

Residential Tenancies (Miscellaneous) Amendment Bill 2023

Summary

The Residential Tenancies (Miscellaneous) Amendment Bill 2023 (the Bill) proposes changes to the *Residential Tenancies Act 1995* (the Act), the *Residential Parks Act 2007* and the *Real Property Act 1886* to improve the rights of renters, modernise existing rental laws and ensure landlords can continue to manage properties effectively.

The amendments proposed in the Bill form part of the government's broader commitment to improve housing outcomes for people in South Australia (SA).

Ending tenancies

Requiring a prescribed ground to terminate or not renew a tenancy

Sections 79, 81 & 84

A key reform in the Bill is to prohibit the termination and non-renewal of tenancy agreements without providing a prescribed reason. Amendments to section 79 of the Act allow for a tenancy to be terminated due to reasons prescribed in the Residential Tenancies Regulations 2010 (the Regulations). Changes to the Act prevent tenancy agreements from being terminated without the landlord specifying a ground.

To balance the rights of landlords, the reasons that may be used to end a periodic tenancy or not renew a fixed term tenancy will be expanded through regulations. These reasons, which will be finalised after consultation on the supporting regulations, are expected to include when:

- The tenant or their visitor intentionally or recklessly causes serious damage to the property, including safety equipment and common areas;
- The tenant or their visitor puts neighbours, the landlord, or the landlord's agent, contractors or employees in danger;
- The premises are unfit for human habitation, destroyed totally, or destroyed to the extent that they are unsafe;

- The tenant or anyone else living at the property seriously threatens or intimidates the landlord, their agent or the landlord's contractors or employees;
- The tenant has failed to comply with a SACAT compliance order;
- The tenant has already been given two breach notices and the same breach occurs;
- The property is being used for illegal purposes;
- The tenant has brought in other tenants or sub-tenants without consent;
- The tenant has not paid the bond as agreed;
- The landlord is a government housing authority and the tenant misled the authority so they could get social housing;
- The tenant has been involved in an illegal drug related activity in the property;
- The tenant is keeping a pet without consent and SACAT has made an order excluding the pet;
- The tenant is renting a house from a charity or a community housing provider and the tenant no longer meets the charity or community housing provider's eligibility requirements to continue as a tenant;
- The tenant has engaged in false, misleading or deceptive conduct or concealed material facts from a landlord or agent in inducing the landlord to enter into the tenancy agreement.

Section 84 of the Act will specify that landlords will retain the ability to terminate a tenancy by providing a notice of termination due to a breach of agreement, as specified at section 80 of the Act. Landlords will also be able to end a periodic tenancy agreement or not renew a fixed term tenancy agreement because they require possession of the property for the reasons detailed in section 81 of the Act. A tenant who receives notice that their tenancy will be terminated due to a reason detailed in section 81 of the Act may vacate their rental property before the end of the notice period and will not be liable to pay rent after they vacate, provided they give their landlord 7 days' notice.

Notice to be given at end of fixed term

Section 83A

A landlord may only terminate a fixed term tenancy agreement at the end of the fixed term on a prescribed ground with 60 days' notice (as opposed to 28 days). When a tenant receives notice that their tenancy will not be renewed, they may vacate their

rental property within the notice period and not be liable to pay rent after they vacate. This provision is contingent on the tenant providing seven days' notice to the landlord of their intention to vacate early.

Supporting evidence for termination on prescribed ground

Section 91

Changes to this section require that a notice of termination on a prescribed ground must be accompanied by written evidence as approved by the Commissioner for Consumer Affairs (Commissioner). The details of the evidence required will be set out in the Regulations.

Prohibition on letting premises after notice of termination

Section 91A

If a landlord terminates a residential tenancy agreement on a ground of a kind prescribed by the Regulations (e.g., if the landlord intends to live in the premises), they must not let the premises to a person for use primarily as a residence within six months after the date on which notice was given. The South Australian Civil and Administrative Tribunal (SACAT) may make an order permitting the re-letting of the premises within six months.

Tribunal may make orders in relation to retaliatory behaviour

Section 90A

SACAT may declare a termination notice has no effect if satisfied it is retaliatory and the landlord was wholly or partly motivated by an application to SACAT by the tenant or action taken or proposed by the tenant to enforce their rights.

Compensation for termination in certain circumstances

Section 84A

The landlord is entitled to costs or expenses of a kind determined by the Commissioner in connection with the termination of a residential tenancy agreement in prescribed circumstances. At present, a landlord is not entitled to compensation (i.e., break lease costs) where the landlord terminates the agreement due to a breach by the tenant that is for something other than unpaid rent.

Notice of termination by tenant for successive breaches of the agreement

Section 85AA

If the tenant has served a notice of breach of a residential tenancy agreement on the landlord on two occasions and the landlord has remedied the breach in the prescribed period on both occasions, should the breach occur again, the tenant may serve a notice of termination without providing a period for the landlord to remedy the breach. The termination date must be at least seven days from the date the notice is served.

Notice of termination by tenant in certain circumstances

Section 85C

The tenant may serve a notice of termination if the tenant requires care of a kind prescribed by the regulations and needs to vacate in order to obtain that care, the tenant has been offered and accepted accommodation by the South Australian Housing Trust (SAHT), a community housing provider, or the tenant requires prescribed temporary crisis accommodation and needs to vacate the premises to obtain that accommodation.

Maximum liability for fixed term tenancies

Section 75A

When a tenant terminates a fixed term tenancy early, the landlord is not entitled to compensation for unpaid rent that is more than one month's rent for each remaining 12 month period of the agreement. A tenant cannot be liable to pay more than six months' rent in total under section 75A. When there is less than one year remaining on an agreement, a tenant will only be liable for a maximum of one month of rent. The landlord is still entitled to usual costs associated with re-letting, such as advertising.

Minimum standards and alterations

Minimum housing standards at the beginning of the tenancy

Section 67A

A landlord must ensure that the premises comply with minimum housing standards under the *Housing Improvement Act 2016* on or before the tenant enters occupation of the premises.

Notice of termination by tenant due to condition of premises

Section 85B

The tenant may serve a notice of termination if the premises do not comply with the prescribed minimum housing standards under the *Housing Improvement Act 2016*, if the premises are destroyed totally or to such an extent as to be rendered unsafe or in prescribed circumstances.

Alteration of premises

Section 70

It is a term of a residential tenancy agreement that the landlord will not unreasonably withhold consent to an alteration or addition to the premises that is minor, necessary to ensure the provision of infrastructure or a service of a prescribed kind, required for a disability within the meaning of *the Equal Opportunity Act 1984* that would not significantly change or affect the structure of the premises, or the tenant has mobility or access needs relating to their age that is reasonable and necessary for the tenant and would not significantly change or affect the structure of the premises.

Renting with pets

Keeping pets on premises

Sections 66C-66G

A tenant may apply for approval to keep a pet at the premises. A landlord must not unreasonably withhold consent but may impose reasonable conditions. A tenant may apply to SACAT if they believe refusal or conditions to be unreasonable.

Domestic abuse

Notice of termination by tenant on ground of domestic abuse

Section 85D

A tenant may terminate their tenancy by serving a notice of termination to their landlord in circumstances of domestic abuse and provide supporting evidence as prescribed by regulation. This will provide tenants who have experienced domestic abuse with the option to end their tenancy on this ground without needing to apply to SACAT under existing domestic abuse provisions.

Section 89A

The Bill proposes change to the existing provisions that allow SACAT to terminate or vary a tenancy in circumstances where domestic abuse has occurred. Changes to section 89A will allow a person who is protected by an intervention order and normally resides at the rental premises, but is not listed on the tenancy agreement, to apply to SACAT for the tenancy agreement to be varied so that they can remain at the premises without the perpetrator.

Further change to section 89A will provide SACAT with greater jurisdiction to make decisions about whether a tenant who has experienced domestic abuse and was not responsible for damage caused by their co-tenant, should be liable to pay compensation to the landlord for this damage. In practice, this will allow SACAT to refund a victim's portion of a rental bond and hold a co-tenant responsible for any damages they caused, even when the amount of compensation owed to the landlord is greater than this tenant's portion of the bond.

Tribunal may make orders in relation to circumstances of domestic abuse

Section 90B

SACAT must make an order that a termination notice served on the tenant is invalid if they have been subject to domestic abuse and the termination notice was served due to the act of a person who subjected the tenant to domestic abuse.

Change of locks

Sections 66A-66B

A tenant who has experienced domestic abuse and has prescribed evidence of this abuse may alter any lock or security device without the permission of their landlord, provided that a key to the lock or security device is provided to the landlord or landlord's agent.

Disclosure and dealing with tenant information

Provision of information to prospective tenants and tenants

Section 47C

A landlord (or agent) must make prescribed information available to prospective tenants and must not make any statement or representation they know to be false, misleading or deceptive or knowingly conceal a material fact of a kind prescribed by regulation.

Section 48

A landlord (or agent) must already ensure that a tenant is given certain information as specified in the Act and any other information required by the Commissioner before or at the time of entering a tenancy. This will be expanded to include information relating to embedded networks.

Provision of information to landlords

Section 47B

To ensure prospective tenants are deterred from providing misleading information, the Bill proposes to amend section 47B to include a provision that requires a prospective tenant must not give a landlord false information or a falsified document in connection with an application to enter a residential tenancy agreement.

Dealing with tenant information

Section 76B

The Bill proposes changes to section 76B of the Act to specify that a person who holds tenant or prospective tenant information must take reasonable steps to protect this information. Section 76B also specifies requirements for the destruction of this information, which are subject to State or Commonwealth legislation relating to the preservation of records.

Rent and inspections

Rent increases

Section 55

Section 55 will be amended to clarify that if a tenancy agreement type changes (i.e., changes from fixed to periodic) the rent cannot be increased within 12 months after the start of the original agreement or the last increase.

This section will also be amended to specify that rent cannot be increased by mutual agreement unless this occurs at least 12 months after the date on which the residential tenancy agreement was entered into or, if there has been a previous increase of rent under this section, the last increase.

Excessive rent

Section 56

Changes to section 56 require that SACAT must have regard to whether an increase in rent is disproportionate, when deciding if a rent increase is excessive.

Manner and payment of rent

Section 56A

A landlord must ensure the payment of rent is in a reasonably convenient manner and must allow one means that is electronic and does not involve the collection of rent by a third party for a fee.

Inspections

Section 72

A landlord (or agent) may inspect the premises no more than four times a year and notice must be given to the tenant of no less than seven days and no more 28 days before the day of entry. Presently, notice must be no more than 14 days and the landlord (or agent) may inspect the premises once every four weeks. It is noted that SACAT may order that additional inspections are permitted, if it deems these to be appropriate in the circumstances.

The regulations may prescribe requirements relating to the production, distribution or publication of documents or records from inspections. This includes photos of tenants' property being published online.

Bonds

Bonds

Sections 61-63

The Bill proposes amendments that will allow the Regulations to provide for the lodgement of bonds by tenants and clarify that bonds will be returned to co-tenants equally unless otherwise consented to or disputed. Section 63 will clarify that SACAT may disclose sealed orders to the Commissioner to allow bond repayments to be made in accordance with these orders.

The process for the repayment of bonds is specified at section 63 of the Act. At different stages of this process, parties are provided with 10 days to take certain actions. The Bill proposes that these timeframes are prescribed in regulations, with the view to reduce these timeframes in circumstances where all parties have access to the online bonds system.

Shared living

Sub-letting

Section 74-74C

The Bill will clarify that a landlord or agent must not unreasonably withhold consent for a tenant to sub-let a property. These provisions also specify that a landlord or agent must not charge a fee for giving consent to a tenant to sub-let the property.

Energy efficiency and utilities

Energy efficiency of appliances, fittings and fixtures

Section 68A

It is a term of a residential tenancy agreement that the landlord will ensure that requirements prescribed by the regulations relating to energy and water efficiency are complied with in relation to appliances, fittings or fixtures installed or replaced after the commencement of this provision.

Excess water charges

Section 73B

If the tenant has notified the landlord as soon as practicable, the landlord is responsible for excessive water usage charges caused by a fault in water infrastructure or equipment or other appliances, fittings or fixtures at or connected to the premises. The landlord is not responsible for costs associated with a fault that is the responsibility of the water industry entity.

Installation of solar energy system

Section 73A

The addition of section 73A will clarify that a landlord and tenant may enter into an agreement under which the tenant is liable for an amount in relation to the costs and charges for the installation of a solar energy system.

Statutory charges

Section 73

The landlord is responsible for rates and charges not based on the level of consumption, such as the water supply charge. If the premises is separately metered, the landlord and tenant may agree otherwise.

A tenant is not required to pay rates or charges if the landlord fails to provide a copy of the invoice within 30 days.

Drug related conduct

Testing and remediation in relation to drugs

Section 67B

If a landlord is aware that drug related conduct has occurred on the premises, they must ensure that the premises is tested and if necessary remediated as soon as reasonably practicable to comply with minimum housing standards under the *Housing Improvement Act 2016*.

Termination by landlord on ground of drug related conduct

Section 80A

A landlord may terminate a tenancy agreement if they are aware the tenant has engaged in or allowed another person to engage in drug related conduct on the premises and testing for contamination conducted in accordance with section 67B indicates that the premises is contaminated because of that drug related conduct.

Rooming houses

Definition of a rooming house

Section 3

The definition of a rooming house will be amended to mean premises in which two or more rooms are available for valuable consideration, for residential occupation. This replaces the requirement for rooming houses to be on a commercial basis for three or more persons.

Registration of proprietors of designated rooming houses

Section 103B

A person must not operate a designated rooming house (a rooming house with five or more rooms available for rent) without being registered.

Sections 103C-103G

The Commissioner must be satisfied that a proprietor of a designated rooming house is a fit and proper person to be registered, has qualifications and experience that the Commissioner considers appropriate and pays the prescribed application and annual

return fees. The Commissioner may impose conditions on, suspend or cancel a registration.

Should a person be dissatisfied with a reviewable decision regarding the registration of a proprietor of a designated rooming house, section 103G allows this person to apply to SACAT for a review of the decision.

Minimum standards for rooming houses

Section 105PA

It is a term of a rooming house agreement that the proprietor will ensure the requirements prescribed by the regulations relating to energy and water efficiency are complied with in relation to appliances, fittings or fixtures installed or replaced on or before commencement of this provision.

Termination of a rooming house agreement

Section 105U

A proprietor may only terminate a rooming house agreement on a prescribed ground and providing 60 days' notice. Presently, a proprietor can terminate a periodic agreement without ground and provide four weeks' notice.

Rooming house bonds

Section 105K

A provision will be introduced at section 105K of the Act to require that bonds for rooming houses must be paid to the Commissioner or rooming house proprietor in the manner and form approved by the Commissioner and be accompanied by information determined by the Commissioner.

Residential Parks

Information to be provided by park owners to residents

Section 14 of the Residential Parks Act 2007

A park owner must provide prescribed information to a resident if electricity is supplied via a connection point that is part of an embedded network.

Permissible consideration for residential park agreement

Section 18 of the Residential Parks Act 2007

A person must not require or receive a payment from a resident other than rent or a bond (or both) under a residential park agreement or as a condition to entering into, renewing or extending a residential park agreement. A new provision will be included clarifying that payment includes a reference to entry or exit fees, a management fee, a fee for amenities provided by the park (known as a communal contribution fee) or any other prescribed fee regardless of how the payment is described, including if these fees are described as “deferred rent”.

However, the resident and park owner may still agree to defer the payment of rent under an agreement so that it is paid at a later date than when it would fall due. Late rental payments must be calculated with specific reference to the regular rent fee payable for occupation. For example, a residential park owner may agree to allow a resident to pay \$20 of the weekly rent of \$200 late such that \$180 is paid now and \$20 is paid after the due date.

Penalties and offences

Various provisions of the Residential Parks Act 2007

Various penalties are being increased and new expiation fees and offences included, where applicable, for consistency with the *Residential Tenancies Act 1995* and to act as a sufficient deterrent and punishment for breaches of the *Residential Parks Act 2007*.

Miscellaneous

Occupation adjacent buildings such as studios or ‘granny flats’

Section 3

The Bill amends the definition of a *residential tenancy agreement* to clarify that an agreement under which a person grants another person, for valuable consideration, a right to occupy for residential purposes a building on land (such as a studio or ‘granny flat’) that is located adjacent to or near the primary residence on the land and which the other person has exclusive access to, or possession of, is a residential tenancy agreement. This amendment is intended to make clear that the Act does not prevent the owner of a ‘granny flat’ renting such a dwelling to tenants.

Termination following death of sole tenant

Section 79B

If a sole tenant dies, the tenancy agreement will terminate 30 days after the death of the tenant, unless this is terminated earlier, or an order by SACAT or an agreement between the landlord and an administrator or next of kin of the deceased tenant specifies otherwise.

Abandoned property and personal documents

Sections 97B-97C

Sections 97B and 97C of the Act specify action to deal with abandoned property and personal documents. These sections currently require that abandoned property and documents must be retained for 28 days after possession of the premises is recovered. The Bill amends this timeframe so that the period that abandoned property and personal documents must be retained is prescribed in the Regulations, with the view that this period should be reduced to seven days, subject to consultation.

Providing copy of personal information listed on a ‘tenant blacklist’

Section 99J

A landlord (or agent) or database operator must not charge a tenant a fee for giving personal information relating to them.

Application of income

Section 101

The Minister may approve the use of income from the Residential Tenancies Fund for any other purpose.

Internal review in relation to certain orders

Section 114A

Except in exceptional circumstances, leave must not be granted in relation to an application for a review of a decision by SACAT if a person was ordered to make a payment (which may include compensation) to another person and that has not occurred. This section is included for the purpose of preventing parties applying for a SACAT decision to be reviewed in order to delay making a compensation payment.

A person will not be prevented from applying for an internal review of a decision when the compensation payment has been made.

Title of registered proprietor indefeasible

Section 69 of the Real Property Act 1886

The title of a registered proprietor is indefeasible subject to, amongst other things, a residential tenancy agreement not exceeding one year. This will be amended to 3 years to encourage longer tenancies by offering the landlord greater security from a caveat being placed on the premises by the tenant.

Penalties and offences

Various provisions of the Residential Tenancies Act 1995

Various penalties are being increased and new expiation fees and offences included within the *Residential Tenancies Act 1995*, where applicable, for consistency with the *Residential Tenancies (Protection of Prospective Tenants) Amendment Act 2023* and to act as a sufficient deterrent and punishment for breaches of the Act.