



ANNO TRICESIMO

ELIZABETHAE II REGINAE**A.D. 1981**

No. 33 of 1981**An Act to amend the Residential Tenancies Act, 1978.***[Assented to 19 March 1981]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Residential Tenancies Act Amendment Act, 1981".

(2) The Residential Tenancies Act, 1978, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Residential Tenancies Act, 1978-1981".

Commence-
ment.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation made for the purposes of subsection (1), suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Amendment of
s. 5—
Interpretation.

3. Section 5 of the principal Act is amended by inserting in the definition of "residential tenancy agreement" after the passage "residential premises" the passage "or part of residential premises".

Repeal of
s. 6 and
substitution
of new section.

4. Section 6 of the principal Act is repealed and the following section is substituted:

Application
of Act to
the Crown.

6. (1) Subject to subsection (2), this Act binds the Crown.

(2) This Act does not apply to any residential tenancy agreement entered into by the South Australian Housing Trust constituted under the South Australian Housing Trust Act, 1936-1973.

5. Section 7 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsections:

(2a) This Act does not apply to or in relation to any agreement *bona fide* entered into for the purpose of conferring on a person a right to occupy premises for a holiday.

(2b) For the purposes of subsection (2a), an agreement conferring a right to occupy premises for a fixed term of two months or longer, shall be deemed, in the absence of proof to the contrary, not to have been entered into *bona fide* for the purpose of conferring a right to occupy the premises for a holiday.;

and

(b) by striking out paragraph (b) of subsection (3).

6. The following section is inserted after section 7 of the principal Act:

7a. (1) Where a residential tenancy agreement was entered into before the commencement of this Act and continues after the commencement of this section and the tenancy under the agreement is a periodic tenancy, this Act shall, subject to any other provisions of this Act, apply to the agreement on and from the first day after the commencement of this section on which rent is payable under the agreement.

(2) Where this Act has application to a residential tenancy agreement by virtue of subsection (1)—

(a) any proceedings commenced in relation to the agreement before that application may be continued and completed as if this Act had not been enacted;

(b) any notice to quit given in relation to the agreement before that application shall have effect and may be enforced as if this Act had not been enacted;

(c) any process commenced before that application, being a process whereby the rent may be increased under the agreement, may be continued and completed and shall have effect to increase the rent as if this Act had not been enacted, but subject to any order under section 36;

(d) proceedings may be brought subject to and in accordance with this Act in respect of any cause of action that arose before that application, not being a cause of action subject to proceedings at the time of that application;

and

(e) no civil or criminal liability shall be incurred by virtue of that application in respect of any act or omission before that application.

7. Section 11 of the principal Act is amended by inserting in subsection (2) after the word "residential" the word "tenancy".

Amendment of
s. 7—
Application
of Act.

Insertion of
new s. 7a.

Application
of Act to
certain
periodic
tenancies

Amendment of
s. 11—
Powers and
functions of
Commissioner
under this
Act.

Amendment of
s. 14—
Residential
Tenancies
Tribunal.

8. Section 14 of the principal Act is amended by inserting after subsection (2) the following subsections:

(2a) The Governor may appoint a member of the Tribunal who is a legal practitioner to be Chairman of the Tribunal.

(2b) The office of the Chairman of the Tribunal may be held in conjunction with any office in the Public Service of the State.

Amendment of
s. 16—
Registrars.

9. Section 16 of the principal Act is amended by striking out from subsection (1) the passage "legal practitioner to be the registrar and any person to be" and substituting the passage "person to be the registrar or".

Amendment of
s. 17—
Registrar may
exercise
jurisdiction
of Tribunal
in certain
matters.

10. Section 17 of the principal Act is amended by inserting after the passage "directions of" the passage "the Chairman of".

Amendment of
s. 19—
Declared areas.

11. Section 19 of the principal Act is amended—

(a) by striking out from subsection (1) the word "Attorney-General" and substituting the word "Minister";

(b) by striking out from subsection (2) the word "Attorney-General" and substituting the word "Minister";

and

(c) by striking out from subsection (3) the word "Attorney-General" and substituting the word "Minister".

Amendment of
s. 20—
Constitution
and times
and places for
proceedings
of Tribunal.

12. Section 20 of the principal Act is amended—

(a) by striking out from subsection (1) the passage "by one member of the Tribunal" and substituting the passage "by one or more members of the Tribunal at the direction of the Chairman of the Tribunal";

(b) by striking out subsection (4);

and

(c) by striking out from subsection (5) the word "Attorney-General" and substituting the word "Minister".

Amendment of
s. 22—
Powers of
Tribunal.

13. Section 22 of the principal Act is amended—

(a) by inserting in subsection (1) after the passage "residential tenancy agreement" the passage "or a party to an agreement for an option to enter into a residential tenancy agreement";

and

(b) by striking out from subsection (4) the passage "cause a certificate of that order in the prescribed form to" and substituting the passage "issue a certificate of the order in the prescribed form which certificate may".

14. The following section is inserted after section 22 of the principal Act:

Insertion of new s. 22a.

22a. (1) A person who is or was a party to any proceedings before the Tribunal may apply to the Tribunal for an order varying or setting aside an order made in those proceedings.

Application to vary or set aside order.

(2) An application to vary or set aside an order, other than an order under section 91, must be made within three months of the making of the order.

15. Section 23 of the principal Act is amended by inserting in paragraph (c) of subsection (1) after the word "fee" the passage "if any".

Amendment of s. 23—
Application to Tribunal.

16. Section 30 of the principal Act is repealed and the following section is substituted:

Repeal of s. 30 and substitution of new section.

30. (1) Subject to subsection (2), a person shall not require or receive from a tenant or prospective tenant any monetary consideration for or in relation to entering into, renewing, extending or continuing a residential tenancy agreement other than rent and a security bond.
Penalty: Two hundred dollars.

Consideration for tenancy agreement to be rent and security bond only.

(2) Subsection (1) does not apply to—

(a) any amount required or received as consideration for an option to enter into a residential tenancy agreement if, upon the option being exercised, the amount is refunded or applied towards the rent payable under the agreement;

(b) any amount that the landlord is authorized by any other provision of this Act to require or receive;

or

(c) any payment of a prescribed class.

17. Section 31 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

Amendment of s. 31—
Rent in advance.

(2) A person shall not require any payment of rent (other than the first payment) under a residential tenancy agreement until the period of the tenancy in respect of which any previous payment has been made has elapsed.

Penalty: Two hundred dollars.

18. Section 32 of the principal Act is amended—

Amendment of s. 32—
Security bond.

(a) by striking out from paragraph (b) of subsection (1) the word "three" and substituting the word "four";

and

(b) by inserting after subsection (1) the following subsections:

(1a) Subsection (1) (b) does not apply in relation to a residential tenancy agreement where the weekly rate of rent payable under the agreement exceeds the prescribed amount.

(1b) Where, during the period of six months after the day on which the tenancy under a residential tenancy agreement commenced, the rent payable under the agreement decreases or is decreased, the amount paid in excess of the lower or, as the case may be, lowest rate of rent payable under the agreement during that period shall be deemed to have been paid as a security bond.

Amendment of
s. 33—
Payment of
security bonds
by Tribunal to
landlord or
tenant.

19. Section 33 of the principal Act is amended—

- (a) by striking out from subsection (3) the passage “subsection (4) of”;
- (b) by inserting after subsection (3) the following subsections:

(3a) Where a person makes an application under subsection (3), the provisions of section 23 (2) shall not apply but the Tribunal shall give to the other party to the residential tenancy agreement notice in writing of the application inviting him to indicate by notice in writing in the prescribed form lodged with the Tribunal within ten days after service of the Tribunal’s notice whether he intends to dispute the application.

(3b) Notwithstanding any other provisions of this Act, where—

- (a) a person makes an application under subsection (3) and notice has been given to the other party in accordance with subsection (3a);

and

- (b) that other party does not within ten days after service of that notice lodge with the Tribunal a notice in writing in the prescribed form indicating that he intends to dispute the application,

the Tribunal may, without conducting a formal hearing, order payment in accordance with the application.

(3c) If the other party indicates in the manner referred to in subsection (3b) that he intends to dispute the application, section 23 (2) and the other provisions of this Act relating to proceedings of the Tribunal shall thereupon apply in relation to the application.

Amendment of
s. 34—
Variation of
rent.

20. Section 34 of the principal Act is amended by inserting after subsection (2) the following subsection:

(2a) Notwithstanding the provisions of this section, where—

- (a) the maximum rent payable in respect of premises subject to a residential tenancy agreement is fixed by a notice under Part VII of the Housing Improvement Act, 1940-1978;
- and

(b) that notice is revoked pursuant to the provisions of that Act, the rent payable by the tenant in respect of the premises may be increased by the landlord by notice in writing to the tenant specifying the amount

of the increased rent and the day as from which the increased rent becomes payable, if—

(c) the notice is given not more than sixty days after the day on which the notice referred to in paragraph (a) was so revoked;

and

(d) the day specified in the notice is not less than fourteen days after the day on which the notice is given.

21. Section 35 of the principal Act is amended by striking out from subsection (2) the word “three” and substituting the word “four”.

Amendment of
s. 35—
Increase in
security bond.

22. Section 37 of the principal Act is amended by inserting after subsection (1) the following subsection:

Amendment of
s. 37—
Duty to give
receipt for
rent.

(1a) Subsection (1) does not apply in relation to rent paid pursuant to an agreement between the landlord and tenant into an account at a bank, building society or other similar body nominated by the landlord.

23. Section 39 of the principal Act is repealed and the following section is substituted:

Repeal of
s. 39 and
substitution
of new section.

39. No person shall require a post-dated cheque or other negotiable instrument that is post-dated in payment of rent under a residential tenancy agreement.

Payment of
rent by
post-dated
cheques, etc.,
prohibited.

Penalty: Two hundred dollars.

24. Section 48 of the principal Act is amended by inserting after subsection (2) the following subsections:

Amendment of
s. 48—
Locks.

(3) Where an agent of a landlord, without reasonable excuse, alters, removes or adds a lock or device without the consent of the tenant given at, or immediately before, the time that the alteration, removal or addition is carried out, the agent shall, in addition to any civil liability that he might incur by so doing, be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(4) The liability of an agent under subsection (3) shall be in addition to any liability of the landlord in respect of the actions of the agent.

25. Section 50 of the principal Act is amended by inserting before paragraph (a) the following paragraphs:

Amendment of
s. 50—
Right of tenant
to affix and
remove
fixtures,
etc.

(aa) that the tenant shall not, without the landlord's written consent, affix any fixture or make any renovation, alteration or addition to the premises, unless the agreement so provides;

(aab) that the landlord shall not unreasonably withhold his consent;

26. Section 52 of the principal Act is amended by striking out subsection (2).

Amendment of
s. 52—
Right of
tenant to
assign or
sub-let.

Amendment of
s. 56—
Landlord or
agent to
deliver copy
of written
residential
tenancy
agreement to
tenant.

27. Section 56 of the principal Act is amended—

- (a) by inserting in subsection (1) after the word “landlord” the passage “or agent of a landlord”;
- and
- (b) by inserting in subsection (2) after the word “landlord”, twice occurring, in each case, the passage “or agent of a landlord”.

Amendment of
s. 58—
Discrimination
against
tenants
with children.

28. Section 58 of the principal Act is amended by striking out subsections (3) and (4).

Amendment of
s. 59—
Accelerated
rent and
liquidated
damages
prohibited.

29. Section 59 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

- (2) Where a residential tenancy agreement provides that, if the tenant does not breach the agreement to pay rent or any other term of the residential tenancy agreement or any provision of this Act or any other Act, the rent shall or may be decreased or the tenant shall or may be granted or paid a rebate, refund or other benefit, the residential tenancy agreement shall be deemed to have been varied from the commencement of the tenancy so that the tenant is entitled to the reduction, rebate, refund or other benefit in any event and the landlord shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

Amendment of
s. 61—
Termination
of residential
tenancy
agreements.

30. Section 61 of the principal Act is amended by inserting after paragraph (a) of subsection (1) the following paragraph:

- (ab) in relation to a tenancy for a fixed term, where the term expires and—
 - (i) the tenant delivers up vacant possession of the premises on or after the expiration of the term;
 - or
 - (ii) the Tribunal, upon application by the landlord, terminates the agreement under section 73a;.

Amendment of
s. 64—
Notice of
termination
by landlord
upon ground
that
possession
required for
certain
purposes.

31. Section 64 of the principal Act is amended—

- (a) by inserting after paragraph (c) of subsection (1) the following paragraph:
 - (ca) that he has entered into a contract for sale of the premises under which he is required to give vacant possession of the premises;;
- (b) by striking out subsection (3);
- (c) by inserting in subsection (4) after the word “landlord” the passage “or agent of a landlord”;
- and

(d) by inserting after subsection (6) the following subsection:

(7) This section does not apply in relation to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of that term.

32. Section 65 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) This section does not apply in relation to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of that term.

Amendment of s. 65—
Notice of termination by landlord without any ground.

33. Section 70 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) This section does not apply in relation to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of that term.

Amendment of s. 70—
Notice of termination by tenant.

34. The following section is inserted after section 72 of the principal Act:

72a. The landlord under a residential tenancy agreement that creates a tenancy for a fixed term of less than one hundred and twenty days shall, within fourteen days after entering into the agreement, notify the registrar of the Tribunal, or cause the registrar to be notified, in writing of—

Insertion of new s. 72a.

Duty of landlords to notify registrar of short fixed term tenancies.

(a) the names and addresses of the parties to the agreement;

(b) the address of the premises subject to the agreement;

and

(c) the first and last days of the term of the tenancy.

Penalty: Two hundred dollars.

35. The following section is inserted after section 73 of the principal Act:

73a. (1) Where a residential tenancy agreement creates a tenancy for a fixed term and the tenant fails to deliver up possession of the premises or or after the expiration of the term, the landlord may, within thirty days after the expiration of the term, apply to the Tribunal for an order terminating the agreement and an order for possession of the premises.

Insertion of new s. 73a.

Application to Tribunal for termination and order for possession in relation to fixed term agreements.

(2) Subject to this section, the Tribunal shall, upon application under this section, make an order terminating the agreement and an order for possession of the premises.

(3) Notwithstanding the provisions of subsection (2), except where the premises the subject of the agreement are the principal place of residence of the landlord, the Tribunal—

(a) may suspend the operation of orders under that subsection for a period not exceeding ninety days, if it is satisfied that it is desirable to do so having regard to the relative hardship that would be caused—

(i) to the landlord by suspending the orders;

or

(ii) to the tenant by not suspending the orders;

and

(b) shall refuse to make the orders under that subsection where the term of the tenancy under the agreement is less than one hundred and twenty days unless it is satisfied—

(i) that the landlord genuinely proposed, at the time that he entered into the agreement, to use the premises after the expiration of the term for purposes inconsistent with the tenant continuing to occupy the premises;

or

(ii) that the tenant of his own initiative sought a tenancy of a term of less than one hundred and twenty days.

(4) Subject to subsection (3) (a), where the Tribunal terminates an agreement and makes an order for possession of the premises under this section, the Tribunal shall specify the day as from which the orders shall operate, being not more than seven days after the day on which the orders are made.

(5) The Limitation of Actions Act, 1936-1975, does not apply to or in relation to an application under this section.

Insertion of
new s. 79a.

Abandoned
goods.

36. The following section is inserted after section 79 of the principal Act:

79a. (1) Where a residential tenancy agreement is terminated and goods are left on the premises that were subject to the agreement, the former landlord may, after the expiration of two days from the termination of the agreement, remove and destroy or dispose of the goods if—

(a) the goods are perishable foodstuffs;

or

(b) the value of the goods is less than the total estimated cost of the removal, storage and sale of the goods.

(2) Where a residential tenancy agreement is terminated and goods are left on the premises that were subject to the agreement and have not been removed for destruction or disposal under subsection (1), the former landlord shall store them in a safe place and manner for a period of not less than sixty days.

(3) A former landlord shall before the expiration of seven days after he has stored goods under subsection (2)—

(a) where the former tenant has informed him of his forwarding address—send a notice to the tenant at that address in or to the effect of the form prescribed for the purposes of this paragraph;

and

- (b) cause a notice in or to the effect of the form prescribed for the purposes of this paragraph to be inserted in a newspaper circulating generally throughout the State.

(4) At the request of a former landlord, the Commissioner may state in writing whether or not in his opinion there are reasonable grounds for believing that subsection (1) applies in respect of particular goods.

(5) Where a former landlord has been found liable to the owner of goods in respect of the removal, destruction or disposal of the goods, being goods that were left on premises that were subject to a former residential tenancy agreement, and it is proved that he removed and destroyed or disposed of the goods in reliance upon a statement of the Commissioner under subsection (4), the former landlord shall be entitled to be paid from the Fund an amount equal to the amount in respect of which he has been found liable.

(6) Where—

- (a) a residential tenancy agreement has been terminated;
- (b) goods have been left on the premises that were subject to the agreement;
- (c) at the request of the former landlord, the Commissioner has made a statement in writing that in his opinion there are reasonable grounds for believing that subsection (1) does not apply to the goods;

and

- (d) the total cost of removing, storing and selling the goods does in fact exceed the value of the goods,

the Tribunal may on application by the former landlord make an order for the payment to him out of the Fund of an amount equal to the difference between the value of the goods and the reasonable cost of removal, storage and sale.

(7) A person who has a lawful right to goods removed and stored under subsection (2) may at any time before the goods are sold under subsection (8) reclaim the goods upon paying to the former landlord the reasonable costs of the removal and storage of the goods.

(8) Where goods are stored under subsection (2) and have not been reclaimed within sixty days after the day on which they were removed and stored, the landlord shall as soon as practicable after the expiration of that period cause them to be sold by public auction.

(9) If goods are stored, removed and sold by public auction under this section, the landlord is entitled to retain out of the proceeds of the sale the reasonable costs of removing, storing and selling the goods.

(10) Where goods have been sold under this section by a former landlord, the former landlord may, upon application containing the prescribed information, pay to the Tribunal an amount that the Tribunal is satisfied represents the balance of the proceeds of the sale after deduction of any amount to which the former landlord is entitled under subsection (9) and any amount which he is owed under the former residential tenancy agreement, and, where such payment is made, the receipt of the Tribunal for the moneys paid shall be a sufficient discharge to the former landlord of his liability in respect of the moneys.

(11) Any moneys paid to the Tribunal under subsection (10) shall be paid into the Fund.

(12) Where any application is made to the Tribunal by any person claiming any amount paid into the Fund under this section, the Tribunal may, upon being satisfied that the person is entitled to the amount, order that the amount be paid to him.

(13) Where goods are sold by public auction under this section, the purchaser shall, unless he has actual notice of any interest in the goods of any person other than the former tenant, acquire a good title to the goods in defeasance of any such interest.

(14) A former landlord shall not incur any liability—

(a) in respect of the removal, destruction or disposal of goods under subsection (1);

or

(b) in respect of the removal, storage or sale under this section of goods to which subsection (1) does not apply, except liability for intentional or negligent damage to the goods or where he has actual notice of any interest in the goods of any person other than the former tenant and fails to take all reasonable steps to notify that person of the whereabouts of the goods and afford that person a reasonable opportunity to reclaim the goods.

(15) Where a dispute arises between a former landlord and a former tenant in respect of goods to which this section applies, the Tribunal may, upon application by such person, order the payment of any amount or make such other order as the Tribunal considers appropriate in the circumstances.

Amendment of
s. 80—
Recovery of
premises by
peaceable
entry
prohibited.

37. Section 80 of the principal Act is amended by striking out the passage “order of a court of” and substituting the passage “order of a court or”.

Amendment of
s. 82—
Bailiffs.

38. Section 82 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) A bailiff of the Tribunal shall be entitled to receive such remuneration and expenses as the Minister may determine.

Amendment of
s. 84—
Residential
Tenancies
Fund.

39. Section 84 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The fund entitled the “Residential Tenancies Fund” shall be kept and administered by the Commissioner.

Amendment of
s. 86—
Application of
income derived
from investment
of Fund.

40. Section 86 of the principal Act is amended—

(a) by inserting before paragraph (a) the following paragraph:

(aa) in making any payment required to be made from the Fund under section 79a;;

and

- (b) by striking out from paragraph (c) the passage "the Fund" and substituting the passage "this Act".

41. Section 87 of the principal Act is amended by striking out from subsection (1) the passage "registrar of the Tribunal" and substituting the word "Commissioner".

Amendment of
s. 87—
Accounts.

42. Section 88 of the principal Act is amended—

Amendment of
s. 88—
Annual report.

- (a) by striking out from subsection (1) the passage "registrar of the Tribunal" and substituting the word "Commissioner";

and

- (b) by striking out from subsection (2) the word "registrar" and substituting the word "Commissioner".

43. Section 93 of the principal Act is amended by inserting in subsection (4) after the passage "agent of the landlord" the passage ", to any person apparently over the age of sixteen years apparently residing at the place of residence of the landlord".

Amendment of
s. 93—
Service.

44. Section 94 of the principal Act is amended by inserting after its present contents (now to be designated subsection (1)) the following subsection:

Amendment of
s. 94—
Summary
proceedings.

- (2) Proceedings in respect of an offence against this Act may be commenced at any time within two years of the day on which the offence is alleged to have been committed.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor