

CONSUMER AFFAIRS - TENANCY

Applications to the Commissioner of Tenancies

If a dispute arises between the tenant and landlord/agent during the period of a tenancy agreement, the parties should try and resolve the issue themselves before contacting the Consumer Affairs Tenancy Unit for assistance. You may be asked to complete an Application to the Commissioner of Tenancies.

UNDER THE RESIDENTIAL TENANCIES ACT LANDLORD'S OR TENANT'S MAY APPLY TO THE COMMISSIONER IF –

- 1) a breach of the tenancy agreement or of a provision of the Act is alleged to have occurred;
- 2) a provision of the Act permits an application to be made to the Commissioner; or
- 3) a tenancy dispute has arisen between the parties to a tenancy agreement or between tenants.

The *Residential Tenancies Act* permits the following applications to be made to the Commissioner.

TO PREPARE A CONDITION REPORT

Sections 27 and 110

If the landlord and tenant cannot agree and fail to accept the condition reports prepared at the beginning and end of a tenancy within the timeframe provided for by the Act, either party may apply to the Commissioner to prepare a condition report in respect of the premises.

PROPORTIONING THE SECURITY DEPOSIT BETWEEN CO-TENANTS

Section 33

If a dispute arises between co-tenants regarding the proportioning of the security deposit the Commissioner can be requested to provide a determination.

DECLARE RENT EXCESSIVE

Section 42

A tenant may apply to the Commissioner to have the amount of rent paid under a tenancy agreement declared excessive. A declaration will only be made if the Commissioner is of the opinion that the rent is excessive having regard to the general level of rents for comparable premises, or because the level of services provided have been reduced to a significant extent.

ORDER RENT PAID IN ADVANCE TO BE REFUNDED

Section 43

If rent is paid in advance and a tenancy is terminated before the end of the period for which rent has been paid, in the event of a dispute, the tenant may apply to the Commissioner for an order that the landlord refund rent paid in advance.

DETERMINE IF PENALTY OR LIQUIDATED DAMAGES

Section 45

Either party may apply to the Commissioner to determine whether a method of calculating rent is intended to function as a penalty provision or an amount by way of penalty or liquidated damages is reasonably proportional to the actual loss that may be suffered as a result of a breach.

ORDER EITHER PARTY TO PAY COST OF PERMITTED REPAIRS

Section 61

A tenant may recover from the landlord the cost of having repairs made under section 60 of the *Residential Tenancies Act*. The Commissioner may, on the application of a landlord or tenant, order either party to pay for the cost of permitted repairs.

ORDER LANDLORD TO MAKE EMERGENCY REPAIRS

Section 63

A tenant may apply to the Commissioner for an order that the landlord carry out emergency repairs.

ORDER TENANT TO ALLOW LANDLORD TO ENTER PREMISES

Section 77

If a tenant unreasonably impedes, or fails to permit, the lawful entry of the landlord to the premises, the landlord may apply to the Commissioner for an order permitting the landlord to enter the premises or ancillary property.

DETERMINE IF LANDLORD CONSENT TO AN ASSIGNMENT OR SUBLETTING WAS REASONABLY OR UNREASONABLY REFUSED

Section 79

Either party may apply to the Commissioner for a declaration that the consent of the landlord to an assignment or subletting was reasonably or unreasonably refused.

DETERMINE IF CHARGES IN RELATION TO ASSIGNMENT/SUBLETTING ARE UNREASONABLE

Section 81

A landlord must not require the tenant to pay a charge for consenting or considering an application for an assignment or subletting that is more than the landlord's reasonable expenses. A tenant may apply to the Commissioner for a declaration that a charge is more than the landlord's reasonable expenses in relation to the assignment or subletting.

DETERMINE VALIDITY OF A TERMINATION

Section 84

The Commissioner may on the application of the tenant or the landlord declare that a purported termination of a tenancy is of no effect.

TERMINATE TENANCY AND ORDER FOR POSSESSION

Section 100A

If a landlord issues a tenant with a notice to remedy a breach –

- (a) for failure to pay rent, or
- (b) of any other term of the tenancy agreement, and

the tenant fails to do so within the prescribed time, the landlord may apply to the Commissioner for the tenancy to be terminated and an order for possession of the premises.

If a tenant issues a landlord with a notice to remedy a breach of a term of the tenancy agreement and the landlord fails to do so within the prescribed time, the tenant may apply to the Commissioner for an order terminating the tenancy and permitting the tenant to give up possession of the premises.

ORDER FOR POSSESSION OF PREMISES

Section 104

If a tenancy is terminated under the *Residential Tenancies Act*, the landlord may apply to the Commissioner for an order for possession of the premises.

DECLARE PREMISES ABANDONED

Section 108

If the landlord has reasonable grounds for believing that premises have been abandoned and rent is outstanding the landlord may take possession of the premises.

The Commissioner may, on the application of the landlord, declare that premises were abandoned and make an order for immediate possession premises.

TO RESOLVE DISPUTE OVER ABANDONED GOODS

Section 109

If a dispute arises between a landlord and tenant about the exercise of powers given to the landlord in relation to retaining and selling abandoned goods, either party may apply to the Commissioner for an order to resolve the dispute.

TO DETERMINE SECURITY DEPOSIT DISPUTE

Section 113

A tenant may apply to the Commissioner for the return of some or all of the security deposit;

- after the tenant has received a notice from the landlord advising of the claims being made against the security deposit, or
- if the tenant has not received notice within 7 business days after the tenant vacated the property.

The Commissioner may determine the proportion of the security deposit to which the landlord or tenant is entitled.

TO DETERMINE CHARGES PAYABLE BY TENANT

Section 119

The Commissioner may, on the application of a landlord or tenant, determine the proportion of a charge that is payable by the owner or occupier of premises for electricity, gas or water that the tenant is required to pay to the landlord in accordance with the *Residential Tenancies Act* and the tenancy agreement.

ORDER FOR COMPENSATION

Section 121 and 122

The landlord may apply to the Commissioner for an order requiring the tenant to pay rent and compensation to the landlord for failing to vacate the premises at the end of a tenancy. Either the tenant or the landlord may apply to the Commissioner for an order for compensation for loss or damage suffered as a result of either party failing to comply with the tenancy agreement or an obligation under the *Residential Tenancies Act*.

For further information contact Consumer Affairs

Old Admiralty Towers, 68 The Esplanade, GPO Box 1722, Darwin NT 0801

Ph: 08 8999 1999 - Fax: 08 8935 7727

or

Level 1, Belvedere House, Parsons Street, PO Box 1745 Alice Springs NT 0871

Telephone: 08 8951 8606 Fax: 08 8951 5442

or phone 1800 019 319

Email: consumer@nt.gov.au

Web site: consumeraffairs.nt.gov.au

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