

Summary of the Residential Tenancies Reforms

A number of amendments have been made to the *Residential Tenancies Act 1995*. This brochure provides a summary of the key changes that will commence on 1 March 2014.

Scope of the Residential Tenancies Act

This Act will now apply to agreements for apartment style accommodation for students provided by operators who are not exempt educational institutions.

The Act will also apply to an agreement (entered into on or after 1 March 2014) where a person sells a property but is entitled to occupy the premises for more than 28 days.

The second phase of the reforms will commence in the 2014/15 financial year. There will be some changes relating to repayment of rental bonds and bonds procedures, and the Act will also apply to operators, owners and residents of no premium retirement villages, commonly known as Lifestyle Villages (rental villages).

Starting a tenancy

Written tenancy agreements must include standard information which is outlined in the Act.

Landlords must:

- keep copies of written residential tenancy agreements for at least 2 years after the end of the agreement.
- take reasonable steps to give manuals or written or oral instructions to tenants before or at the time that the tenant commences occupation for the proper operation of facilities where appropriate (e.g. air conditioner, irrigation system). The facility should be listed in the tenancy agreement. If the tenant unintentionally damages the premises or ancillary property as a result of the use of the facility, the landlord is not entitled to compensation unless it was listed in the agreement and instructions were provided.

Rent

Rent (under an agreement entered into on or after 1 March 2014) cannot be increased until at least 12 months has passed since the start of the agreement or when the rent was last increased and at least 60 days after notice is given. However, if both parties agree, rent can be increased at any time (e.g. if there was no air conditioning but the landlord agrees to install a system).

Landlords must:

- allow tenants to pay rent by at least one means other than cash or a rent collection agency (where the tenant pays a fee).
- keep proper rent records ensuring certain information is recorded.
- provide a tenant with a copy of a rent record within 7 days of a written request.

Rent paid electronically is considered paid on the date it is credited to the ADI account.

Repairs and maintenance

Landlords will be:

- responsible for compensating tenants for their reasonable losses from a failure to carry out repairs after the tenant has notified or made reasonable attempts to notify the landlord.
- unable to unreasonably withhold consent to any alteration or addition to the premises that is necessary for the provision of key infrastructure or services (e.g. digital TV and the NBN).

Neither a landlord nor tenant can unreasonably withhold consent for changing a lock or security device by and at the expense of the other.

Selling a property

Landlords must:

- ensure that a prospective tenant is advised, before entering into a residential tenancies agreement, if they intend to advertise the property for sale during the agreement and of any existing sales agency agreement.
- give tenants written notice of their intention to sell the property within 14 days of entering into a sales agency agreement or determining to make the property available for inspection.
- give the tenant written notice of the name of the purchaser and the date from which rent is to be paid to them, at least 14 days before settlement if the property is to be sold.

Tenants can terminate a residential tenancy agreement (entered into on or after 1 March 2014) if within 2 months after the start of the agreement, the landlord enters into a contract for the sale of the property and the landlord did not, before the residential tenancy agreement was entered into, advise the tenant that they had, or intended to advertise the property for sale or had entered into a sales agency agreement.

Paying for water

In the absence of an agreement about water, if the water supply is separately metered, all rates and charges for water supply will be borne by the tenant.

Tenants will only be required to pay water charges if the landlord requests payment within 3 months of the issue of the bill.

If the tenant requests a copy of the water bill, the landlord must provide this within 30 days (and at no cost), otherwise the tenant is not obliged to pay for water charges.

Lost or destroyed property

Tenants will be responsible for compensating landlords for ancillary property lost or destroyed (e.g. keys and remote controls for doors and gates).

Landlords will be able to recover their reasonable expenses where the tenant is at fault (e.g. replacement of rent books, or fees associated with dishonoured tenant cheques).

Entry and Inspection

There are different requirements depending on the purpose of entry (such as to: collect rent; inspect the premises; in an emergency; or to carry out maintenance). Details of these requirements are outlined in section 72 of the Act.

Residential Tenancy Databases (RTD)

The RTD provisions apply to all commercial databases containing information about tenancies, but not to databases kept by an entity for the use of the entity only, or its officers, employees or agents.

Breaches by interstate operators in relation to personal information about a person residing in South Australia or relating to premises in South Australia will be taken to be offences against the Residential Tenancies Act.

Landlords and agents must:

- inform prospective tenants if they use an RTD.
- inform a prospective tenant if an RTD contains information about them and how the listing can be amended or removed.
- not list information on an RTD unless a copy has been given to the tenant for their review and the tenant has been given at least 14 days to review and make a submission.
- inform RTD operators, within 7 days, if they become aware that listed information is incorrect. The operator must amend or remove the listing within 14 days after the operator was given notice.

The circumstances in which information may be listed on an RTD will be limited:

- the tenancy must have ended;
- the tenant breached the agreement; and
- either the tenant owes the landlord more than the bond, or the Tribunal has made an order terminating the residential tenancy agreement.

A copy of information held on an RTD must be provided by a landlord to a tenant within 14 days if requested. A fee may be charged.

RTD operators must remove a listing after 3 years.

The Tribunal can make orders against a landlord, agent or RTD operator to ensure compliance.

Termination of agreements

Rent arrears

If a tenant vacates the premises pursuant to a Form 2 breach notice for rent arrears, the landlord is entitled to compensation for any loss (including loss of rent) caused by the early termination. The landlord must take reasonable steps to mitigate their loss.

Landlords who have served tenants with a Form 2 for rent arrears twice in 12 months can apply directly to the Tribunal for vacant possession if the tenant is in rent arrears for a third time. (This only applies where the Form 2 has been served after 1 March 2014.) The Tribunal may make an order for a payment plan rather than terminate the agreement.

Fixed term agreements

Parties to a fixed term tenancy agreement (entered into on or after 1 March 2014) must give a notice of termination within 28 days of the end of the tenancy, otherwise the tenancy continues as a periodic tenancy.

Parties will be able to terminate an agreement on the ground that the property is uninhabitable, no longer usable for residential purposes, or has been acquired by compulsory process.

Abandoned premises/goods

Factors to be considered by the Tribunal in determining whether premises have been abandoned will be expanded to include failure to pay rent or carry out obligations under the residential tenancy agreement and evidence that the tenant no longer resides there.

Landlords can immediately dispose of perishable goods left behind.

If the value of abandoned goods, including personal documents, is more than a fair estimate of the cost to remove, store and sell them, the landlord must store the goods for 28 days after taking possession of the property. Landlords must make reasonable attempts to notify the tenant. Goods not reclaimed within 28 days may be disposed of in any lawful manner (instead of public auction).

Interested person

The definition of an 'interested person' (s90 of the Act) will be expanded to include a community corporation, strata corporation, police officer or authorised officer under the *Fair Trading Act 1987*. An application by an authorised officer may be referred to the Police Commissioner who must make available any information relevant to the application that can be released.

Enforcement of orders for possession

If the Tribunal is advised within 14 days of the day on which the order takes effect, that an order for possession has not been complied with, the order is enforced by the Tribunal bailiff.

Rooming Houses

The provisions relating to rooming houses will be transferred into the Residential Tenancies Act. Residents will be able to apply to the Tribunal for a declaration that a house rule is unreasonable. A house rule is void if the Tribunal makes an order that it is unreasonable.

Proprietors must:

- provide residents or prospective residents with a copy of the house rules if requested.
- provide an itemised account for facilities/services setting out the resident's proportional use, before requiring a resident to make payment for use of the facility/service.
- keep relevant information for each payment made and provide residents with a copy of that relevant information upon request.
- exercise right of entry in a reasonable manner and not stay in the room longer than necessary to achieve the purpose of the entry without the resident's consent.
- provide a lockable cupboard or other facility to enable a resident to keep their property secure in their room.
- ensure facilities shared with other residents are kept in a reasonable state of cleanliness.
- provide 14 days' notice of renovations and provide substitute facilities in respect to bathroom, toilet or laundry facilities if necessary.
- disclose an intention to sell the premises within 14 days of entering into a sales agency agreement. If the property is sold, the proprietor must give the resident written notice of the name of the purchaser and the date from which rent is to be paid to them.
- store personal possessions left behind by a former resident for 14 days after possession of the room is recovered and must make reasonable attempts to notify the resident.

The Tribunal may order a proprietor to reduce rent payable if services or facilities provided to a resident are reduced.

Proprietors must not seize or dispose of a resident's goods as compensation for unpaid rent.

An agreement is terminated if the resident abandons the room which means at least 7 days have passed since the last rent payment was due and the proprietor has made reasonable attempts to confirm the abandonment or the resident has advised that the room is abandoned.

Termination notices will be in a form approved by the Commissioner.

Residential Tenancies Tribunal

Powers

The Tribunal will be able to:

- reject frivolous or vexatious applications and those of a trivial matter or amount.
- determine an application without a hearing, based on the application and documentation provided by the parties.

The Registrar will be able to make orders with the written consent of both parties which will operate as an order of the Tribunal.

Other changes to the Tribunal

- The jurisdictional limit will be raised from \$10,000 to \$40,000.
- The Tribunal may require each party to attend a conciliation conference.
- A hearing notice directed to an occupier or subtenant need not address them by name.
- People giving evidence during proceedings will be protected against self incrimination.
- Applications to vary or set aside a Tribunal order must be made within 1 month of the making of the order.
- The application fee is not recoverable, including in connection with an award of costs or an order to pay compensation.

Alternative dispute resolution

The alternative dispute resolution procedures under the Act will be consolidated into one division providing for conciliation processes to be undertaken by the Commissioner and the referral of a dispute to conciliation conference by the Tribunal.

Serving forms or notices

Forms and notices required to be served under the Act will be able to be sent by email or fax.

Consumer and Business Services

Ph 131 882

For more information visit www.sa.gov.au/tenancy/renters

