

Lease agreement terms inconsistent with the *Residential Tenancies Act 1995* (the Act)

Under Section 115 of the Act, a person who enters into an agreement or arrangement to defeat, evade or prevent the operation of the Act (directly or indirectly) is guilty of an offence. Maximum penalty: \$50,000. Some examples of inconsistent terms are listed below:

Carpet cleaning

'All carpets shall be professionally cleaned by the tenant at the termination of the tenancy'.

This term states that the carpets must be professionally cleaned at the end of the tenancy, whether they are dirty or not. This term is not enforceable, as Section 69 of the Act states that 'It is a term of a residential tenancy agreement that, at the end of the tenancy, the tenant must give the premises and ancillary property back to the landlord in a reasonable condition and in a reasonable state of cleanliness'. The issue at the end of the tenancy is whether carpets are left in a reasonable condition, not whether they've been professionally cleaned.

Rent payments

'The agent reserves the right to change the method of how the tenant is to pay rent'.

The method of payment cannot be changed during an existing agreement without the tenant's consent. Refer to the [rent payments bulletin](#).

Routine inspections

'The tenant agrees to allow entry to the premises for the purpose of routine inspections. Inspections are carried out between 9am and 5pm Monday to Friday'.

The tenant is entitled to receive proper notice before an inspection takes place. Therefore, before each routine inspection is carried out proper notice must be given to the tenant.

Proper notice is not less than 7 days and no more than 14 days written notice. The notice must specify the reason of entry, the date of entry and a 2 hour time frame in which the entry will occur. For further information on rights of entry refer to the [right of entry bulletin](#).

Number of occupants

'The tenants agree that for the duration of the tenancy there will be a maximum of 2 persons occupying the premises as tenants'.

Under Section 74 of the Act, a tenant has a right to sub-let the premises with the landlord's written consent and the landlord can't unreasonably withhold consent. A tenant also has the right to have guests and visitors at the property during the agreement. Therefore, a term that unreasonably restricts the number of people who can live or stay at the property is invalid.

Smoke detectors

'The tenant agrees to test all smoke detectors on a regular basis and replace batteries when required, so that the smoke alarm is always working to its full capacity'.

Under Section 68 of the Act, a landlord has an obligation to ensure that a rented property is in a reasonable state of repair having regard to its age, character and prospective life. Therefore, if a smoke detector battery is flat and the tenant is aware of this, the tenant must inform the landlord and the landlord is then obligated to replace the battery. We recommend that smoke detectors be tested by the landlord/agent at each routine inspection.

Altering terms

'The terms and conditions of a periodic tenancy may be altered by the agent during the term of the tenancy, provided the tenant is given 60 clear days notice notifying the tenant of the changes or variance/s which shall thereafter form part of the tenancy agreement'.

The terms and conditions of an existing tenancy agreement cannot be altered without both parties consent. However, the rent cannot be increased unless 12 months have passed since the last rent increase, even if mutually agreed.

Pruning

'The tenant is responsible to prune fruit trees, vines, shrubs and dispose of all clippings'.

This condition cannot be enforced. A tenant is responsible to maintain the property and gardens in a reasonable condition. That does not include specialised work such as pruning. The trimming of ornamental trees and shrubs, the pruning of fruit trees and rose bushes are not the responsibility of the tenant. The tenant runs a grave risk of receiving a complaint from the landlord of inappropriate and inexperienced trimming of permanent plantings.

Water

'If the water charges are not paid by the due date, a penalty charge of 10% interest will be added to the water cost'.

Section 53 of the Act states that a person must not require or receive from a tenant a payment, other than rent or security (or both), for a residential tenancy. Section 77 of the Act states that if a residential tenancy agreement provides that upon breach by the tenant of a term of the agreement the tenant is liable to pay an amount by way of penalty, the provision is void. Where the agreement provides that the tenant is responsible for water usage, the landlord is entitled to claim the cost of water usage only. No penalty charge can be claimed.

Rent payments

'Should the tenant pay the agent any monies that are not equal amounts of weekly, fortnightly or calendar monthly payments (as required under the provisions of the tenancy schedule), these amounts shall be applied as rental payments and thereafter any odd amounts shall be applied as sundry payments to clear any outstanding invoices owed by the tenant. Should no invoices be outstanding then odd amounts shall be applied as rental payments'.

All rent that is paid must be applied to rent and if an odd amount is received, this must be clearly shown on the rent record as a credit or an amount 'in hand'. Any odd amounts cannot be applied to sundry payments (e.g. water) without the tenants consent. For further information see [rent receipts and records](#).

All the above terms are inconsistent with the Act. They are not enforceable and should not be included as a term in a residential tenancy agreement.

For further information contact Consumer and Business services on 131 882, or visit www.sa.gov.au/tenancy/renters