

SOUTH AUSTRALIA

RESIDENTIAL TENANCIES ACT 1995

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 3 February 1997.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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RESIDENTIAL TENANCIES ACT 1995

being

Residential Tenancies Act 1995 No. 63 of 1995
[Assented to 10 August 1995]¹

as amended by

Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996 No. 34 of 1996 [Assented to 2 May 1996]²

¹ Ss. 1-3, 73, 121, Sched. cl. 1(2), 2 and 3(b) came into operation 24 August 1995: *Gaz.* 24 August 1994, p. 499; ss. 4, 5(1), 5(2)(c), 6-23, 24(1)(a), (c), (2)-(5), 25-62, 63(1)-(6), 64-72, 74-100, 101(a), (b), (d)-(f), 102, 106-120, Sched. cl. 1(1), 3(a), 4 and 6 came into operation 30 November 1995: *Gaz.* 23 November 1995, p. 1412; s. 63(7)-(10) came into operation 5 February 1996: *Gaz.* 25 January 1996, p. 808; ss. 5(2)(a), (b), (d)-(h) and 24(1)(b) came into operation 1 July 1996: *Gaz.* 27 June 1996, p. 3107; remainder of Act had not been brought into operation at the date of this reprint.

² Came into operation 3 February 1997: *Gaz.* 19 December 1996, p. 1923.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix.

An Act to regulate the relationship of landlord and tenant under residential tenancy agreements; to repeal the Residential Tenancies Act 1978 and the Residential Tenancies (Housing Trust) Amendment Act 1993; to make related amendments to the Retirement Villages Act 1987; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Residential Tenancies Act 1995*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"**ancillary property**" means property (not forming part of premises subject to a residential tenancy agreement) that is provided by the landlord, either under the residential tenancy agreement or independently of the agreement, for use by the tenant;

"**Commissioner**" means the Commissioner for Consumer Affairs;

"**financial institution**" means—

- (a) a bank; or
- (b) a building society; or
- (c) a credit union;

"**Fund**" means the Residential Tenancies Fund;

"**housing improvement notice**" means a notice of intention to declare premises substandard, a notice declaring premises to be substandard, or a notice fixing the maximum rent payable for premises, under Part 7 of the *Housing Improvement Act 1940*;

"**landlord**" means—

- (a) the person who grants the right of occupancy under a residential tenancy agreement; or
- (b) a successor in title to the tenanted premises whose title is subject to the tenant's interest,

and includes a prospective landlord and a former landlord;

"**lawyer**" means a person entitled to practise the profession of the law under the *Legal Practitioners Act 1981*;

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"**mediation**" of a dispute includes preliminary assistance in dispute resolution such as the giving of advice to ensure that—

- (a) the parties to the dispute are fully aware of their rights and obligations; and
- (b) there is full and open communication between the parties about the dispute;

"**premises**" includes a part of premises;

"**registered agent**" means a person registered as an agent under the *Land Agents Act 1994*;

"**registered housing co-operative**" means a housing co-operative registered under the *Housing Co-operatives Act 1991*;

"**rent**" means an amount payable under a residential tenancy agreement for the right to occupy premises for a period of the tenancy;

"**residential premises**" means premises for occupation as a place of residence;

"**residential tenancy agreement**" means an agreement (other than a rooming house agreement) under which a person grants another person, for valuable consideration, a right (which may, but need not, be an exclusive right¹) to occupy premises for the purpose of residence;

¹ However, it should be noted that the Act confers certain protections against intrusion on the premises by the landlord. Hence, even if the agreement does not, in its terms, confer an exclusive right to occupation, the Act will (at least in some respects) assimilate the right of occupation to the exclusive right conferred by a lease.

"**rooming house**" means residential premises in which—

- (a) rooms are available, on a commercial basis, for residential occupation; and
- (b) accommodation is available for at least three persons on a commercial basis;

"**rooming house agreement**" means an agreement under which accommodation is provided (with or without meals, or other facilities or services) in a rooming house;

"**rooming house proprietor**" means a person who carries on a business involving the provision of accommodation under rooming house agreements;

"**rooming house resident**" means a person who boards or lodges in a rooming house;

"**Rules**" means the rules of the Tribunal;

"**security**" means an amount a tenant is required to pay under a residential tenancy agreement, or an agreement collateral to a residential tenancy agreement, as security for the performance of obligations under a residential tenancy agreement;

"**security bond**" means a provision of a residential tenancy agreement or a collateral agreement under which a tenant is required to give security for the performance of obligations under a residential tenancy agreement;

"**statutory rates, taxes and charges**" means—

- (a) rates or charges imposed under the *Local Government Act 1934*; and
- (b) rates or charges imposed under the *Waterworks Act 1932* or the *Sewerage Act 1929*; and
- (c) land tax under the *Land Tax Act 1936*;

"**tenancy dispute**" means—

- (a) a claim under a residential tenancy agreement, a rooming house agreement, or an agreement collateral to a residential tenancy agreement or a rooming house agreement; or
- (b) a dispute between parties or former parties to a residential tenancy agreement, a rooming house agreement, or an agreement collateral to a residential tenancy agreement or a rooming house agreement, about matters arising under the agreement or this Act;

"**tenant**" means the person who is granted a right of occupancy under a residential tenancy agreement or a person to whom the right passes by assignment or operation of law and includes a prospective tenant or a former tenant;

"**Tribunal**" means the Residential Tenancies Tribunal.

(2) If this Act provides for something to be done within a specified period from a particular day, the period will be taken not to include the particular day.

(3) If this Act provides that action may be taken after the expiration of a specified period of days, the period will be taken to be a period of clear days.

Presumption of periodicity in case of short fixed terms

4. (1) If a residential tenancy agreement is entered into for a short fixed term, the agreement is taken to be an agreement for a periodic tenancy with a period equivalent to the length of the fixed term unless the landlord establishes that—

- (a) the tenant genuinely wanted a tenancy ending at the end of the short fixed term and the term was fixed at the tenant's request; or
- (b) before the residential tenancy agreement was entered into—
 - (i) the landlord gave the tenant a notice containing a warning in the form required by regulation; and
 - (ii) the tenant signed a statement in the form required by regulation acknowledging that the tenant did not expect to continue in possession of the premises after the end of the term stated in the agreement.

(2) A **short fixed term** is a term of 90 days or less.

Application of Act

5. (1) This Act does not apply to—

- (a) an agreement giving a right of occupancy in—

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-
- (i) a hotel or motel; or
 - (ii) an educational institution, college, hospital or nursing home; or
 - (iii) club premises; or
 - (iv) a home for aged or disabled persons administered by an eligible organisation under the *Aged or Disabled Persons Care Act 1954* of the Commonwealth; or
 - (v) a retirement village within the meaning of the *Retirement Villages Act 1987*; or
 - (vi) a supported residential facility within the meaning of the *Supported Residential Facilities Act 1992*; or
 - (vii) prescribed premises, or premises of a prescribed class; or
- (b) an agreement (other than a rooming house agreement) under which a person boards or lodges with another; or
 - (c) an agreement genuinely entered into for the purpose of conferring on a person a right to occupy premises for a holiday; or

An agreement conferring a right to occupy premises for a fixed term of 60 days or longer will be taken, in the absence of proof to the contrary, not to have been genuinely entered into for the purpose of conferring a right to occupy premises for a holiday.

- (d) an agreement conferring a right to occupy premises for the purpose of residence but under which no rent is payable; or

Example—

An agreement under which families exchange houses for an agreed period would not be a residential tenancy agreement if no rent were payable under the agreement.

- (e) an agreement for the sale of land that confers a right to occupy premises on a party to the agreement; or
- (f) a mortgage; or
- (g) an agreement arising under a scheme in which—
 - (i) a complex of adjacent premises is owned by a company; and
 - (ii) the premises are let by the company to persons who jointly have a controlling interest in the company; or
- (h) a prescribed agreement or an agreement of a prescribed class.

(2) The following provisions of this Act (and only those provisions) apply to residential tenancy agreements under which the South Australian Housing Trust is the landlord, to residential tenancies arising under those agreements and to related tenancy disputes—

- (a) Part 3 (*Residential Tenancies Tribunal*);
- (b) Section 66 (*Security of premises*);

- (c) Section 71 (*Tenant's conduct*);
- (d) Section 90 (*Tribunal may terminate tenancy where tenant's conduct unacceptable*);
- (e) Section 93 (*Order for possession*);
- (f) Section 99 (*Enforcement orders for possession*);
- (g) Division 3 of Part 8 (*Powers of the tribunal*);
- (h) Division 4 of Part 8 (*Representation*).

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**PART 2
ADMINISTRATION**

Administration of this Act

6. The Commissioner is responsible for the administration of this Act.

Ministerial control of administration

7. The Commissioner is, in the administration of this Act, subject to control and direction by the Minister.

The Commissioner's functions

8. The Commissioner has the following functions:

- (a) investigating and researching matters affecting the interests of parties to residential tenancy agreements and rooming house agreements; and
- (b) publishing reports and information on subjects of interest to the parties to residential tenancy agreements and rooming house agreements; and
- (c) giving advice (to an appropriate extent) on the provisions of this Act and other subjects of interest to the parties to residential tenancy agreements and rooming house agreements; and
- (d) investigating suspected infringements of this Act and taking appropriate action to enforce the Act; and
- (e) making reports to the Minister on questions referred to the Commissioner by the Minister and other questions of importance affecting the administration of this Act; and
- (f) administering the Fund.

Immunity from liability

9. No liability attaches to the Commissioner, or any other person acting in the administration of this Act, for an honest act or omission in the exercise or purported exercise of functions under this Act.

Annual report

10. (1) The Commissioner must, on or before 31 October in each year, prepare and forward to the Minister a report on the administration of this Act for the year ending on the preceding 30 June.

(2) The report must include a report on the administration of the Fund.

(3) The Minister must, within six sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

**PART 3
RESIDENTIAL TENANCIES TRIBUNAL**

DIVISION 1—THE TRIBUNAL AND ITS MEMBERSHIP

Continuation of Tribunal

11. The *Residential Tenancies Tribunal* continues in existence.

Membership of the Tribunal

12. (1) Members of the Tribunal are appointed by the Governor.

(2) A member of the Tribunal is appointed for a term (not exceeding five years) specified in the instrument of appointment and, at the end of a term of appointment, is eligible for reappointment.

(3) A member of the Tribunal is appointed on conditions specified in the instrument of appointment.

(4) The office of member of the Tribunal may be held in conjunction with an office or position in the public service of the State.

(5) The Governor may remove a member of the Tribunal from office for—

(a) breach of, or non-compliance with, a condition of appointment; or

(b) misconduct; or

(c) failure or incapacity to carry out official duties satisfactorily.

(6) The office of a member of the Tribunal becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) is convicted of an offence punishable by imprisonment; or

(e) is removed from office under subsection (5).

Presiding and Deputy Presiding Members

13. (1) The Governor may appoint a member of the Tribunal to be the Presiding Member or a Deputy Presiding Member of the Tribunal.

(2) A person may only be appointed as the Presiding Member or a Deputy Presiding Member of the Tribunal if the person is legally qualified.

(3) A Deputy Presiding Member may exercise powers and functions of the Presiding Member by delegation from the Presiding Member.

(4) If the Presiding Member is absent, or there is a temporary vacancy in the office of the Presiding Member, the powers, functions and duties of the Presiding Member devolve on a Deputy Presiding Member appointed by the Governor to act in the absence of the Presiding Member or, if no such appointment has been made, on the most senior Deputy Presiding Member of the Tribunal.

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(5) A member who holds office as the Presiding Member or a Deputy Presiding Member of the Tribunal continues in that office until the term of office as member falls due for renewal and, if the member's term of office is renewed, the appointment as Presiding Member or Deputy Presiding Member may (but need not be) renewed also.

Remuneration

14. A member of the Tribunal is entitled to remuneration, allowances and expenses determined by the Governor.

Registrars

15. (1) The Governor may appoint a person to be the registrar or a deputy registrar of the Tribunal.

(2) The office of registrar or deputy registrar may be held in conjunction with another office in the public service of the State.

Registrar may exercise jurisdiction in certain cases

16. The registrar or a deputy registrar may—

- (a) exercise the jurisdiction of the Tribunal if specifically authorised to do so by or under this Act; and
- (b) subject to direction by the Presiding Member of the Tribunal—exercise the jurisdiction of the Tribunal in respect of classes of matters, or in circumstances, specified by the regulations.

Magistrates may exercise jurisdiction in certain cases

17. (1) A magistrate may exercise the jurisdiction of the Tribunal.

(2) The regulations may prescribe a scheme for the listing of matters before magistrates.

(3) A regulation cannot be made for the purposes of subsection (2) except after the Minister has consulted with the Presiding Member of the Tribunal and the Chief Magistrate.

(4) A magistrate exercising the jurisdiction of the Tribunal is taken to be a member of the Tribunal.

Immunities

18. A member or officer of the Tribunal incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.

DIVISION 2—PROCEEDINGS BEFORE THE TRIBUNAL

Constitution

19. (1) The Tribunal is constituted for the purpose of hearing proceedings of a single member of the Tribunal.

(2) The Tribunal may, at any one time, be separately constituted for the hearing and determination of a number of separate matters.

Times and places of sittings

20. (1) The Tribunal may sit at any time (including a Sunday).

(2) The Tribunal may sit at any place.

Duty to act expeditiously

21. The Tribunal must, where practicable, hear and determine proceedings within 14 days after the proceedings are commenced and, if that is not practicable, as expeditiously as possible.

Sittings generally to be in public

22. (1) Subject to any contrary provision of an Act or regulation, the Tribunal's proceedings must be open to the public.

(2) However, the Tribunal may, in an appropriate case, order that proceedings be held in private.

Offices of the Tribunal

23. Offices of the Tribunal will be maintained at such places as the Minister may determine.

DIVISION 3—THE TRIBUNAL'S JURISDICTION

Jurisdiction of Tribunal

24. (1) The Tribunal has—

- (a) exclusive jurisdiction to hear and determine a matter that may be the subject of an application under this Act;
- (b) subject to the regulations—jurisdiction to hear and determine claims or disputes arising from tenancies granted for residential purposes by the South Australian Housing Trust;
- (c) the other jurisdictions conferred on the Tribunal by statute.

(2) However, the Tribunal does not have jurisdiction to hear and determine a monetary claim if the amount claimed exceeds \$10 000 unless the parties to the proceedings consent in writing to the claim being heard and determined by the Tribunal (and if consent is given, it is irrevocable).

(3) If a monetary claim is above the Tribunal's jurisdictional limit, the claim and any other claims related to the same tenancy may be brought in a court competent to hear and determine a claim founded on contract for the amount of the claim.

(4) A court in which proceedings are brought under subsection (3) may exercise the powers of the Tribunal under this Act.

(5) If the plaintiff in proceedings brought in a court under this section recovers less than \$10 000, the plaintiff is not entitled to costs unless the court is satisfied that there were reasonable grounds for the plaintiff to believe that the plaintiff was entitled to \$10 000 or more.

Application to Tribunal

25. (1) An application under this Act to the Tribunal must—

- (a) be made in writing; and
- (b) contain the prescribed particulars.

(2) Before the Tribunal proceeds to hear an application it must—

- (a) give the applicant notice in writing setting out the time and place at which it will hear the application; and

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- (b) give to any other party—
 - (i) notice in writing setting out the time and place at which it will hear the application; and
 - (ii) notice of the nature of the application as it thinks fit.

DIVISION 4—CONFERENCES

Conferences

26. (1) The Tribunal may refer contested proceedings to a conference of the parties to explore the possibilities of resolving the matters at issue by agreement and must (subject to subsection (2)) refer contested proceedings to such a conference if the proceedings are of a class prescribed by regulation for the purposes of this section.

(2) However, even though proceedings are of a class prescribed by regulation for the purposes of this section, a conference need not be held if a member or officer of the Tribunal dispenses with the conference on the ground that the conference would serve no useful purpose or there is some other proper reason to dispense with the conference.

Presiding officer

27. A member of the Tribunal, the registrar, or another officer of the Tribunal authorised by the Presiding Member of the Tribunal, will preside at a conference.

Registrar to notify parties

28. The registrar must notify the parties of the time and place fixed for a conference in a manner prescribed by the Rules.

Procedure

29. (1) A conference may, at the discretion of the presiding officer, be adjourned from time to time.

(2) Unless the presiding officer decides otherwise, the conference will be held in private and the presiding officer may exclude from the conference any person apart from the parties and their representatives.

(3) A party must, if required by the presiding officer, disclose to the conference details of the party's case and of the evidence available to the party in support of that case.

(4) A settlement to which counsel or other representative of a party agrees at a conference is binding on the party.

(5) The presiding officer (if not legally qualified) may refer a question of law arising at the conference to a member of the Tribunal who is legally qualified for determination.

(6) The presiding officer may record a settlement reached at the conference and make a determination or order to give effect to the settlement.

(7) A determination or order under subsection (6) is a determination or order of the Tribunal.

Restriction on evidence

30. Evidence of anything said or done in the course of a conference under this Division is inadmissible in proceedings before the Tribunal except by consent of all parties to the proceedings.

DIVISION 5—EVIDENTIARY AND PROCEDURAL POWERS

Tribunal's powers to gather evidence

- 31.** (1) For the purpose of proceedings, the Tribunal may—
- (a) by summons signed by a member, registrar or deputy registrar of the Tribunal, require a person to attend before the Tribunal;
 - (b) by summons signed by a member, registrar or deputy registrar of the Tribunal, require the production of books, papers or documents;
 - (c) inspect books, papers or documents produced before it, retain them for a reasonable period, and make copies of them, or of their contents;
 - (d) require a person appearing before the Tribunal to make an oath or affirmation that the person will truly answer relevant questions put by the Tribunal or a person appearing before the Tribunal;
 - (e) require a person appearing before the Tribunal (whether summoned to appear or not) to answer any relevant questions put by the Tribunal or a person appearing before the Tribunal.
- (2) If a person—
- (a) fails without reasonable excuse to comply with a summons under subsection (1); or
 - (b) refuses or fails to comply with a requirement of the Tribunal under subsection (1); or
 - (c) misbehaves before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal,

the person is guilty of an offence and liable to a penalty not exceeding \$2 000.

Procedural powers of the Tribunal

- 32.** (1) In proceedings the Tribunal may—
- (a) hear an application in the way the Tribunal considers most appropriate;
 - (b) decline to entertain an application, or adjourn a hearing, until the fulfilment of conditions fixed by the Tribunal with a view to promoting the settlement of matters in dispute between the parties;
 - (c) decline to entertain an application if it considers the application frivolous;
 - (d) proceed to hear and determine an application in the absence of a party;
 - (e) extend a period prescribed by or under this Act within which an application or other step in respect of proceedings must be made or taken (even if the period had expired);
 - (f) vary or set aside an order if the Tribunal considers there are proper grounds for doing so;
 - (g) adjourn a hearing to a time or place or to a time and place to be fixed;
 - (h) allow the amendment of an application;

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- (i) hear an application jointly with another application;
- (j) receive in evidence a transcript of evidence in proceedings before a court and draw conclusions of fact from that evidence;
- (k) adopt, as in its discretion it considers proper, the findings, decision or judgment of a court that may be relevant to the proceedings;
- (l) generally give directions and do all things that it thinks necessary or expedient in the proceedings.

(2) The Tribunal's proceedings must be conducted with the minimum of formality and in the exercise of its jurisdiction the Tribunal is not bound by evidentiary rules but may inform itself as it thinks appropriate.

(3) The Tribunal may, on the application of the South Australian Co-operative Housing Authority, allow the Authority to intervene in proceedings before the Tribunal.

(4) The Authority may only be allowed to intervene if the Tribunal is satisfied that it is fair and reasonable that the Authority participate in the proceedings.

(5) If the Authority is allowed to intervene in proceedings, it may intervene in the manner and to the extent directed by the Tribunal, and on other conditions determined by the Tribunal.

General powers of the Tribunal to cure irregularities

33. (1) The Tribunal may, if satisfied that it would be just and equitable to do so, excuse a failure to comply with a provision of this Act on terms and conditions the Tribunal considers appropriate.

(2) The Tribunal may amend proceedings if satisfied that the amendment will contribute to the expeditious and just resolution of the questions in issue between the parties.

DIVISION 6—MEDIATION

Mediation

34. (1) If before or during the hearing of proceedings it appears to the Tribunal either from the nature of the case or from the attitude of the parties that there is a reasonable possibility of settling the matters in dispute between the parties, the person constituting the Tribunal may—

- (a) appoint, with the consent of the parties, a mediator to achieve a negotiated settlement; or
- (b) personally endeavour to bring about a settlement of the proceedings.

(2) A mediator appointed under this section has the privileges and immunities of a member of the Tribunal and may exercise any powers of the Tribunal that the Tribunal may delegate to the mediator.

(3) Nothing said or done in the course of an attempt to settle proceedings under this section may subsequently be given in evidence in proceedings before the Tribunal except by consent of all parties to the proceedings.

(4) A member of the Tribunal who attempts to settle proceedings under this section is not disqualified from hearing or continuing to hear further proceedings in the matter.

(5) If proceedings are settled under this section, the Tribunal may embody the terms of the settlement in an order.

DIVISION 7—JUDGMENTS AND ORDERS

Special powers to make orders and give relief

35. (1) The Tribunal may make an order in the nature of an injunction (including an interim injunction) or an order for specific performance.

(2) However, a member of the Tribunal who is not legally qualified cannot make an order under subsection (1) without the approval of the Presiding Member of the Tribunal.

(3) Although a particular form of relief is sought by a party to proceedings before the Tribunal, the Tribunal may grant any other form of relief that it considers more appropriate to the circumstances of the case.

(4) The Tribunal may make interlocutory orders on matters within its jurisdiction.

(5) The Tribunal may, on matters within its jurisdiction, make binding declarations of right whether or not any consequential relief is or could be claimed.

(6) The Tribunal may, in the exercise of its jurisdiction, make ancillary or incidental orders.

Enforcement of orders

36. (1) An order of the Tribunal may be registered in the Magistrates Court and enforced as an order of that Court.

(2) A person who contravenes an order of the Tribunal (other than an order for the payment of money) is guilty of an offence.

Maximum Penalty: \$2 000

Application to vary or set aside order

37. (1) A party to proceedings before the Tribunal may apply to the Tribunal for an order varying or setting aside an order made in the proceedings.

(2) An application to vary or set aside an order must be made within three months of the making of the order (unless the Tribunal allows an extension of time).

Costs

38. The Governor may, by regulation, provide that in proceedings of a prescribed class the Tribunal will not award costs unless—

(a) all parties to the proceedings were represented by legal practitioners; or

(b) the Tribunal is of the opinion that there are special circumstances justifying an award of costs.

DIVISION 8—OBLIGATION TO GIVE REASONS FOR DECISIONS

Reasons for decisions

39. The Tribunal must, if asked by a person affected by a decision or order, state in writing the reasons for its decision or order.

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DIVISION 9—RESERVATION OF QUESTIONS OF LAW AND APPEALS

Reservation of questions of law

40. (1) The Tribunal may reserve a question of law for determination by the Supreme Court.

(2) If a question of law is reserved, the Supreme Court may decide the question and make consequential orders and directions appropriate to the circumstances of the case.

Appeals

41. (1) An appeal lies to the District Court from a decision or order of the Tribunal made in the exercise (or purported exercise) of its powers under this Act.

(2) On an appeal, the District Court may (according to the nature of the case)—

(a) re-hear evidence taken before the Tribunal, or take further evidence;

(b) confirm, vary or quash the Tribunal's decision;

(c) make any order that should have been made in the first instance;

(d) make incidental and ancillary orders.

(3) The appeal must be commenced within one month of the decision or order appealed against unless the District Court allows an extension of time.

(4) If the reasons of the Tribunal are not given in writing at the time of making a decision or order and the appellant then requests the Tribunal to state its reasons in writing, the time for commencing the appeal runs from the time when the appellant receives the written statement of the reasons.

Stay of proceedings

42. (1) If an order has been made by the Tribunal and the Tribunal or the District Court is satisfied that an appeal against the order has been commenced, or is intended, it may suspend the operation of the order until the determination of the appeal.

(2) If the Tribunal suspends the operation of an order, the Tribunal may terminate the suspension, and if the District Court has done so, the District Court may terminate the suspension.

DIVISION 10—MISCELLANEOUS

Entry and inspection of property

43. (1) The Tribunal may enter land or a building and carry out an inspection the Tribunal considers relevant to a proceeding before the Tribunal.

(2) The Tribunal may authorise a person to enter land or a building and carry out an inspection the Tribunal considers relevant to a proceeding before the Tribunal.

(3) A person who obstructs the Tribunal, or a person authorised by the Tribunal, in exercising a power of entry or inspection under this section commits a contempt of the Tribunal.

Contempt of the Tribunal

44. A person who—

(a) interrupts the proceedings of the Tribunal or misbehaves before the Tribunal; or

- (b) insults the Tribunal or an officer of the Tribunal acting in the exercise of official functions; or
- (c) refuses, in the face of the Tribunal, to obey a lawful direction of the Tribunal,

is guilty of a contempt of the Tribunal.

Punishment of contempts

45. (1) The Tribunal may punish a contempt as follows:

- (a) it may impose a fine not exceeding \$2 000; or
- (b) it may commit to prison until the contempt is purged subject to a limit (not exceeding six months) to be fixed by the Tribunal at the time of making the order for commitment.

(2) The powers conferred by this section may only be exercised by a member of the Tribunal who is legally qualified.

Fees

46. (1) The Governor may, by regulation, prescribe and provide for the payment of fees in relation to proceedings in the Tribunal.

(2) The registrar may remit or reduce a fee if the party by whom the fee is payable is suffering financial hardship, or for any other proper reason.

Procedural rules

47. (1) The Governor may, by regulation—

- (a) prescribe matters relevant to the practice and procedures of the Tribunal; and
- (b) provide for the service of any process, notice or other document relevant to proceedings before the Tribunal (including circumstances where substituted service in accordance with the regulations or an order of the Tribunal will constitute due service); and
- (c) deal with other matters necessary for the effective and efficient operation of the Tribunal.

(2) The Presiding Member of the Tribunal may make Rules of the Tribunal relevant to the practice and procedure of the Tribunal, or to assist in the effective and efficient operation of the Tribunal, insofar as those matters are not dealt with by the regulations.

(3) The Rules take effect as from the date of publication in the *Gazette* or a later date specified in the rules.

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PART 4

MUTUAL RIGHTS AND OBLIGATIONS OF LANDLORD AND TENANT

DIVISION 1—ENTERING INTO RESIDENTIAL TENANCY AGREEMENT

Tenant to be notified of landlord's name, etc.

48. (1) A landlord under a residential tenancy agreement must, at the time of entering into the agreement, notify the tenant in writing of—

- (a) the full name and address of the landlord and of any person with superior title to the landlord; and
- (b) if the landlord or the person with superior title to the landlord is a company—the address of the registered office of the company.

Maximum penalty: \$500.

Expiation fee: \$75.

(2) If a person succeeds another as the landlord under a residential tenancy agreement, the new landlord must, within 14 days, notify the tenant in writing of—

- (a) the full name and address of the new landlord; and
- (b) if the new landlord is a company—the address of the registered office of the company.

Maximum penalty: \$500.

Expiation fee: \$75.

(3) The requirement to notify the address of a person is not satisfied by giving the address of the person's agent.

(4) If a name or address of which the landlord is required to notify the tenant under this section changes, the landlord must, within 14 days, notify the tenant in writing of the change.

Maximum penalty: \$500.

Expiation fee: \$75.

Written residential tenancy agreements

49. If a landlord (or an agent acting for a landlord) invites or requires a tenant or prospective tenant to sign a written residential tenancy agreement or a document recording its terms, the landlord must ensure that—

- (a) the tenant receives a copy of the document when the tenant signs it; and
- (b) if the document has not then been signed by the landlord, a copy of the document, as executed by all parties, is delivered to the tenant within 21 days after the tenant gives the document back to the landlord or the landlord's agent to complete its execution.

Maximum penalty: \$500.

Expiation fee: \$75.

Cost of preparing agreement

50. The cost of preparing a written residential tenancy agreement, or a document recording its terms, must be borne by the landlord.

[Note: Residential tenancy agreements are exempt from stamp duty.]

False information from tenant

51. A tenant must not give a landlord false information about the tenant's identity or place of occupation.

Maximum penalty: \$500.

DIVISION 2—DISCRIMINATION AGAINST TENANTS WITH CHILDREN

Discrimination against tenants with children

52. (1) A person must not refuse to grant a tenancy to another on the ground that it is intended that a child should live on the premises.

Maximum penalty: \$1 000.

(2) A person must not—

(a) instruct a person not to grant; or

(b) state an intention (by advertisement or in any other way) not to grant,

a tenancy on the ground that it is intended that a child should live on the premises.

Maximum penalty: \$1 000.

(3) However, this section does not apply if the landlord, or an agent appointed by the landlord to manage the premises, resides in the premises to which the tenancy relates or in premises adjacent to those premises.

DIVISION 3—RENT

Permissible consideration for residential tenancy

53. (1) A person must not require or receive from a tenant or prospective tenant a payment, other than rent or security (or both), for a residential tenancy or the renewal or extension of a residential tenancy.

Maximum penalty: \$500.

(2) However—

(a) the landlord may lawfully require or receive consideration for an option to enter into a residential tenancy agreement but, in that case, the following condition applies:

(i) if the prospective tenant enters into the residential tenancy agreement, the landlord must apply the consideration towards rent payable under the agreement;

(ii) if the prospective tenant does not exercise the option to enter into the residential tenancy agreement, the landlord may retain the consideration; and

(b) the landlord may require the tenant to reimburse the landlord for rates and charges for water supply that are to be borne by the tenant under the residential tenancy agreement or a collateral agreement; and

(c) the landlord may lawfully require or receive a payment of a class the landlord is authorised to require or receive by another provision of this Act or under the regulations.

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Rent in advance

54. (1) A person must not require¹ the payment of more than two weeks' rent under a residential tenancy agreement before the end of the first two weeks of the tenancy.

Maximum penalty: \$500.

(2) If rent has been paid under a residential tenancy agreement, a person must not require¹ a further payment of rent until the end of the last period for which rent has been paid.

Maximum penalty: \$500.

(3) A person must not require another to give a post-dated cheque or other post-dated negotiable instrument in payment of rent under a residential tenancy agreement.

Maximum penalty: \$500.

¹ The prohibition is against *requiring* payment of rent for more than two weeks in advance. Hence, if a tenant voluntarily elects to pay rent for more than two weeks in advance, the landlord (or the landlord's agent) may lawfully accept the payment.

Variation of rent

55. (1) The landlord may increase the rent payable under a residential tenancy agreement by giving written notice to the tenant specifying the date as from which the increase takes effect.

- A series of residential tenancy agreements between the same parties and relating to the same premises is treated as a single residential tenancy agreement for the purposes of this section unless at least six months have elapsed since rent for the premises was fixed or last increased.

(2) However—

- (a) the right to increase the rent may be excluded or limited by the terms of the residential tenancy agreement; and
- (b) if the tenancy is for a fixed term, the residential tenancy agreement is taken to exclude an increase in rent during the term unless it specifically allows for an increase in rent; and
- (c) the date fixed for an increase of rent must be at least six months after the date of the agreement or, if there has been a previous increase of rent under this section, the last increase and at least 60 days after the notice is given but—
 - (i) if the maximum rent for the premises has been fixed by a housing improvement notice, and the notice is revoked, the landlord may, by notice given under this section within 60 days after revocation of the housing improvement notice, increase the rent for the premises from a date falling at least 14 days after the notice is given; and
 - (ii) if the landlord is a registered housing co-operative, and the residential tenancy agreement provides for variation of rent in accordance with the tenant's income, the landlord may increase the rent on the ground of a variation in the tenant's income from a date falling at least 14 days after the notice of the increased rent is given; and

- (iii) if the landlord is a registered housing co-operative under a residential tenancy agreement that allows the landlord to change the basis of calculating the rent payable under the agreement, and the landlord gives the tenant written notice that there is to be a change in the basis of calculating rent as from a specified date (which must be at least 60 days after the notice is given and at least six months from the date of the agreement, or if there has been a previous change in the basis of rent calculation, at least six months from the date of the last such change), the rent may be increased to accord with the new basis of rent calculation as from the specified date without further notice under this section.

(3) The rent payable under a residential tenancy agreement may be reduced by mutual agreement between the landlord and the tenant.

(4) A reduction of rent may be made on a temporary basis so that the rent reverts to the level that would have been otherwise applicable at the end of a specified period.

(5) If the rent payable under a residential tenancy agreement is increased or reduced under this section, the terms of the agreement are varied accordingly.

(6) This section does not affect the operation of a provision of a residential tenancy agreement under which the rent payable under the agreement changes automatically at stated intervals on a basis set out in the agreement.

Excessive rent

56. (1) The Tribunal may, on application by a tenant, declare that the rent payable under a residential tenancy agreement is excessive.

(2) In deciding whether the rent payable under a residential tenancy agreement is excessive, the Tribunal must have regard to—

- (a) the general level of rents for comparable premises in the same or similar localities; and
- (b) the estimated capital value of the premises at the date of the application; and
- (c) the outgoings for which the landlord is liable under the agreement; and
- (d) the estimated cost of services provided by the landlord and the tenant under the agreement; and
- (e) the nature and value of furniture, equipment and other personal property provided by the landlord for the tenant's use; and
- (f) the state of repair and general condition of the premises; and
- (g) other relevant matters.

(3) If the Tribunal finds, on an application under this section, that the rent payable under a residential tenancy agreement is excessive, the Tribunal may, by order—

- (a) fix the rent payable for the premises and vary the agreement by reducing the rent payable under the agreement accordingly; and

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(b) fix a date (which cannot be before the date of the application) from which the variation takes effect; and

(c) fix a period (which cannot exceed one year) for which the order is to remain in force.

(4) The Tribunal may, on application by the landlord, vary or revoke an order under this section if satisfied that it is just to do so.

(5) If, while an order remains in force under this section, a landlord asks for or receives rent for the premises to which the order relates exceeding the amount fixed by the order, the landlord is guilty of an offence.

Maximum penalty: \$1 000.

Landlord's duty to keep proper records of rent

57. (1) A landlord under a residential tenancy agreement must ensure that a proper record is kept of rent received under the agreement.

Maximum penalty: \$500.

(2) A person must not—

(a) make a false entry in a record of the rent received under a residential tenancy agreement; or

(b) falsify the record in any other way.

Maximum penalty: \$1 000.

Duty to give receipt for rent

58. (1) A person who receives rent under a residential tenancy agreement must, within 48 hours after receiving the rent, give the person paying the rent a receipt stating—

(a) the date on which the rent was received; and

(b) the name of the person paying the rent; and

(c) the amount paid; and

(d) the period of the tenancy to which the payment relates; and

(e) the address of the premises to which the payment relates.

Maximum penalty: \$500.

Expiation fee: \$75.

(2) However, if the tenant pays the rent into an account kept by the landlord or the landlord's agent at a financial institution, and the landlord, or the landlord's agent keeps a written record containing the information required by subsection (1), a receipt need not be given.

Accrual and apportionment of rent

59. (1) The rent payable under a residential tenancy agreement accrues from day to day.

(2) If rent is paid in advance, and the tenancy ends before the end of the period for which rent has been paid, the landlord must refund the appropriate proportion of the amount paid to the tenant or apply it towards other liabilities of the tenant to the landlord.

Abolition of distress for rent

60. A landlord is not entitled to distrain goods of a tenant for non-payment of the rent payable under a residential tenancy agreement.

DIVISION 4—SECURITY BONDS

Security bond

61. (1) A person must not—

- (a) require more than one security bond for the same residential tenancy agreement; or
- (b) require the payment of security exceeding the relevant limit.

Maximum penalty: \$1 000.

(2) If at least two years have elapsed since the security under a security bond was given or last increased, the landlord may by written notice to the tenant require the tenant to increase the security by a specified additional amount, within a specified period (which must be at least 60 days from the date of the notice), but not so that the total amount of the security exceeds the relevant limit.

- The requirement has effect as if it were a term of the residential tenancy agreement.

(3) The **relevant limit** is—

- (a) if the rent payable under the agreement does not exceed an amount (which must be at least \$150 per week) prescribed by regulation for the purposes of this paragraph—four weeks rent under the agreement;
- (b) if the rent payable under the agreement exceeds an amount prescribed by regulation for the purposes of this paragraph—six weeks rent under the agreement.

(4) The relevant limit is, in the first instance, calculated by reference to the rent—or if the rent varies, the lowest rent—payable during the first six months of the tenancy (expressed as a weekly rent) and if there is to be an increase in the amount of the security, the relevant limit is calculated by reference to the rent (expressed as a weekly rent) payable when the notice of increase is given.

Receipt of security and transmission to the Commissioner

62. (1) A person must, within 48 hours after receiving an amount paid by way of security, give the person who pays a receipt stating the date payment was received, the name of the person from whom the payment was received, the amount paid, and the address of the premises to which the payment relates.

Maximum penalty: \$1 000.
Expiation fee: \$150.

(2) A person who receives an amount by way of security must pay the amount of the security to the Commissioner within the period allowed by regulation.

Maximum penalty: \$1 000.
Expiation fee: \$150.

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Repayment of security bond¹

63. (1) An application may be made to the Commissioner for—

- (a) payment of the whole amount of the security either to the landlord or the tenant; or
- (b) payment of a specified amount of the security to the landlord and the balance to the tenant.

(2) The application—

- (a) must be in a form approved by the Commissioner; and
- (b) may be made jointly by the landlord and the tenant or by either the landlord or the tenant.

(3) If the application is undisputed¹, the Commissioner must pay out the amount of the security as specified in the application.

¹ An application is undisputed if it is a joint application by the landlord and the tenant; or an application by the landlord that the whole of the amount of the security be paid to the tenant; or an application by the tenant that the whole of the amount of the security be paid to the landlord. An application that does not fall into any of those categories is liable to be disputed.

(4) If an application is liable to be disputed, the Commissioner must give the respondent¹ written notice of the application (in a form the Commissioner considers appropriate) and inform the respondent that, if the respondent wants to dispute the application, a written notice of dispute must be lodged with the Commissioner within ten days after the date the notice is given to the respondent.

¹ If the application was made by the landlord, the tenant is the respondent; if the application was made by the tenant, the landlord is the respondent.

(5) If the respondent does not give the Commissioner written notice of dispute within ten days after the date the Commissioner's notice¹ is given to the respondent, the Commissioner may pay out the amount of the security as proposed in the application.

¹ I.e. the notice under subsection (4).

(6) If the Commissioner receives a written notice of dispute before the amount of the security is paid out under subsection (5), the Commissioner must refer the dispute to the Tribunal for determination.

(7) Despite a preceding subsection, if—

- (a) the security has been provided or paid by a third party prescribed by the regulations, or in circumstances prescribed by the regulations; and
- (b) the Commissioner is given notice of the third party's interest in accordance with the regulations,

then—

¹ S. 63(11) and (12) had not been brought into operation at the date of this reprint.

- (c) the third party is entitled to make application to the Commissioner for the payment of the whole, or a specified part, of the security; and
- (d) —
 - (i) if the application is made with the consent of the landlord—the Commissioner must pay out the amount of the security as specified in the application;
 - (ii) in any other case—the Commissioner must give the landlord and, if the tenant is still in possession of the premises, the tenant, written notice of the application (in a form the Commissioner considers appropriate) and—
 - if the Commissioner does not receive a written notice of dispute from the party or parties to whom the notice of the application was given within ten days after the date on which the original notice is given—the Commissioner may pay out the amount of the security as proposed in the application;
 - in any other case—the Commissioner must refer the matter to the Tribunal for determination.

(8) If a payment is made under subsection (7) and the tenant is still in possession of the premises, the landlord may require the tenant to provide a new security bond in accordance with section 61.

(9) If—

- (a) security for the performance of obligations under a residential tenancy agreement is provided by a third party prescribed by the regulations in circumstances prescribed by the regulations; and
- (b) the landlord makes application to the Commissioner for the payment of the whole, or a specified part, of the amount payable under the security,

then—

- (c) if the application is made with the consent of the third party—the Commissioner must pay out the amount as specified in the application;
- (d) in any other case—the Commissioner must give the third party and, if the tenant is still in possession of the premises, the tenant, written notice of the application (in a form the Commissioner considers appropriate) and—
 - (i) if the Commissioner does not receive a written notice of dispute from the party or parties to whom the notice of the application was given within ten days after the date on which the original notice is given—the Commissioner may pay out the amount as proposed in the application;
 - (ii) in any other case—the Commissioner must refer the matter to the Tribunal for determination.

(10) If a payment is made under subsection (9), the third party must reimburse the Fund to the extent of the payment.

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(11) A payment under this section will be made from the Fund and, in the case of a payment to a tenant, must include interest.

(12) The interest will be calculated on the amount of the payment to the tenant under this section, and will be taken to have accrued from the day on which the security was paid to the Commissioner to the day of payment to the tenant at a rate fixed by the Minister for the purposes of this section.

DIVISION 5—TENANT’S ENTITLEMENT TO POSSESSION AND QUIET ENJOYMENT

Vacant possession, etc.

64. (1) It is a term of a residential tenancy agreement that the tenant is entitled to vacant possession of the premises (except for a part of the premises in respect of which a right to exclusive possession is not given by the agreement) from the day the tenancy begins.

(2) It is a term of a residential tenancy agreement that there is no legal impediment of which the landlord has, or ought to have knowledge, to the tenant’s occupation of the premises for the period of the tenancy as a place of residence.

Quiet enjoyment

65. (1) It is a term of a residential tenancy agreement that—

- (a) the tenant is entitled to quiet enjoyment of the premises without interruption by the landlord or a person claiming under the landlord or with superior title to the landlord’s title; and
- (b) the landlord will not cause or permit an interference with the reasonable peace, comfort or privacy of the tenant in the tenant’s use of the premises; and
- (c) the landlord will take reasonable steps to prevent other tenants of the landlord in occupation of adjacent premises from causing or permitting interference with the reasonable peace, comfort or privacy of the tenant in the tenant’s use of the premises.

(2) If the landlord causes or permits interference with the reasonable peace, comfort or privacy of the tenant in the tenant’s use of the premises in circumstances that amount to harassment of the tenant, the landlord is guilty of an offence.

Maximum penalty: \$2 000.

- The liability to be prosecuted for the offence is in addition to civil liability for breach of the agreement.

DIVISION 6—SECURITY OF PREMISES

Security of premises

66. (1) It is a term of a residential tenancy agreement that—

- (a) the landlord will take reasonable steps to provide and maintain the locks and other devices that are necessary to ensure the premises are reasonably secure; and
- (b) neither the landlord nor the tenant will alter or remove a lock or security device or add a lock or security device without the consent of the other.

(2) A landlord or tenant who, without reasonable excuse, contravenes the term of the agreement arising under subsection (1)(b) is guilty of an offence.

Maximum penalty: \$1 000.

- The liability to be prosecuted for the offence is in addition to civil liability for breach of the agreement.

(3) If the landlord's agent, without reasonable excuse, alters or removes a lock or security device, or adds a lock or security device, without the tenant's consent, the agent is guilty of an offence.

Maximum penalty: \$1 000.

- The liability to be prosecuted for the offence is in addition to civil liability the agent or the landlord may incur.

DIVISION 7—LANDLORD'S OBLIGATION IN REGARD TO CONDITION OF THE PREMISES

Cleanliness

67. It is a term of a residential tenancy agreement that the landlord will ensure that the premises, and ancillary property, are in a reasonable state of cleanliness when the tenant goes into occupation of the premises.

Landlord's obligation to repair

68. (1) It is a term of a residential tenancy agreement that the landlord—

(a) will ensure that the premises, and ancillary property, are in a reasonable state of repair at the beginning of the tenancy and will keep them in a reasonable state of repair having regard to their age, character and prospective life; and

(b) will comply with statutory requirements affecting the premises.

- The obligation applies even though the tenant had notice of the state of disrepair before entering into occupation.

(2) However—

(a) the landlord will not be regarded as being in breach of the obligation to repair unless—

(i) the landlord has notice of the defect requiring repair; and

(ii) the landlord fails to act with reasonable diligence to have the defect repaired; and

(b) if the landlord is a registered housing co-operative, the regulations may limit the extent of the obligation imposed by subsection (1); and

(c) if the premises are subject to a housing improvement notice fixing the maximum rent for the premises, the landlord's obligation under subsection (1) to repair the premises does not apply.

(3) If—

(a) premises or ancillary property are in a state of disrepair that does not arise from a contravention of the residential tenancy agreement by the tenant; and

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- (b) the state of disrepair is, unless remedied, likely to result in personal injury or damage to property or undue inconvenience; and
- (c) the tenant notifies the landlord of the state of disrepair or makes a reasonable attempt to do so; and
- (d) the tenant incurs costs in having the state of disrepair remedied; and
- (e) the repairs are carried out by a person who is licensed to carry out the necessary work and the person provides the landlord with a report on the work carried out and the apparent cause of the state of disrepair,

the tenant is entitled to recover from the landlord the reasonable costs of having the repairs carried out.

(4) However, the tenant is not entitled to recover the cost of repairing the premises if the premises are subject to a housing improvement notice fixing the maximum rent payable for premises.

**DIVISION 8—TENANT'S OBLIGATIONS IN RELATION TO
THE PREMISES AND ANCILLARY PROPERTY**

Tenant's responsibility for cleanliness and damage

69. (1) It is a term of a residential tenancy agreement that the tenant—

- (a) must keep the premises and ancillary property in a reasonable state of cleanliness; and
- (b) must notify the landlord of damage to the premises or ancillary property; and
- (c) must not intentionally or negligently cause or permit damage to the premises or ancillary property.

(2) A tenant who intentionally causes serious damage to the premises or ancillary property is guilty of an offence.

Maximum penalty: \$2 000.

- The liability to be prosecuted for an offence is in addition to civil liability for a breach of the agreement.

(3) It is a term of a residential tenancy agreement that, at the end of the tenancy, the tenant must give the premises and ancillary property back to the landlord in reasonable condition and in a reasonable state of cleanliness.

(4) In deciding whether premises or other property is in reasonable condition, its condition when the tenant took possession of it, and the probable effect of reasonable wear and tear since that time, must be taken into account.

Alteration of premises

70. (1) It is a term of a residential tenancy agreement that a tenant must not, without the landlord's written consent, make an alteration or addition to the premises.

(2) A tenant may remove a fixture affixed to the premises by the tenant unless its removal would cause damage to the premises.

(3) If a tenant causes damage to the premises by removing a fixture, the tenant must notify the landlord and, at the option of the landlord, repair the damage or compensate the landlord for the reasonable cost of repairing the damage.

DIVISION 9—TENANT'S CONDUCT ON THE PREMISES

Tenant's conduct

71. It is a term of a residential tenancy agreement that—

- (a) the tenant must not use the premises, or cause or permit the premises to be used, for an illegal purpose; and
- (b) the tenant must not cause or permit a nuisance; and
- (c) the tenant must not cause or permit an interference with the reasonable peace, comfort or privacy of another person who resides in the immediate vicinity of the premises.

DIVISION 10—LANDLORD'S RIGHT OF ENTRY

Right of entry

72. (1) It is a term of a residential tenancy agreement that the landlord may enter the premises if (and only if)—

- (a) the entry is made in an emergency; or
- (b) the landlord gives the tenant written notice stating the purpose and specifying the date and time of the proposed entry not less than seven and not more than 14 days before entering the premises; or
- (c) the entry is made at a time previously arranged with the tenant (but not more frequently than once every week for the purpose of collecting the rent); or
- (d) the entry is made at a time previously arranged with the tenant (but not more frequently than once every four weeks) for the purpose of inspecting the premises; or
- (e) the entry is made for the purpose of carrying out necessary repairs or maintenance at a reasonable time of which the tenant has been given at least 48 hours written notice; or
- (f) the entry is made for the purpose of showing the premises to prospective tenants, at a reasonable time and on a reasonable number of occasions during the period of 28 days preceding the termination of the agreement, after giving reasonable notice to the tenant; or
- (g) the entry is made for the purpose of showing the premises to prospective purchasers, at a reasonable time and on a reasonable number of occasions, after giving the tenant reasonable notice; or
- (h) the entry is made with the consent of the tenant given at, or immediately before, the time of entry.

(2) This section does not apply to a part of the premises that the tenant uses in common with the landlord or another tenant of the landlord.

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DIVISION 11—RATES, TAXES AND CHARGES

Rates, taxes and charges

73. (1) It is a term of a residential tenancy agreement that the landlord must bear all statutory rates, taxes and charges imposed in respect of the premises.

(2) However, rates and charges for water supply are to be borne as agreed between the landlord and the tenant.

(3) In the absence of an agreement—

(a) the landlord will bear the rates and charges for water supply up to a limit fixed or determined under the regulations; and

(b) any amount in excess of the limit is to be borne by the tenant.

DIVISION 12—ASSIGNMENT

Assignment of tenant's rights under residential tenancy agreement

74. (1) A tenant under a residential tenancy agreement may, by written or oral agreement with another—

(a) assign the tenant's interest in the agreement to the other; or

(b) sub-let the premises to which the residential tenancy agreement relates to the other.

(2) However, it is a term of a residential tenancy agreement that—

(a) the tenant must not assign the tenant's interest, or sub-let the premises, without the written consent of the landlord; but

(b) the landlord—

(i) must not unreasonably withhold consent (unless the landlord is a registered housing co-operative, in which case the landlord has an absolute discretion to withhold consent to an assignment); and

(ii) must not make a charge for giving consent or considering an application for consent exceeding the landlord's reasonable expenses.

· The absence of consent does not invalidate an assignment or sublease unless the landlord is a registered housing co-operative. However, if the landlord's consent to an assignment is not obtained, the tenant who assigns the interest remains liable to the landlord under the residential tenancy agreement (together with the new tenant, who is jointly and severally liable) unless the landlord has unreasonably withheld consent. This continuing liability of the assignor does not apply, in the case of a periodic tenancy, to a liability accruing more than 21 days after the landlord became aware or ought reasonably to have become aware of the assignment (whichever is the earlier).

· If the landlord's consent to an assignment is not obtained and the landlord had, before the assignment, served a notice of termination on the assignor, the landlord may enforce the notice against the assignee.

- The landlord may terminate a residential tenancy agreement on the ground that the tenant has assigned the tenant's interest, or has granted a sub-tenancy, without the landlord's consent, but only if the landlord has not unreasonably withheld consent and serves the notice of termination within 21 days after the time the landlord became aware or ought reasonably to have become aware of the assignment or sub-tenancy (whichever is the earlier).

(3) The effect of an assignment under this section is that the assignee is substituted for the assignor as tenant under the residential tenancy agreement (but the assignor remains responsible for liabilities that accrued before the date of the assignment)¹.

¹ If the assignment is made without the landlord's consent, the tenant may also remain liable under the agreement for liabilities that accrue later—*See above*.

(4) An assignee is liable to indemnify the assignor for liabilities incurred by the assignor to the landlord because of a breach of the residential tenancy agreement by the assignee.

(5) If the tenant assigns the tenant's interest, an amount paid by the tenant and held by way of security will (unless the parties agree to the contrary) continue to be held as security for the proper performance by the assignee of obligations under the residential tenancy agreement.

DIVISION 13—TENANT'S VICARIOUS LIABILITY

Vicarious liability

75. It is a term of a residential tenancy agreement that, if a person is on the premises at the invitation or with the consent of the tenant, the tenant is vicariously responsible for an act or omission by the person that would, if it had been an act or omission of the tenant, have constituted a breach of the agreement.

DIVISION 14—HARSH OR UNCONSCIONABLE TERMS

Harsh or unconscionable terms

76. (1) The Tribunal may, on application by a tenant, make an order rescinding or varying a term of a residential tenancy agreement if satisfied that the term is harsh or unconscionable.

(2) On making an order under subsection (1), the Tribunal may make consequential changes to the residential tenancy agreement or another related document.

DIVISION 15—MISCELLANEOUS

Accelerated rent and liquidated damages

77. (1) If a residential tenancy agreement provides that, upon breach by the tenant of a term about rent or other term of the agreement, the tenant is liable to pay—

- (a) all or any part of the rent remaining payable under the agreement; or
- (b) rent of an increased amount; or
- (c) an amount by way of penalty; or
- (d) an amount by way of liquidated damages,

the provision is void.

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(2) If a residential tenancy agreement provides that, on early or punctual payment of rent, the rent will or may be decreased or the tenant will or may be granted or paid a rebate, refund or other benefit, the tenant is entitled to the reduction, rebate, refund or other benefit in any event.

(3) If a residential tenancy agreement contains a provision to which this section applies, the landlord is guilty of an offence.

Maximum penalty: \$1 000.

Duty of mitigation

78. The rules of the law of contract about mitigation of loss or damage on breach of a contract apply to a breach of a residential tenancy agreement.

PART 5
TERMINATION OF RESIDENTIAL TENANCY AGREEMENTS

DIVISION 1—TERMINATION GENERALLY

Termination of residential tenancy

79. A residential tenancy terminates if—

- (a) the tenancy is for a fixed term and the fixed term comes to an end; or
- (b) the landlord or the tenant terminates the tenancy by notice of termination given to the other (as required under this Act); or
- (c) the Tribunal terminates the tenancy; or
- (d) a person having title superior to the landlord's title becomes entitled to possession of the premises under the order of the Tribunal or a court¹; or
- (e) a mortgagee takes possession of the premises under a mortgage; or
- (f) the tenant abandons the premises; or
- (g) the tenant dies without leaving dependants in occupation of the premises; or
- (h) the tenant gives up possession of the premises with the landlord's consent; or
- (i) the interest of the tenant merges with another estate or interest in the land; or
- (j) disclaimer of the tenancy occurs.

¹. See section 96.

DIVISION 2—TERMINATION BY THE LANDLORD

Notice of termination by landlord on ground of breach of the agreement

80. (1) If the tenant breaches a residential tenancy agreement, the landlord may give the tenant a written notice in the form required by regulation—

- (a) specifying the breach; and
 - (b) informing the tenant that if the breach is not remedied within a specified period (which must be a period of at least seven days) from the date the notice is given then—
 - (i) the tenancy is terminated by force of the notice; and
 - (ii) the tenant must give up possession of the premises on or before a day specified in the notice (which, subject to subsection (2)(c), must be at least seven days after the end of the period allowed for the tenant to remedy the breach).
- (i) If notice is given under this section on the ground of a failure to pay rent—
- (a) the notice is ineffectual unless the rent (or any part of the rent) has remained unpaid in breach of the agreement for not less than 14 days before the notice was given; and
 - (b) the notice is not rendered ineffectual by failure by the landlord to make a prior formal demand for payment of the rent; and

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- (c) the day specified in the notice for the tenant to give up possession of the premises if the rent is not paid in accordance with the terms of the notice can be any day after the day on which the tenancy is terminated under the notice¹.

¹ I.e. the requirement to give the tenant at least seven days to give up possession of the premises if the tenant remains in default does not apply.

(3) If notice is given under this section in respect of a residential tenancy agreement that creates a tenancy for a fixed term, the notice is not ineffectual because the day specified as the day on which the tenant is to give up possession of the premises is earlier than the last day of that term.

(4) The tenant may at any time after receiving a notice under this section and before giving vacant possession to the landlord, apply to the Tribunal for an order—

- (a) declaring that the tenant is not in breach of the residential tenancy agreement, or has remedied the breach of the agreement, and that the tenancy is not liable to be terminated under this section; or
- (b) reinstating the tenancy.

(5) If the Tribunal is satisfied that a tenancy has been validly terminated under this section, but that it is just and equitable to reinstate the tenancy (or would be just and equitable to reinstate the tenancy if the conditions of the order were complied with), the Tribunal may make an order reinstating the tenancy.

- An order reinstating the tenancy under this section may be made on conditions that the Tribunal considers appropriate.
- On an application for an order reinstating the tenancy, the Tribunal may make alternative orders providing for reinstatement of the tenancy if specified conditions are complied with but, if not, ordering the tenant to give up possession of the premises to the landlord.

Termination because possession is required by the landlord for certain purposes

81. (1) A landlord may, by notice of termination given to the tenant, terminate a periodic residential tenancy on the ground that—

- (a) the landlord requires possession of the premises for demolition; or
- (b) the landlord requires possession of the premises for repairs or renovations that cannot be carried out conveniently while the tenant remains in possession of the premises; or
- (c) the landlord requires possession of the premises for—
- (i) the landlord's own occupation; or
 - (ii) occupation by the landlord's spouse, child or parent; or
 - (iii) occupation by the spouse of the landlord's child or parent; or
- (d) the landlord has entered into a contract for the sale of the premises under which the landlord is required to give vacant possession of the premises; or
- (e) the landlord requires possession of the premises for a purpose prescribed by regulation.

(2) The period of notice given under this section must be at least 60 days or a period equivalent to a single period of the tenancy (whichever is the longer).

(3) A person must not falsely state the ground of termination in a notice of termination given, or purportedly given, under this section.

Maximum penalty: \$2 000.

(4) A landlord who recovers possession of premises under this section must not, without the consent of the Tribunal, grant a fresh tenancy over the premises within six months after recovering possession.

Maximum penalty: \$2 000.

Termination of residential tenancy by housing co-operative

82. (1) A registered housing co-operative that is landlord under a residential tenancy agreement may, by notice of termination given to the tenant, terminate a residential tenancy on the ground that—

- (a) the tenant has ceased to be a member of the co-operative; or
- (b) the tenant no longer satisfies conditions specified by the agreement as essential to the continuation of the tenancy.

(2) The period of notice under this section must be at least 28 days.

Termination by landlord without specifying a ground of termination

83. (1) A landlord may, by notice of termination given to the tenant, terminate the tenancy without specifying a ground of termination.

(2) However, if the tenancy is for a fixed term, it cannot be terminated under this section; nor can a housing co-operative terminate a tenancy with a member of the co-operative under this section; nor can a tenancy be terminated by notice under this section if the premises are subject to a housing improvement notice, or subject, or potentially subject, to rent control under this Act.

- Premises are subject to, or potentially subject to, rent control under this Act if an order is in force under section 56 or proceedings for such an order have been commenced.

(3) The period of notice under this section must be at least 90 days.

Limitation of right to terminate

84. (1) If premises to which a residential tenancy agreement applies are—

- (a) subject to a housing improvement notice; or
- (b) subject to, or potentially subject to, rent control under this Act,

the landlord may only terminate the tenancy by notice of termination if the notice is given on a specified ground, and the Tribunal authorises the notice of termination.

- Premises are subject to, or potentially subject to, rent control under this Act if an order is in force under section 56 or proceedings for such an order have been commenced.

(2) The Tribunal may authorise a notice of termination under this section if satisfied of the genuineness of the proposed ground on which the notice is to be given.

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DIVISION 3—TERMINATION BY TENANT

Notice of termination by tenant on ground of breach of the agreement

85. (1) If the landlord breaches a residential tenancy agreement, the tenant may give the landlord a written notice, in the form required by regulation—

- (a) specifying the breach; and
- (b) informing the landlord that if the breach is not remedied within a specified period (which must be a period of at least seven days) from the date the notice is given the tenancy is terminated by force of the notice from a date that is also specified in the notice (which must be at least seven days after the end of the period allowed for the landlord to remedy the breach).

(2) The landlord may, before the time fixed in the tenant's notice for termination of the tenancy or the tenant gives up possession of the premises (whichever is the later), apply to the Tribunal for an order—

- (a) declaring that the landlord is not in breach of the residential tenancy agreement, or has remedied the breach of the agreement, and that the tenancy is not liable to be terminated under this section; or
- (b) reinstating the tenancy.

(3) If the Tribunal is satisfied that a tenancy has been validly terminated under this section, but that it is just and equitable to reinstate the tenancy (or would be just and equitable to reinstate the tenancy if the conditions of the order were complied with), the Tribunal may make an order reinstating the tenancy.

- An order reinstating the tenancy under this section may be made on conditions that the Tribunal considers appropriate.

Termination by tenant without specifying a ground of termination

86. (1) The tenant under a residential tenancy agreement for a periodic tenancy may, by notice of termination given to the landlord, terminate the tenancy without specifying a ground of termination.

(2) The minimum period of notice under this section is 21 days or a period equivalent to a single period of the tenancy (whichever is longer).

DIVISION 4—TERMINATION BY THE TRIBUNAL

Termination on application by landlord

87. (1) The Tribunal may, on application by a landlord, terminate a residential tenancy and make an order for possession of the premises if satisfied that—

- (a) the tenant has committed a breach of the residential tenancy agreement; and
- (b) the breach is sufficiently serious to justify termination of the tenancy¹.

¹ A tenancy may be terminated by a notice under section 80 if the tenant fails to remedy a breach after being required to do so by the landlord. This alternative procedure may be appropriate if (for example) the breach is not capable of remedy.

(2) The Tribunal may, on application by a landlord, terminate a residential tenancy and make an order for immediate possession of the premises if the tenant or a person permitted on the premises with the consent of the tenant has, intentionally or recklessly, caused or permitted, or is likely to cause or permit—

- (a) serious damage to the premises; or
- (b) personal injury to—
 - (i) the landlord or the landlord's agent; or
 - (ii) a person in the vicinity of the premises.

Termination on application by tenant

88. The Tribunal may, on application by a tenant, terminate a residential tenancy and make an order for possession of the premises if satisfied that—

- (a) the landlord has committed a breach of the residential tenancy agreement; and
- (b) the breach is sufficiently serious to justify termination of the tenancy¹.

¹ A tenancy may be terminated by a notice under section 85 if the landlord fails to remedy a breach after being required to do so by the tenant. This alternative procedure may be appropriate if (for example) the breach is not capable of remedy.

Termination based on hardship

89. (1) If the continuation of a residential tenancy would result in undue hardship to the landlord or the tenant, the Tribunal may, on application by the landlord or the tenant, terminate the agreement from a date specified in the Tribunal's order and make an order for possession of the premises as from that day.

(2) The Tribunal may also make an order compensating a landlord or tenant for loss and inconvenience resulting, or likely to result, from the early termination of the tenancy.

Tribunal may terminate tenancy where tenant's conduct unacceptable

90. (1) The Tribunal may, on application by an interested person, terminate a residential tenancy and make an order for possession of the premises if it is satisfied that the tenant has—

- (a) used the premises, or caused or permitted the premises to be used, for an illegal purpose; or
- (b) caused or permitted a nuisance; or
- (c) caused or permitted an interference with the reasonable peace, comfort or privacy of another person who resides in the immediate vicinity of the premises.

(2) If the Tribunal terminates a tenancy and makes an order for possession under this section, the Tribunal must specify the day as from which the orders will operate, being not more than 28 days after the day on which the orders are made.

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(3) In this section—

"interested person" means—

- (a) the landlord; or
- (b) a person who has been adversely affected by the conduct of the tenant on which the application is based.

DIVISION 5—NOTICES OF TERMINATION

Form of notice of termination

91. (1) A notice of termination given by a landlord to a tenant must—

- (a) be in writing and in the form prescribed by regulation¹; and
- (b) be signed by the landlord or the landlord's agent; and
- (c) state the address of the premises subject to the tenancy; and
- (d) state the day on which the tenant is required to give up vacant possession of the premises to the landlord; and
- (e) if the tenancy is to be terminated on a particular ground—specify and give reasonable particulars of the ground of termination; and
- (f) include any further information required by regulation.

(2) A notice of termination given by a tenant to a landlord must—

- (a) be in writing and in the form required by regulation¹; and
- (b) be signed by the tenant or an agent of the tenant; and
- (c) state the address of the premises subject to the tenancy; and
- (d) state the day on which the tenant is to give up vacant possession of the premises to the landlord; and
- (e) if the tenancy is to be terminated on a particular ground—specify and give reasonable particulars of the ground of termination; and
- (f) include any further information required by regulation.

¹ The Acts Interpretation Act 1915 allows some divergence from the prescribed form providing that the form actually used is to the same effect.

Termination of periodic tenancy

92. A notice terminating a periodic tenancy under this Act is not ineffectual because—

- (a) the period of notice is less than would, apart from this Act, have been required at law; or
- (b) the day on which the tenancy is to end is not the last day of a period of the tenancy.

DIVISION 6—REPOSSESSION OF PREMISES

Order for possession

93. (1) If a residential tenancy—

- (a) is terminated by notice of termination under this Act or, in the case of a tenancy under which the South Australian Housing Trust is landlord, under the residential tenancy agreement; or
- (b) is for a fixed term which expires and is not renewed,

the landlord may apply to the Tribunal for an order for possession of the premises.

(2) If the Tribunal is satisfied that the tenancy has terminated or has been terminated, the Tribunal may make an order for possession of the premises.

(3) The order for possession will take effect on a date specified by the Tribunal in the order, being a date not more than seven days after the date of the order unless the operation of the order for possession is suspended¹.

¹ See subsection (4).

(4) However, if the Tribunal, although satisfied that the landlord is entitled to an order for possession of the premises, is satisfied by the tenant that the grant of an order for immediate possession of the premises would cause severe hardship to the tenant, the Tribunal may—

- (a) suspend the operation of the order for possession for up to 90 days; and
 - (b) extend the operation of the residential tenancy agreement until the landlord obtains vacant possession of the premises from the tenant.
- In extending the operation of the residential tenancy agreement, the Tribunal may make modifications to the agreement that it considers appropriate (but the modifications cannot reduce the tenant's financial obligations under the agreement).

(5) If the tenant fails to comply with an order for possession, the landlord is entitled to compensation for any loss caused by that failure.

(6) The Tribunal may, on application by the landlord, order the tenant to pay to the landlord compensation to which the landlord is entitled under subsection (5).

Abandoned premises

94. (1) The Tribunal may, on application by a landlord—

- (a) declare that a tenant abandoned premises on a day stated in the declaration; and
- (b) make an order for immediate possession of the premises.

(2) A tenant is taken to have abandoned the premises on the day stated in a declaration under this section.

(3) If a tenant has abandoned premises, the landlord is entitled to compensation for any loss (including loss of rent) caused by the abandonment.

(4) However, the landlord must take reasonable steps to mitigate any loss and is not entitled to compensation for loss that could have been avoided by those steps.

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(5) The Tribunal may, on application by the landlord, order the tenant to pay to the landlord compensation to which the landlord is entitled under this section.

Repossession of premises

95. A person must not enter premises for the purpose of taking possession of the premises before, or after, the end of a residential tenancy unless—

- (a) the tenant abandons, or voluntarily gives up possession of, the premises; or
- (b) the person is authorised to take possession of the premises under the order of a court or the Tribunal.

Maximum penalty: \$2 000.

Forfeiture of head tenancy not to result automatically in destruction of right to possession under residential tenancy agreement

96. (1) A person cannot take possession of residential premises subject to a residential tenancy agreement so as to defeat the tenant's right to possession under the residential tenancy agreement unless an order for possession of the premises is made by a court or the Tribunal.

(2) If a person is entitled to possession of residential premises as against a person who granted a residential tenancy, a court before which proceedings for possession of the premises are brought, or the Tribunal, may, on application by an interested person, vest the residential tenancy agreement in the person who would, but for the agreement, be entitled to possession of the premises so that the tenant holds the premises directly from that person as landlord.

(3) An order may be made under subsection (2) on terms and conditions the court or Tribunal considers just.

DIVISION 7—ABANDONED GOODS

Abandoned goods

97. (1) If a residential tenancy terminates or is terminated, and goods are left on the premises that were subject to the tenancy, then—

- (a) the landlord may, when at least two days have passed since the landlord took possession of the premises, remove, and destroy or dispose of, goods—
 - (i) if they are perishable foodstuffs; or
 - (ii) if their value is less than a fair estimate of the cost of their removal, storage and sale; but
- (b) if the goods are not liable to destruction or disposal under paragraph (a), the landlord must store the goods in a safe place and manner for at least 60 days.

(2) The landlord must, within seven days after storing goods or having goods stored under this section—

- (a) give notice of the storage of the goods to—
 - (i) if the tenant has left a forwarding address—the tenant; and

- (ii) if another person has, to the knowledge of the landlord, an interest in the goods and the person's name and address are known to, or reasonably ascertainable by, the landlord—that person; and
- (b) publish notice of the storage of the goods in a newspaper circulating generally throughout the State.
- (3) A notice must be in the form prescribed by regulation for the purposes of this section.
- (4) A person who is entitled to possession of goods stored under this section may reclaim the goods by paying to the landlord the reasonable costs of their removal and storage.
- (5) If the goods are not reclaimed within the 60 day period, the landlord must, as soon as practicable after the end of that period, have the goods sold by public auction.
- (6) On the sale of the goods by public auction, the landlord—
 - (a) may retain out of the proceeds of sale—
 - (i) the reasonable costs of removing, storing and selling the goods; and
 - (ii) the reasonable costs of giving notice under subsection (2)(b); and
 - (iii) any amounts owed to the landlord under the residential tenancy agreement; and
 - (b) must pay the balance (if any) to the owner, or if the identity and address of the owner are not known to, or reasonably ascertainable by, the landlord, to the Commissioner for the credit of the Fund.
- (7) If goods are sold by public auction under this section, the purchaser acquires a good title to the goods which defeats—
 - (a) the tenant's interest in the goods; and
 - (b) the interests of others (apart from the tenant) unless the purchaser has actual notice of the interest before purchasing the goods.
- (8) If a dispute arises between a landlord and tenant about the exercise of powers conferred by this section, the Tribunal may, on application by either party to the dispute, make orders resolving the matters in dispute.

DIVISION 8—MISCELLANEOUS

Bailiffs

- 98.** (1) The Governor may appoint a person to be a bailiff of the Tribunal.
- (2) The office of bailiff may be held in conjunction with another office in the public service of the State.
- (3) A bailiff is entitled to remuneration and expenses determined by the Minister.

Enforcement of orders for possession

- 99.** (1) If an order for possession of premises is made by the Tribunal and the person in whose favour the order was made advises the Tribunal that the order has not been complied with, a bailiff of the Tribunal must enforce the order as soon as is practicable thereafter.

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(2) A bailiff enforcing an order for possession of premises may enter the premises, ask questions and take all steps as are reasonably necessary for the purpose of enforcing the order.

(3) A member of the police force must, if requested by a bailiff, assist the bailiff in enforcing an order for possession.

(4) In the exercise of the powers conferred by this section a bailiff may use the force that is reasonable and necessary in the circumstances.

(5) A person must not hinder or obstruct a bailiff in the exercise of the powers conferred by this section.

Maximum penalty: \$1 000

(6) A person questioned pursuant to this section must not refuse or fail to answer the question to the best of his or her knowledge, information and belief.

Maximum penalty: \$1 000

(7) However, a person is not obliged to answer a question under this section if to do so might tend to incriminate the person or to make the person liable to a penalty, or would require the disclosure of information that is privileged under the principles of legal professional privilege.

(8) A bailiff or a member of the police force assisting a bailiff incurs not civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions under this section.

PART 6
RESIDENTIAL TENANCIES FUND

Residential Tenancies Fund

- 100.** (1) The fund entitled the Residential Tenancies Fund continues in existence.
- (2) The Fund is to be kept and administered by the Commissioner.
- (3) The Fund consists of the amounts received by the Commissioner by way of security, and other amounts paid into the Fund under this Act.
- (4) The Fund may be invested as approved by the Minister.
- (5) The Commissioner will make repayments in respect of security bonds from the Fund.

Application of income¹

- 101.** The income derived from investment of the Fund may be applied—
- (a) towards the costs of administering and enforcing this Act (including the operating costs of the Tribunal); and
- (b) for the education of landlords and tenants about their statutory and contractual rights and obligations; and
- (c) *in the payment to tenants of interest on amounts of securities repaid to them at the end of residential tenancies; and*
- (d) towards the costs of projects directed at providing accommodation, or assistance related to accommodation, for the homeless or other disadvantaged sections of the community; and
- (e) on research, approved by the Minister on the recommendation of the Tribunal, into—
- (i) the availability of rental accommodation within the community;
- (ii) areas of social need related to the availability (or non-availability) of rental accommodation or particular kinds of rental accommodation; and
- (f) for the benefit of landlords and tenants in other ways approved by the Minister.

Accounts and audit

- 102.** (1) The Commissioner must keep proper accounts of the receipts and payments from the Fund.
- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.

¹ S. 101(c) had not been brought into operation at the date of this reprint.

**PART 7
ROOMING HOUSES**

Codes of conduct¹

103. (1) *There is to be a code of conduct governing the conduct of rooming house proprietors.*

(2) *There is to be a code of conduct governing the conduct of rooming house residents.*

(3) *The codes of conduct are to be prescribed by regulation.*

Obligation to comply with codes of conduct

104. (1) *A rooming house proprietor must comply with the relevant code of conduct.*

Maximum penalty: \$1 000.

(2) *A rooming house resident must comply with the relevant code of conduct.*

Maximum penalty: \$200.

Jurisdiction of the Tribunal

105. *The Tribunal has jurisdiction to hear and determine, on the application of a rooming house proprietor or resident, a question arising under a code of conduct under this Part.*

¹ Ss. 103-105 had not been brought into operation at the date of this reprint.

**PART 8
DISPUTE RESOLUTION**

DIVISION 1—MEDIATION

Responsibility of the Commissioner to arrange for mediation of disputes

106. The Commissioner is responsible for making arrangements to facilitate the resolution of tenancy disputes.

Mediation of dispute

107. (1) A party to a tenancy dispute may apply to the Commissioner for mediation of the dispute.

(2) A fee prescribed by regulation is payable on an application under this section.

Statements made in the course of mediation proceedings

108. Evidence of admissions or statements made in the course of the mediation of a tenancy dispute under this Division is not admissible in evidence before the Tribunal or a court.

DIVISION 2—INTERVENTION

Power to intervene

109. (1) The Commissioner may intervene in proceedings before the Tribunal or a court concerning a tenancy dispute.

(2) If the Commissioner intervenes in proceedings the Commissioner becomes a party to the proceedings and has all the rights (including rights of appeal) of a party to the proceedings.

DIVISION 3—POWERS OF THE TRIBUNAL

Powers of the Tribunal

110. The Tribunal may, on application by a party to a tenancy dispute—

- (a) restrain an action in breach of this Act, a residential tenancy agreement, a rooming house agreement, or an agreement collateral to a residential tenancy agreement or a rooming house agreement; or
- (b) require a person to comply with an obligation under this Act, a residential tenancy agreement, a rooming house agreement or an agreement collateral to a residential tenancy agreement or a rooming house agreement; or
- (c) order a person to make a payment (which may include compensation) under this Act, a residential tenancy agreement, a rooming house agreement or a collateral agreement or for breach of this Act, a residential tenancy agreement, a rooming house agreement, or a collateral agreement; or
- (d) relieve a party to a residential tenancy agreement, a rooming house agreement or a collateral agreement from the obligation to comply with a provision of the agreement; or
- (e) terminate a residential tenancy or declare that a residential tenancy has, or has not, been validly terminated; or
- (f) reinstate rights under a residential tenancy agreement that have been forfeited or have otherwise terminated; or

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- (g) require payment of rent into the Tribunal until conditions stipulated by the Tribunal have been complied with; or
- (h) require that rent paid into the Tribunal be paid out and applied as directed by the Tribunal; or
- (i) require that security paid into the Fund be paid out and applied as directed by the Tribunal; or
- (j) require a tenant or a rooming house resident to give up the possession of premises to the landlord or rooming house proprietor; or
- (k) make orders to give effect to rights and liabilities arising from the assignment of a residential tenancy agreement; or
- (l) exercise any other power conferred on the Tribunal under this Act; or
- (m) do anything else necessary or desirable to resolve a tenancy dispute.

Conditional and alternative orders

111. (1) The Tribunal may make orders on conditions the Tribunal considers appropriate.

(2) The Tribunal may make orders in the alternative so that a particular order takes effect, or does not take effect, according to whether stipulated conditions are complied with.

Restraining orders

112. (1) If the Tribunal is satisfied, on application by a landlord, that there is a risk that the tenant or a person permitted on the premises by the tenant may cause serious damage to property or personal injury, the Tribunal may make an order (a **restraining order**) restraining the tenant and other persons on the premises from engaging in conduct of a kind described in the order.

(2) An application for a restraining order may be made without notice to the persons against whom the order is sought but, if the order is made without giving them a reasonable opportunity to respond to the allegations against them, the Tribunal must allow them a reasonable opportunity to satisfy it that the order should not continue in operation.

(3) A person must not contravene a restraining order.

Maximum penalty: Imprisonment for 1 year.

DIVISION 4—REPRESENTATION**Representation in proceedings before the Tribunal**

113. (1) A party to a tenancy dispute may only be represented in proceedings before the Tribunal, at a pre-trial conference or in proceedings for the mediation of the dispute under this Act as allowed by this section.

(2) A party to a tenancy dispute may be represented by a lawyer if—

- (a) all parties to the proceedings agree to the representation and the Tribunal is satisfied that it will not unfairly disadvantage a party who does not have a professional representative; or
- (b) the Tribunal is satisfied that the party is unable to present the party's case properly without assistance; or

- (c) another party to the dispute is a lawyer, or is represented by a professional representative; or
 - (d) the Commissioner has intervened in, or is a party to, the proceedings.
- (3) A party to a tenancy dispute may be represented by a person who is not a lawyer if—
- (a) the party is a body corporate and the representative is an officer or employee of the body corporate; or
 - (b) the party is a landlord and the representative is an agent, or an officer or employee of an agent, appointed by the landlord to manage the premises on the landlord's behalf; or
 - (c) all parties to the proceedings agree to the representation and the Tribunal is satisfied that it will not unfairly disadvantage an unrepresented party; or
 - (d) the Tribunal is satisfied that the party is unable to present the party's case properly without assistance.
- (4) In this section—

"professional representative" means—

- (a) a lawyer, a law clerk, or a person who holds or has held legal qualifications under the law of the State or another place; or
- (b) a land agent, or an officer or employee of a land agent.

Remuneration of representative

114. A person must not ask for or receive a fee for representing a party to a tenancy dispute in proceedings before the Tribunal, at a pre-trial conference or in proceedings for the mediation of the dispute under this Act unless—

- (a) the representative is a lawyer or a law clerk employed by a lawyer; or
- (b) the representative is an officer or employee of a body corporate who represented the body corporate in the proceedings; or
- (c) the representative is an agent, or an officer or employee of an agent, who represented a landlord in the proceedings whose premises the agent had been appointed to manage on behalf of the landlord.

Maximum penalty: \$15 000.

Residential Tenancies Act 1995

**PART 9
MISCELLANEOUS**

Contract to avoid Act

115. (1) An agreement or arrangement that is inconsistent with this Act or purports to exclude, modify or restrict the operation of this Act, is (unless the inconsistency, exclusion, modification or restriction is expressly permitted under this Act) to that extent void.

(2) A purported waiver of a right under this Act is void.

(3) A person who enters into an agreement or arrangement to defeat, evade or prevent the operation of this Act (directly or indirectly) is guilty of an offence.

Maximum penalty: \$8 000.

Overpayment of rent

116. An overpayment of rent under a residential tenancy agreement is not recoverable unless the overpayment was made within six months before the proceedings for recovery of the overpayment were commenced.

Notice by landlord not waived by acceptance of rent

117. A demand for, any proceeding for the recovery of, or acceptance of, rent by a landlord after the landlord has notice of a breach of the agreement by the tenant or has given the tenant notice of termination under this Act does not operate as a waiver of that breach or that notice.

Exemptions

118. The Minister may, by order published in the *Gazette*—

- (a) exempt agreements, or premises, of a specified class from the provisions, or specified provisions, of this Act; or
- (b) modify specified provisions of this Act in their application to a specified class of agreements or a specified class of premises; or
- (c) vary or revoke an order previously made by the Minister under this section.

Tribunal may exempt tenancy agreement or premises from provision of Act

119. (1) The Tribunal may, on application by an interested person, if the Tribunal considers it necessary or desirable in the circumstances, order that a provision of this Act will not apply in relation to a residential tenancy agreement or prospective residential tenancy agreement or to particular premises, or will apply in a modified manner (and the order will have effect accordingly).

(2) An order may be made on conditions that the Tribunal considers appropriate.

(3) A person must not contravene a condition to an order.

Maximum penalty: \$500

Service

120. (1) A notice or document required or authorised to be given to a person under this Act may be—

- (a) given to the person, or an agent of the person, personally; or
- (b) sent by post addressed to the person, or an agent of the person, at the last known place of residence, employment or business of the person or agent; or
- (c) left in a letterbox or other place where it is likely to come to the attention of the person, or an agent of the person, at the last known place of residence, employment or business.

(2) If the whereabouts of a person is unknown, the notice or document may be given by publishing it in a newspaper circulating generally throughout the State.

(3) If two or more persons are the landlords or tenants under a residential tenancy agreement, a notice or other document is duly given if given to any one of them.

Regulations

121. (1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may—

- (a) be of general or limited application; and
- (b) provide that a matter or thing is to be determined, dispensed with or regulated by the Minister.

(3) A regulation may impose a penalty not exceeding \$500 for breach of the regulation.

(4) The regulations may fix expiation fees, not exceeding \$100, for alleged offences against the regulations.

Residential Tenancies Act 1995

SCHEDULE

Repeal, Transitional Provisions and Consequential Amendments

DIVISION 1—REPEALS

Repeal

1. (1) The *Residential Tenancies Act 1978* is repealed.
- (2) The *Residential Tenancies (Housing Trust) Amendment Act 1993* is repealed.

DIVISION 2—TRANSITIONAL PROVISIONS

Definitions

2. In this Division "**former Act**" means the *Residential Tenancies Act 1978*.

Retrospective operation

3. Subject to the regulations—
 - (a) this Act (other than section 73) extends to agreements entered into before the commencement of this paragraph that have been subject to the former Act;
 - (b) section 73 extends to agreements entered into before the commencement of this paragraph that have been subject to the former Act.

Proceedings

4. An application, appeal or other proceeding commenced under the former Act but which had not been finally determined before the commencement of this clause may be continued and completed as if this Act had not been enacted.

Interest on money lodged in Fund under former Act¹

5. *If a tenant is entitled under this Act to interest on money lodged in the Fund under the former Act, the interest will be calculated as from the commencement of this clause.*

DIVISION 3—CONSEQUENTIAL AMENDMENTS

Amendment of the Retirement Villages Act 1987

6. The *Retirement Villages Act 1987* is amended—
 - (a) by striking out from section 20 "Supreme Court" wherever it appears and substituting, in each case, "District Court";
 - (b) by striking out subclause (1) of clause 2 of schedule 3 and substituting the following subclause:
 - (1) The Tribunal will, for the purpose of hearing proceedings under this Act, be constituted of a single member of the Tribunal.

¹ Clause 5 had not been brought into operation at the date of this reprint.

APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996, s. 5)

5. An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

Legislative History

Section 48(1), (2) and (4):	amended by 34, 1996, s. 4 (Sched. cl. 29)
Section 49:	amended by 34, 1996, s. 4 (Sched. cl. 29)
Section 58(1):	amended by 34, 1996, s. 4 (Sched. cl. 29)
Section 62(1) and (2):	amended by 34, 1996, s. 4 (Sched. cl. 29)
Section 121(4):	inserted by 34, 1996, s. 4 (Sched. cl. 29)