

# Residential Tenancies Bill

## NOTES ON CLAUSES

*Clause 1* contains the short title, provides for the Act to come into operation on a proclaimed day or proclaimed days, and contains the division of the Bill into Parts and Divisions.

*Clause 2* contains the interpretation provisions.

*Clause 3* provides a definition of notice of termination which includes notices given by the landlord or by the tenant.

*Clause 4* applies the provisions of the Bill to assignees and transferees of the landlord or the tenant.

*Clause 5* makes provision for the alteration by regulation of the present monetary limit of \$1500 which defines the jurisdiction of the Tribunal in disputes under the Act.

*Clause 6* provides that the Act applies to tenancy agreements entered into on or after the commencement of the provision and contains details of the types of tenancy agreement that are exempt from the provisions of the Act.

*Clause 7* contains power for the Tribunal to exempt other tenancy agreements from the operation of the Act.

*Clause 8* makes provision for the exemption of certain agreements from the *Landlord and Tenant Act* 1958 when those agreements become subject to the Residential Tenancies Act.

*Clause 9* provides that certain provisions of the *Landlord and Tenant Act* 1958 and of the *Property Law Act* 1958 do not apply to tenancy agreements under the Act.

*Clause 10* provides that the Act binds the Crown.

*Part II* contains the administration provisions relating to the Director of Consumer Affairs, the Tribunal and the Fund.

*Clause 11* sets out the functions and powers of the Director of Consumer Affairs under this Act.

*Clause 12* permits the Director to delegate his powers and functions under this Act.

*Clause 13* requires the Director to include in his annual report a review of the administration and operation of the Residential Tenancies Act.

*Clause 14* establishes the Residential Tenancies Tribunal consisting of a chairman and such other members as are appointed by the Governor in Council. Members of the Tribunal may be appointed with limited or unlimited powers.

*Clause 15* provides for terms and conditions of appointment.

*Clause 16* provides for the remuneration of the Chairman and other members of the Tribunal.

*Clause 17* provides that the Tribunal may hear and determine any matter arising in relation to a tenancy agreement of premises in Victoria.

*Clause 18* prevents the Tribunal hearing and determining applications involving an amount exceeding \$1500.

*Clause 19* provides that the Tribunal is constituted by one member when hearing and determining a matter.

*Clause 20* provides for the validity of acts or decisions of the Tribunal.

*Clause 21* enables the Chairman of the Tribunal to determine places at which the Tribunal is to sit, subject to such provision as may be made in the regulations.

*Clause 22* enables the Chairman to give directions as to the arrangement of business.

*Clause 23* makes general provision for applications to the Tribunal.

*Clause 24* makes general provision for determinations by the Tribunal.

*Clause 25* requires the Tribunal in appropriate circumstances to take steps to achieve settlements of disputes.

*Clause 26* makes provision for the manner of application to the Tribunal.

*Clause 27* requires certain applications to be referred to the Director for investigation and report.

*Clause 28* makes provision for amendment of applications.

*Clause 29* makes provision for withdrawal of applications.

*Clause 30* makes provision for the procedure of the Tribunal.

*Clause 31* relates to reports to the Tribunal by the Director or the Valuer-General.

*Clause 32* permits evidence to be given to the Tribunal on oath but enables the Tribunal to inform itself on any matter in such manner as it thinks fit.

*Clause 33* requires the hearing of proceedings to be held in public unless the Tribunal otherwise directs.

*Clause 34* enables the Tribunal to dismiss applications that have no substance.

*Clause 35* permits applications to be dismissed if the applicant fails to attend the hearing and enables the Tribunal to hear an application in the absence of a party in certain circumstances.

*Clause 36* requires the Tribunal to refer questions of law arising before it to the Supreme Court where the applicant or the party so requests and permits the Tribunal so to do on its own initiative.

*Clause 37* requires the Tribunal to state reasons for determinations.

*Clause 38* requires determinations to be in writing, which is to be conclusive evidence of the determination.

*Clause 39* requires copies of determinations to be given to absent parties.

*Clause 40* permits the Tribunal to review, rescind or vary determinations in appropriate cases.

*Clause 41* makes provision for the enforcement of determinations through the Magistrates' Court.

*Clause 42* provides that determinations of the Tribunal are not justiciable, and makes provision for procedure where an issue is brought both before a court and before the Tribunal.

*Clause 43* restricts the application of the *Administrative Law Act 1978* for review of determinations of the Tribunal.

*Clause 44* provides that a party to proceedings is to conduct his case in person except in certain circumstances where he may be represented.

*Clause 45* provides for orders for payment of costs in certain circumstances.

*Clause 46* makes it an offence to be in contempt of the Tribunal.

*Clause 47* makes provision for the appointment of Registrar and Assistant Registrar of the Tribunal.

*Clause 48* enables the Registrar to delegate powers and functions to Assistant Registrars.

*Clause 49* requires a Residential Tenancies Fund to be kept.

*Clause 50* makes provision for the payment of moneys into the Fund.

*Clause 51* makes provision for the payment of moneys out of the Fund.

*Clause 52* makes provision for the investment of moneys in the Fund.

*Clause 53* requires a Rent Special Account to be established into which is to be paid certain rents on an order of the Tribunal.

*Clause 54* enables loans to be made from the Fund to tenants for the payment of security deposits or first payment of rents or to landlords for urgent repairs.

*Part III.* contains provisions relating to rents, security deposits and other charges under tenancy agreements.

*Clause 55* prohibits the demanding or receiving from tenants of amounts under tenancy agreements other than rent or other amounts for which provision is made by the Act.

*Clause 56* provides that for the purposes of the Act rent is deemed to accrue from day to day.

*Clause 57* prevents rent being paid more than one month in advance where it is paid at a rate not exceeding \$100 per week (or any greater prescribed amount).

*Clause 58* prohibits the demanding or requiring of rent more than two weeks in advance under weekly tenancies.

*Clause 59* permits the landlord to keep any rent paid in advance by a tenant who has abandoned the premises.

*Clause 60* requires rent to be paid at the agreed place or at the rented premises.

*Clause 61* requires a landlord or person on his behalf who receives rent to give a receipt.

*Clause 62* prohibits a review or increase of rent at intervals of less than six months and requires at least 30 days' notice of increase of rent.

*Clause 63* enables a tenant to request an investigation on whether or not rent or an increase of rent is excessive.

*Clause 64* permits application to the Tribunal for an order declaring rent excessive and provides that where such an order is made, it remains in force for twelve months, fixing the rent at a figure determined in the order.

*Clause 65* provides for the approval of banks or other financial institutions as approved institutions for the holding of security deposits.

*Clause 66* provides that a landlord holds a security deposit upon trust for the tenant, subject to the Act.

*Clause 67* requires a landlord to pay a security deposit into an approved trust account at an approved institution.

*Clause 68* provides that approved trust accounts are accounts in respect of which there is an arrangement for the payment of interest to the Treasurer, being interest that is paid into the Residential Tenancies Fund.

*Clause 69* requires a landlord who assigns his interest in rented premises to transfer any security deposit held by him to his assignee.

*Clause 70* limits the amount of security deposits that may be demanded or received in respect of tenancy agreements where the weekly rent is not more than \$100.

*Clause 71* permits a landlord to require a security deposit exceeding the limits set out in clause 70 where the Director or the Tribunal has so determined.

*Clause 72* prohibits more than one security deposit where a tenant continues in occupation of premises under more than one tenancy agreement.

*Clause 73* requires the landlord to prepare a report as to the repair and general condition of the premises where security deposits are taken.

*Clause 74* prohibits a landlord requiring a guarantee as well as a security deposit in relation to certain tenancy agreements.

*Clause 75* restricts the amount of guarantees (where no security deposit is taken) in relation to certain tenancy agreements.

*Clause 76* requires a receipt to be given for security deposits.

*Clause 77* makes provision for the payment of the security deposit to the landlord or the tenant during or upon termination of the tenancy agreement.

*Clause 78* provides that the security deposit, if unclaimed, is to be dealt with as unclaimed moneys.

*Clause 79* prohibits a tenant refusing to pay rent on the grounds that there is a security deposit.

*Clause 80* provides for the refund of application deposits.

*Clause 81* prohibits the payment of holding deposits and certain other charges in relation to tenancy agreements.

*Clause 82* provides that the tenant is liable for charges for electricity, gas and oil and for any excess water charges.

*Clause 83* requires the costs of a tenancy agreement to be paid by the party that incurred the costs.

*Clause 84* requires the landlord to indemnify the tenant in respect of rates and taxes unless the tenancy agreement is a fixed term tenancy agreement for more than one year.

*Part IV* contains provisions relating to the rights and duties of landlords and tenants in relation to tenancy agreements.

*Clause 85* requires the landlord to give the tenant certain documents, including a copy of any written tenancy agreement and advice as to the rights and obligations of landlords and tenants under tenancy agreements.

*Clause 86* prohibits a person refusing to let certain classes of premises on the ground that the tenant intends to live on the premises with a child.

*Clause 87* requires a tenant to give notice to the landlord of any damage to the premises.

*Clause 88* contains a provision relating to a statement of the state of repair and general condition of the premises.

*Clause 89* restricts the exercise of rights for breach of duty to repair premises and gives the other party a right to remedy the breach.

*Clause 90* makes further provision for the remedying of breaches of tenancy agreements.

*Clause 91* requires a landlord to ensure that premises are vacant and in a reasonably clean condition at the commencement of the tenancy agreement.

*Clause 92* requires a landlord to ensure that the tenant has quiet enjoyment of the premises.

*Clause 93* prohibits a tenant using rented premises for illegal purposes or in a manner that causes a nuisance.

*Clause 94* requires a landlord to provide locks and requires parties who change locks to give a key to the other party.

*Clause 95* contains provisions for right of entry by landlords.

*Clause 96* enables the Tribunal to make an order for compensation for damage caused by entry or an order restricting the right of entry.

*Clause 97* requires a landlord to ensure that rented premises are maintained in good repair.

*Clause 98* provides that for the purposes of the Act the landlord is not in breach of duty under clause 97 while there is a declaration or direction in force under the *Housing Act 1958* or the *Health Act 1958*.

*Clause 99* enables a tenant to carry out urgent repairs where the landlord is unavailable and to recover the cost up to \$200 from the landlord.

*Clause 100* contains provisions relating to other repairs including provision for the Director to assist in negotiating the carrying out of repairs by the landlord.

*Clause 101* enables the Tribunal to make an order authorizing the tenant to pay rent into the Rent Special Account where the landlord has not carried out repairs.

*Clause 102* requires the tenant to keep rented premises in a reasonably clean condition and to ensure that care is taken to avoid damaging the premises.

*Clause 103* enables the landlord to require the tenant to make good damage caused by the tenant through his failure to comply with his obligations.

*Clause 104* requires the tenant to obtain the landlord's consent before he installs fixtures or makes any renovation, alteration or addition to the premises.

*Clause 105* contains provisions enabling parties to tenancy agreements to claim compensation by order of the Tribunal where there has been a breach of obligations under the tenancy agreement.

*Clause 106* prohibits the claiming of compensation unless notice of the breach of obligation has been given to the other party.

*Clause 107* prohibits a claim for compensation by reason of a failure to pay rent unless the rent has been unpaid for at least fourteen days.

*Clause 108* prohibits an assignment or sub-letting of premises without the consent of the landlord.

*Part V.* contains provisions dealing with the termination of tenancy agreements.

*Clause 109* specifies the circumstances under which a tenancy agreement terminates or is terminated.

*Clause 110* contains provisions enabling a head lessor or reversioner to terminate a tenancy agreement of premises in the same manner as the landlord may terminate the agreement.

*Clause 111* makes provision for a declaration by the Tribunal that premises have been abandoned.

*Clause 112* provides that a periodic tenancy arises where the term of a fixed term tenancy agreement has expired but the tenant continues in occupation.

*Clause 113* enables the Tribunal to order that the term of a fixed term tenancy agreement is reduced where it is satisfied that hardship would otherwise arise.

*Clause 114* enables the tenant to give notice of intention to vacate rented premises and unless the premises are destroyed or unfit for habitation the tenant is required to give 28 days' notice of a termination date.

*Clause 115* enables a landlord to give immediate notice to vacate rented premises where malicious or serious damage has been caused by the tenant, the premises are destroyed, or unfit for habitation.

*Clause 116* enables the landlord to give fourteen days' notice to vacate in certain circumstances where rent is unpaid or certain obligations have not been fulfilled and in certain other circumstances.

*Clause 117* enables the landlord to give fourteen days' notice to vacate terminating a fixed term tenancy agreement either at the end of the term or after its expiration where the premises were the landlord's principal place of residence.

*Clause 118* enables the landlord to give 60 days' notice to vacate premises where they are to be demolished, altered, sold or used for a different purpose in certain circumstances.

*Clause 119* enables the landlord to give four months' notice to vacate without specifying any grounds.

*Clause 120* prohibits the landlord giving a four months' notice to vacate where a rent fixing order is in force.

*Clause 121* provides that a person is not entitled to give a notice of termination on the grounds of a breach unless a notice of the breach has first been given and the breach has not been remedied or compensation paid as provided in the clause.

*Clause 122* provides that a notice of termination ceases to have effect where the breach is remedied or compensation is made.

*Clause 123* requires a notice of termination to be in writing signed by the person giving it or by his agent.

*Clause 124* contains provisions relating to the giving of notices of termination.

*Clause 125* provides that the invalidity of a notice of termination does not effect the validity of another notice.

*Clause 126* provides for the withdrawal of a notice of termination by agreement.

*Clause 127* provides for an application to the Tribunal for an order for possession of rented premises where a notice to vacate the premises is given.

*Clause 128* contains provisions relating to the documents required to accompany an application to the Tribunal for an order for possession.

*Clause 129* prevents the Tribunal determining an application for possession before the termination date specified in the notice to vacate the premises.

*Clause 130* provides for the making of an order for possession.

*Clause 131* makes provision for an application to the Tribunal by a person who claims to be entitled to possession of the premises for an order for possession of those premises. An application under this clause may be made where the applicant alleges that persons are in possession of the premises without his licence or consent.

*Clause 132* relates to the issue of warrants of possession in relation to orders for possession.

*Clause 133* provides that an order for possession is discharged if a warrant of possession is not issued within six months.

*Clause 134* relates to the execution of a warrant of possession.

*Clause 135* contains provisions enabling persons who have been residing on rented premises with a tenant who has abandoned the premises to apply for a tenancy agreement where an application is made by the landlord for an order for possession.

*Clause 136* contains provisions relating to the removal and disposal of abandoned goods on rented premises.

*Clause 137* relates to the sale of abandoned goods and permits the landlord to retain out of the proceeds of sale the reasonable costs incurred by him if the sale is made within eight weeks.

*Part VI* contains enforcement and miscellaneous provisions.

*Clause 138* protects the Director and his delegates in the performance of functions and the exercise of powers under the Act.

*Clause 139* contains certain secrecy provisions relating to the Tribunal and persons administering the Act.

*Clause 140* permits inspection of the register kept by the Registrar.

*Clause 141* provides that documents sent by post are deemed to have been given at the time of ordinary delivery.

*Clause 142* places the onus of proof that the Act does not apply on the person so claiming.

*Clause 143* makes void a provision in a tenancy agreement excluding, restricting or modifying the provisions of the Act.

*Clause 144* contains provisions for the institution of proceedings.

*Clause 145* requires a stipendiary magistrate alone to hear proceedings for an offence that are brought in a Magistrates' Court.

*Clause 146* contains provisions for liability of officers of companies.

*Clause 147* creates an offence for failing to comply with a determination of the Tribunal.

*Clause 148* contains an offence for obtaining or attempting to obtain possession of premises in certain circumstances.

*Clause 149* contains a penalty for making false representations in relation to tenancy agreements.

*Clause 150* contains provisions relating to the jurisdiction of the Supreme Court under the Act and includes a right to apply to the Supreme Court where a claim exceeds the limit of the Tribunal's jurisdiction.

*Clause 151* relates to the jurisdiction of the County Court and Magistrates' Court, those courts having jurisdiction where the amount of the claim exceeds the jurisdiction of the Tribunal.

*Clause 152* contains a regulation-making power.

*Part VII.* contains amendments to certain Acts and transitional provisions.

*Clause 153* relates to the transfer of staff administering Part V. of the *Landlord and Tenant Act 1958*.

*Clause 154* amends the *Landlord and Tenant Act 1958* in relation to prescribed premises.

*Clause 155* amends the *Landlord and Tenant Act 1958* and provides that the Tribunal is the successor of the Fair Rents Board.

*Clause 156* amends the *Landlord and Tenant Act 1958* in relation to rent increases.

*Clause 157* further amends the *Landlord and Tenant Act 1958* in relation to prescribed premises.

*Clause 158* provides that Part V. of the *Landlord and Tenant Act 1958* is repealed on the second anniversary of the commencement of the relevant provisions of this Bill.

*Clause 159* contains transitional provisions consequent upon the amendment of the *Landlord and Tenant Act 1958*.

*Clause 160* includes the *Residential Tenancies Act 1979* in the Schedule of Acts administered by the Ministry of Consumer Affairs.