

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

EXPLANATORY STATEMENT**GENERAL OUTLINE**

This Bill amends the *Residential Tenancies Act 1999*, and the *Residential Tenancies Regulations 2000*.

The purpose of this Bill is to make a number of amendments to the *Residential Tenancies Act 1999* and the *Residential Tenancies Regulations 2000* to address issues identified with the administration and operation of the Act and Regulations, and consequently, affecting residential tenancies in the Northern Territory subject to the requirements of the Act and Regulations.

NOTES ON CLAUSES**Part 1 Preliminary matters****Clause 1. Short title**

This is a formal clause which provides for the citation of the Act. When passed, the Act may be referred to as the *Residential Tenancies Legislation Amendment Act 2019*.

Clause 2. Commencement

This clause provides for the commencement of the Bill. The Bill will commence on the day fixed by the Administrator by notice in the Government Gazette.

Part 2 Amendment of Residential Tenancies Act 1999**Clause 3. Act amended**

This clause is a formal clause that provides that Part 2 amends the *Residential Tenancies Act 1999*.

Clause 4. Section 4 amended (Definitions)

This clause provides for a number of definitions which are required to assist in the interpretation of the Act.

In particular, the clause omits the definition of 'notice of termination' and replaces it with a new definition 'notice of intention to terminate' to mean a notice given in accordance with section 101 which provides for the form of a notice of intention to terminate. The new definition is intended to clarify that the notice provided in section 101 is not a termination notice and does not effect termination, and merely provides notice of intent to terminate.

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Clause 5. Section 24A amended (Condition reports generally)

This clause amends section 24A of the Act to clarify the form in which condition reports may be made and, specifically, to remove the possibility of a condition report being entirely by images. A condition report may therefore be either entirely in writing or partly in writing and partly by images.

Clause 6. Sections 65A and 65B inserted

This clause inserts two new provisions to provide for the keeping of pets. Without the provisions, there is no specific legislative requirements relating to the keeping of pets.

This clause inserts a new section 65A to provide a presumption that a tenant may keep a pet by providing written notice to a landlord. Within 14 days of receiving the notice, the landlord may object to the keeping of a pet by advising the tenant of the objection in writing and making an application to the Tribunal (the NTCAT) to determine if the refusal is unreasonable.

The new section 65A does not apply where a body corporate prohibits the keeping of pets at the premises under either the *Unit Titles Act 1975* or the *Unit Title Schemes Act 2009* as the providing of consent is beyond the control of the landlord.

The new section 65A also clarifies that the *Disability Discrimination Act 1992* (Cth) applies in relation to the keeping of assistance animals on the premises in a residential tenancy setting. Except under certain specific limited circumstances under the *Disability Discrimination Act 1992* (Cth), it is unlawful to discriminate against a person who uses a disability support service, including an animal that is trained to facilitate the participation of that person in various aspects of their personal and public life.

Clause 6 also inserts a new section 65B to provide the factors that the Tribunal may have regard to in considering the reasonableness of the tenant keeping a pet on the premises. These factors include the type of pet proposed, the character or nature of the premises and whether the keeping of a pet is permitted, restricted or prohibited under any other law or by-law (such as a local government by-law that limits the number of pets on a premises). The clause provides that the Tribunal may order that the objection is reasonable or not reasonable and may provide for terms and conditions relating to the keeping of the pet on the premises if considered appropriate.

A transition provision applies to the application of this clause in the new section 175.

Clause 7. Section 77 amended (Tribunal may order tenant to let landlord enter premises)

This clause amends section 77 of the Act by removing gender specific language through reference to 'him or her' and replacing with a reference to 'the landlord'.

This clause also amends section 77 to provide clarity about what the Tribunal authority allows in relation to entry to a premises. New section 77(3) provides that an order under subsection (1) may authorise the use of reasonable means to enter the property and can specify what those reasonable means may be. New section 77(4) expressly states that entering the premises pursuant to an order must not involve physical contact with the tenant or any other person on the premises.

New section 77(5) provides that any property damaged by the entry must be replaced or compensated for by the landlord, unless the property damaged was used to prevent entry.

New section 77(6) provides that the landlord is not criminally or civilly liable for acts or omissions in entering the premises if done in good faith and in accordance with the order, and that the landlord must make sure that the premises are returned to a reasonably secure state after gaining entry.

Clause 8. Section 83 amended (Fixed term tenancy becomes periodic if not terminated)

This clause amends section 83 of the Act by omitting the term 'notice of termination' and replacing with the new term 'notice of intention to terminate' as defined in section 4 and as provided for in section 101. The amendment reflects the clarification of the effect of the section 101 notice.

Clause 9. Section 90 replaced

This clause amends section 90 by repealing the provision relating to termination of a fixed term tenancy by a landlord and inserting a new provision which clarifies how a fixed term tenancy may be terminated. A fixed term tenancy may be terminated by a landlord giving notice of intention to terminate at least 14 days before the particular day the tenancy is due to terminate.

Clause 10. Section 91 amended (Employment-related tenancy)

This clause amends section 91(1) in relation to termination of an employment-related tenancy by omitting the reference to a notice provided in accordance with section 101 and inserting a notice of intention to terminate in line with the definition amended in section 4.

Clause 11. Section 95 replaced

This clause amends section 95 by repealing the provision relating to termination of a fixed term tenancy by a tenant and inserting a new provision which clarifies how a fixed term tenancy may be terminated. A fixed term tenancy may be terminated by a tenant giving notice of intention to terminate at least 14 days before the particular day the tenancy is due to terminate.

Clause 12. Part 11, Division 3A heading amended (Notice of intention to terminate for failure to remedy breach)

This clause amends the heading of Part 11, Division 3A by omitting the words 'of intention to terminate for failure'. The heading is amended to read 'Notice to remedy breach' to reflect the substance of the notices that may be provided under Division 3A.

Clause 13. Part 11, Division 5 heading amended (Notice of termination)

This clause amends the heading of Part 11, Division 5 by omitting 'notice of termination' and inserting 'notice of intention to terminate' which reflects the amended definition in section 4 and the substance of the notice issued in accordance with section 101.

Clause 14. Section 101 amended (Form of notice of termination)

This clause amends section 101, amending the heading to read 'Form of notice of intent to terminate' and omitting the references to 'notice of termination' in subsections (1), (2) and (3) and inserting 'notice of intention to terminate'. The amendment clarifies that the notice does not effect termination and merely provides notice of an intention to terminate a tenancy.

Clause 15. Section 102 amended (Notice may be withdrawn)

This clause amends section 102 of the Act by omitting the term 'notice of termination' and replacing with the new term 'notice of intention to terminate' as defined in section 4 and as provided for in section 101. The amendment reflects the clarification of the effect of section 101.

Clause 16. Section 103 amended (Tenant to give vacant possession)

This clause amends section 103 of the Act by omitting the term 'notice of termination' and replacing with the new term 'notice of intention to terminate' as defined in section 4 and as provided for in section 101. The amendment reflects the clarification of the effect of section 101.

Clause 17. Section 104 amended (Tribunal may make order for possession)

This clause omits section 104(1) and inserts a new section 104(1) to provide that if vacant possession is not delivered to a landlord in accordance with a notice of intention to terminate under section 101, the landlord may apply to the Tribunal for an order for possession. The amendment is intended to clarify that the tenancy is not terminated by the notice but may be terminated by the Tribunal on making an order for possession under section 104(2).

Clause 18. Section 105 amended (Tribunal may suspend order for possession)

This clause amends section 105(4) of the Act by omitting the term 'notice of termination' and replacing with the new term 'notice of intention to terminate' as defined in section 4 and as provided for in section 101. The amendment reflects the clarification of the effect of section 101.

Clause 19. Section 116A inserted

This clause establishes an offence for failure to comply with the requirements set out in section 116(1). Section 116(1) provides that if a tenant is owed a security deposit but cannot be found within six months of the termination of the tenancy, that within 28 days of that period a landlord must place the money in the Tenancy Trust Account to be held for the tenant. Under new section 116A, contravention of the section 116(1) requirement is an offence that is punishable by a maximum penalty of 20 penalty units.

Clause 20. Part 15 inserted

This clause inserts a new Part 15 'Termination for purposes under the *Housing Act 1982*' to provide the Chief Executive Officer (Housing) (CEO (Housing)) with powers to terminate a public housing tenancy under certain specific circumstances.

New Division 1 of Part 15 contains a new section 137. This new section provides for the general application of Part 15 to public housing tenancies.

New Division 2 of Part 15 contains new sections 138 to 143. These sections broadly establish a process for the CEO (Housing) where a public housing premises requires renovation, replacement or demolition.

Section 138 provides the CEO (Housing) (or delegate) with the power to terminate a tenancy agreement if vacant possession of the premises is required for the purpose of the renovation, replacement or demolition of the premises.

Section 139 provides the process the CEO (Housing) must follow for termination under Division 2. The process includes the CEO (Housing):

- taking reasonable steps to consult the tenant or occupier and what such consultation must address;
- providing a notice of intention to terminate that includes specific details set out in section 139(3);
- providing an undertaking to enter into a new tenancy agreement once the renovated or new premises are ready for occupation. The undertaking must be in writing and explain the terms of the new tenancy agreement;
- making transitional accommodation available to the tenant in accordance with section 140; and
- agreeing on a date for vacant possession of the premises with the tenant.

Section 140 provides that the CEO (Housing) must offer transitional accommodation without charge from when the tenant gives up vacant possession of the premises and until the renovated or new premises are available. Section 140 also provides that an agreement must be entered regarding the terms of any transitional accommodation accepted by the tenant or occupier, however that agreement is not to be construed as a tenancy agreement under the Act.

Section 141 provides that the tenant or occupier is entitled to remain in possession of the premises until either the later of the agreed date, or in the absence of agreement, the date by when the transitional accommodation is available.

Section 142 provides that any security deposit held in a tenancy terminated under this Division is to be paid back to the tenant unless the tenant consents to it being held in trust as a deposit for the new tenancy agreement.

Section 143 provides that section 84 of the Act does not apply to such a termination under Division 2 of Part 15.

New Division 3 of Part 15 contains new sections 144-149. These broadly provide for relocating the tenant in public housing under certain circumstances.

New section 144 provides the CEO (Housing) with the power to terminate a tenancy agreement if the CEO (Housing) offers to relocate the tenant or occupier to other accommodation on the following specific grounds:

- the premises have more bedrooms than are needed or the other accommodation has a suitable number of bedrooms;
- the premises do not meet the social, physical, psychological or medical needs of the tenant or occupier and the other accommodation would be better suited to those needs;
- the premises or neighbours pose a risk to the health or safety of the tenant or occupier and the other accommodation would be safer;
- the tenant or occupier engaged in any unacceptable conduct as specified in section 100(1)(a)(b) or (c) of the Act. This provides for usage of the premises for an illegal purpose, repeatedly causing or permitting a nuisance, or repeatedly causing or permitting an interference with the reasonable peace or privacy of a person residing in the immediate vicinity of the premises; or
- the tenant or occupier engaged in any anti-social behaviour as specified in section 28A of the *Housing Act 1982*.

Section 145 provides the process the CEO (Housing) must follow for termination under this Division. The process includes the CEO (Housing):

- providing the tenant or occupier with a notice of intention to terminate with specific details of what it must contain. This includes a clear explanation of the liability of the CEO (Housing) to pay for the tenant's reasonable moving costs. It also includes a clear explanation of the right to make submissions under section 147 of the Act;
- providing a written undertaking to enter into a new tenancy agreement that explains the terms of the new tenancy agreement; and
- considering and determining any submissions by the tenant made under the new section 147.

Section 146 provides the date the tenant or occupier is entitled to remain in possession of the premises until an agreed date, or in the absence of an agreed date or any submission under section 147, 7 days after the tenant or occupier is given the notice of intention to terminate. In the absence of an agreed date and if a submission is made under section 147 of the Act, 7 days after the tenant or occupier is given notice of the decision of the CEO (Housing) under section 147.

Section 147 enables a tenant to make submissions to the CEO (Housing) as to why they should not be relocated or why the tenancy agreement should not be terminated. This must be provided within 7 days of being provided with a notice of intention to terminate and can be made orally or in writing. The CEO (Housing) must consider the request and any representations made and then provide written notice of a decision to either proceed with the termination, withdraw it or amend the notice of intention to terminate with a new undertaking that offers different accommodation from what was previously offered.

Section 148 provides that notwithstanding sections 122(1) and (2) of the Act, the CEO (Housing) is entitled to retain in trust any security deposit of the tenancy being terminated for application as a security deposit for the new tenancy agreement.

Section 149 enables the tenant to apply to the NTCAT for a declaration that a termination under this Division has no effect unless the CEO (Housing) amends its notice of intention to terminate with a new offer of other accommodation that the NTCAT considers more appropriate.

Clause 21. Part 18, Division 6 inserted

This clause provides a transitional provision relating to the keeping of pets by inserting a new Division 6 and new section 175 which provides that new sections 65A and 65B as outlined in clause 6 do not apply to a lease entered into before the commencement of the sections. The sections will therefore only apply to a lease entered into after commencement.

Part 3 Amendment of Residential Tenancies Regulations 2000

Clause 22. Regulations amended

This is a formal clause to provide that Part 3 amends the *Residential Tenancies Regulations 2000*.

Clause 23. Regulation 10A amended

This clause amends the heading of regulation 10A by omitting 'Prescribed information in notice of intention to terminate tenancy agreement for failure to pay rent' and inserting "prescribed information in notice of breach" as it relates to section 96A of the Act which provides that the landlord may issue a notice of breach to a tenant for failure to pay rent. The clause clarifies the nature of the notice issued is reflected in the heading of the Regulation.

Clause 24. Schedule 1 amended (Offences and penalties)

This clause provides for the inclusion of section 116A, relating to if a person owed a security deposit cannot be found, to provide that an infringement may be issued in relation to an offence against section 116A, with a penalty of 4 penalty units applying.

Part 4 Repeal of Act

Clause 25. Repeal of Act

This is a formal clause to provide that the Act is repealed on the day after it commences.