



Weblinks

[CPD Information](#)

[Newsletter Archive](#)

[e-Bulletin Archive](#)

[Departmental Publications](#)

[Contact Us](#)

[Privacy Statement](#)

[Copyright](#)

Special E-Bulletin: *Residential Tenancies Act 1987*

On 1 July 2013, changes to the *Residential Tenancies Act 1987* (the RT Act) and the *Residential Tenancies Regulations 1989* came into force. The application of the new laws to residential tenancy agreements commencing after 1 July 2013 is clear. How the new laws apply to residential tenancy agreements signed prior to 1 July 2013 will vary. This e-Bulletin is designed to assist lessors understand how the new laws may apply to the properties they manage. It is not meant to be a comprehensive overview; rather, the e-Bulletin is a general outline of enquiries lessors have sent the Department.

Further information may be found on the Department's [website](#).

Copies of the RT Act and Regulations can be purchased or downloaded from the [State Law Publisher](#).

Property condition report

Lessors must provide tenants with two copies of the property condition report (PCR) within seven days of the tenants moving in. The report must contain, at the very minimum, the content in the property condition report ([Form 1](#)). You can add further information about things (eg a cracked ceiling, torn fly screen or stained carpet) provided it doesn't result in a person being misled or attempts to bypass the minimum information required. Photos and/or video are not an acceptable substitute for the written report but may be included.

Please note if a lessor did not prepare a PCR at the start of a tenancy agreement (e.g. where an agreement commenced before 1 July 2013), and it finishes after 30 June 2013, they **must** still prepare a final outgoing PCR at the end of the tenancy.

Tenants must also be given a reasonable opportunity to be present during the inspection when the final PCR is completed.

More information on PCRs can be found [here](#).

Vacant possession

Be aware that lessors can no longer contract out of vacant possession as they may have done previously. Tenants may be entitled to take legal action against a lessor to recover potential costs if a lessor fails to deliver vacant possession on the date specified in the residential tenancy agreement.

If a residential tenancy agreement signed prior to 1 July 2013 has been contracted out of, then those clauses may continue to apply for the life of that agreement.

...continued on page 2



continued from page one

Property manager attendance in Court - Authorisation form

The definition of a property manager has been expanded to include the person doing the day-to-day management of a property, so long as they are a registered sales representative.

This assists in enabling a property manager to attend court on the lessor's behalf. For a Court to recognise the person as being properly authorised, the lessor must complete a signed authorisation form (available from the [Magistrates Court](#)) to be submitted with the court application or with the response to a court application.

Utility services

Changes to a lessor's and tenant's responsibilities in respect of public utility services (s.49A) only apply if the account is in the lessor's name (ie the tenant does not have the utility bill in their own name).

Under s.49A, lessors must specify in writing how often the invoices will be presented and the method for calculating the utilities charge. While this does not need to be written into the tenancy agreement (ie it can be a separate document), the prescribed tenancy agreement provides space to insert the utilities calculations.

Tenants may also be responsible for service charges (eg meter reading fees and late fees where the tenant is at fault) although lessors may wish to seek independent legal advice in relation to this matter.

Please note, s.49A does not apply to leases that commenced prior to 1 July 2013. For tenancy agreements entered into prior to 1 July 2013, the responsibility for paying the utility costs will be governed by the terms of the lease.

Rent increases

As of 1 July 2013, if there is a fixed-term tenancy agreement and the lessor increases the rent as part of the tenancy agreement renewal for the current tenants, the rent cannot be increased for the first 30 days. This rule also applies if the lessor wishes to allow the current fixed-term lease to roll into a periodic tenancy agreement.

The application of s.31(b) on the prescribed tenancy agreement is as follows:

- Part A should be used to specify the rent that will be payable under the new agreement; and
- Part C could be used to specify that the rent payable for the first 30 days from the commencement of the new agreement will be the same as under the former agreement.

...continued on page three



...continued from page two

Infringement notices

The RT Act imposes serious obligations on people involved in renting residential property. The failure of agents to meet those obligations may result in the Department issuing an infringement notice, or commencing prosecution in Court or disciplinary action in the State Administrative Tribunal.

The penalty for certain offences can be as high as \$5,000. The State Administrative Tribunal also has the power to suspend or cancel a licence or registration.

A list of Infringement Notice offences and the penalties associated are available on the Department's [website](#). Agents should read the list in context with the full provisions of the RT Act and Regulations (available from the [State Law Publisher](#)).

Break lease costs

Whilst the RT Act does not change the tenant's and lessor's obligations in relation to a break lease situation there appears to be some confusion regarding these costs.

The information in a recent [Real Estate News article](#) on break lease costs still applies. There is also information on the Department's website about [additional fees](#).

A monetary figure for break lease fees should not be included in a tenancy agreement as the actual costs need to be determined at the time the lease is terminated.

Allowable and prohibited fees

Section 27(1) limits the amounts a tenant may be charged during a tenancy to only rent and bond (this excludes an option fee that may be payable at the start of a tenancy). No other fees may be charged.

Any term in a lease that requires the payment of an amount in breach of s.27(1) will be void after 1 July 2013. Lessors should review any additional clauses they add to the residential tenancy agreement to make sure they do not breach the amended RT Act.

For example, a residential tenancy agreement which requires a tenant to use a third-party rent collector and to pay any fee the third party charges, breaches s.27(1).

While a property manager may be able to pass some of these fees on to the lessor, they may not charge the tenant.

A tenant who is charged such a fee can recover the cost for up to two years after the payment has been made.

...continued on page 4



...continued from page three

Please note, tenants may continue to pay rent via BPay or Australia Post. Fees incurred by using these methods relate to the service provided (which is not sufficiently related to a residential tenancy agreement unlike third-party rent collectors).

Negotiating a time and day for inspections

Under the amended RT Act, no more than four routine inspections are allowed in any 12-month period. The limit of four inspections in any 12-month period commences on 1 July 2013. Any inspection conducted on or before 30 June 2013 is not included.

Furthermore, routine inspections are no longer allowed when collecting rent.

Re-inspections to check whether cleaning, gardening, or damage caused by tenant has been carried out are not included in the four routine inspections. However, the lessor must give at least 72-hours' written notice prior to entering the property.

Before giving notice of entry, lessors must make a reasonable effort to negotiate with the tenant a suitable time and day to carry out the inspection. Negotiation must occur **before** the notice is sent.

The RT Act does not prescribe how negotiation must occur but emails, SMS and/or telephone may be acceptable. Writing inspection times into a lease or sending out a written notice which ends 'call me if the inspection time is inconvenient' without prior discussion with the tenant does not constitute 'negotiation'.

Lessors must also stipulate on the notice whether the entry will be before or after 12 noon.

A 'reasonable time' is now defined as being:

- between 8.00 a.m. and 6.00 p.m. on a weekday; or
- between 9.00 a.m. and 5.00 p.m. on a Saturday; or
- at any other time agreed.

Tenants are entitled to be present during an inspection and a lessor must offer compensation if they damage the tenant's goods when exercising a right of entry.

Please note, the negotiation requirements apply to all inspections after 1 July 2013.

Bonds

From 1 July 2013, lessors must lodge any security bond received with the Bond Administrator as soon as practicable and within 14 days of receiving it.

...continued on page 5



...continued from page four

Bonds received by lessors before 1 July 2013 that are held in financial institutions or a tenancy bond trust account must be transferred to the Bond Administrator by 1 January 2015.

Receipts for the bond should be issued immediately if paid in person or, if paid electronically, as soon as the payment is seen in the agency's trust account. Please note, payment of rent by Electronic Funds Transfer (EFT) does not require a receipt but payment of a bond by EFT does require a receipt.

From 1 July 2013, if a lessor receives a bond in instalments (eg multiple tenants in a share property paying their portion of the bond at different times), section 29(4)(b) of the RT Act requires any instalment of a security bond to be paid to the Bond Administrator as soon as practicable and, in any event, within 14 days after the receipt of the bond. This includes bond top-ups. More information on bonds and lodging online is available on the Department's [website](#).

Electronic service of notices

It is the Department's view that notices to be issued under the RT Act may be served by email, as long as both parties have previously agreed they will correspond electronically and it is reasonable to expect the information will be accessible and available at a later date.

However, to ensure a notice is being received by the intended recipient and to avoid dispute about whether it is received, it would be wise to serve the notice personally or by mail.

Existing residential tenancy agreements

Please note that some provisions in residential tenancy agreements that existed prior to 1 July 2013 may continue to apply for the life of those agreements (eg contracting out). For more information on how the amendments apply to existing residential tenancy agreements, please see the Department's [Frequently Asked Questions](#).

Tenancy databases

The amended RT Act sets out who, when, and why a person can be listed in a tenancy database and enables disputes about proposed and existing listings to be resolved. Lessors who intend to use a tenancy database must give each applicant a written notice containing certain information.

Lessors must advise tenants in writing if they propose to list them on a tenancy database. Any information recorded on a database must identify the reason for the listing in an accurate, complete and unambiguous way (eg 'eviction order given on grounds of rent arrears, tenant owes \$500 in rent above the bond').

Tenants may request a copy of the personal information on the tenancy database from the person who listed them (free of charge). Tenants may also request the information stored on the database from the operator at their own expense.