

Continuing the reform of the *Residential Tenancies Act 1999*

Residential Tenancies Legislation Amendment Bill 2023

Clarification of, and enhancement to, general landlord rights and responsibilities under the tenancy agreement

Background/Purpose

The *Residential Tenancies Act 1999* (the Act) has been in operation for over twenty years. While the Act continues to balance the interests of landlords and tenants in the Northern Territory, the changing landscape of housing means that we need to ensure the Act remains fit for purpose in a contemporary environment.

In 2019, the Department of the Attorney-General and Justice undertook a comprehensive root and branch review of the Act. Tranche 1 of the reform program was implemented through the Residential Tenancies Legislation Amendment Bill 2020.

The Residential Tenancies Legislation Amendment Bill 2023 delivers Tranche 2 of the reform program. The Bill implements measures to enhance protections and options for victims of domestic and family violence (DVF), and address other emerging issues facing tenants.

Changes included in the Bill

The Bill will do the following:

Confirming what a tenant is, and is not, required to pay

- Clarify that a tenant is not required to make payments or provide guarantees, indemnities, or other sureties, other than rent, a security deposit (bond) or those expressly provided in the Act, such as utility charges. The limitation also applies to:
 - charges or services of third party providers that the landlord has engaged, such as reference checks offered as an additional service as part of an application process, or fees charged to a landlord or tenant for processing rent payments. These amendments do not apply to things like fees the tenant's bank charges the tenant for doing business with the bank, such as direct debit processing fees; and
 - guarantees, indemnities, or other sureties provided to the landlord through the tenancy agreement, including liquidated damages clauses, such as 'lease break fees', other indemnities that deem the tenant automatically liable for a breach that is yet to be proven, or other sureties other than the security deposit; and
 - compensation for early termination of a fixed-term tenancy by a tenant to a maximum of 28 days rent where less than half of the term has passed, or 14 days rent where more than half of the term has passed.
- Prohibit rent bidding, rent auctions, gazumping, and unilateral increases in rent between offer and formally entering into a tenancy agreement, by including provisions that state that the landlord may:
 - only offer a tenancy with rent set at a fixed amount;

- not require the tenant to pay, or accept from the tenant a payment that is higher than the rent fixed at the time the tenancy was on offer;
- require the tenant to pay a higher amount of rent only where the landlord includes additional benefits or services not included in the initial offer; and
- Prevent landlords from circumventing the rent bidding prohibition by withdrawing the property and then readvertising it at a higher rent within one month of that withdrawal.

Protection of a tenant's personal information

- Ensure that only the most relevant personal information from a tenant is required to assess an application, and be retained by a prospective landlord:
 - the Commissioner of Residential Tenancies will be given the power to set the types of personal information and documents a landlord may request from a prospective tenant as part of an application for a tenancy;
 - where a landlord does not enter into a tenancy agreement with a prospective tenant, the landlord will have five business days to destroy all the information the landlord received from that prospective tenant;
 - where a landlord enters into a tenancy agreement with the prospective tenant, the landlord must:
 - take steps that are reasonable in the circumstances to protect the information and documents from misuse, interference or loss; and from unauthorised access, modification or disclosure;
 - destroy any information or document the landlord holds in relation to a tenant three years after termination of the tenancy, unless it is required as evidence in a proceeding in relation to the tenancy;
 - give the tenant a copy of any information or documents about the tenant that the landlord holds, and amend, remove or destroy any inaccurate information about the tenant held by the landlord.
- The general protections on personal information provision does not apply to a tenant's personal information that is obtained, used or stored under the tenancy database provisions under Part 14 of the Act.

Realigning no-cause termination provisions

- Increase and align notice periods set out in sections 89 and 90 of the Act to 60 days for both periodic and fixed-term tenancies;
- Provide an option for the tenant to leave the tenancy before the expiration of the 60 day notice period, with the tenancy ceasing on the day the tenant gives up vacant possession.

Enabling electronic service of notices

- Provide tenants and landlords with the option to give notices required under the Act by electronic means in accordance with the *Electronic Transactions (Northern Territory) Act 2000*.

Clarify the listing process for tenancy databases

- Clarify the circumstances around when a person may be listed on a tenancy database at the end of a tenancy, confirming:
 - the person must have been a tenant at the time of a breach;
 - that either:
 - the person agreed to the listing; or
 - the NTCAT found that the person personally breached the tenancy agreement, and as a result of that breach, either:
 - owed the landlord an amount of money that exceeded the security deposit; or
 - resulted in the termination of the tenancy.
- The amendments also make it an offence for a landlord to threaten to list a person on a tenancy database during the tenancy. This offence provision confirms that the only time a person may be listed on a tenancy database is following the conclusion of the tenancy, and then only where all the elements associated with listing have been met;
- Establish the ability for the Commissioner of Residential Tenancies to approve the form in which a landlord or database operator is required to give a person a copy of the personal information the landlord or database operator intends to list on a database.