

TASMANIA

**RESIDENTIAL TENANCY AMENDMENT
BILL 2003**

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RESIDENTIAL TENANCY AMENDMENT BILL 2003

*(Brought in by the Minister for Justice and Industrial
Relations, the Honourable Judith Louise Jackson)*

A BILL FOR

An Act to amend the *Residential Tenancy Act 1997*

Be it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled,
as follows:

Short title

1. This Act may be cited as the *Residential Tenancy
Amendment Act 2003*.

Commencement

2. The provisions of this Act commence on a day or days to
be proclaimed.

Principal Act

3. In this Act, the *Residential Tenancy Act 1997** is
referred to as the Principal Act.

*No. 82 of 1997

Section 3 amended (Interpretation)

4. Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting the definition of “abandoned” and substituting the following definition:

“abandoned” means abandoned as referred to in section 47;

- (b) by inserting the following definition after the definition of “dispute”:

“early vacation” means early vacation as referred to in section 46;

- (c) by inserting the following paragraph after paragraph (b) in the definition of “essential service”:

(c) removal of grey water from premises, including ensuring the effective functioning of any on-site water treatment facility, but not including pipes, plumbing or other water-disposal or sewage-disposal facilities owned by a council;

- (d) by inserting the following definition after the definition of “essential service”:

“grey water” means grey water or sullage as defined in Australia New Zealand Standard (AS/NZS 1547:2000 On-site domestic-wastewater management);

- (e) by omitting the definition of “owner” and substituting the following definition:

“owner” means –

- (a) a person who holds legal title to residential premises; and
- (b) that person's successors and assigns; and
- (c) an agent of that person; and
- (d) a mortgagee who made an application under section 85 of the *Land Titles Act 1980*; and
- (e) a mortgagee or encumbrancee who gave or left a notice under section 77 of the *Land Titles Act 1980*;

Section 6 amended (Non-application of Act)

5. Section 6 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (c) and (d) from subsection (1);
- (b) by omitting paragraphs (f), (g), (h) and (i) from subsection (2) and substituting the following paragraphs:
 - (f) any premises used to provide residential care, within the meaning of the *Aged Care Act 1997* of the Commonwealth;
 - (g) any premises in respect of which a memorandum of lease is registered under the *Land Titles Act 1980*.

Section 17 substituted

6. Section 17 of the Principal Act is repealed and the following section is substituted:

Money other than rent

17. (1) A person must not require or receive from a tenant or prospective tenant any money or other consideration for entering into, renewing, extending or continuing a residential tenancy agreement other than –

- (a) rent in advance for the relevant payment period; and
- (b) a security deposit; and
- (c) a holding fee.

Penalty: Fine not exceeding 50 penalty units.

(2) Except as provided otherwise in the regulations made under this Act, a person must not require or receive from another person any money or other consideration for or in relation to any of the following:

- (a) making an application to rent residential premises;
- (b) providing keys for the inspection of residential premises;
- (c) giving permission to examine or inspect residential premises;
- (d) supplying details of residential premises available for rental;

- (e) placing the name of that other person on any waiting list for vacant residential premises;
- (f) any other prescribed activity.

Penalty: Fine not exceeding 50 penalty units.

(3) An owner must not require or receive from a tenant during the term of a residential tenancy agreement any money or other consideration other than –

- (a) rent in advance for the relevant payment period; and
- (b) a water consumption charge if the residential premises are equipped with a device that calculates the amount of water used at those premises; and
- (c) reasonable compensation for damage to the residential premises arising from the actions of the tenant or any loss incurred by the owner arising from the actions of the tenant.

(4) In this section, “**water consumption charge**” means an amount levied on an owner by a council for water consumed by an occupant of residential premises that is calculated as a fee for each unit of water consumed.

Section 19 amended (Payment period)

7. Section 19(2) of the Principal Act is amended by omitting “4 weeks” and substituting “31 days”.

Section 24 substituted

8. Section 24 of the Principal Act is repealed and the following section is substituted:

Distress for rent prohibited

24. (1) A person must not levy or make distress for any amount due that is unpaid.

Penalty: Fine not exceeding 50 penalty units.

(2) In addition to any penalty imposed on a person for an offence under subsection (1), the person –

- (a) is liable to pay any costs incurred by any other person as a result of that offence; and
- (b) must return any goods seized to the owner of the goods or, if the goods cannot be returned, pay the owner the value of the goods.

Section 27 substituted

9. Section 27 of the Principal Act is repealed and the following section is substituted:

Return of security deposit, &c.

27. (1) On termination of a residential tenancy agreement, the owner is to –

- (a) return the security deposit to the tenant within 3 working days of the termination of the residential tenancy agreement together with the prescribed amount of interest (if any such amount

is prescribed) less any amount due to the owner arising from the non-performance of the residential tenancy agreement by the tenant; or

- (b) give to the tenant a notice stating the reasons why the security deposit has been retained and –
 - (i) a statement of the loss incurred by the owner; or
 - (ii) an estimate of the date on which it is expected that the loss will be determined.

(2) If the tenant is given a notice under subsection (1), the owner is to provide the tenant with a statement to the effect that, if the tenant is dissatisfied with the matters contained in the notice, the tenant may apply to the Commissioner for resolution of the matter, and is to provide the tenant with the address of the Commissioner.

(3) In this section, “**working day**” means a weekday that is not a statutory holiday, within the meaning of the *Statutory Holidays Act 2000*, in the area in which the residential premises to which the residential tenancy agreement relates are situated.

Section 28 amended (Disputes)

10. Section 28(2)(a) of the Principal Act is amended by inserting “within 60 days after the termination of the residential tenancy agreement” after “Commissioner”.

Section 29 amended (Determination of dispute)

11. Section 29 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “disbursing the security deposit together with the prescribed rate of interest as the Commissioner considers appropriate in the circumstances” and substituting “giving notice to the parties of the Commissioner’s decision to disburse the security deposit together with the prescribed amount of interest (if any such amount is prescribed) in the manner specified in the notice”;
- (b) by inserting the following subsections after subsection (2):

(3) The Commissioner may refuse to determine a dispute if the application is made after the period referred to in section 28(2)(a).

(4) The Commissioner may refund –

- (a) to the owner the fee paid under section 28(5) if of the opinion that the application by the tenant is vexatious; or
- (b) to the tenant the fee paid under section 28(2)(c) if of the opinion that any action of the owner in relation to the subject matter of the dispute is vexatious.

(5) If after the expiration of 7 days from the date on which the determination is made no appeal has been lodged under section 30(1), the Commissioner is to disburse the security deposit together with the prescribed amount of

interest (if any such amount is prescribed) in the manner specified in the notice referred to in subsection (1).

Section 32 amended (General repairs and maintenance)

12. Section 32 of the Principal Act is amended by omitting subsection (4).

Section 33 amended (Urgent repairs)

13. Section 33 of the Principal Act is amended by inserting after subsection (4) the following subsection:

(4A) If the owner arranges for the carrying out of any urgent repair within 24 hours after being notified, the owner is to ensure that the repair is carried out as soon as practicable.

Section 34 amended (Emergency repairs)

14. Section 34 of the Principal Act is amended by inserting after subsection (4) the following subsection:

(4A) If the owner arranges for the carrying out of any emergency repair after being notified of the need for repair, the owner is to ensure that the repair is carried out as soon as practicable.

Section 36A inserted

15. After section 36 of the Principal Act, the following section is inserted in Division 4:

Order for repairs

36A. A tenant may apply to the Court for an order that the owner carry out any reasonable repairs under this Division that do not arise from any fault of the tenant.

Section 37 amended (Termination of agreement)

16. Section 37(1)(e) of the Principal Act is amended by inserting “or early vacation” after “abandonment”.

Section 39 amended (Effect of notice of termination)

17. Section 39(2) of the Principal Act is amended by inserting “, other than a provision relating to repairs,” after “agreement”.

Section 41 amended (Order of termination)

18. Section 41(1) of the Principal Act is amended by omitting paragraphs (a) and (b) and substituting the following paragraphs:

- (a) that another party has intentionally or recklessly caused or permitted, or is likely to intentionally or recklessly cause or permit, serious damage to –
 - (i) the residential premises or contents of those premises; or
 - (ii) any neighbouring premises;
- (b) that another party has caused physical injury, or is likely to cause physical injury, to that

party or a person occupying neighbouring premises.

Section 42 amended (Notice to vacate by owner)

19. Section 42(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “purpose.” and substituting “purpose;”;
- (b) by inserting the following paragraphs after paragraph (c):
 - (d) that a residential tenancy agreement is due to expire at least 28 days after service of the notice;
 - (e) that an order has been made under section 86 of the *Land Titles Act 1980* for foreclosure of the premises;
 - (f) that the premises are to be sold pursuant to section 78 of the *Land Titles Act 1980*;
 - (g) that the tenant has caused nuisance at the premises that is substantial.

Section 43 amended (Effect of notice to vacate)

20. Section 43 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “section 42(1)(a) or (b)” and substituting “section 42(1)(a), (b) or (g)”;

- (b) by omitting from subsection (1)(b) “section 42(1)(c)” and substituting “section 42(1)(c), (d), (e) or (f)”;
- (c) by inserting the following subsection after subsection (3):

(4) A notice to vacate expires after the period of 28 days from the day on which it took effect.

Section 45 amended (Order for vacant possession)

21. Section 45(5) of the Principal Act is amended by omitting paragraph (c).

Sections 46 and 47 substituted

22. Sections 46 and 47 of the Principal Act are repealed and the following sections are substituted:

Early vacation

46. Early vacation of residential premises occurs if –

- (a) the tenant has ceased to occupy those premises; and
- (b) a notice of termination has not been served in respect of those premises; and
- (c) a notice to vacate has not been served in respect of those premises; and
- (d) the tenant notified the owner of the intention to vacate the premises.

Abandonment

47. Residential premises are abandoned if –

- (a) the tenant has ceased to occupy those premises; and
- (b) a notice of termination has not been served in respect of those premises; and
- (c) a notice to vacate has not been served in respect of those premises.

Order declaring abandonment

47A. (1) An owner of residential premises may apply to the Court for an order declaring that the premises are abandoned.

(2) If satisfied that the residential premises are abandoned, the Court may make an order to that effect.

(3) Vacant possession of the residential premises is delivered to the owner as at the date of the order.

Loss following abandonment or early vacation

47B. Following abandonment or early vacation of residential premises, a tenant is liable to the owner for –

- (a) rent payable under the residential tenancy agreement from the date of the abandonment or early vacation of the premises until –
 - (i) the date on which another residential tenancy agreement is entered into; or

- (ii) the date at which the residential tenancy agreement for those premises could have been terminated under this Act, if another residential tenancy agreement is not entered into before that date; and
- (b) any other loss arising from the abandonment or early vacation.

Joint tenant ceases occupancy

47C. If a joint tenant ceases to occupy residential premises and any other tenant remains in occupancy of those premises, the joint tenant is not liable for any loss incurred by any action of any other tenant remaining in occupancy of those premises.

Section 56 amended (Right of entry)

23. Section 56 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or permit any other person to enter the premises” after “the premises”;
- (b) by omitting from subsection (3) “without the tenant’s permission between 8 a.m. and 6 p.m.”;
- (c) by omitting paragraphs (a) and (b) from subsection (3);
- (d) by inserting the following paragraph after paragraph (e) in subsection (3):
 - (ea) except in the case of boarding premises, to carry out an

inspection within one month of the commencement of the residential tenancy agreement;

- (e) by omitting subsection (4) and substituting the following subsections:

(4) An owner of residential premises may enter the premises without the approval of the tenant to show the premises to one prospective tenant only and any persons accompanying the prospective tenant –

- (a) if a notice to terminate or notice to vacate has been given –

(i) on not more than one occasion on any day; and

(ii) on not more than 5 days in any week; and

(iii) on the giving of not less than 48 hours' notice in writing to the tenant; and

(iv) between the hours of 8 a.m. and 6 p.m.; or

- (b) if a notice to terminate or notice to vacate has not been given, within 28 days of the expiry of the residential tenancy agreement –

(i) on not more than one occasion on any day; and

(ii) on not more than 5 days in any week; and

- (iii) on the giving of not less than 48 hours' notice in writing to the tenant; and
- (iv) between the hours of 8 a.m. and 6 p.m.

(4A) An owner who wishes to let residential premises may, with the prior written approval of the tenant of the premises, by notice to the public, invite prospective tenants to inspect the premises in the presence of the owner within the period specified in the approval.

(4B) An owner of residential premises may enter the premises without the approval of the tenant to show the premises to one prospective purchaser only and any persons accompanying the prospective purchaser –

- (a) on not more than one occasion on any day; and
- (b) on not more than 5 days in any week; and
- (c) on the giving of not less than 48 hours' notice in writing to the tenant; and
- (d) between the hours of 8 a.m. and 6 p.m.

(4C) An owner who wishes to sell residential premises may, with the prior written approval of the tenant of the premises, by notice to the public, invite prospective purchasers to inspect the premises in the

presence of the owner within the period specified in the approval.

- (f) by omitting subsection (5) and substituting the following subsection:

(5) After giving notice under subsection (3), the owner may enter the premises –

- (a) during any period agreed to by the owner and the tenant of the premises; or
- (b) if there is no agreement, between 8 a.m. and 6 p.m. as specified by the owner.

Section 57 amended (Locks and security devices)

24. Section 57 of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1B) A tenant of residential premises may apply to the Court for an order requiring the owner of the premises to comply with subsection (1).

Section 64 amended (Certain provisions void)

25. Section 64 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(3) A provision of a residential tenancy agreement that imposes on a tenant a penalty or fine or a charge that exceeds the cost incurred by the owner of the residential premises has no effect.

Sections 64A, 64B and 64C inserted

26. After section 64 of the Principal Act, the following sections are inserted in Part 5:

Mitigation of loss

64A. The owner of residential premises –

- (a) is to take all reasonable measures to mitigate any loss or damage to the premises; and
- (b) is to take all reasonable measures to enter into a residential tenancy agreement in respect of the premises with another tenant as soon as possible after the early vacation of those premises or after those premises have been abandoned; and
- (c) is not entitled to be paid for any loss or damage that occurs because of the failure to take those measures.

Keeping of pets

64B. (1) A tenant is not to keep a pet on residential premises –

- (a) without permission of the owner of the premises; or
- (b) unless permitted to do so under the residential tenancy agreement.

(2) This section does not apply to a guide dog as defined by the *Guide Dogs and Hearing Dogs Act 1967*.

Strata title property by-laws

64C. The owner of residential premises that are a strata title lot is to give to a prospective tenant before entering into a residential tenancy agreement a copy of the by-laws made by the body corporate of the strata title property.

Section 65 amended (Regulations)

27. Section 65 of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1A) The regulations may provide that a prescribed provision of the Act does not apply to the following:

- (a) any prescribed residential tenancy agreement or any prescribed provision of a prescribed residential tenancy agreement;
- (b) any residential tenancy agreement of a prescribed class or any provision of a residential tenancy agreement of a prescribed class;
- (c) any prescribed premises or part of prescribed premises;
- (d) any premises or part of premises of a prescribed class.

***Land Titles Act 1980* amended**

28. The *Land Titles Act 1980* is amended as follows:

- (a) by omitting from section 40(3)(d)(iii) “registration;” and substituting “registration; and”;
- (b) by inserting the following subparagraph after subparagraph (iii) in section 40(3)(d):
 - (iv) a residential tenancy agreement to which the *Residential Tenancy Act 1997* applies;
- (c) by inserting in section 146(6) “, subject to subsection (6A),” after “Court”;
- (d) by inserting the following subsection after subsection (6) in section 146:

(6A) A writ is not to be issued under subsection (6) unless at least 28 days’ written notice is given to the tenant of the affected mortgagor.