

South Australia

Landlord and Tenant (Commercial Tenancies) Regulations 1986

under the *Landlord and Tenant Act 1936*

Contents

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 5 Payment of money to Tribunal under security bond
- 6 Application to Commercial Tribunal under Part 4 of the Act
- 6AA Circumstances where transfer of action to court not required
- 6A Written statements
- 7 Warranty of fitness for purpose
- 7A Five year terms
- 7B Abandoned goods
- 8 Exclusions from certain provisions of Part 4 of Act
- 9 Exclusions from application of Part 4 of Act of agreement between Treasurer and Port Dock Railway Museum
- 10 Exclusion from application of Part 4 of Act of commercial tenancy agreements where landlord is Aboriginal Lands Trust

Schedule—Lodgement of security bond

Legislative history

1—Short title

These regulations may be cited as the *Landlord and Tenant (Commercial Tenancies) Regulations 1986*.

2—Commencement

These regulations shall come into operation on 1 January, 1986.

3—Interpretation

In these regulations—

the Act means the *Landlord and Tenant Act 1936*.

5—Payment of money to Tribunal under security bond

A person who is paying to the Tribunal money paid under a security bond shall lodge a form in the form of Form 1 of the Schedule to these regulations duly completed in accordance with the instructions contained in that form.

6—Application to Commercial Tribunal under Part 4 of the Act

- (1) Subject to this regulation, an application to the Commercial Tribunal under Part 4 of the Act—
 - (a) must be in a form approved by the Commercial Registrar for an application of the relevant kind; and
 - (b) must include such information, and be accompanied by such other documents, as the approved form requires; and
 - (c) must be accompanied by an application fee of \$28.
- (2) For the purposes of section 61(2) of the Act—
 - (a) the prescribed form of agreement shall be Form 3 of the Schedule to these regulations; and
 - (b) an application under that section must be accompanied by an agreement between the parties made in the prescribed form.
- (3) No application fee is payable on an application under section 61 of the Act.

6AA—Circumstances where transfer of action to court not required

Pursuant to section 56(4) of the Act, the Commercial Tribunal is not required to transfer an action to a court if the reason for the transfer would be that—

- (a) by reason of an amendment to the amount of the claim (or any cross-claim) the action involves a small claim and no other claim (apart from a claim for costs, interest or both); or
- (b) —
 - (i) the amount of the claim (or any cross-claim) has, since the commencement of the proceedings, been increased so as to exceed the prescribed amount under section 56(2) of the Act; and
 - (ii) it appears that the increase is attributable solely to the effluxion of time.

6A—Written statements

For the purposes of section 62(2)(b) of the Act, the prescribed form of written statement will be Form 5 of the Schedule to these regulations.

7—Warranty of fitness for purpose

- (1) For the purposes of section 66(2) of the Act, the warranty referred to in section 66(1) of the Act is excluded if, before the agreement is executed by the tenant, the landlord specifically draws to the attention of the tenant, a notice in the form of Form 4 of the Schedule to these regulations.
- (2) The notice referred to in subregulation (1)—
 - (a) must be inserted immediately above the place provided for the tenant's signature in the document referred to in section 62(1) of the Act; and
 - (b) must be—

- (i) printed in characters not smaller than the corresponding characters in Form 4 of the Schedule to these regulations, as printed in the Gazette; or
 - (ii) typed in type not smaller than 12 pitch.
- (3) In subregulation (2)—
12 pitch, in relation to type, means type of such dimensions that any selected passage of typing 25mm in length includes no more than 12 characters.

7A—Five year terms

- (1) For the purposes of section 66A(2)(a) of the Act, the prescribed form of certificate to be signed by a legal practitioner will be Form 6 of the Schedule to these regulations.
- (2) For the purposes of section 66A(5) of the Act, the prescribed form of notice to be given to a tenant will be Form 7 of the Schedule to these regulations.

7B—Abandoned goods

- (1) For the purposes of section 67A(3)(a) of the Act, the prescribed form of notice to be sent to a former tenant will be Form 8 of the Schedule to these regulations.
- (2) For the purposes of sections 67A(3)(b) and (c) of the principal Act, the prescribed form of notice to be sent to a person who has an interest in the relevant goods and to be inserted in a newspaper will be Form 9 of the Schedule to these regulations.
- (3) Pursuant to section 67A(8) of the Act the following information is prescribed:
 - (a) the name and address of the landlord; and
 - (b) the name of the tenant; and
 - (c) the address of the premises the subject of the commercial tenancy agreement; and
 - (d) in relation to each item sold—
 - (i) the date on which the item was sold; and
 - (ii) the person to whom the item was sold; and
 - (iii) the public auction at which the item was sold; and
 - (iv) the amount for which the item was sold; and
 - (v) the costs of removing, storing and selling the item; and
 - (vi) a description of the item.

8—Exclusions from certain provisions of Part 4 of Act

- (1) Any commercial tenancy agreement between—
 - (a) the occupier of a hotel owned or partially owned by—
 - (i) The South Australian Brewing Company Limited; or
 - (ii) S.A. Brewing Holdings Limited; or
 - (iii) S.A.B. Properties Limited; or
 - (iv) a wholly owned subsidiary company of any of those companies,

as tenant; and

(b) the owners of the hotel, as landlord,

is excluded from the application of sections 59, 60, 61, 62 and 62A of the Act.

- (2) Any commercial tenancy agreement where the premises to which the agreement relates comprise licensed premises within the meaning of the *Liquor Licensing Act 1985* is excluded from the application of sections 64 and 66 of the Act.
- (3) Any commercial tenancy agreement where the hours during which the premises to which the agreement relates are open for business are fixed by or under the *Liquor Licensing Act 1985* is excluded from the application of section 65 of the Act.

9—Exclusions from application of Part 4 of Act of agreement between Treasurer and Port Dock Railway Museum

Pursuant to section 55(3)(a) of the Act, the agreement dated 29 November, 1988, between the Treasurer of South Australia and Port Dock Railway Museum (South Australia) Incorporated appointing Port Dock Station Railway Museum (South Australia) Incorporated the operator of Port Dock Station Railway Museum, is excluded from the application of Part 4 of the Act.

10—Exclusion from application of Part 4 of Act of commercial tenancy agreements where landlord is Aboriginal Lands Trust

Pursuant to section 55(3)(a) of the Act, any commercial tenancy agreement to which the Aboriginal Lands Trust is a party as landlord is excluded from the application of Part 4 of the Act.

Schedule—Lodgement of security bond

COMMERCIAL TRIBUNAL
LANDLORD AND TENANT (COMMERCIAL TENANCIES) REGULATIONS, 1986
Regulation 5
FORM 1
LODGE MENT OF SECURITY BOND

To the Commercial Tribunal
Information Centre
Ground Floor
50 Grenfell Street
ADELAIDE 5000

***IMPORTANT:**

Please read instructions on
back before completing.
USE BLOCK LETTERS

			Office Use Only
Name of Tenant(s)			Commercial Tenancy Number
	Surname(s)	Christian or Given Name(s)	
	OR:		
	Full Name of Company		
Address of Rented Premises	Postcode:		
	AMOUNT RECEIVED		
	Do Not Tear	AMOUNT PAID	Commercial Tenancy Number
1. Name of Tenant(s)			Contact Phone No.
	Surname(s)	Christian or Given Name(s)	
	OR:		
Full Name of Company			
2. Residential address or address of registered office	Postcode:		
3. Name and address of Landlord(s)			Contact Phone No.
	Surname(s)	Christian or Given Name(s)	
	OR:		
	Full Name of Company		
Postcode:			
4. Address of Rented Premises	Postcode:		

Landlord and Tenant (Commercial Tenancies) Regulations 1986—1.7.1996 to 1.9.1997—expired
 Schedule—Lodgement of security bond

5. Name and address of Agent (if any)		Contact Phone No.
6. Details of amount of Security Bond sum lodged	Amount in words: *Cheque/Cash/Money Order *Delete whichever is not applicable	Amount \$
7. Signature of Tenant(s) If a Company please detail		Date: / /19
	Full Name of Director:	
8. Signature of Landlord(s) If a Company please detail		Date: / /19
	Full Name of Company	

INSTRUCTIONS:

1. *Name and address of tenant(s) and landlord(s):* Please give full details as on lease agreement.
 - (a) *If a Company:*
 give full name
 and registered office under the *Companies (S.A.) Code*.
 - (b) *If a Partnership:*
 give full names and addresses of all individuals who are parties to the lease.
 - (c) *Individuals:*
 give full name and addresses of all individuals who are parties to the lease.
2. This form must accompany payment.
3. A separate lodgement form must be submitted for each security bond sum lodged.
4. *Signature of tenant(s) and landlord(s)*
 If the tenant or landlord is a Company this form must be signed by a Director who has been duly authorized by the Company to sign on its behalf.

COMMERCIAL TRIBUNAL
LANDLORD AND TENANT (COMMERCIAL TENANCIES) REGULATIONS, 1986

Regulation 6(2)

FORM 3

AGREEMENT FOR PAYMENT OF SECURITY BOND

To the Commercial Tribunal
Information Centre
Ground Floor
50 Grenfell Street
ADELAIDE 5000

Commercial Tenancy Number

IMPORTANT: Please read instructions on back before completing

1. Full name of tenant and postal address to which refund, if any should be sent			Business Phone No. Private Phone No.
	Surname(s)	Christian or Given Name(s)	
	OR: Full Name of Company		
	Postcode:		
2. Full name of landlord(s) or agent and postal address to which refund, if any should be sent			Business Phone No. Private Phone No.
	Surname(s)	Christian or Given Name(s)	
	OR: Full Name of Company		
	Postcode:		
3. Address of rented premises			
4. When did tenancy agreement terminate? / /19			
When were premises vacated? / /19			
5. Claim for refund of Security Bond Money	PLEASE PAY TENANT	\$	* Total: \$
	PLEASE PAY LANDLORD/AGENT	\$	
* This amount should agree with the total amount of security bond money held in the Commercial Tenancies Fund at the date of submitting this claim			
6. Signature of Tenant(s) (as on lodgement form)			Date / /19
7. Signature of landlord(s) or agent (as on lodgement form)			Date / /19

OFFICE USE ONLY

Examined	Checked		Cheque No.	Amount

INSTRUCTIONS:

- The signatures of the persons signing this claim should be the same as those appearing on the lodgement form. If not, please advise of change.
- Please ensure that the commercial tenancy number is shown in the box on the top of this form.

FORM 4

LANDLORD AND TENANT (COMMERCIAL TENANCIES) REGULATIONS 1986

Regulation 7

IMPORTANT NOTICE

THE LANDLORD DOES NOT WARRANT THAT THE PREMISES YOU ARE ABOUT TO RENT WILL, FOR THE DURATION OF YOUR COMMERCIAL TENANCY AGREEMENT, BE STRUCTURALLY SUITABLE FOR THE TYPE OF BUSINESS YOU INTEND TO CARRY ON.

FORM 5

LANDLORD AND TENANT (COMMERCIAL TENANCIES) REGULATIONS 1986

Regulation 6a

IMPORTANT INFORMATION FOR NEW TENANTS

A. PARTIES

LANDLORD
(As set out in commercial
tenancy agreement)

NAME:
ADDRESS
.....

MANAGING AGENT
(*Delete if not applicable)

*

NAME:
ADDRESS
.....

Contact Person
Telephone Number

Tenants have a right to assign or sub-let in some circumstances. Discuss with your landlord or managing agent and, if in doubt, obtain independent advice.

(*Delete if not applicable)

* This landlord is also a tenant of these premises.

* You can see the landlord's own lease by contacting
on

B. PREMISES

POSTAL ADDRESS

.....
.....

Relocation

* Under the agreement the landlord may in certain circumstances move you to other premises. See clause/paragraph
of the agreement for details.

C. TERM

TERM OF AGREEMENT

YOUR AGREEMENT IS FOR A TERM OF
COMMENCING ON THE DAY OF 19

(*Delete if not applicable)

*

WITH A RIGHT OF RENEWAL SET OUT IN CLAUSE/PARAGRAPH OF THE AGREEMENT

(*Delete if not applicable)

*Read the right of renewal section carefully. You must give proper notice if you want to renew this agreement. Ask your landlord or managing agent for details. If in doubt, obtain independent advice.

D. RENT

RENT AND MANNER OF
PAYMENT

(*Delete if not applicable)

(*Delete if not applicable)

..... dollars (\$.....) per annum payable
*in advance in calendar monthly instalments of (or some other
appropriate expression of rental and method of payment)

* This rent may change. Details are set out in clause/paragraph of
the agreement.

*Interest may be payable on overdue rent.
See clause/paragraph of the agreement.

E. SECURITY BOND

AMOUNT OF SECURITY
BOND

(*Delete if not applicable)

\$

* If a security bond is paid you must sign another form (Form 3) to have
it lodged with the Commercial Tribunal. The Tribunal will hold the bond
in case there is a dispute under the agreement.

F. OTHER PAYMENTS

BEFORE THE TERM OF THE AGREEMENT COMMENCES YOU WILL HAVE TO PAY:

	Payee	Amount	Reason for Payment
Set out details of:	1.	\$.....	for
persons (including the landlord)	2.	\$.....	for
to whom payments in addition to rent	3.	\$.....	for
and security bond are to be paid;	4.	\$.....	for
reasonable estimates of the tenant's	5.	\$.....	for
liability; and the reason for payment.	6.	\$.....	for

(*Delete if not applicable *Clause(s)/Paragraph(s) of the agreement relates to other operating expense
you may have to pay DURING THE TERM OF THE AGREEMENT.

By law, you must receive regular details of these operating expenses and estimates of the amount you must pay. The
first statement will be given to you
and thereafter on

(*Delete whole
section if
not applicable)

***G. DETAILS RELATING TO PREMISES IN SHOPPING COMPLEXES**

NAME OF
COMPLEX
(if any)

AREA

Complete only if any payments made by the tenant under the agreement are based on the area of the premises expressed
as a proportion of the area of the shopping complex

APPROXIMATE NET LETTABLE AREA OF PREMISES: sq. metres
APPROXIMATE NET LETTABLE AREA OF SHOPPING COMPLEX: sq. metres
ESTIMATED PROPORTION OF NET LETTABLE AREA: %

Landlord and Tenant (Commercial Tenancies) Regulations 1986—1.7.1996 to 1.9.1997—expired
Schedule—Lodgement of security bond

TRADING HOURS

(*Delete if not applicable)

* It is a term of the agreement that you shall keep your premises open for business during the following core TRADING HOURS:

* Day : Times Day : Times
* These hours were set by a vote of tenants carried on / /19

TENANTS' ASSOCIATION

(*Delete if not applicable)

* The complex has a Tenants'/Merchants' Association.
* Details of membership are available from , who can be contacted by
* The complex has a set of RULES which must be followed.
* They are available from , who can be contacted by
* They are attached to this form.

YOU MUST SIGN THIS NOTICE BEFORE SIGNING ANY OTHER DOCUMENTS GIVEN TO YOU WITH IT.
BEFORE SIGNING, READ THIS INFORMATION CAREFULLY AND ALSO READ ALL THE OTHER DOCUMENTS—ESPECIALLY YOUR AGREEMENT—BEFORE SIGNING THEM.
IF YOU DO NOT UNDERSTAND SOMETHING ASK YOUR LANDLORD OR MANAGING AGENT TO EXPLAIN IT. IF YOU ARE STILL IN DOUBT SEEK INDEPENDENT ADVICE.

.....
Tenant
..... / /
(Date of signature)

FORM 6
LANDLORD AND TENANT (COMMERCIAL TENANCIES) REGULATIONS 1986
Regulation 7a(1)
LANDLORD AND TENANT ACT 1936 SECTION 66a(2)
CERTIFICATE OF LEGAL PRACTITIONER

I hereby certify that
.....
(Name(s) of tenant(s))

of
.....
(Address(es) of tenant(s))

has/have sought and received advice concerning the execution of a proposed commercial tenancy agreement in respect of the premises described below without the right to apply for an extension of the agreement under section 66a of the *Landlord and Tenant Act 1936*.

Description or address of the premises to which the agreement is to relate:
.....
.....
.....
.....

Name of landlord:

Dated: Signed:
Name of firm:
Address:

FORM 7

LANDLORD AND TENANT (COMMERCIAL TENANCIES) REGULATIONS 1986

Regulation 7a(2)

LANDLORD AND TENANT ACT 1936 SECTION 66a(5)

NOTICE REQUIRING TENANT TO DECIDE ABOUT AN APPLICATION TO EXTEND TENANCY PERIOD

TO:
(Name of Tenant)

of
.....
(Address of Premises)

THE TENANCY COMMENCED/WILL COMMENCE ON / /19 .

By law you have the right to apply for an extension of the tenancy so that it will last up to FIVE YEARS.

BUT THIS NOTICE REQUIRES YOU TO MAKE A DECISION.

If you wish to make such an application, you have 21 DAYS from the day you received this notice or (or 21 DAYS from the date shown above if the tenancy has not yet commenced) to write to the landlord asking for an extension of the tenancy period. You can nominate a day on which you want the tenancy to end. This can be any day after the lease expiry date—up to five years from the date above.

After you have written it is up to you and the landlord to agree on the date on which the tenancy will end. If you cannot agree after a month then you can apply to the COMMERCIAL TRIBUNAL which will decide the matter as an independent body.

WRITE TO YOUR LANDLORD AT THIS ADDRESS:
.....
.....
.....

FORM 8

LANDLORD AND TENANT (COMMERCIAL TENANCIES) REGULATIONS 1986

Regulation 7b(1)

NOTICE TO FORMER TENANT THAT GOODS HAVE BEEN STORED

TO:
(Name of former tenant)

of
(Address of former tenant)

1. On the day of 19 a commercial tenancy agreement between you as tenant and me as landlord was terminated.

2. The agreement was in respect of premises at

3. You left behind at the premises the following goods:

(specify goods, other than perishable foodstuffs)

which I have stored in a safe place and manner.

4. If you wish to claim the goods you may do so by contacting me at the address below and paying my reasonable costs of removing and storing the goods.

5. If you do not claim the goods on or before the day of 19 (being sixty days after the day on which I removed and stored the goods), I may sell the goods at a public auction and retain out of the proceeds of the sale my reasonable costs of removing, storing and selling the goods. I may also claim any amount you owe me under the former commercial tenancy agreement and pay the remainder to the Commercial Tenancies Fund.

.....
(Date)

.....
(Signature of former landlord)

.....
.....
(Name and address of former landlord)

FORM 9

LANDLORD AND TENANT (COMMERCIAL TENANCIES) REGULATIONS

Regulation 7b(2)

NOTICE OF INTENTION TO SELL ABANDONED GOODS

I,
(Full name of former landlord)

of
(Address of former landlord)

the former landlord under a commercial tenancy agreement with
(Full name of former tenant)

in respect of premises at
(Address of premises the subject of the former agreement)

.....

HEREBY GIVE NOTICE that I intend as soon as practicable after the day of 19 (being not less than sixty days after the termination of the former commercial tenancy agreement) to sell at public auction the following goods left at the premises by the former tenant:

.....
(description of goods)

I FURTHER GIVE NOTICE that I intend to retain out of the proceeds of sale of the goods my reasonable costs of removing, storing and selling the goods.

NOTE: At any time before the goods are sold any person who has a lawful right to the goods may reclaim them from me after paying me for the reasonable costs of removal and storage of the goods.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Expiry of regulations

The *Landlord and Tenant (Commercial Tenancies) Regulations 1986* have expired.

These regulations expired on 1.9.1997 but continue to apply to retail shop leases entered into before 30.6.1997: see s 81 of the *Retail Shop Leases Act 1995*.

Principal regulations and variations

Year	No	Reference	Commencement
1985	237	<i>Gazette 5.12.1985 p1716</i>	1.1.1986: r 2
1987	198	<i>Gazette 20.8.1987 p585</i>	20.8.1987
1988	222	<i>Gazette 27.10.1988 p1550</i>	27.10.1988
1988	245	<i>Gazette 8.12.1988 p1962</i>	8.12.1988
1989	3	<i>Gazette 12.1.1989 p71</i>	12.1.1989
1991	141	<i>Gazette 27.6.1991 p2249</i>	1.7.1991: r 2
1991	187	<i>Gazette 29.8.1991 p707</i>	1.9.1991: r 2
1991	279	<i>Gazette 19.12.1991 p1999</i>	1.2.1992: r 2
1992	150	<i>Gazette 25.6.1992 p2034</i>	1.7.1992: r 2
1993	67	<i>Gazette 22.4.1993 p1430</i>	22.4.1993: r 2
1993	140	<i>Gazette 24.6.1993 p2102</i>	1.7.1993: r 2
1994	146	<i>Gazette 25.8.1994 p590</i>	25.8.1994: r 2
1995	56	<i>Gazette 10.5.1995 p2001</i>	1.7.1995: r 2
1996	91	<i>Gazette 30.5.1996 p2663</i>	1.7.1996: r 2

Provisions varied

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 4</i>	<i>deleted by 187/1991 r 3</i>	<i>1.9.1991</i>
r 6		
r 6(1)	varied by 198/1987 r 2	20.8.1987
	varied by 141/1991 r 3	1.7.1991

	substituted by 279/1991 r 3	1.2.1992
	varied by 150/1992 r 3	1.7.1992
	varied by 140/1993 r 3	1.7.1993
	varied by 56/1995 r 3	1.7.1995
	varied by 91/1996 r 3	1.7.1996
r 6(1a)	<i>inserted by 187/1991 r 4</i>	<i>1.9.1991</i>
	<i>deleted by 279/1991 r 3</i>	<i>1.2.1992</i>
r 6AA	inserted by 279/1991 r 4	1.2.1992
r 6A	inserted by 187/1991 r 5	1.9.1991
r 7A	inserted by 187/1991 r 6	1.9.1991
r 7B	inserted by 187/1991 r 6	1.9.1991
r 7B(3)	inserted by 279/1991 r 5	1.2.1992
r 8	inserted by 222/1988 r 2	27.10.1998
	substituted by 187/1991 r 7	1.9.1991
r 8		
r 8(1)	substituted by 146/1994 r 3	25.8.1994
r 9	inserted by 245/1988 r 2	8.12.1988
	substituted by 3/1989 r 2	12.1.1989
r 10	inserted by 67/1993 r 3	22.4.1993
Sch		
Form 1	varied by 187/1991 r 8(a)	1.9.1991
Form 2	<i>varied by 198/1987 r 3</i>	<i>20.8.1987</i>
	<i>deleted by 187/1991 r 8(b)</i>	<i>1.9.1991</i>
Form 3	varied by 187/1991 r 8(c)	1.9.1991
Form 4	substituted by 187/1991 r 8(d)	1.9.1991
Forms 5—9	inserted by 187/1991 r 8(d)	1.9.1991

Historical versions

Reprint No 1—8.2.1995

Reprint No 2—1.7.1995