

Additional terms for certain residential tenancy agreements

Residential Tenancies Act 1997—Schedule 2

incorporating amendments by Residential Tenancies Legislation Amendment Act 2023 A2023-5—commencing 1 April 2023

2.1 Break lease fee clause

Termination before end of fixed term—fee for breaking lease

- 101 (1) If the tenant ends a fixed term agreement before the end of the fixed term (other than for a reason provided for by the Residential Tenancies Act or the agreement), the tenant must pay a fee (a *break fee*) of the following amount:
- (a) if the fixed term is 3 years or less—
 - (i) if less than half of the fixed term has expired—6 weeks rent; or
 - (ii) in any other case—4 weeks rent;
 - (b) if the fixed term is more than 3 years—the amount agreed between the lessor and tenant.
- (2) The lessor agrees that the compensation payable by the tenant for ending a fixed term agreement before the end of the fixed term is limited to the amount of the break fee specified in subclause (1).
- (3) However, the lessor and tenant agree that if, within the defined period after the tenant vacates the premises, the lessor enters into a residential tenancy agreement with a new tenant, the amount payable by the tenant is limited to—
- (a) the amount of the break fee under subclause (1) less the amount of rent payable by the new tenant for the defined period; and
 - (b) if the tenant vacates the premises more than 4 weeks before the end of the fixed term—the lessor’s reasonable costs (not exceeding the defined cost limit) of advertising the premises for lease and of giving a right to occupy the premises to another person.
- (4) In this clause:
- defined cost limit* means—
- (a) if half or more than half of the fixed term has expired—an amount equal to $\frac{2}{3}$ of 1 week’s rent; or
 - (b) if less than half of the fixed term has expired—an amount equal to 1 week’s rent.

defined period means—

- (a) if subclause (1) (a) (i) applies—6 weeks; or
- (b) if subclause (1) (a) (ii) applies—4 weeks; or
- (c) if subclause (1) (b) applies—N weeks.

N is the number worked out as follows:

$$\frac{\text{break fee}}{\text{weekly rent payable at the time the tenant ends the agreement}}$$

2.2 Posting termination clause

Termination because of posting

- 102 (1) The tenancy agreement may be terminated—
- (a) if the lessor is posted to the ACT in the course of the lessor's employment—by the lessor giving the tenant at least 8 weeks notice to vacate the premises; or
 - (b) if the tenant is posted away from the ACT in the course of the tenant's employment—by the tenant giving the lessor at least 8 weeks notice of the tenant's intention to vacate the premises.
- (2) A notice under subclause (1) must be accompanied by evidence of the posting (for example, a letter from the employer of the lessor or tenant confirming the details of the posting).
- (3) The residential tenancy agreement terminates—
- (a) 8 weeks after the day the notice under subclause (1) is received; or
 - (b) if a later date is stated in the notice—on the stated date.

2.3 Community housing provider termination clause

Termination by community housing provider if premises required by owner

- 103 (1) For a periodic tenancy, the lessor may give the tenant—
- (a) if the owner of the premises genuinely intends to sell the premises—at least 8 weeks notice to vacate; or
 - (b) if the owner of the premises genuinely intends to live in the premises—at least 8 weeks notice to vacate; or
 - (c) if the owner of the premises genuinely believes the owner's immediate relative intends to live in the premises—at least 8 weeks notice to vacate; or

- (d) if the owner of the premises genuinely believes an interested person intends to live in the premises—at least 8 weeks notice to vacate; or
 - (e) if the owner of the premises genuinely intends to reconstruct, renovate or make major repairs to the premises and the reconstruction, renovation or repairs cannot reasonably be carried out with the tenant living in the premises—at least 12 weeks notice to vacate the premises; or
 - (f) if the owner of the premises is not the housing commissioner and the owner genuinely intends to stop using the premises for community housing—at least 26 weeks notice to vacate the premises.
- (2) For a fixed term or periodic tenancy, the lessor may give the tenant at least 26 weeks notice to vacate the premises if the housing commissioner—
- (a) is the owner of the premises; and
 - (b) withdraws the premises in accordance with an approved housing assistance program.
- (3) A notice to vacate under this clause must be accompanied by written evidence supporting the owner's genuine intention or belief for requiring the lessor to give the notice.

Examples—written evidence

statutory declaration, development application, quotes from a tradesperson for renovations, notice of decision from the housing commissioner

- (4) If the tenant is given a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the notice to vacate (the lessor's notice to vacate date) provided the tenant gives the lessor—
- (a) at least 2 weeks notice of the tenant's intention to vacate; or
 - (b) in the last 2 weeks before the lessor's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.
- (5) The residential tenancy agreement terminates on the day the tenant vacates the premises.
- (6) In this clause:

immediate relative, of the owner, means a son, daughter, son-in-law, daughter-in-law, mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law or sister-in-law.

interested person, for an owner, means a person who is not an immediate relative of the owner but who has a close family or personal relationship with the owner and who has a reasonable expectation arising from that relationship that the owner would provide accommodation for the person.

2.4 Public housing termination clauses

Termination if housing assistance cancelled or withdrawn

- 104 (1) This clause applies if—
- (a) the tenant receives housing assistance under an approved housing assistance program in relation to the tenancy (other than a rebate of rent); and
 - (b) the housing commissioner decides—
 - (i) after reviewing the tenant's eligibility to receive the housing assistance, that the tenant is no longer eligible to receive the housing assistance under the program; or
 - (ii) after the tenant fails to comply with a request for information made by the housing commissioner in accordance with the [Housing Assistance Act 2007](#), section 25 (2) (a), to cancel the tenant's housing assistance under that [Act](#), section 25 (3); and
 - (c) the tenant is no longer able to ask for a review of the housing commissioner's decision.
- (2) The lessor may give the tenant at least 26 weeks notice to vacate the premises.
- (3) If the notice to vacate is given because of subclause (1) (b) (ii) and the tenant gives the lessor the information in accordance with the lessor's request for information before the end of the period in the notice, the notice is taken to have been withdrawn.
- (4) Subclause (5) applies if—
- (a) the tenant gives the lessor the information in accordance with the lessor's request for information before the end of the period in the notice given under subclause (2); and
 - (b) the housing commissioner decides, after reviewing the tenant's eligibility to receive the housing assistance, that the tenant is no longer eligible to receive the housing assistance under the program; and
 - (c) the tenant is no longer able to ask for a review of the housing commissioner's decision.

- (5) Despite subclause (1) (b) (i), the lessor may give the tenant notice to vacate the premises provided that the notice is for the later of—
 - (a) the end of the period in the notice given under subclause (2); and
 - (b) 12 weeks after notice is given under this subclause.

Example

On 1 July, Ziggy's lessor gives Ziggy a notice to vacate because Ziggy did not provide the lessor with information about Ziggy's eligibility for housing assistance within the required period. The notice to vacate gives Ziggy the required 26 weeks notice, meaning Ziggy must vacate the premises by 30 December. On 1 August, Ziggy gives the lessor the information the lessor requested and the first notice to vacate is taken to be withdrawn. Taking into account the new information, the housing commissioner decides that Ziggy is no longer eligible to receive the housing assistance. Ziggy does not seek ACAT review of the commissioner's decision. The lessor may give Ziggy a second notice to vacate, but the second notice must not have a notice period that ends before 30 December.

- (6) For this clause, a tenant is ***no longer able to ask for a review*** of the housing commissioner's decision if—
 - (a) the period in which the tenant may make an application for review of the decision has ended and the tenant has not made an application; or
 - (b) if the tenant applies for review of the decision—the commissioner's decision is confirmed.
- (7) If the lessor gives a tenant a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the lessor's notice to vacate provided the tenant gives the lessor—
 - (a) at least 2 weeks notice of the tenant's intention to vacate; or
 - (b) in the last 2 weeks before the lessor's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.
- (8) The residential tenancy agreement terminates on the day the tenant vacates the premises.

Termination if tenant refuses transfer to alternate rental premises

- 105 (1) This clause applies if—
- (a) the housing commissioner gives the tenant written notice in accordance with an approved housing assistance program requiring the tenant to move to alternate rental premises; and
 - (b) the tenant has rejected, or failed to accept, an offer from the housing commissioner to enter into a tenancy agreement for the alternate rental premises; and
 - (c) the tenant is no longer able to ask for a review of the housing commissioner's decision to require the tenant to move to the alternate rental premises.

- (2) The lessor may give the tenant at least 26 weeks notice to vacate the premises.
- (3) To remove any doubt, this clause also applies if the housing commissioner requires the tenant to move to alternate rental premises when the tenant begins receiving ongoing housing assistance after the tenant's temporary housing assistance ends.
- (4) For this clause, a tenant is ***no longer able to ask for a review*** of a decision to require the tenant to move to alternate rental premises if—
 - (a) the period under the approved housing assistance program in which the tenant may make an application for review of the decision has ended and the tenant has not made an application; or
 - (b) if the tenant applies for review under the approved housing assistance program of the decision—the commissioner's decision is confirmed.
- (5) If the lessor gives a tenant a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the lessor's notice to vacate provided the tenant gives the lessor—
 - (a) at least 2 weeks notice of the tenant's intention to vacate; or
 - (b) in the last 2 weeks before the lessor's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.
- (6) The residential tenancy agreement terminates on the day the tenant vacates the premises.

Termination if tenant is party to 2 tenancies

- 106
- (1) This clause applies if—
 - (a) the tenant agrees to move to alternate rental premises; and
 - (b) the tenancy for the alternate premises has commenced in accordance with the tenancy agreement.
 - (2) The lessor may give the tenant at least 1 week's notice to vacate the first premises.
 - (3) The residential tenancy agreement terminates on the day the tenant vacates the premises.

2.5 Temporary housing assistance termination clause

Termination if housing commissioner decides tenant not eligible for ongoing housing assistance

- 107
- (1) This clause applies if the housing commissioner provides temporary housing assistance to the tenant under an approved housing assistance program because the tenant is a remaining occupant in the premises after a former tenant has stopped living in the premises because they—
 - (a) have died; or
 - (b) are physically unable to live in the premises; or
 - (c) are legally unable to live in the premises; or
 - (d) no longer wish to live in the premises.
 - (2) If the housing commissioner decides that the tenant is not eligible for ongoing housing assistance under an approved housing assistance program, the lessor may give the tenant—
 - (a) if the housing commissioner makes the decision before the tenant's temporary housing assistance ends—at least 26 weeks notice to vacate the premises; or
 - (b) if the housing commissioner makes the decision after the tenant's temporary housing assistance ends—at least 12 weeks notice to vacate the premises.
 - (3) If the lessor gives a tenant a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the lessor's notice to vacate provided the tenant gives the lessor—
 - (a) at least 2 weeks notice of the tenant's intention to vacate; or
 - (b) in the last 2 weeks before the lessor's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.
 - (4) The residential tenancy agreement terminates on the day the tenant vacates the premises.

2.6 Subsidised accommodation clauses

What are *subsidised accommodation eligibility requirements*?

- 108 For this agreement, *subsidised accommodation eligibility requirements*, in relation to premises under a residential tenancy agreement, means any rule or requirement against which—
- (a) the tenant's eligibility to live in the premises will be assessable during the tenancy; or
 - (b) the lessor's eligibility to receive government funding or assistance in relation to the premises will be assessable during the tenancy.

Lessor's obligations in relation to eligibility requirements

- 109 If a subsidised accommodation eligibility requirement is amended during the tenancy, the lessor must give the tenant a copy of the amended requirements not later than 2 weeks after the lessor is informed of or makes the amendments.

Tenant must provide information relating to eligibility requirements

- 110
- (1) The lessor may ask the tenant, in writing, to give the lessor any information that is reasonably necessary for assessing—
 - (a) the lessor's or owner's eligibility for government funding or assistance for the premises; or
 - (b) the tenant's eligibility to live in the premises.
 - (2) If the lessor makes a request under subclause (1), the lessor must give the tenant a reasonable period to comply with the request.
 - (3) The tenant agrees to give the lessor any information requested under subclause (1) within the period stated in the lessor's request.
 - (4) A tenant's failure to comply with subclause (3) is not taken to be a breach of this agreement.

Termination if tenant fails to provide information relating to eligibility requirements

- 111
- (1) If the tenant does not give the lessor information in accordance with the lessor's request for information within the period stated in the lessor's request, the lessor may give the tenant at least 26 weeks notice to vacate the premises.

- (2) A notice to vacate given under subclause (1) must include the following information:
 - (a) a statement that the tenant did not give the lessor the information requested by the lessor;
 - (b) the name and contact details of a legal or advocacy service that may be able to provide the tenant with advice about the tenant's legal rights;
 - (c) a statement that the notice will be withdrawn if the tenant gives the lessor the requested information before the end of the period stated in the notice.
- (3) If the tenant gives the lessor the information in accordance with the lessor's request for information before the end of the period in the notice given under subclause (1), the notice to vacate is taken to have been withdrawn.
- (4) Subclause (5) applies if—
 - (a) the tenant gives the lessor the information in accordance with the lessor's request for information before the end of the period in the notice given under subclause (1); and
 - (b) under the subsidised accommodation eligibility requirements for the premises—
 - (i) the tenant stops, or will stop, being eligible to live in the premises; or
 - (ii) the lessor stops, or will stop, being eligible to receive government funding or assistance to provide the premises to the tenant.
- (5) Despite clause 112, the lessor may give the tenant notice to vacate the premises provided that the notice is for the later of—
 - (a) the end of the period in the notice given under subclause (1); and
 - (b) 12 weeks after notice is given under this subclause.

Example

On 1 July, Poppy's lessor gives Poppy a notice to vacate because Poppy did not provide the lessor with information about Poppy's eligibility for subsidised housing within the required period. The notice to vacate gives Poppy the required 26 weeks notice, meaning Poppy must vacate the premises by 30 December. On 1 August, Poppy gives the lessor the information the lessor requested and the first notice to vacate is taken to be withdrawn. Taking into account the new information, the lessor determines that Poppy is no longer eligible to live in the premises. The lessor may give Poppy a second notice to vacate, but the second notice must not have a notice period that ends before 30 December.

- (6) A notice to vacate given under subclause (5) must include the name and contact details of a legal or advocacy service that may be able to provide the tenant with advice about the tenant's legal rights.

- (7) If the lessor gives a tenant a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the lessor's notice to vacate provided the tenant gives the lessor—
 - (a) at least 2 weeks notice of the tenant's intention to vacate; or
 - (b) in the last 2 weeks before the lessor's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.
- (8) The residential tenancy agreement terminates on the day the tenant vacates the premises.

Termination if tenant no longer eligible to live in premises

- 112
- (1) This clause applies if, under the subsidised accommodation eligibility requirements for the premises—
 - (a) the tenant stops, or will stop, being eligible to live in the premises; or
 - (b) the lessor stops, or will stop, being eligible to receive government funding or assistance to provide the premises to the tenant.
 - (2) The lessor may give the tenant notice to vacate the premises provided that the notice is not less than the later of the following:
 - (a) 26 weeks after the day the lessor gives the notice to the tenant;
 - (b) if the lessor gives the notice because the tenant has stopped, or will stop, being eligible to live in the premises—the day the tenant stops being eligible to live in the premises;
 - (c) if the lessor gives the notice because the lessor has stopped, or will stop, being eligible to receive government funding or assistance to provide the premises to the tenant—the day the lessor stops being eligible for funding or assistance for the premises.
 - (3) A notice to vacate must include the following information:
 - (a) if the tenant has stopped, or will stop, being eligible to live in the premises—the reason why;
 - (b) if the lessor has stopped, or will stop, being eligible to receive government funding or assistance to provide the premises to the tenant—the reason why;
 - (c) the name and contact details of a legal or advocacy service that may be able to provide the tenant with advice about the tenant's legal rights.

- (4) If the lessor gives a tenant a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the lessor's notice to vacate provided the tenant gives the lessor—
 - (a) at least 2 weeks notice of the tenant's intention to vacate; or
 - (b) in the last 2 weeks before the lessor's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.
- (5) The residential tenancy agreement terminates on the day the tenant vacates the premises.