they follow an agreed repayment plan. However, this guarantee will not apply if the tenant is shown to have frequently failed to pay their rent on time.

Alterations

The Act gives tenants greater flexibility to add fixtures or make minor alterations at their own expense, provided they obtain the landlord's consent. Landlords will be able to reasonably refuse such requests, for example, if it involves painting the premises or structural changes. The Act also clarifies the rights of landlords to seek compensation where the work is not done to a satisfactory standard or will impact on the ability of the premises to be rented in the future.

Rent payments

The Act will require all tenants be given at least one free and easy option to pay their rent. Tenants will be required to pay the landlord's costs if a cheque for rent bounces or if a direct debit payment is dishonoured.

Security of tenure

The Act includes measures to encourage more long-term leases and gives greater protection against eviction for tenants who have lived in the same premises for over twenty years.

Tenancy databases

The Act limits the type of information that can be listed in a 'bad tenant' database and the period of time such information can be kept. It also gives the Tribunal broad powers to resolve disputes about listings.

Sub-letting

The Act gives tenants greater flexibility to sub-let part of the premises or bring in an extra co-tenant, provided they obtain the landlord's consent. Landlords will be able to reasonably refuse such requests, for example, if the person is listed on a tenancy database or if the request would exceed the number of occupants permitted on the lease or otherwise lead to overcrowding.

Water efficiency

The Act will require rented premises to be water efficient if tenants of separately metered premises are to pay for water. The standards for water efficiency will be determined when the regulations are made later this year.

Co-tenant disputes

The Act introduces new measures to resolve disputes between co-tenants or shared households, including domestic violence situations. Victims of domestic violence living in a rented property will have the right to change the locks and seek to take over the tenancy if their name is not already on the lease.

Goods left behind

The Act will streamline procedures and reduce costs for landlords when dealing with goods left behind when a tenant vacates. At the same time, it introduces more practical methods to help tenants retrieve their goods and personal papers.

Pre-tenancy

The Act will permit holding fees to be charged only after an application for a tenancy has been approved. It prohibits certain terms from being added to a lease and requires the disclosure of material facts to prospective tenants, such as if the landlord has drawn up a contract to sell the property or if a mortgagee has taken court action to recover possession.

Breaking a lease early

The Act will enable tenants to break a lease early without penalty in certain situations, such as when they accept an offer of public housing or need to move to a nursing home. The Act also introduces the concept of an optional 'break fee', fixing the penalty payable in other cases where a tenant breaks a lease early. Where there is no break fee term in the lease the tenant would be liable to compensate the landlord for any loss.

Sale of rented premises

The Act requires the tenant to be told before a rental property is placed on the market. It obliges the selling agent to make reasonable efforts to agree with the tenant on the days and times the premises will be available for inspection. Two inspection periods each week are provided in the Act, and the parties can negotiate if more access is required.

Security and safety

The Act gives guidance as to what is meant by rental properties needing to be 'reasonably secure'.

What happens next?

A new Regulation, including a revised standard lease and condition report, will need to be made and this will involve further public consultation. It is anticipated that the new laws will commence towards the end of 2010.