ACT Government

THE RENTING BOOK

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Contents

WELCOME TO THE RENTING BOOK

WHAT IS THE RENTING BOOK?

The Renting Book is a guide to rental laws in the ACT. It is primarily written for tenants, to explain their legal rights and responsibilities. It may also help landlords and real estate agents to make sure that properties are managed in accordance with the law.

Rental laws in the ACT are set out in the *Residential Tenancies Act 1997* (**the Act**) and the *Residential Tenancies Regulation 1998* (**the Regulation**). The Act applies to properties rented from private landlords (whether or not through a real estate agent) as well as to public housing rented from the Government and other forms of social and affordable housing provided by community housing providers. The Act aims to ensure that (among other things) people renting in the ACT have stable and secure housing and are protected from unfair practices.

The Act requires landlords to provide a copy of this Renting Book to tenants (or tell their tenant where it can be obtained) before the tenancy starts.

The Renting Book covers the main issues that may arise before, during and after a tenancy. **It is a guide only. It does not cover every aspect of the Act or every situation.** The Act is also amended from time to time. You should always read your tenancy agreement closely, check the Act and seek legal advice if you are unsure about your rights or obligations.

IS THIS BOOK FOR YOU?

The guidance in the Renting Book applies where a property (or a room in a property) is rented under a residential tenancy agreement (often referred to as a lease). If you are paying rent for your home, you will usually have a residential tenancy agreement, but there are a few exceptions.

This information is not for occupants

Agreements to live in a caravan or mobile home in a mobile home park, student accommodation on a university campus or other educational institution, crisis accommodation, agreements to occupy a premises because of a membership in a club or other entity, accommodation in a boarding house, will usually be **occupancy agreements**. The law that applies to occupancy agreements is different and so the guidance in this Renting Book will not apply.

If you have an occupancy agreement (or if you are unsure what type of agreement you have), you can contact these services for **free and confidential advice**:

- the Tenancy Advice Service ACT on **1300 402 512** or TAS@legalaidact.org.au, or
- Canberra Community Law on **(02) 6218 7900** or info@canberracommunitylaw.org.au Canberra Community Law can provide advice to occupants in crisis accommodation, residential parks (long-stay caravan parks) or social housing (including social housing provided by community housing providers).

The Act (and this Renting Book) also does not apply to retirement villages, most university student accommodation, aged care accommodation, or short-term holiday accommodation (e.g. through platforms like AirBnB).

If you wish to seek advice in relation to these other types of accommodation, you can contact the Legal Aid general helpline on **1300 654 314** or visit https://www.legalaidact.org.au/what-we-do/legal-aid-helpline.

IMPORTANT NOTE ABOUT PUBLIC HOUSING TENANCIES

The ACT Government, through Housing ACT, provides public housing to those in greatest need, including people who are experiencing homelessness, escaping domestic and family violence, in unhealthy and inappropriate living conditions, and where housing costs are unaffordable.

The guidance in the Renting Book applies to public housing tenancies. However, there are some additional rules around the way public housing tenancies may be ended, that are **not** covered in this Book.

Occasionally there are reasons Housing ACT might need to end a tenancy agreement with a public housing tenant. Usually this is to facilitate an existing tenant to move from one public housing dwelling to another. However, it may also include ending the tenancy of a tenant who is no longer eligible for public housing. The waiting list for public housing is long. Housing ACT needs to be able to end tenancies in some circumstances, to make sure the public housing program operates effectively and public housing properties are made available to those most in need.

ACT tenancy laws changed on 1 April 2023. In particular, 'no cause' evictions were removed from tenancy law. Limited new grounds to end public housing tenancies were introduced, to facilitate the effective management of the public housing program. The Renting Book **does not** cover these new grounds. Further guidance will be made publicly available in this renting book soon. In the interim, if you are a tenant in public housing and you receive a notice to vacate you may wish to seek legal advice.

ESSENTIALS FOR TENANTS

- Read your residential tenancy agreement and check what terms it contains before you sign it. Check that it contains the standard residential tenancy terms and whether it contains any additional terms.
- Do not sign anything unless you understand what it means. Never sign a blank form even if it looks official. Keep a copy of everything you sign.
- Read the condition report for the property and make sure you sign it and send it back. If you don't do this, you will be taken to accept it. You have the right to disagree with it and add your comments to the report. Consider taking photos of the property on, or soon after, the day you move in as evidence of its condition. You may wish to send your photos to your landlord along with the completed condition report.
- Put all requests to your agent or landlord in writing. If important matters are discussed or agreed in a conversation, follow up with an email to confirm your understanding of the conversation. Having a written record will help if there is a dispute at a later stage.
- Let your landlord or agent know as soon as possible of any repairs that need to be done.
- If you are in a share house, get written permission from your landlord and fellow co-tenant(s) if you want to move out or have a new housemate move in as a co-tenant.
- Get written permission from your landlord if you want to sublet the property to someone else. You are not allowed to have new people (other than a domestic partner, children or short-term, non-paying guests) living in the property without the landlord's consent.
- Make sure you pay your rent on time. You are not allowed to withhold rent during a dispute with your landlord unless you have the approval of the ACT Civil and Administrative Tribunal (**ACAT**).
- You cannot be evicted in the ACT without your landlord giving you a valid reason that is recognised under the law. Wanting to increase the rent is not an acceptable reason. See further below on ending your tenancy.
- You are always entitled to seek legal advice. The Tenancy Advice Service ACT is funded by the ACT Government to provide free legal advice to all tenants. You can contact them on 1300 402 512 or TAS@legalaidact.org.au. Other information and support services are listed in the 'Need more help?' section at the end of this book.
- Communicate with your landlord or agent and keep them informed of any problems that may arise. Most problems are resolved by agreement.
- If a dispute between you and the landlord (or agent) cannot be resolved, you have the right to take the dispute to ACAT. You do not need a lawyer in ACAT. Application fees (and fee waiver processes) may apply. You can get further information on ACAT's website or contact ACAT on (02) 6207 1740 or tribunal@act.gov.au.
- The law prohibits landlords from retaliating against you (e.g. trying to evict you or putting you on a tenancy database (also known as a tenancy 'blacklist') or ending your tenancy) if you seek to enforce your rights. If you think this has happened, see further below for more information on retaliatory evictions and tenancy databases, or seek legal advice.

NEW TENANT CHECKLIST

Note: If you cannot tick 'yes' to any of the items in this checklist you may need to ask further questions or seek legal advice. If you need further information about what to do, consult the relevant section in the Renting Book.

- I have been given a copy of my residential tenancy agreement ☐
  - I have read the agreement and asked questions if I didn't understand it ☐
  - I know whether my agreement has a break lease fee clause ☐
  - I know whether my agreement has a posting termination clause ☐
  - I know whether my agreement contains the community housing provider termination clause ☐
  - I know whether my agreement contains the subsidised accommodation clauses ☐
  - If my agreement *does* contain the subsidised accommodation clauses, I have *also* been given a copy of any subsidised accommodation eligibility requirements that apply to my tenancy agreement ☐
  - If my tenancy agreement is crisis accommodation provided by a declared crisis accommodation provider, I have received a statement which explains that the landlord can end the agreement with 4 weeks notice if the provider needs the premises for someone else ☐
  - I know whether my tenancy agreement includes any additional terms to the standard terms (and the landlord has pointed out if any of the terms are inconsistent with the Standard Terms) ☐
  - If the lanldord *has* proposed a term inconsistent with the standard terms, I have agreed to the term(s) and have also agreed to make a joint application to ACAT to have the inconsistent term(s) endorsed. I understand that if inconsistent terms are not endorsed by ACAT they are unenforcable. ☐

- If renting an apartment or unit, I have been given a copy of the owners corporation rules. ☐

- I have been given two copies of the condition report. ☐
  - I have made any necessary changes to the condition report and returned my signed copy within two weeks. I have also taken photos of the property so I have a record of the condition it is in at the start of the tenancy. ☐

- I have been given a copy of the energy efficiency rating (EER) statement for the property (if one exists) or been told that there is no EER statement for the property. ☐

- I have received a written statement in relation to the ceiling insulation standard which indicates: ☐
  - The rental property meets the ceiling insulation standard; OR
  - The rental property does not meet the ceiling insulation standard but indicates a date by when the property must meet the standard; OR
  - The rental property is exempt from complying with the ceiling insulation standard, and the reason for the exemption.

- I have requested and received a copy of my landlord's records about the property's compliance with, or exemption from the ceiling insulation standard from my ☐

landlord. (**Note:** This is optional – you do not have to make this request but you can if you want a copy of the records).

I have received an asbestos assessment report for the property or an asbestos advice notice for the premises, indicating where asbestos may be found at the property. ☐

I have a receipt as proof that my bond will be lodged with the ACT Revenue Office ☐

I have provided my email address so the ACT Revenue Office can send me the bond lodgment receipt ☐

I am not being required to pay more than two weeks' rent in advance (unless I have chosen to pay more) ☐

If required to pay a bond I have: ☐

- Paid the bond (after ensuring I am not being charged more than 4 weeks' rent for bond) AND
- Received a receipt for the bond.

I am not being charged for the initial supply of keys and security devices. ☐

I know the rules on pets for my new home: ☐

- I am allowed to keep a pet if my agreement does not state that the landlord's consent is required and I do not need permission from the owners corporation of my unit complex OR ☐
- I must seek the landlord's written consent for my pet (if my agreement states that consent is required. Landlords cannot refuse consent without the approval of ACAT) AND/OR
- I am aware that if I am in an apartment building or unit complex, I may also require permission from the owners corporation as well as from my landlord.

There are smoke alarms in my new home and they work. ☐

I know which utilities bills I have to pay. ☐

I have the contact details for my landlord or real estate agent, including an address (physical or email address) where I can send notices to them (such as a notice to remedy if they have not conducted repairs or a notice that I intend to vacate the property). ☐

I have provided my landlord or real estate agent with my contact details, including an address where they can send or serve notices on me. ☐

- I understand that while some notices (such as notices for inspections or rent increases) can be sent by email, notices to vacate (eviction notices) can only be posted or delivered personally to a physical or postal address. ☐

END OF TENANCY CHECKLIST

I told my landlord or agent in writing that I want to end the tenancy and I gave them the correct amount of notice, **or** ☐

I have agreed an end date for the tenancy with my landlord in writing, **or**

I have been given a valid notice to vacate from my landlord or their agent, **or**

ACAT has made an order to end the tenancy.

I have removed all my belongings and made sure the property is in substantially the same state of cleanliness and repair as it was when I moved in (fair wear and tear excepted). ☐

If I have made any changes to the property ('modifications'): I have agreed with my landlord on whether I need to undo the modifications or whetherthey can remain. ☐

The final inspection has been done in my presence (unless I agreed otherwise) ☐

- I have signed the final condition report based on the inspection (indicating clearly if I disagree with any aspects of it and I have photos of anything I do not agree with) ☐
- I have returned all my keys and any other security devices (such as garage door openers). ☐

My landlord, co-tenant(s) and I have discussed the approach we will take to the bond (see below for options). ☐

My contact details (and those of my co-tenant(s)) are up to date with the Office of Rental Bonds at the ACT Revenue Office so they can contact me/us about the bond. ☐

I have arranged for final meter readings and for accounts for utilities connected in my name to be closed on the date I leave the property. ☐

I have changed my mailing address and/or arranged a mail redirection. ☐

I have advised my landlord or agent of my forwarding address. ☐

RETURN OF BOND OPTIONS

At the end of the tenancy you, your co-tenant(s) (if there are any) and your landlord must determine an approach to the bond. Options for this are outlined below. See the information on return of bond for more detail.

My landlord has confirmed within 3 days of final inspection that the bond will be refunded in full and I have provided bank account details to them or to the ACT Revenue Office at rb@act.gov.au. ☐

OR

My landlord has provided an **itemised list and costs** for claiming part of the bond within 10 days of the final inspection. **I agree** with the landlord and have provided my bank details to my landlord or to rb@act.gov.au for the bond to be returned to me. ☐

OR

My landlord has provided an **itemised list and costs** for claiming part of the bond, within 10 days of the final inspection. **I do not agree** with the landlord claiming part of the bond and have sent a refund form to rb@act.gov.au as soon as possible. ☐

OR

My landlord requested the refund of the bond be paid to them and the rental bonds office has requested I tell them whether I agree or dispute the claim made by my landlord. ☐

I have replied within 14 days to rb@act.gov.au indicating whether or not I agree with the claim the landlord has made.

I understand that if I **do not** respond to the ACT Revenue Office within 14 days, the ACT Revenue Office will pay out the bond as requested by the landlord.

I understand that if I dispute the landlord's claim then it will be referred to ACAT for resolution.

Note: A different process will apply if you are living in a share house as a co-tenant who is leaving a tenancy while your fellow co-tenants remain in the property and continue the tenancy agreement. See the section on bonds in share houses for more information.

SEARCHING FOR A TENANCY

There are some rules that apply before a tenancy even begins. This includes rules about how properties are advertised for rent and rules about how landlords and agents can behave when discussing the rent for a property with a prospective tenant. This section of the Renting Book discusses these rules.

RENTAL ADVERTISEMENTS

When a property is advertised for rent there are rules about what information the rental ad **must contain** and rules about what **it must not contain**. These rules are meant to make sure that you have information to to decide if the property is right for you.

All ads for a rental property **must**:

- Indicate the **Energy Efficiency Rating** (EER) for the property, if the property has an EER rating
  - If there is no EER rating, the ad must say that there is no EER rating.
- Indicate if the proposed tenancy agreement contains certain **special conditions**, including:
  - Any terms that are inconsistent with the standard terms (noting these must be endorsed by ACAT to be valid).
  - If the tenant will be required to seek the landlord's consent before being able to keep a pet.
- Indicate if the premises are an **adaptable housing dwelling** (a premises that is designed so that it can be easily modified to make it accessible for individuals with disabilities or progressive frailties).
- Indicate whether the premises comply with the ceiling insulation standard, or, if an exemption applies.
- Indicate the **rental rate** (i.e. the weekly rent) for the property.
  - Note: It is possible for the ad to indicate different rental rates for the property if the rate depends on what is included with the property (e.g. if the property is furnished / unfurnished or if the property comes with / without a car space or storage area).

The person publishing the ad **commits an offence** if they do not include the required information in the ad. See the section on penalties for more information.

When an ad for a rental property is published it **must not**:

- advertise the property *without* a rental rate,
- advertise *with* a rent range (e.g., '$500-$600/ week' or '$500 ono/ week')
- advertise the property in a way that invites rent bidding (e.g., 'by negotiation' or 'offers accepted').

RENT BIDDING

'Rent bidding' is where a person wanting to rent a property offers to pay more rent than the advertised amount.

It is an offence for landlords, agents or rental application databases (e.g. apps) to ask you to bid more than the advertised rental price for a property. However, you can choose to offer to pay more for a property if you want to.

If you voluntarily offer to a pay a higher an amount than the advertised rent, a landlord is allowed to accept your offer.

Remember that the landlord or agent may be constrained in what they can say to you as they are not allowed to encourage rental bids. For example, they should not proactively tell you that other tenants have made a higher bid on the property as this may be seen as encouraging you to make a higher offer.

The scenarios below provide some examples of conversations that might happen and how rent bidding laws would apply.

Scenario 1

A prospective tenant approaches a landlord or agent and says "I would like to offer $10 per week above the advertised price for the property".

Landlord or agent responds: "Thank you for that offer. I will pass it on to the landlord and it will be considered when assessing rental applications."

Comment: This response complies with ACT rent bidding laws as landlords are allowed to accept rent price offers made voluntarily by tenants.

Scenario 2

A prospective tenant asks if anyone has offered more than the advertised price for the property / more than an amount they have just offered.

Landlord or agent responds: Under ACT tenancy laws I am not allowed to encourage a person to offer more than the advertised rent. Answering that question may be considered to be encouraging a rental price offer. Under ACT laws tenants are not prevented from offering more than the advertised price if they do so voluntarily.

Comment: This response complies with ACT rent bidding laws as it states the law but does not encourage the tenant to offer a rent bid by informing them about other rental bids.

Scenario 3

A prospective tenant asks a real estate agent or landlord "If I offer more rent, would I have a better chance of securing the property?"

Landlord or agent responds: Under ACT tenancy laws I am not allowed to encourage a person to offer more than the advertised rent for the property. The law does not prevent tenants from volunteering to pay more. Applications are judged on multiple factors and the rent is not the only criteria used when evaluating an application.

Comment: This response complies with ACT rent bidding laws as it states the law but does not encourage the tenant to offer a rent bid.

Scenario 4

An applicant missed out on a rental property and asks why. The landlord or agent informs the tenant that the successful applicant had offered a higher rent. The unsuccessful applicant is unhappy and asks "Why didn't you tell me that someone else had made a higher offer?"

Landlord or agent responds: Under ACT tenancy laws tenants are able to offer more than the advertised price where they do so voluntarily. However, I am not allowed to encourage a person to offer more than the advertised rent for the property. Informing you about other offers in relation to a property may be considered to be an invitation to you to offer a higher amount so I was unable to inform you of other rent offers.

Comment: This response complies with ACT rent bidding laws as it states the law and informs the tenant why they could not be advised of other rental bids.

Scenario 5

At a rental property inspection, the landlord or agent proactively informs each prospective tenant that tenants can offer amounts above the advertised price when making a rental application.

Comment: This conduct does not comply with ACT tenancy laws as by proactively raising the question of rent bidding (without responding to a question or offer voluntarily made by the tenant), the landlord or agent may be considered to be encouraging rental bids.

Scenario 6

A prospective tenant calls the landlord or agent to ask about the progress of their application but does not offer to pay additional rent when inquiring about their application. The landlord or agent replies: "Someone has made a higher offer on the property so the landlord is considering that application first."

Comment: This statement does not comply with ACT tenancy laws. This is because proactively raising the question of rent bids (without responding to a question or an offer voluntarily made by the tenant), may be considered to be encouraging a rental bid.

Scenario 7

A landlord has several applications to choose from, one of which has offered to pay an additional $10 per week. The landlord asks the agent to go back to another applicant to see if they will match or offer more.

Agent replies: Under ACT tenancy laws tenants are able to offer more than the advertised price where they do so voluntarily. However, I am not allowed to encourage a person to offer more than the advertised rent for the property.

Comment: This response complies with ACT rent bidding laws as it states the law but the agent does not encourage a tenant to offer a higher rent.

STARTING YOUR TENANCY

This section of the Renting Book discusses the most important rules about how tenancies are started and issues you should consider before you sign a residential tenancy agreement.

KNOW YOUR AGREEMENT

A residential tenancy agreement is often called a 'lease'. It is a legally binding contract that includes all the terms associated with the tenancy. The tenancy agreement includes the Standard Residential Tenancy Terms which are set rules that apply to all tenancies in the ACT. In certain circumstances the tenancy agreement may also include additional terms.

As a tenant, you must comply with the terms of the tenancy agreement (as must the landlord).

Read your agreement carefully so you know what is in the agreement before you sign it. If you do not understand something in the agreement, ask the agent or landlord for clarification, or seek legal advice. You may wish to get clarification on any points that are important to you in writing from the landlord or agent.

It is possible under the law for residential tenancy agreements to be verbal (or partly written and partly verbal). However, this is not common, and it is not advisable as it can give rise to confusion or disputes. It can be difficult to prove what was agreed in a spoken conversation (unless it is recorded). Anything agreed with your landlord at the time of entering a tenancy agreement should preferably be recorded in writing as part of the agreement.

FIXED TERM OR PERIODIC

Make sure you understand at the beginning of your tenancy whether you have a fixed term or periodic agreement.

A **fixed term agreement** specifies a particular period during which there will be less options for both you and the landlord to end the agreement. It is common in the ACT for residential tenancy agreements to start out as fixed term agreements for 6 or 12 months. Fixed term agreements will automatically convert to a periodic tenancy at the end of the fixed term (unless the tenant ends the agreement or the tenant agrees to enter a new fixed term agreement). **Note: a landlord cannot end a tenancy agreement just because the fixed term is ending.**

Any residential tenancy agreement that does not specify a fixed term is a **periodic agreement.** Periodic tenancies are sometimes referred to colloquially as '**month-to-month'** leases.

Periodic tenancies continue indefinitely until one party brings it to an end. A tenant can end a periodic tenancy by giving 3 weeks' notice to their landlord. A landlord can also end a periodic tenancy for a range of reasons, including by giving notice to the tenant. The amount of notice will depend on the reason the landlord wants to end the tenancy. The required notice will usually be more than a month's notice. For example, if the landlord wants to move

in or sell the property they must give 8 weeks' notice or if they want to undertake significant renovations they must give 12 weeks' notice.

Whether your agreement is for a fixed term or periodic may affect your rights and responsibilities, especially around when the agreement can be ended. Generally speaking, it is easier for periodic agreements to be ended, which gives both you and the landlord more flexibility.

A fixed term agreement will become a periodic agreement at the end of the fixed term

A fixed term tenancy does not automatically end at the end of a fixed term.

If **you** do not give notice to your landlord that you want to end the tenancy at the end of a fixed term, the tenancy will continue as a periodic tenancy. You do not have to give any notice if you simply wish to remain in the property.

Landlords are not permitted to end a tenancy simply because the fixed term has ended. Landlords can only end a tenancy in accordance with the grounds for ending a tenancy listed in your agreement or the Act (see the section on ending a tenancy for more details). Your landlord cannot end a tenancy (regardless of whether it is fixed or periodic) without giving you a reason for doing so.

However, you should be aware that it is easier for both you and the landlord to end a tenancy when it is periodic (there are more termination grounds available to a landlord during a periodic tenancy). If you prefer to have the security of a fixed term tenancy, you can agree with your landlord to enter a new fixed term agreement at the end of an existing fixed term agreement. However, **you do not have to do this if you do not want to**.

An example of a fixed-term agreement converting to a periodic tenancy is as follows:

- You find a rental property and you sign a residential tenancy agreement with the landlord that states that the term of the agreement is from 1 July 2023 until 30 June 2024. You have a fixed term agreement.
- By 30 June 2024, you have not entered into a new fixed term tenancy agreement, but you remain in the property. On 1 July 2024, you have a periodic agreement.
- Your periodic agreement will continue until you or the landlord terminate it, or you enter into a new fixed term agreement with the landlord.

WHAT STANDARD TERMS DOES THE AGREEMENT INCLUDE?

There are Standard Residential Tenancy Terms (**Standard Terms**), which, by law, form part of all tenancy agreements in the ACT. There are some Standard Terms that apply to all tenancies whilst other Standard Terms only apply to some tenancies. Many of the rules described in the Renting Book come from the Standard Terms. This section describes which Standard Terms will be included in your agreement. Before you sign your agreement, pay attention to which Standard Terms your agreement includes.

Standard Terms that apply to all tenancy agreements

The Standard Terms are the basic terms of a tenancy agreement. The Standard Terms in Schedule 1 of the Act apply to **all** tenancy agreements in the ACT and are at Attachment 1 to this Book. They are intended to provide protections for both landlords and tenants that cannot readily be contracted out of (so tenants don't feel pressured to give up rights in order to get a tenancy).

It is possible for a tenancy agreement to include additional terms to the Standard Terms. Generally speaking, any additional terms must be consistent with the Standard Terms. However, there is a process to include terms that are inconsistent with the Standard Terms where both parties agree to the terms **and** they are endorsed by ACAT. Unless inconsistent terms are endorsed, they will not be enforceable. There are also some terms that cannot be added to a tenancy agreement, even where the parties agree to them. These are discussed further below.

Standard Terms that apply in certain circumstances only

There are certain standard terms that will only apply to some tenancy agreements. These additional standard terms are contained in Schedule 2 of the Act and are at Attachment 2 to this Book. Whether your agreement contains any of these additional Standard Terms may depend on:

- whether you have agreed to the additional standard term being included in your agreement; or
- whether your agreement is for community housing or subsidised accommodation.

The additional Standard Terms will only be included in your agreement in the circumstances described below.

Additional Standard Terms that can be included by agreement

A residential tenancy agreement can include **additional Standard Terms** where you and the landlord agree on their inclusion.

These additional Standard Terms include:

- the 'break lease fee clause' (Standard Term 101); and
- the 'posting termination clause' (Standard term 102).

Break lease fee clause

If you have a fixed term agreement, check if it includes a 'break lease fee clause'.

The break lease fee clause determines the fee that you must pay if you end a fixed term agreement early (other than for a reason permitted under the Act). The fee will be capped at between 4 to 6 weeks' rent, depending on how much of the term of your lease has expired. See further below the section on 'Ending Your Tenancy' for details on how the break lease fee clause works.

You might wish to include a break lease clause if there is any chance you may not stay in your home for the full fixed term period.

If you **leave** the property early**, other than for a reason permitted under the Act, the landlord can make an application to** ACAT **for compensation.** The compensation will be to cover the loss of rent to the date when your fixed term was due to end and the costs of finding a tenant to replace you.

Your landlord is always under a duty to minimise any losses they may suffer (this is sometimes referred to as 'mitigating' loss). This means that if you break your lease, they must act to find replacement tenants as soon as possible. As soon as new tenants are found and start their tenancy, your liability to pay compensation to your landlord will reduce by the amount that the new tenants pay in rent. If the new tenants pay the same or a higher amount of rent than you were paying, this will mean that your liability to pay compensation will end from the date that the new tenants' agreement starts. If your landlord does not take steps to reduce their losses (e.g. by finding a new tenant) then you may be able to argue that your liability for compensation should be reduced.

The posting termination clause

If you have a fixed term agreement, check if it includes a 'posting termination clause.' This clause allows either the tenant or the landlord to break a fixed term agreement without penalty if posting arrangements for their work require them to do so.

- The **landlord** may break a fixed term agreement if they are **posted to Canberra** during the fixed term.
- The **tenant** may break a fixed term agreement if they are **posted away from Canberra** during the fixed term.

The person who wishes to rely on the clause must provide a minimum of 8 weeks' notice to the other person before the agreement can be terminated, as well as evidence of their posting arrangements (e.g. a letter from their employer).

You should:

- Consider whether your employment arrangements make it desirable for the posting termination clause to be included in your agreement.
- Be aware, if it is included, it may be exercised by the landlord to end your agreement early and you may only have 8 weeks to find a new home.

Additional Standard Terms that depend on the circumstances of your tenancy agreement

There are some other Standard Terms that will apply to a tenancy agreement in certain circumstances. These include:

- the community housing provider termination clause (Standard Term 103)
- the subsidised accommodation clauses (Standard Terms 108 – 112).

These additional standard terms are designed to assist in the management of social and affordable housing programs offered by community housing providers. They allow these accommodation providers to end a tenancy in certain circumstances, such as where you are no longer eligible for the support you are receiving or where the property owner requires their property back.

Note: It is possible that an agreement will contain several of these additional terms. For example, an agreement could include **both** the community housing provider termination clause **and** the subsidised accommodation clause

Further information on when these Standard Terms will be included in an agreement is below.

Community housing provider termination clause

The community housing provider termination clause will be automatically included in a tenancy agreement if:

- your landlord is a registered Community Housing Provider (**CHP**); and
- the property is owned by another person; and
- the CHP rents the property to you under an agreement with the owner.

This could include community-based social or affordable housing programs where the property is owned by either Housing ACT or a private property owner. For more information,refer to the section on the community housing provider termination clause in this Book.

Subsidised accommodation clauses

'Subsidised accommodation' is a term used to describe certain types of accommodation offered to eligible community members by non-Government accommodation providers. It is intended to capture tenancies offered under the National Rental Affordability Scheme, tenancies offered under the ACT Government's Community Affordable Housing program and other social and affordable housing tenancies offered by CHPs where the tenant pays less than the 'market rate' in rent. It may also capture accommodation programs offered by CHPs on their own initiative. These additional clauses are intended to support the operation of the community social and affordable housing programs and to ensure these types of tenancies can be made available to eligible community members.

The subsidised accommodation clauses will automatically be included in your tenancy agreement where:

- your landlord, or the organisation acting on behalf of your landlord **is a CHP**; **or**
- your landlord or the property owner receives Government funding or assistance to provide the property to you.

For more information,refer to the section on subsidised accommodation in this Book.

ANY TERMS IN ADDITION TO THE STANDARD TERMS?

Additional terms *consistent* with the Standard Terms

A residential tenancy agreement can include **additional terms** to the Standard Terms where:

- you and the landlord agree; and
- the term is not inconsistent with the Standard Terms.

Examples of additional terms that are not inconsistent with the Standard Terms include:

- a term stating the amount of rent and the method for rental payments (e.g., bank transfer, direct debit, credit card, cash, cheque, payment app etc.)
- a term in a fixed term tenancy agreement that indicates the amount by which the rent will increase (or a method for calculating the rent increase) for each year of a multi-year fixed term tenancy; or
- a term indicating that the tenant must seek the landlord's consent to have a pet at the rental property (so long as the requirement to seek consent was included in the advertisement for the property – see the section on pets below for more information).

Terms that are *inconsistent* with the Standard Terms (where endorsed by ACAT)

A residential tenancy agreement can only include a term that is **inconsistent with the Standard Terms** if:

- you and the landlord agree; and
- **the term is endorsed by ACAT**.

Most agreements do not include endorsed inconsistent terms, although in some cases there might be good reason to do this.

If your landlord proposes to include inconsistent terms in the agreement, these must be clearly marked or annotated in the agreement in a way to draw your attention to them. If you agree to the term, you and your landlord must then make a **joint application** to ACAT for the term to be endorsed.

If an inconsistent term is not endorsed by ACAT, it will be unenforceable, even if you have agreed to it by signing the lease.

Some examples:

- A landlord inserts a term into the agreement that says only one person can live in the property (e.g. a studio apartment) at any time. This term is inconsistent with clause 52 of the Standard Terms which provides that a landlord must not cause or permit interference with the reasonable peace, comfort or privacy of the tenant in the use by the tenant of the premises. It cannot be included unless you agree to it and it is endorsed by ACAT.
- A landlord inserts a term into the agreement that says that the landlord may conduct inspections at any time and without notice. This term is inconsistent with the Standard Terms. It cannot be included unless you agree to it and it is endorsed by ACAT.

Terms that cannot be added

A residential tenancy agreement cannot include a term that is **inconsistent with the Act** (other than the Standard Terms). ACAT cannot endorse such terms. **Such terms are unenforceable, even if the tenant and landlord agree to include them.** This is because the law is designed to protect tenants by making sure that landlords cannot try to 'contract out' of the basic minimum protections in the Act.

Example:

- A landlord inserts a term in the agreement requiring the payment of extra bond because you have a pet. This term is inconsistent with the Act. It cannot be included (and cannot be endorsed by ACAT).

- A landlord inserts a term in the agreement which allows them to increase the rent in a periodic tenancy with just 1 weeks' notice. This term is inconsistent with the Act which requires that the tenant be given 8 weeks' notice of a rent increase. It cannot be included (and cannot be endorsed by ACAT).

UNITS – OWNERS CORPORATION RULES

If your new home is a unit or apartment it will have an owners corporation (sometimes referred to as the 'body corporate') that has rules about how the building will operate. The rules will cover such things as use of common space in the apartment building. The landlord or agent is required to give you a copy of the oweners corporation rules at the start of your tenancy. Owners corporation rules are sometimes referred to as 'strata rules'.

You must comply with the owners corporation rules (and any notices given to you by the owners corporation under the rules), unless the rules are inconsistent with the Standard Terms.

An example of an inconsistent term:

- A landlord provides a copy of the owners corporation's rules. The rules say that tenants are not permitted to have visitors stay overnight. This rule is inconsistent with clause 52 of the Standard Terms, which entitles tenants to use the property without interference, and so tenants would not be required to comply with it.

However, if the owners corporation rules include rules about pets you must comply with them. These owners corporation rules must be reasonable and they are regulated by the *Unit Titles (Management) Act 2011*.

If you think the owners corporation rules for your new home are inconsistent with the Standard Terms, you should raise this with your landlord or agent, and you may wish to seek legal advice.

If you breach a rule of the owners corporation, you may be issued with a rule infringement notice by the owners corporation. This notice will outline what the breach is and what you must do to remedy the breach. You may dispute the rule infringement notice if you believe you have not committed a breach of the rule. However, if you fail to comply with a rule infringement notice, the owners corporation can pursue the matter further through ACAT, where an order or penalties may be applied.

UTILITIES AND ENERGY EFFICIENCY

Energy Efficiency

When advertising properties for rent, landlords or real estate agents must state in the advertisement whether the property has an existing energy efficiency rating ('EER'). Properties with higher EERs should be more energy efficient and save you money on your energy bills. There are separate rules (including advertising rules) in relation to minimum housing standards (which require the property to have ceiling insulation to a certain standard) – see the sections on advertising requirements and minimum housing standards for more information.

If the property you are going to rent has a current EER, the landlord or agent must give you a copy of the EER statement before your tenancy begins. For tips on how to make your rental home more energy-efficient, and save money on your bills, see https://www.actsmart.act.gov.au/.

The ACT Government's Renter's Home Energy Program can help with draught-proofing and other energy efficiency measures for your home. The program provides an online home energy assessment tool as well as free and tailored advice for renters either in-person, over the phone or via email.

Low-income households can access help to draught-proof their home through the Low-Income household program currently delivered by St Vincent de Paul.

Utilities

Make sure you are clear at the outset which bills you will need to pay for the property. Generally:

- You are responsible for paying all utilities bills where the account is in your name. For example, if the gas, electricity, phone or internet bill is in your name, you are responsible for the charges.
- For water bills,
    - the **landlord** is responsible for the **supply charge**, and
    - the **tenant** is responsible for **consumption charges** (the bills will itemise supply and consumption separately). If you are not provided a copy of the water bill you can ask for it so that you can check if what you are being asked to pay is correct.

A landlord **cannot** make you pay for services for which there is not a separate metering device for the property. For example, if there is no water meter for each apartment in an apartment building or a granny flat behind a main residence, or if the property is a share house with different tenancy agreements covering different parts of the house, the tenant cannot be required to pay water consumption charges as there is no way of accurately measuring their inidivdual consumption. Where the utilities are not separately metered, the landlord is responsible for that cost.

Landlords are responsible for all rates and taxes associated with the property as well as owners corporation levies and fees (if applicable).

A note for landlords:

> ACT law requires landlords to pay land tax on rented properties that are not their principal place of residence. Landlords must tell the Commissioner for ACT Revenue if they start renting out a residential property as generally it will be liable for land tax. High penalties may apply if a landlord fails to notify the Commissioner of the rental property. Further information about land tax is available at: https://www.revenue.act.gov.au/land-tax.

PETS

If you are a tenant currently living in a rental property and you want to get a pet, see the information on pets in the 'During Your Tenancy' section below.

I am looking for a rental property and I have a pet (or I want to get a pet). How do I make sure I will be allowed to keep my pet?

Landlords are not permitted to include terms in residential tenancy agreements that prohibit pets outright. However, landlords can require you to ask for their consent to have a pet, as long as this is done within the rules set out below.

If the landlord requires you to ask for their consent to have a pet, they must state this in the advertisement for the rental property. It is an **offence** for the landlord not to do this.

If the advertisement for a rental property does not say anything about pets, this means that you are allowed to have a pet.

This advertising requirement is intended to help prospective tenants decide whether to inspect or apply for a property and to allow them to start a conversation with the landlord or real estate agent about their pet.

You are not obliged to disclose that you have a pet during the application process for a property. However, if you are interested in a property that does not permit pets without the landlord's consent, **think carefully about how you will obtain consent before you sign the residential tenancy agreement. You will not be permitted to keep a pet on the property without the landlord's consent if they have followed the process below.**

Can the landlord refuse consent for my pet?

Landlords are not permitted to refuse consent for pets unless they have the approval of ACAT.

This is intended to be a case-by-case process, where ACAT will consider the circumstances of the tenant and landlord, the nature of the property and the type of pet. If necessary, the ACAT process can happen before you sign the residential tenancy agreement (as prospective tenants and prospective landlords are able to bring matters before ACAT under the Act).

The information in the pets section in the 'During Your Tenancy' chapter below contains more detail on how the ACAT process works.

Can the landlord put conditions on their consent?

A landlord may grant consent for the pet while imposing **reasonable** conditions about how many pets you are allowed to keep on the property, or the cleaning and maintenance of the property. ACAT's approval is not required for **reasonable** conditions to be imposed.

Do I have to pay more bond or agree to more inspections because of my pet?

A landlord **cannot** require you to pay extra bond or insist on additional inspections because you have a pet.

I am looking to rent a unit. Are the rules on pets different?

If you are looking to rent in an apartment building, you and your landlord must comply with the rules under rental laws as well as unit title laws and owners corporation rules that apply to keeping pets. See the information on pets in unit titled properties section of the 'During Your Tenancy' chapter.

I have a disability and I have an assistance animal. Will my animal be allowed?

Discrimination law in the ACT (the *Discrimination Act 1991*) prohibits landlords from discriminating against a tenant who has a disability, which includes their reliance on an assistance animal. This means that landlords cannot refuse an application for a rental property from a person with a disability because of their assistance animal. A landlord might ask for evidence (e.g. a letter from a health practitioner) confirming the need for the animal. The same applies to owners corporations in unit titled properties.

BOND

How much?

A landlord or real estate agent is **not** permitted to ask for or accept more than **4 weeks' rent as a bond**. They cannot ask you to 'top up' or increase the bond in any way.

Some examples:

- Tenants cannot be asked to pay more than one bond. If you enter into successive agreements with the same landlord for the same property, the original bond remains valid.
- Tenants cannot be asked for extra bond money for any reason e.g. as a condition of consent to keep a pet.

Lodging the bond

The bond must be lodged with the ACT Revenue Office (which is part of the ACT Government). You need to agree with the landlord on whose responsibility it is to lodge the bond.

The usual practice is for the landlord or real estate agent to lodge the bond.

> Landlords or agents can lodge bonds online using the Rental Bonds Portal on the ACT Revenue Office website (rather than filling in and submitting a bond lodgement form) or by filling in a web form.

> It is an **offence** for landlords or agents to keep the bond and not lodge it.

> A **private landlord** must lodge the bond within **two weeks** of receiving it, or within two weeks of the start of the tenancy (whichever is later).

> An **agent** must lodge the bond within **4 weeks** of receiving it, or within 4 weeks of the start of the tenancy (whichever is later).

If you and the landlord agree that you should lodge the bond directly, you can do that online using the Tenant Bond Lodgement Form on the ACT Revenue Office website. Tips for filling in the form include:

> If there is more than one tenant who has contributed to the bond, make sure that all individuals are clearly listed on the form as parties to the bond.

> Do not include children or tenants who have not contributed any money to the bond. ACT Revenue will generally refund the bond to the persons listed in equal shares. Written consent is required where the refund is not in equal shares.

> Provide contact numbers and email addresses for all persons listed as parties to the bond. This is important as ACT Revenue may need to contact you at the end of your tenancy about how to refund the bond.

> If the contact details for any of the parties to the bond change during the tenancy from those listed on the bond lodgement form, make sure you update those details with the ACT Revenue Office.

> **There are special rules for how to manage the bond when there is a change of co-tenants during a co-tenancy.** See the section on share housing below for more information about this.

More information about how to lodge a bond (for tenants and landlords) is available on the ACT Revenue Office website at: https://www.revenue.act.gov.au/rental-bonds.

Regardless of who lodges the bond, **make sure that you get a receipt** from the ACT Revenue Office **as proof that the bond has been lodged**. If you are not given a receipt, contact the Office of Rental Bonds to ask for one.

Rental Bond Help Program

If you want to start a tenancy but your income is low to moderate and you cannot afford to pay the bond upfront, you may be eligible for the ACT Government's Rental Bond Help

Program. The Program offers to pay up to 100% of the rental bond for approved applicants, as a loan that is interest free and can be repaid over 24 months.

For more information, see the Housing ACT website at:
https://www.myaccount.act.gov.au/rentalbondhelp/s/

Alternatives to bonds

The law permits landlords and tenants to use guarantees or indemnities instead of, or in addition to, a bond in some circumstances. A guarantee or indemnity is basically a contractual promise by a third party (e.g. a parent of one of the tenants) that they will be liable for the tenant's compliance with their obligations under the lease. For example, if the tenant fails to pay rent, the landlord can seek payment from the person who provided the guarantee or indemnity. If acceptable to a landlord, this type of arrangement may be a useful option for a tenant who is not able to pay the bond upfront.

A guarantee or indemnity can only be used (it will only be legally enforceable) up to the maximum amount payable as a bond (i.e. 4 weeks' rent). This means:

- when used in addition to a bond, the guarantee or indemnity can only make up the difference (e.g. the tenant might pay a bond of 2 weeks' rent, and use a guarantee or indemnity to cover the other 2 weeks' rent), or
- when used instead of a bond, the guarantee or indemnity can only be for a maximum amount up to 4 weeks' rent.

Importantly, there are additional strict rules that apply if the guarantee or indemnity is being provided to the tenant on a commercial basis (by a company, rather than a relative or friend). **Companies may only offer commercial alternatives to bonds in the ACT if the standard contract used for the product is registered with the ACT Government** (the Commissioner for Fair Trading).

This regulatory scheme is intended to provide protection to renters from commercial contracts that may contain significant fees payable by tenants.

There are currently no registered commercial alternative to bond products. **This means that there are currently no legal commercial alternatives to bonds in the ACT.** However non commercial arrangements are permitted. For example, a family member could provide a guarantee on your behalf instead of a bond.

CONDITION REPORT

A landlord or real estate agent is required to give you two copies of the condition report no later than the day after you move in. Condition reports must be substantially the same as the form published by the ACT Government. A copy of the form is available on the ACT Revenue website: https://www.revenue.act.gov.au/__data/assets/pdf_file/0020/1093043/Condition-Report.pdf

You must:

- Check to see if you agree with the report. If you disagree with the report, make comments on the report about which parts you disagree with and why.
- Send a signed copy (with your comments, if any) back to the landlord or agent. You must send the report back within two weeks.

You might wish to **take photos of the condition of the property**, and in particular any signs of damage or parts of the condition report with which you disagree. Photos or videos can be attached to the condition report when you send it back.

The condition report is used as evidence to resolve disputes at the end of the tenancy about any damage you may have caused (and whether you should get your bond back), so it is important that it accurately reflects the condition of the property.

If you do not sign and return a copy of the condition report within two weeks, you are taken to agree with the report.

If a new co-tenant is added to a tenancy agreement during the course of a tenancy, the existing co-tenants will also need to provide the joining co-tenant with a copy of the original condition report for the tenancy. See the section below on share housing for more information.

MINIMUM HOUSING STANDARDS: CEILING INSULATION

The Act allows the Government to set minimum housing standards for rental properties.

A minimum housing standard for energy efficiency – a ceiling insulation standard – commenced on 1 April 2023 with a phase in period until 30 November 2026. To date, no other minimum housing standards have been set. However, landlords do have a general obligation to provide the rental premises that are **habitable** and also **reasonably safe, clean, and secure.**

The ceiling insulation standard for rental homes is designed to help improve energy performance, increase thermal comfort, reduce greenhouse gas emissions, and contribute to climate change resilience.

Around half of the energy used in an average Canberra home is for heating and cooling. Up to 35 per cent of heat is lost through the ceiling over the colder months in an uninsulated Canberra house.

Installing effective insulation in houses reduces the amount of warmth escaping in winter and the amount of heat entering in summer. This ensures that houses are more comfortable, reducing heating and cooling bills and helping to reduce greenhouse gas emissions.

What is the ceiling insulation standard?

Ceiling insulation is measured with reference to an 'R' value. The 'R value is a measure of thermal resistance; the higher the R-value of insulation, the more it slows heat flow and the better it insulates.The standard requires rental homes with **no insulation or existing ceiling insulation below an R-value of R2**, to install or upgrade the ceiling insulation to a **minimum R-value of R5**. R5 is recommended for the ceiling and is the standard insulation level used in new builds.

Rental homes with ceiling insulation rated at R2 or above will **not** require any upgrades as they will already meet the minimum standard.

The standard will apply to all types of rental properties, including (public, private and community housing).

For more information about the standard, refer to the website on minimum energy efficiency standards for rental homes.

Compliance with the ceiling insulation standard

Landlords must:

- Ensure the rental premises complies with the standard by the required date (see below) and keep records demonstrating compliance;
    - Or, if an exemption from the standard applies, keep records supporting the exemption; and
- Tell you whether the property meets the required standard when advertising the property **and** when entering the lease. See above in the section on advertising requirements for more information, and
- If you request a copy of the landlord's records about the property's compliance with the minimum housing standard, the landlord **must** provide a copy of their records to you.

If, at some point during a tenancy, your landlord becomes aware that the property does not comply, or no longer complies with a minimum housing standard, they must ensure the property complies with the standard **as soon as practicable** after they become aware of non-compliance.

When will landlords need to comply with the ceiling insulation standard?

The minimum standard came into effect on 1 April 2023, with a phase in period extending to 30 November 2026.

From 1 April 2023, all properties will be required to comply with the minimum standard after a new lease is signed. The length of time that the landlord will have to comply with the standard from signing a new lease will depend on whether the lease is signed before or after 1 December 2026.

- **From 1 April 2023:** Landlords are required to indicate whether their property meets the minimum standards in any rental advertisements and lease agreements.

- **From 1 April 2023 – 30 November 2026** (phase-in period)**:** During the phase-in period, properties will need to comply with the minimum standard **within nine months after signing a new lease**. (If no new lease is signed in this period, then properties must nevertheless comply by 30 November 2026).
- **From 1 December 2026** (after the phase-in period): After the phase-in period, from 1 December 2026, any property entering the rental market has **three months from the date a new lease is signed** to comply with the minimum standard.

Are there exemptions to the ceiling insulation standard?

There are exemptions available for some properties. Some exemptions are permanent, and some are temporary.

Permanent exemptions apply for properties that are:

- Heritage-listed and where installing insulation would compromise the heritage value.
- Lower floor units in apartment complexes (as they are effectively insulated by the apartments above).
- Dwellings where insulation cannot be feasibly installed due to physical constraints, such as roof design.
- Dwellings where the cost of installing ceiling insulation is over $10,000 (although if this exemption applies, as much work as can be done for up to $10,000 must be undertaken, focusing on rooms in which the tenants will spend most time, such as lounge/living rooms and bedrooms).

Temporary exemptions apply where:

- The property is a top-floor unit of an apartment building, and the owners corporation refuses permission for the installation of ceiling insulation, or is in the process of arranging ceiling insulation to be installed collectively.
- The property (or a substantial part of the property) is going to be demolished within 2 years of signing the lease. If this is the case, you must be notified of this before signing the lease.
- You object in writing to the ceiling insulation work being undertaken (see further below).
- You are the former owner of the property and are renting the property from the new owner on a temporary basis (for up to 12 months).

Once a temporary exemption stops applying, the property must meet the minimum standard:

- within nine months, if a temporary exemption stops applying to a property between 1 April 2023 and 30 November 2026, or
- within three months, if a temporary exemption stops applying to a property after 30 November 2026.

Access to the property to ensure the property complies with a minimum housing standard

The landlord will have a **temporary exemption** from complying with the ceiling insulation standard **if you object in writing to providing access to the property**. However, the law gives the landlord the right to proceed with the installation despite your objections, if they wish to do so.

Landlords are allowed to access to the property to inspect the property, or have work undertaken, to ensure it complies with a minimum housing standard. However, the lessor must only enter premises for the purpose of an inspection or undertaking work if it is **reasonable and necessary** to do so.

To obtain access, your landlord must give you **1 week's notice** (or less if you agree). Unless you agree otherwise, the landlord is not entitled to enter the property before 8am or after 6pm or on Sundays or public holidays.

You should be aware that if your landlord needs access to the property to comply with the ceiling insulation standard, they may need access on several occasions. For example, they may need access to:

- have an assessor check what, if any, insulation is already in the property;
- have an electrical inspection to check it is safe to install the insulation (this is a **mandatory** requirement to ensure safety);
- undertake any electrical work needed to make the property safe to install insulation
- install the ceiling insulation (this should be able to be done during normal working hours, generally in less than a day); and
- check that the ceiling insulation and electrical work have been completed to standard.

If you are having difficulties negotiating appropriate access times with your landlord you can seek legal advice. If you cannot agree on an access arrangements, either you or your landlord may need to apply to ACAT for orders in relation to access.

Rights for tenants if the property does not comply with a minimum housing standard

If the property **does not** comply with the minimum standard within the designated time period after the tenancy has started (and no exemption applies), you can apply to ACAT for an order:

- to end the tenancy (without penalty e.g., without having to pay compensation for breaking the lease)
- for a rent reduction for the period where the property was required to meet the minimum standard but did not, or

- for compensation for any loss you have suffered due to the property not meeting the minimum standard.

You may also apply to ACAT for dispute resolution in circumstances including where:

- you want to dispute the landlord's claim that the property meets the standard, or
- an exemption is found to be based on a false or misleading statement.

If you are considering making an application to ACAT, you may want to seek legal advice before making your application.

You should be aware that if the landlord was not able to comply with the minimum standard because you did not allow them access to the property, then ACAT may refuse an order to end a tenancy or an order for rent reduction or compensation.

Will the rental property be safe once ceiling insulation has been installed?

The ACT Government has put measures in place to ensure ceiling insulation is installed safely. The law requires that ceiling insulation installations or upgrades to meet the minimum standard **must be installed by certified insulation installers** (the landlord cannot install it themselves).

To prevent electrical or fire risks, **licensed electricians must complete an electrical safety check before the insulation is installed**. If any issues are identified during the check, and electrical work is required, a licensed electrician must undertake the work and then complete a certificate to confirm the work has been completed. Your landlord is required to keep records of this work and you can request copies of the documentation if you want to check that the work was undertaken safely.

A note for landlords:

> **Ceiling Inspections:** The law does not impose any specific rules about who may check the level of ceiling insulation present at the property.
>
> For safety reasons, the Government strongly recommends that ceiling insulation inspections are only undertaken by suitably qualified persons,such as those who have extensive experience working at heights and in roof spaces, expertise in assessing R values of insulation, and/or who have undertaken appropriate training.

> **Electrical Checks:** The law requires that a licensed electrician must undertake an electrical safety inspection **before** insulation is installed (or upgraded), to identify if any electrical work is required to make sure the installation or upgrade can occur safely.
>
> the law requires the electrician to check for the following issues and fix them before insulation can be installed:
>
> - ❖ unsafe wiring in the roof space or wiring that is rated incorrectly
> - ❖ whether installation of insulation will lead to any electrical wiring or circuits being materially adversely affected

- ❖ whether a Residual Current Device (RCD) needs to be installed in the relevant circuit
- ❖ Removal of incandescent downlights and halogen downlights in areas where insulation is to be installed and replaced with IC-4 rated LED downlights.

  Note: Halogen and other incandescent downlights generate a lot of heat, and if insulation covers them this creates a fire risk.

The electrician will complete the following paperwork:

- ❖ Certificate of Electrical Safety (they are required to submit this to Access Canberra); and
- ❖ Required Electrical Work Report: States whether any required electrical work report was identified, and includes details of the required electrical work

If required electrical work is identified:

- ❖ Completed Electrical Work Report: Once required electrical work is completed, the electrician fills in this form with details of the work.

You should ask for a copy of the above to keep as documentary evidence that the electrical check/work required under the regulation was completed (including the invoice for the work).

> **Installing Ceiling Insulation:** Under the law, only insulation installers with an Insulation Installer Certification from the Energy Efficiency Council Certifications program can install insulation under the minimum standard.

This is to ensure the safety of tenants and the rental home. To find a certified installer, visit the Energy Efficiency Council website. You should also be aware that if you do not comply with the legal requirements for the safe installation of ceiling insulation any insurance you have in relation to the property may be invalidated.

SMOKE ALARMS

Your landlord is responsible for making sure that smoke alarms are installed and are in working order at the start of the tenancy.

A smoke alarm must be installed:

> in each storey of the property that has a bedroom:
  - ❖ in every corridor or hallway associated with a bedroom;
  - ❖ or if there is no corridor or hallway, in every part of the property that divides a bedroom from the remainder of the property; and

> in each storey of the property that does not have a bedroom.

Each smoke alarm must comply with Australian Standard 3786, must be installed on or near the ceiling and may be battery operated or hard-wired.

If the smoke alarm is battery operated, **you are responsible for replacing the battery during the tenancy**.

LOOSE-FILL ASBESTOS

The law in the ACT aims to prevent tenants from renting properties that are known to contain loose-fill asbestos, because of the serious health and safety risks from these properties. The ACT Government operated a voluntary buyback scheme that ensured that most properties that were identified as being affected by loose-fill asbestos have been demolished and the land remediated. However, a very small number of affected properties remain.

The ACT Government maintains an online register that lists the remaining affected properties. From 1 July 2020, **any residential tenancy agreement entered into for an affected property that is listed on the register will be void** (meaning it will be invalid). The same will apply for occupancy agreements, subletting and any other agreement to allow someone to live in an affected property.

The Government's register is available at: http://www.asbestostaskforce.act.gov.au/the-list/the-register.

You can check the register to see whether the property you are considering renting is affected by loose-fill asbestos. Affected properties are also required to prominently display an asbestos management plan which would be visible during inspections.

Anyone who enters into a tenancy agreement (or other agreement) to live in an affected property will be entitled to apply to ACAT for compensation.

Note: Some older properties (built before 1990) may contain bonded or sheet asbestos. Properties containing bonded asbestos can still be rented out. When your tenancy commences your landlord is required to either provide you with an absestos report in relation to the property (if one exists) or an asbestos advice notice (which provides information about common places in a property that may contain asbestos).

DURING YOUR TENANCY

TENANT'S OBLIGATIONS

As a tenant you have the right to exclusive possession and 'quiet enjoyment' of your new home, which means your landlord cannot interfere with your use of the property in reasonable peace, comfort and privacy.

You also have obligations as a tenant. In particular:

- You must pay your rent when it is due.
- You must take reasonable care of the property and keep it reasonably clean (having regard to its condition at the start of the tenancy).
- You must not intentionally or negligently damage the property (or allow others to damage the property).
- You must notify your landlord of any damage to the property or required repairs as soon as possible.
- You must obtain your landlord's consent if you want to make changes to the property or if you want to keep a pet (if your landlord indicated at the start of the tenancy that permission to keep a pet is required).
- You can only use the property for a residential purpose (meaning you can't use the property as a place of business - unless otherwise agreed in writing with your landlord).
- You cannot use (or allow others to use) the property for any illegal purpose. Permitting illegal activity on the property may allow the landlord to apply to ACAT to end your residential tenancy agreement.
- You must not interfere with the neighbours' quiet enjoyment of their homes or use the property in a way that causes nuisance to the local community.
- You must not leave the property vacant for more than 3 weeks without informing your landlord or real estate agent. This is not asking for permission, it is simply notifying them of your absence.
- You must not sublet (allow someone else to live in) part or all of the property without the written consent of the landlord (see further below on subletting). You can have non-paying guests stay for short periods, but you can't let new people move in without consent.
- If you want to leave a co-tenancy while your other co-tenants remain, or if you want to add a new co-tenant to your tenancy agreement, you must follow the required steps. See the section on share housing for more information.
- If your rental is a unit, you must comply with the owners' corporation rules.
- If you are a tenant in subsidised accommodation, such as community-based social or affordable housing tenancies, you may also be required to demonstrate your on-going

eligibility to continue living in the property. See the section on subsidised accommodation for more information.

Finally, you should be aware that engaging in conduct that is threatening, intinidating harrassing, or abusive towards your landlord (or their family members) or your agent or other representative of your landlord, may be grounds to end your tenancy.

RENT

You have an obligation to pay rent in full and on time. Failure to pay your rent can be a ground for your landlord to end your tenancy.

How much and how often?

Your residential tenancy agreement will state **how much rent is to be paid and when (how often) rent is to be paid**. Check that the rent as advertised for the property matches what is in the agreement.

A landlord or real estate agent **cannot require you to pay more than two weeks' rent in advance**. However, if you would like to pay rent at different intervals you may wish to discuss this with your landlord (for example, if it suits you to pay rent monthly in accordance with your income cycle you could ask to pay rent monthly). If you are being asked to pay more than two weeks' rent in advance, you are entitled to say no.

If you agree to pay rent on a monthly basis, check the amount payable per calendar month stated in the agreement. Be aware that it will be more than 4 weeks' rent if the property was advertised with a weekly rent amount (as a month is usually longer than 4 weeks). For example:

> A weekly rent of $500 becomes $2172.62 payable per calendar month (not $2000).

If you have any questions, ask the real estate agent or landlord how they calculated the rent amount.

Method of payment

The residential tenancy agreement should also state **how rent will be paid** e.g. directly into a bank account, cash, Bpay or by a payment app. Once agreed at the start of the tenancy, the way in which rent is to be paid cannot be changed unless both parties agree to the change. For example, if your agreement states that your rent is to be paid into a bank account, the landlord cannot demand that you start using a third party payment app to pay your rent. **Be aware that some methods of payment may involve processing or administrative fees.**

Receipts for rent or bond

If the rent is paid directly into a bank account, the landlord is not required to give you a receipt. The landlord **is** required to provide a receipt when the rent is paid:

> in person—a receipt must be given at that time; or

> by another method—the receipt should be provided or sent by post within one week.

A receipt for rent (or bond) should include:

- the date of payment;
- the period for which the payment was made;
- which property the payment was made for; and
- whether the payment was for bond or rent.

A note for landlords:

- Under the Act you are required to keep records of all rent paid for one year after the tenancy ends. Be aware that other legislation (e.g. tax laws) may require you to keep records for a longer period.

RENT INCREASES

There are rules about how often your rent can be increased and by how much. Your landlord or real estate agent must also follow certain rules to give you proper notice of the proposed increase. Make sure you know your rights if your landlord or agent proposes to increase your rent.

The way the rent increase rules apply depends on whether you are in a fixed term or periodic residential tenancy agreement (see the section on fixed or periodic agreements above if you are unsure what type of agreement you have or seek legal advice about your agreement).

How often can my landlord increase the rent?

Rent cannot be increased at intervals of less than 12 months from the start of the tenancy or from the date of the last rent increase regardless of whether the tenancy is fixed or periodic (unless you have agreed to a special term allowing more frequent increases and the term was endorsed by ACAT).

How much can my rent increase in a fixed term tenancy?

If you are in a **fixed term** agreement, **your rent cannot be increased during the fixed term, unless your agreement specifically provides for rent increases to occur.** This is not common but check your agreement to make sure this does not apply to you. If your agreement does provide for rent increases, **it must state the amount of the increase or the method for calculating the increase as part of the agreement**.

If you are approaching the end of a fixed term agreement, remember that unless you end the tenancy, it will automatically become a periodic tenancy after the end of the fixed term. If you are happy for your tenancy to automatically continue as a more flexible periodic agreement, the rules on rent increases in periodic tenancies will apply from when your tenancy becomes periodic. Your landlord cannot end your tenancy for no reason, or because you do not agree to a proposed rent increase (see the section on When Your Landlord Can End Your Tenancy).

If you are considering entering a new fixed term agreement (e.g. for a further 12 months in the property), the new rent payable will be a matter for negotiation between you and the landlord because it will be a new contract.

How much can my landlord increase the rent in a periodic tenancy?

The rules in the Act aim to ensure that rent increases are 'not excessive' (unless exceptional circumstances apply). The Act permits landlords to increase rent by a certain amount, which (in very simplified terms), is the inflation rate on rental prices plus 10% of the inflation amount. In effect, this amount acts as a limit on rent increases.

- Any increase above the limit is generally considered an excessive rent increase (unless your landlord can convice ACAT it is not excessive).
- Your landlord can **only** impose an excessive rent increase **if you agree OR if ACAT approves the increase**.
- If your landlord or agent proposes a rent increase, they must tell you whether the increase is above the limit. If you want to check their calculations, see further below for how to calculate the limit and notification requirements.
- You **do not** have to agree to an excessive rent increase.
- If you do not agree to an excessive rent increase, you can inform your landlord or agent. If the landlord still wants to pursue the increase, it is their responsibility to apply to ACAT to obtain approval for it. The landlord will need to show ACAT that the rent increase should not be considered excessive in all the circumstances of the case.

The **rules on excessive rent increases apply in periodic tenancies only.**

How do I work out the rent limit amount myself?

If you are in a periodic tenancy and you receive notice of a proposed rent increase, you might want to check for yourself whether the increase is above or below the permitted limit on rent increases.

The formula is based on the Consumer Price Index (**CPI**) published by the Australian Bureau of Statistics (**ABS**). The CPI is a commonly used measure of inflation. The ABS publishes new CPI figures every quarter at: https://www.abs.gov.au/Price-Indexes-and-Inflation. You will need to find the CPI figures for the **cost of rent** in the ACT. These figures are called 'index numbers'. To find the index numbers for rent in the ACT, you will need to look for the CPI table which details specific expenditure classes for each capital city (usually in a detailed Excel spreadsheet available for download on the ABS website).

To calculate the **rent increase limit amount,** use this formula:

$$\mathbf{110} \times \left(\frac{\boldsymbol{A} - \boldsymbol{B}}{\boldsymbol{B}}\right)$$

Where:

> *"A"* is the *index number* for rents in the ACT in the CPI figures most recently published by the ABS; and

> *"B"* is the *index number* for rents in the ACT in the CPI figures that applied when your rent last went up (or at the start of the tenancy, if this is your first rental increase). This number should be from at least 12 months ago.

For example:

> A tenant is in a periodic tenancy commencing from 1 January 2022, with a weekly rent of $600. The landlord proposes to increase the rent from 1 January 2023.

> The index number for rents in Canberra in January 2023 was **120.0**. This is the number *"A".*

> The index number for rents in Canberra in January 2022 (when the periodic tenancy commenced)[1] was **113.2**. This is the number *"B".*

> Substituting these numbers into the formula will give you the rent increase limit**amount**:

$$110 \times \left(\frac{120.0 - 113.2}{113.2}\right)$$

$$= 6.6$$

The **rent increase limit amount** is 6.6%. This means your rent can be increased by up to 6.6% before it will be considered an excessive rent increase.

As the tenant's rent was previously $600 per week, it may be increased by $40 per week (6.6% of $600) before it exceeds the permitted amount.

How much notice do I need to be given before a rent increase in a periodic tenancy?

For any rental increase to be effective, **the landlord must give you 8 weeks' notice in writing**. The notice must state:

> the amount of the proposed increase

> whether the proposed increase is more than the rent increase limit amount, and

> if the proposed increase is more than the permitted amount – the notice must state that **if you do not agree to it, the landlord must seek ACAT's approval before the increase can take effect**.

This last requirement is intended to ensure that tenants know they **do not need to agree** to an excessive rent increase and that they have the right to have ACAT review the landlord's proposal.

[1] If you have previously had a rent increase, this should be the reference month, rather than the start of your periodic tenancy.

If you think that you have not been given proper notice of the rent increase in accordance with these requirements, you should raise this as soon as possible with your landlord or real estate agent, and/or seek legal advice. The rent increase will not be valid under the Act unless it complies with the notification requirements (or it is otherwise approved by ACAT).

Can I challenge a rent increase that is less than the permitted amount?

If your landlord wants to increase your rent by less than the rent increase limit amount, they are allowed to, provided the other rules around rental increases are being followed (e.g. you have been given proper notice and 12 months or more have passed since the last increase). However, if you disagree with the proposed increase (for example, if you think the property is in a poor state of repair and not worth the rent the landlord is asking), you can still make an application to ACAT to challenge the proposed increase.

Be aware that if you challenge an increase that is less than the permitted amount, you will need to show ACAT that the increase should be considered excessive. You may wish to seek legal advice before taking the matter to ACAT.

How will ACAT decide rent increase disputes?

In deciding whether to approve a rent increase, ACAT is required to consider:

- when the rent was last increased, and by how much
- the landlord's outgoings or costs in relation to the property
- the value of any services, or goods or fixtures the landlord provides to the tenant
- the state of repair of the property
- rental rates for comparable properties, and
- the value of any improvements to the property carried out lawfully by the tenant.

ACAT will consider any other relevant circumstances of the case and determine the matter taking into account the views of the tenant and of the landlord.

Can I move out if I am unhappy with the rent increase?

If you are unhappy with the proposed rent increase in a periodic tenancy and either you do not wish to go to ACAT, or ACAT has approved the increase, you can decide to end your periodic tenancy and move out instead. If you want to do this, you must give **3 weeks' written notice** to the landlord.

RENT REDUCTIONS

If you are experiencing problems with your property that you cannot resolve with your landlord or agent, you can apply to ACAT for an order that the landlord do a certain thing (such as complete repairs or comply with the minimum standard) and / or that your rent be reduced for a period of time to compensate you for the landlord not complying with the rental agreement. **To obtain a rent reduction order, you will need to show ACAT that your use or enjoyment of the property has significantly diminished** because:

- you have lost the benefit of an appliance, furniture, facility or service supplied by the landlord (e.g. the landlord agreed to provide a washing machine and it is broken and not being fixed)
- the landlord has failed to maintain the property in a reasonable state of repair (for matters which are the responsibility of the landlord)
- the landlord has failed to provide or maintain locks or other security devices to ensure that the property is reasonably secure
- you have lost the use of all or part of the property (e.g. part of the garden cannot be used because of storm damage that has not been fixed within a reasonable time), or
- the landlord has substantially interfered with your quiet enjoyment of the property – this includes your right to use the property in reasonable peace, comfort and privacy and to exercise all of your rights as a tenant.

You can also apply for a rent reduction or compensation **if the rental property does not comply with the ceiling insulation minimum standard** (and no exemption applies).

Remember, **you are not permitted to withhold rent** if you are in a dispute with your landlord. If you do withold rent, you will be in breach of your agreement and your landlord may seek to evict you. Instead, you must apply to ACAT for an order to reduce the rent. You may wish to seek legal advice before making an application.

ACAT may also make other orders, such as an order that the landlord make any outstanding repairs or that the landlord ensures the proeprty complies with the ceiling insulation standard within a specified timeframe.

If your landlord has failed to ensure the property complies with the ceiling insulation standard, you may also seek an order to end the tenancy if you no longer want to continue living at the property. ACAT can also make orders for compensation if you have suffered loss as a result of the landlord's failure to ensure the premises meets the minimum standard.

ACCESS TO YOUR HOME

When you rent a property you have the right to exclusive possession and 'quiet enjoyment' of your new home, which means your landlord cannot interfere with your use of the property in reasonable peace, comfort and privacy. A landlord or their agent must not require access to the premises during the tenancy except as provided by your tenancy agreement, the law or an order of ACAT.

The general rules are that the landlord must not have access—

- on Sundays; or
- on public holidays; or
- before 8 am and after 6 pm;

However, there are exceptions to these general rules around access times. These exceptions include gaining access:

- for the purpose of carrying out urgent repairs or for health or safety reasons in relation to the premises; or
- with your consent.

You may agree to give your landlord access to the property at any time if you wish.

If your landlord contacts you seeking access and you do not think it is reasonable or permitted, you can refuse and they will have the option of making an application to ACAT for an order for reasonable access. It is important that you are aware of the rules relating to reasonable access. See below for more information or seek legal advice.

INSPECTIONS

How often can the landlord inspect the property?

Landlords are entitled to conduct the following standard inspections:

> An inspection of the property during the first month of the agreement. This is to make sure that there are no problems and that you are using the property as a home rather than for some other purpose.

> In addition to the first inspection, your landlord may inspect the property twice within each twelve-month period.

> In addition to the first inspection and the two annual routine inspections, the landlord may inspect the property in the final month of the tenancy. This is to make sure that the property is in a state of repair ready for a new tenancy.

The effect of these rules is that it is normal in a 12 month fixed term agreement for you to have an inspection every quarter.

In a periodic tenancy, after the first year, your landlord may conduct inspections twice a year.

You do not have to agree to any other inspections, unless they are for prospective new tenants or purchasers of the property (see below). For example, landlords cannot require you to allow additional inspections as a condition of having a pet. If a landlord or agent wants to ‘re-inspect’ a property after raising issues in relation to the condition of the property, this will count towards the twice yearly inspection limit.

Similarly, your landlord cannot require additional inspections if you want to add or remove a co-tenant from the tenancy agreement. If a landlord or agent does want to conduct an inspection which coincides with a change of tenants, this inspection counts towards the 2 per year limit on inspections. See the section below on share housing for more information.

How much notice do I get before an inspection?

Your landlord must give you at least **1 weeks' notice** in writing before any standard inspection.

Inspections for prospective tenants or purchasers

In addition to the standard inspections discussed above, if you are moving out and the landlord wants to find new tenants, you must provide **reasonable** access to the property to prospective tenants during the final 3 weeks of the tenancy. Your landlord must give you **24 hours' notice** that access is required.

If the landlord is selling the property, they must notify you of their intention to sell. Once they have done this, you must provide **reasonable** access for inspections by prospective purchases. Your landlord must give you **48 hours' notice** that access is required. Only **2 inspections per week** are permitted for prospective purchasers (unless you agree to more).

If you live in a rental property that is on the market for sale for a considerable time and your landlord requires access to the property for inspections for **more than 8 weeks**, you have the right to **end your agreement and move out early**, if you wish. See further the section on 'Ending Your Tenancy'.

You can choose whether you wish to be present when other people are being shown around your home. If you think your landlord's requests for access are unreasonable, you may wish to seek legal advice about your options.

What time can inspections take place?

Inspections must take place at a time negotiated by you and the landlord. The agreed time should be reasonable, taking into account your work and other commitments as well as those of your landlord.

Unless you consent, the landlord is not entitled to enter the property for inspections before 8am or after 6pm or on Sundays or public holidays.

Your landlord is not entitled to use their copy of the keys to enter the property if you disagree about a suitable time. If there is a dispute about when it is reasonable to undertake the inspection, you or the landlord may apply to ACAT for an order about when the inspection will take place.

REPAIRS AND MAINTENANCE

Your landlord is responsible for maintaining the property, keeping it in a reasonable state of repair, and ensuring it remains reasonably secure. They are also responsible for ensuring your property meets the ceiling insulation standard.

You should not intentionally or negligently damage the property. If you do, you may be responsbile for paying for any damage to the property.

You are responsible for notifying the landlord if there is a need for a repair. This is important because if you do not notify your landlord about the need for repair and the problem gets worse, you may be considered liable for some of the damage. For example, if

you do not notify your landlord about a water leak in the ceiling and the ceiling subsequently collapses, you may be considered to have contributed to the damage.

The landlord's obligations to carry out the repairs depend on whether the repair is classified as urgent or not under the Act.

Urgent repairs

The following are urgent repairs:

- a burst water service
- a blocked or broken toilet
- a serious roof leak
- a gas leak
- a dangerous electrical fault
- flooding or serious flood damage
- serious storm or fire damage
- a failure of gas, electricity or water supply to the property
- a failure of any refrigerator or laundry appliance supplied with the property, or any service for hot water, cooking, heating or cooling
- any fault or damage that makes the property unsafe or insecure, or is likely to cause injury to person or property, or
- a serious fault in any door, staircase, lift or other common area that prevents (or causes undue inconvenience to) the tenant accessing or using the property.

You must notify the landlord about the need for urgent repairs **as soon as practicable**.

There is no fixed timeframe within which an urgent repair must be completed. **The landlord must carry out an urgent repair as soon as necessary, having regard to the nature of the problem.**

You can arrange for an urgent repair to be carried out at the landlord's expense, but only if:

- your landlord cannot be contacted (you must have made reasonable attempts at contact), or they fail to perform the urgent repairs within a reasonable time
- the value of the urgent repairs does not exceed 5% of your annual rent (e.g. if your rent is $450 per week, then you can arrange urgent repairs up to the value of $1,170 (5% of 450 x 52 weeks), and
- you attempt first to contact the qualified tradesperson nominated by your landlord in your tenancy agreement. If your landlord has not nominated a tradesperson, or if that person cannot be contacted or is unavailable, you can contact any qualified tradesperson to undertake the repairs.

If you follow these requirements strictly, then you can have your landlord billed directly for the urgent repairs. If you arrange urgent repairs outside of these requirements, you will be liable for the cost.

Non-urgent repairs

Any repairs that are not an 'urgent' repair are ordinary repairs. The landlord must make these repairs **within 4 weeks of being notified** (unless otherwise agreed with you).

Repairs to common property in apartment buildings

If you live in a unit titled building (a unit, townhouse or apartment) and repairs are required to common property, notify your landlord as soon as possible. **Your landlord** must take steps to require the owners corporation to undertake the repairs as quickly as possible. You should not have to deal with the owners' corporation yourself - that is your landlord's responsibility.

Regular maintenance by the tenant

Your landlord is **not** required to undertake repairs or maintenance that an ordinary tenant would reasonably be expected to do themselves. Common examples of this include that:

- You are responsible for replacing the battery in smoke alarms (your landlord is responsible for making sure that a smoke alarm is installed, and it is in working order).
- You are responsible for changing light bulbs unless some specialist expertise or equipment is required.
- You are responsible for standard upkeep of the garden e.g. mowing the lawn and weeding.

If your new home has a garden or a pool, make sure you are clear at the beginning of your tenancy what your responsibilities are for maintenance.

Access for making or inspecting repairs

For **urgent repairs**, your landlord must give you **reasonable notice** and enter the property at a **reasonable time**. What is reasonable may depend on the circumstances of the repair issue.

For other non-urgent repairs or maintenance issues, your landlord must give you **1 week's notice** (or less if you agree). Unless you consent, the landlord is not entitled to enter the property for inspections before 8am or after 6pm or on Sundays or public holidays.

Be aware that your landlord also has a right to access the property to inspect the repairs undertaken (to ensure they were done correctly or appropriately). However, the lessor must only enter premises for the purpose of making or inspecting repairs if it is **reasonable and necessary** to do so.

Options for tenants if repairs are not undertaken

If your landlord does not undertake repairs within the required timeframe they will be in breach of the tenancy agreement. If this is the case, you can choose to apply to ACAT for

an order that they undertake repairs or follow the process to end your tenancy. (See the section below about ending your tenancy when the landlord is in breach of the tenancy agreement). You may also be entitled to a rent reduction.

MAKING CHANGES TO THE PROPERTY ('MODIFICATIONS')

As a tenant, you may want to make changes (or 'modifications') to the property to make it work better for you as a home. There are some basic rules about modifications you need to follow.

- **You cannot make any modifications without your landlord's written consent.** Written consent includes consent granted via email or in a mobile phone message. You should make sure you keep a record of your landlord's consent to the modification, in the event there is any dispute.
- You are responsible for the cost of modifications (unless your landlord agrees to share the costs, e.g. if the modification improves the property).
- You must make sure the modifications are undone at the end of your tenancy, so the property is in substantially the same condition as at the beginning of the tenancy, unless your landlord agrees to the modifications remaining in place.
- You are responsible for the cost of undoing the modifications. Your landlord is under no obligation to compensate you for the modifications even if they remain in place.
- Your landlord may impose other **reasonable conditions** on their consent to the modification (such as requiring you to use a suitably qualified tradesperson to do the modifications (or to undo them at the end of the tenancy)).

The rules for obtaining consent from your landlord depend on what kind of modification you want to make.

If the modification is a 'special modification,' your landlord cannot refuse consent without ACAT's approval (see further below). The landlord has 14 days to decide whether to apply to ACAT, otherwise they will be taken to consent.

For all other modifications, your landlord can only refuse consent if it is reasonable for them to do so in the circumstances. If your landlord refuses consent and you think this was unreasonable, then you may apply to ACAT to overturn your landlord's refusal.

Special modifications

Special modifications are any modifications in one of the following categories:

- **Minor modifications** – anything that can be removed or undone so that the property is restored to substantially the same condition as at the start of the tenancy, fair wear and tear excepted. Examples include:
  - putting up picture hooks
  - installing a shelf
  - fixing blinds to a window

- painting a wall
- planting vegetables, fruit, herbs, flowers or shrubs (under 2 metres), as long as existing vegetation (including mature lawns) or plants do not need to be removed, and
- installing or placing a compost bin or tumbler in the garden if existing vegetation or plants do not need to be removed.

> **Safety modifications** – anything that promotes the safety of people on the property (e.g. furniture anchors or child safety gates).

> **Security modifications** – anything that improves the security of the property or people on the property (e.g. installing deadlocks or alarms).

> **Disability-related modifications** – anything that assists a tenant who has a disability (e.g. access ramps, safety rails). For this type of requet, you must provide a written recommendation from a health practitioner in support of the request.

> **Energy-efficiency modifications** – anything that improves the energy efficiency of the property (e.g. switching to energy efficient lighting or putting glazing film on windows).

> **Telecommunications modifications** – anything that enables access to telecommunication services (e.g. installing an internet, phone or cable television connection).

If you make a request to your landlord in writing for a special modification, your landlord must apply to ACAT within 14 days of receiving your request, if they wish to refuse consent.

If your landlord does not apply to ACAT, or if they do not respond to your request within 14 days, then they are taken to have consented to the request.

The following table summarises the rules on consent to modifications.

Type of modification	Can landlord refuse consent?
Special modification: > Minor modification > Safety modification > Security modification > Disability modification > Energy efficiency modification > Telecommunications modification	Landlord needs approval from ACAT to refuse consent. Landlord must apply to ACAT for this approval. If the tenant requests consent in writing (e.g. via email), and the landlord does not respond within 14 days, the landlord is taken to have consented.
General modification (anything that is not a special modification)	Landlord can refuse consent, without needing approval from ACAT, as long as the landlord's decision is reasonable. Tenant may apply to ACAT for an order allowing the modification if they believe the landlord has unreasonably refused consent.

How will ACAT decide modifications disputes?

In any dispute about whether a modification should be permitted (whether a special modification or otherwise), ACAT must consider:

- whether the landlord would suffer significant hardship if the modification were made
- whether the modification would be contrary to the law for any reason (e.g. it would not be permitted under planning or building laws)
- whether the modification is likely to require modifications to other residential properties or common areas (e.g. in apartment buildings), and
- whether the modification would result in additional maintenance costs for the landlord.

ACAT will consider any other relevant circumstances of the case and determine the matter fairly taking into account the views of the tenant and of the landlord.

CHANGING LOCKS

Except in an emergency, the landlord or tenant may only change the locks for the property with the consent of the other party. The person who changes the locks is responsible for the cost, unless both parties agree that the cost will be shared.

In the case of an emergency, the landlord or tenant can change the locks without the consent of the other party. The person who changed the locks must give the other party a copy of the new key as soon as possible.

In a situation of family or personal violence, a tenant (or someone else living at the property) who is a protected person under a protection order can change the locks at their own cost without the landlord's consent. The person must provide a copy of the new key to the landlord as soon as possible, unless doing so would affect their safety.

PETS

If you own a pet and are looking for a new rental property, see also the information on pets in the 'Starting Your Tenancy' section above.

I am living in a rental property. Am I allowed to have a pet?

You are allowed to have a pet, unless your landlord obtains the approval of ACAT to refuse your pet. This is intended to be a case-by-case process, where ACAT will consider the circumstances of the tenant and landlord, the nature of the property and the type of pet. This process allows for a balance between the rights of tenants and landlords.

The starting point is to check what your residential tenancy agreement says. Landlords are not permitted to include terms in the agreement that prohibit pets outright. However, your agreement can require you to ask for the landlord's consent to have a pet (look for rules on 'keeping animals on the premises').

Some landlords are comfortable with pets and do not require their tenants to notify them or seek their consent.

- If your agreement does not say that your landlord's consent is required for you to keep a pet on the property, then you can go ahead and get a pet.
- There is no requirement for you to seek the consent of (or even notify) your landlord.

Some landlords do not permit pets on their properties without the tenant seeking their written consent first. This requirement must be specifically included in the residential tenancy agreement.

- If your agreement says that you must seek your landlord's consent in writing before getting a pet, then you must ask for consent.
- **If you get a pet without consent (when consent is required under your agreement), you will be in breach of your agreement.**

If your landlord requires you to seek consent for a pet, there is a process that must be followed.

- You must put the request in writing to your landlord (email or even a text message is fine). Keep a copy of your request. Make sure your request is as specific as possible – What pet would you like to get? How many? Are there any issues with cleaning or maintenance, or neighbours (e.g. in an apartment building), that you may need to think about? Your landlord may want to know how you will handle these issues.
- Your landlord must respond to your request within 14 days of receiving your request.
- If your landlord does not respond within 14 days, they are taken to have consented to your request. This means you can go ahead and get the pet. You should do your best (within reason) to check that your landlord has received your request (and when they received it) before getting a pet.

Your landlord has two options when responding to your request.

Your landlord can agree to your request, with or without conditions.

- Your landlord can impose reasonable conditions about the number of animals you are allowed to keep on the property, or the cleaning and maintenance of the property.
- If your landlord wants to impose other conditions (that do not relate to the number of animals or the cleaning and maintenance of the property), your landlord needs to apply to ACAT for approval of those conditions.
- If you think the conditions your landlord wants to impose are unreasonable, you can apply to ACAT to resolve the dispute.

If your landlord wants to refuse your request, they must first seek an order from ACAT approving their refusal.

- Your landlord must lodge the application with ACAT within 14 days of receiving your request, if they wish to take this route.

Your landlord may have been to ACAT before and ACAT may have agreed to refuse a previous tenant's request to a pet. This does not mean your landlord can refuse your pet outright. Your circumstances, or the type of pet you are requesting, may be different. Generally a landlord will need ACAT's approval on a case-by-case basis to refuse any request from a tenant for a pet. However, you should think about the reasons ACAT may have previously agreed that a pet should not be permitted in the property, and whether these apply in your case.

How will ACAT determine applications about pets?

ACAT will consider the matter independently. ACAT will take into account your views and those of the landlord, as well as the nature of the property and the pet in question.

ACAT may approve the landlord refusing consent to your pet if:

- the property is unsuitable for the pet
- keeping the pet would result in unreasonable damage to the property
- keeping the pet would be an unacceptable risk to public health or safety
- the landlord would suffer significant hardship from the tenant keeping the pet, or
- keeping the pet would be contrary to the law.

Key points to remember if you do get a pet

You have rights and obligations as a tenant in relation to your pet. In particular:

- **You will be responsible for any damage to the property caused by your pet, including if the amount of damage exceeds your bond.**
- Your landlord cannot require you to pay extra bond because you have a pet.
- Your landlord cannot require you to accept additional inspections because you have a pet.

I live in a unit titled property. Are the rules on pets any different?

The rules discussed above will still apply to tenants in unit titled properties when you are dealing with your landlord. These rules govern the relationship between you and your landlord and protect your landlord's interest in the rental property.

However, you and your landlord must also comply with the rules on pets in the *Unit Titles (Management) Act 2011*. These rules govern the communal relationships involved (between you and the other residents in the apartment building) and protect the interests of all owners and residents in unit titled properties.

The owners corporation rules will govern the process you need to follow as a tenant to make sure you are permitted to keep your pet.

If your owners corporation rules have a 'pet friendly rule' that allows pets to be kept without seeking consent from the owner's corporation, then you can have a pet in accordance with that rule. The pet friendly rule may impose conditions (e.g. around the number of pets you

may keep, cleaning or maintenance, supervision when using common property etc) so you should make sure you understand what the rule requires.

If your owners' corporation rules do not have a pet friendly rule, you will need to ask the owners' corporation for consent to keep your pet, even if you have already received the consent of your landlord. The owners' corporation must respond in writing. If you do not receive a response within 3 weeks of your request, the owners corporation is taken to consent.

The owners corporation may respond by granting consent (which may be subject to reasonable conditions), or by refusing consent. If consent is refused, the reasons must be stated. The owners' corporation may not unreasonably refuse consent.

If you think the decision of your owners' corporation is unreasonable, you may take the dispute to ACAT.

I have a disability and I need an assistance animal. Will my animal be allowed?

The ACT's discrimination laws (the *Discrimination Act 1991*) prohibit landlords from discriminating against a tenant who has a disability, which includes their reliance on an assistance animal. A tenant who needs to get an assistance animal because of their disability should still notify their landlord in writing. A landlord might ask for evidence (e.g. a letter from a health practitioner) confirming the need for the animal. Landlords cannot lawfully refuse a tenant's genuine request for an assistance animal. The same applies to owners corporations in unit titled properties.

Cat containment laws

If you own, or are considering getting, a cat, be aware that the ACT Government has introduced cat containment requirements across the ACT for all cats born from 1 July 2022. A number of suburbs have already been declared cat containment areas, which means all cats in these areas, regardless of age, must be contained.Cats born before 1 July 2022 do not have to be contained, unless they live in one of the declared cat containment suburbs.

Containment means keeping your cat on your premises 24 hours a day. This can include your house or apartment, an enclosed area in a backyard or courtyard, or a cat crate. You are permitted to take your cat away from the property if they are in a cage or vehicle or on a harness and lead.

There are a number of ways cats can be kept to their owner's premises and still be able to explore. Cats can be kept indoors or go outdoors in a purpose built enclosure which allows them to explore the outdoors without the risk of roaming.

If you think you will need to make modifications or changes to your rental property in order to appropriately contain your cat, refer to the section on modifications for more information about how you may be able to obtain permission from your landlord to do this. Be aware that if you are in a unit complex, the maintenance of the balcony area may be the responsibility of the owners' corporation and your landlord may need to seek permission from the owners' corporation if you wish to make any modifications on the balcony.

For more information about cat containment laws in the ACT visit:
https://www.cityservices.act.gov.au/pets-and-wildlife/domestic-animals/cats/cat-containment

SUBLETTING

Subletting is when you (as the tenant) allow someone else (other than a child or domestic partner) who is not named on the lease to live in all or part of the property, regardless of whether you stay living there or not. This does not apply to having short-term, non-paying guests visit.

You are not allowed to sublet the property without the written permission of the landlord. The landlord has the right to know (and to approve) who is living in the property.

Subletting without permission is a ground for the landlord to seek to terminate your agreement.

Further, the subletting arrangement will be legally unenforceable, meaning the person to whom the property is sublet will not have any rights as a tenant.

If you wish to sublet the property, make sure you get your landlord's agreement in writing. This may be in any form (e.g. via email or mobile phone message), but make sure to keep a copy of the record in case there is any dispute later on.

The agreement should be as specific as possible about the identity of the person to whom you are subletting and the key terms (e.g. for how long and whether you will still be living in the property).

SHARE HOUSING OR "CO-TENANCIES"

Living in a share house can be a great way to share the costs and responsibilities of renting as well as making life more social. Share housing can be different from other tenancies though, as it can be more transient, with people moving in and out of the house over time. It may seem that these arrangements are informal but the reality is that legal rules do apply when people move in and out. You need to know these rules because not following them correctly may cause disputes and result in significant costs. You may want to consider these rules before setting up, or moving into a share house, so you and your other housemates can agree on how you want your house to operate.

In any situation where there is more than one tenant listed on the agreement, each tenant will be known as a 'co-tenant' and the agreement can be called a 'co-tenancy.'

What are my rights and responsibilities as a co-tenant?

In a co-tenancy, you all share the same rights and obligations under the lease towards the landlord. This means that you all have the security and stability that comes with having the legal right to live in the property as a tenant: a co-tenant can't be made to leave the property unless the lease allows it. However, being a tenant also comes with responsibilities, and all co-tenants are equally responsible for the property under the law. **This means that if one co-tenant breaches the agreement, the other co-tenants are liable to the landlord for the breach**. For example, if one co-tenant stops paying rent or damages the property, the landlord may seek to have the other co-tenants pay the outstanding rent or pay for the property damage.

While it may be unlikely that you end up having to pay for something your housemate did (or didn't) do, be aware that this is part of the risk you assume when deciding to live with others in a co-tenancy.

An advantage of a co-tenancy is that the law clearly regulates your relationship, through the rules outlined in this section of the Renting Book.

How do I become a co-tenant?

Where you are one of several tenants under a residential tenancy agreement, you are all called co-tenants.

You are a co-tenant if:

- you are part of the original group starting up the share house, and your name is on the lease, or
- you join an existing share house, and you follow the correct process to join as a co-tenant.

Are there any other options?

It is possible for you to live in a share house without being a co-tenant, as the law also recognises other types of arrangements. In particular, you could be a head tenant or sub-tenant, or have a 'licence' to live in the property. These alternatives to co-tenancies are outlined at the end of this section of the Renting Book. They have advantages and disadvantages, depending on what is important to you.

It is important that **you know your legal status** at the beginning when you move into a share house, as this can significantly affect your legal rights and obligations.

Key Points

These are the key points you should know about how the law regulates share houses that are co-tenancies:

- **If a person wants to move out of a share house they MUST request the consent of the other housemates and of the landlord.**
- **If a person moves out without consent, they may face significant costs because they will still be part of the tenancy agreement down the track (e.g. if damage is caused to the property after they leave).**
- There are rules about whether the landlord and other housemates can refuse consent to someone moving out. In short:
  - Any of the housemates or the landlord can refuse a person moving out during a **fixed term** agreement for any reason.
  - The housemates or the landlord can only refuse a person moving out during a **periodic agreement** if this is reasonable and if they obtain an ACAT order endorsing the refusal.
  - Any of the housemates can refuse a new person moving in for any reason.
  - The landlord can only refuse a new person moving in if this is reasonable.
- If the housemates and/or the landlord disagree about a person moving in or out, the dispute may be taken to ACAT for an independent decision.
- If the consent processes are properly followed, then people can move in and out of the share house without terminating the tenancy agreement with the landlord. The original agreement is treated as continuing, just with different tenants. This is good news because it means that:
  - **new condition reports do not need to be done**, and
  - **the landlord or agent cannot require the tenants to move out or undergo additional inspections** just because the housemates in the share house are changing.
- Landlords must not require or accept any money for consenting to requests for people to move in and out of the share house.
- **If a new person moves in without the consent process being followed:**
  - **that person will have no rights as a tenant under the law, and**
  - **the other housemates will be in breach of their agreement**. As with unlawful subletting, having a new person move in without seeking the landlord's consent is a ground for the landlord to seek to terminate the lease.
- **BOND - When people move in and out, the housemates are responsible for dealing with the bond.**
  - The housemates work out whether the person leaving owes any money (e.g. for unpaid rent or damage) and deduct this from their share of the bond.

- ❖ The person moving in pays their share of the bond to the housemates (or to the person leaving, as the case may be).
- ❖ The housemates must notify the ACT Revenue Office of the changes in the share house, so that the legal record of who is a party to the bond can be updated.

> If a legal dispute about any aspect of the tenancy arises between the housemates, or between the landlord and the housemates, and it can't be resolved, the dispute can be taken to ACAT for independent resolution.

CHANGING HOUSEMATES

A housemate wants to move out (leaving a co-tenancy)

It is part of life in a share house that for various reasons people may want to move on. However, the decision of one housemate to move out affects the interests of the other housemates as well as of the landlord. Because of this, the law requires the leaving housemate to ask for their consent before they can end their co-tenancy and move out.

> **The housemate who wants to leave must seek consent in writing from the landlord and the other housemates.**

> **The housemate must give a minimum of 21 days' notice before they plan to move out** (in practice, of course, the more notice the better.)

> There is no particular form required to seek consent as long as it is in writing (e.g. the housemate could seek consent via email, text message, social media etc).

> All parties should keep records of their messages to each other.

> If there is more than one other housemate, a response is required from each housemate. This does not mean that each person must reply separately, but if one housemate replies on behalf of some or all of the others, this should be made clear in the response.

What happens if a housemate moves out without seeking consent?

Their liability under the tenancy agreement does not end and they may be responsible to cover their share of the rent until the end of the agreement. See - What happens if ACAT approves the other parties refusing consent?

Can the landlord or other housemates refuse consent?

The way the consent process works depends on whether the housemate is proposing to leave during a fixed term or a periodic agreement. Basically, it is easier to leave during a periodic tenancy (this is consistent with the general position at law that it is easier to end periodic tenancies than fixed term tenancies).

If you are in doubt about whether your tenancy is fixed term or periodic, see the information in Starting Your Tenancy.

Consent process for housemate moving out

Type of agreement	Can the other parties refuse consent?
The housemate wants to move out during a **fixed term agreement.**	The landlord or the other housemates can **refuse consent for any (lawful) reason**. For example, if one housemate thinks they will not be able to afford the rent on their own if the other housemate moves out and does not want to live with someone else. If the landlord or one of the other housemates refuses consent, the co-tenant who wants to move out may apply to ACAT for an order permitting them to do so.
The housemate wants to move out during a **periodic agreement.**	The landlord or the other housemates can **only refuse consent if**: > it is reasonable for them to do so, and > **they apply for** (and obtain) **an order from ACAT** allowing them to refuse consent. If the landlord or any of the other housemates want to refuse consent**, they have to apply to ACAT within 21 days** of receiving the co-tenant's request to move out. If the application to ACAT is not made within 21 days, the landlord or other housemate/s are taken to have consented. ACAT will decide whether the person who refused consent to the housemate moving out was acting reasonably. **Example** Keira, Manon and Aley are housemates on a periodic tenancy agreement. They agree at the start of December that they will all move out at the end of January. However, Aley then decides she wants to move out early and she asks Keira and Manon to consent to her leaving at the end of December. Keira and Manon don't want to consent to this, as it will mean they need to cover the rent between the two of them until the end of January and because it will be difficult for them to find a replacement tenant for just a few weeks. Keira and Manon apply to ACAT for an order requesting permission to refuse consent to Aley's request to leave the tenancy.

What happens if consent is granted?

If:

> the landlord and the other housemates grant consent, or

> ACAT makes an order approving the housemate leaving,

then **the housemate can move out and the residential tenancy agreement continues between the landlord and the remaining housemates.**

The housemate's rights and obligations as a co-tenant under the residential tenancy agreement will end on the day that they move out (or another date agreed by the parties or ordered by ACAT). In particular, from that date the housemate is no longer liable to pay rent or for any damage to the property. The continuing housemates will also need to make arrangements to pay out the leaving housemate's share of the bond (see more on this below).

What if the landlord or the other housemates don't respond to the request for consent?

If the landlord or any of the other housemates **do not respond within 21 days** of receiving the request for consent, they are **taken to have consented**.

The housemate who is seeking consent should try (within reason) to make sure that the landlord and the other housemates have received the request.

What happens if ACAT approves the other parties refusing consent?

If the residential tenancy agreement is for a **fixed term**, and the housemate cannot obtain consent to move out (even after taking the dispute to ACAT), they can still move out in practice. However, they will remain legally liable for their obligations as a co-tenant under the agreement for the rest of the fixed term, unless they negotiate a different outcome with their landlord and/or housemates. In this circumstance, the other parties will be under a general duty to mitigate their losses, in particular by trying to find a new co-tenant or by accepting the extra cost associated with the outgoing tenant leaving (if they do not want to find a replacement tenant).

If the residential tenancy agreement is **periodic,** and ACAT has made an order refusing consent for the housemate to move out, then the housemate can still move out, but they would need to issue a new 'notice of intention to vacate' giving the landlord 21 days' notice of their intention to leave the tenancy. Legally the effect of this would be to end the entire tenancy agreement for all of the remaining housemates. The landlord and the remaining housemates would need to sign a new agreement (and finalise a new condition report etc). If this doesn't happen, but the remaining housemates stay on and keep paying rent, it's very likely that a new tenancy will be implied.

In practice, the housemate who wants to leave may wish to discuss these options with the remaining co-tenants and the landlord early to decide whether it would be better to issue a notice of intention to vacate (ending the tenancy agreement for all parties) or if it is better to seek the consent of the other parties for the leaving housemate to move out and allow the agreement to continue for the remaining housemates.

Example: Kelly wants to move out of her share house

Peter, Saffron, and Kelly are co-tenants, and Jasper is their landlord. They have a fixed term tenancy with 8 months still remaining in the fixed term. Kelly would like to leave the tenancy as she would like to accept a job in Queensland. Kelly seeks consent in writing from Peter, Saffron, and Jasper, giving them 21 days notice in writing before the date that she would like to move out.

Any one of Peter, Saffron or Jasper may refuse consent for any lawful reason, and Peter chooses to exercise this right (while the others consent). Peter refuses because he is concerned that he will not be able to afford an increase in his rent if he and Saffron can't find a replacement tenant for Kelly.

Kelly applies to the ACAT for an order that she may leave the tenancy. ACAT directs everyone to attend mediation, and the parties voluntarily come to an agreement that they will consent following a pathway similar to a 'break lease fee clause' situation, meaning that Kelly will cover the rent for a period, giving Peter and Saffron time to find a new tenant.

A new person wants to move in (Joining a co-tenancy)

Great! You've found a suitable new housemate. If someone new wants to move into the property as a co-tenant, the following rules apply.

- **One of the existing housemates must seek consent in writing from the landlord <u>and</u> from any other housemates.**
- **The housemate seeking consent on behalf of the new person must give a minimum of 14 days' notice before the new person wants to move in.** (In practice, of course, the more notice the better.)
- There is no particular form required to seek consent as long as it is in writing e.g. the housemate could seek consent via email, text message, etc.
- All parties should keep records of their messages to each other.
- If there is more than one other housemate, a response is required from each housemate. This does not mean that each person must reply separately, but if one housemate replies on behalf of some or all of the others, this should be made clear in the response.
- **If a new person moves in without the consent process being followed:**
    - **that person will have no rights as a tenant under the law, and**
    - **the other housemates will be in breach of their agreement**. As with unlawful subletting, having a new person move in without seeking the landlord's consent is a ground for the landlord to seek to end the lease.

Can the landlord or other housemates refuse consent?

The rules on consent are different for the landlord and the other housemates.

Can the other parties refuse consent to a new person moving in?	
Landlord	The landlord can **only refuse consent if it is reasonable for them to do so**. If they refuse consent, **the landlord must provide their reasons in writing** to the housemate seeking consent and the new person. **The housemate seeking consent may apply for an order from ACAT approving the new person moving in (**as long as the other housemates have consented and it is only the landlord who has not). **The new person can move in as a co-tenant from the date this application is made.** ACAT will decide whether the landlord's decision was reasonable.
Other housemates	**Any other housemate can refuse consent for any (lawful) reason.** This is because the law recognises that the other housemates should have a say in who they live with and should not be forced to live with a new co-tenant if they do not wish to.

These rules are the same for fixed term and periodic tenancies.

These rules do not apply to share houses in crisis accommodation or social housing (see below for the rules in these situations).

What happens if consent is granted?

If:

- the other housemates and the landlord consent, or
- ACAT makes an order preventing the landlord from refusing consent,

then **the existing tenancy will continue with the new person as a co-tenant.**

The date the new person becomes a co-tenant will be either: the date they move in, the date that the application (if any) to ACAT challenging the landlord's refusal is made, or another date agreed between the parties or ordered by ACAT.

What if the landlord or the other housemates don't respond to the request for consent?

If the landlord or any of the other housemates **do not respond within 14 days** after receiving the request for consent**, they are taken to have consented**. This rule is designed to ensure that the landlord or other housemates cannot prevent someone new from moving in simply by ignoring the request.

The housemate who is seeking consent on behalf of the new person should try (within reason) to make sure that the landlord and the other housemates have received the request.

What is the process for challenging the landlord's refusal to consent in ACAT?

If the other housemates consent but the landlord does not, the housemate seeking consent can apply for an ACAT order to approve the incoming co-tenant moving in. This is known as a '**declaration application**'.

The incoming co-tenant will be able to move in from the date of the ACAT application and becomes a co-tenant from that date. They will need to pay rent and bond from this date and will also need to be given a copy of the condition report. This approach recognises that the ACAT process may take time to resolve and it may be difficult for the new housemate to make other temporary housing arrangements while waiting for the outcome.

ACAT must decide whether the landlord acted reasonably in refusing consent. ACAT will take into account all of the circumstances, but under the law it must consider whether:

- The property would be overcrowded if the new person were to move in.
- The new person is listed on a residential tenancy database (for further information see the section on tenancy databases).
- The new person is suitable for the tenancy, if the tenancy exists for a particular purpose. For example, it may be reasonable for a landlord operating a housing support program for women at risk of homelessness, or men leaving prison, to refuse consent to a new person who is not within this class of people.
- The property is provided by an employer in connection with a person's employment, in which case it may be reasonable to only permit employees to live there.

ACAT can also take into account other matters that it considers relevant.

It is expected that landlords will only withhold consent where there are genuine, objective reasons for doing so, rather than mere personal preferences. Landlords should also not unreasonably withhold consent in exchange for benefits (e.g. an increase in rent).

If ACAT decides that the landlord's decision to refuse consent was unreasonable, then the new person continues being a co-tenant and may remain in the property.

If ACAT finds that the landlord's decision to refuse consent was reasonable, then the new person will stop being a co-tenant and **must leave the property within 21 days**.

Note: the law provides procedural protections for landlords in the event that a housemate applies to ACAT, thereby making the new person a co-tenant, and then withdraws the application (which would technically prevent ACAT from deciding the matter). In that event, the landlord can apply for an order that the new person must stop being a co-tenant and leave the property.

Example: Aparna wants to move into the share house

Rafael, Mai, and Rami are co-tenants, and James is their landlord. The housemates would all like Aparna to join the tenancy. Any one of Rafael, Mai, or Rami may seek consent from the others and from James, so Rafael takes on that task. Rafael seeks consent in writing for

Aparna to join the tenancy, giving the others at least 14 days to respond before she proposes to move in.

Mai and Rami may refuse consent for any lawful reason, but on this occasion they reply in writing within 14 days to confirm their consent.

James must not unreasonably refuse consent. He wishes to refuse consent. He provides his refusal and reasons in writing (as he is required to do). He says that his reason is because he is worried about overcrowding in the property.

Rafael, Mai, and Rami disagree that the property would be overcrowded as it has four bedrooms and two bathrooms. As Mai and Rami have both consented, Rafael applies to ACAT for an order that James' refusal was unreasonable. ACAT must consider if the property would be overcrowded with Aparna as a co-tenant.

Aparna becomes a co-tenant and can move in on the day that Rafael makes the application to ACAT.

If ACAT considers that James' refusal was reasonable, it may order that Aparna is to stop being a party to the residential tenancy agreement, and Aparna will have to leave the property within 21 days of the order.

If ACAT considers that James' refusal was unreasonable, it can make a declaration to this effect. In this case, ACAT orders that James was unreasonable to refuse, having regard to the size of the property and the number of bedrooms and bathrooms. Aparna will remain a co-tenant and can continue living at the property.

What are the rules for new people moving into social housing or crisis accommodation?

A new person can only move in as a co-tenant to a share house that is in social housing or declared crisis accommodation if the other co-tenants and the landlord agree. This means that rules in relation to challenging the landlord's refusal to consent to a new housemate do not apply in relation to social housing or crisis accommodation. This is to ensure that social housing and crisis accommodation can continue to be allocated on a needs basis.

Social housing means Government-provided housing (through Housing ACT) or housing provided by a registered community housing provider under a Government-approved program.

CHANGES IN HOUSEMATES: WHAT ABOUT THE BOND?

Key point: the housemates must work out the bond

When there is a change of housemates in the share house:

- **There is no need for the bond to be paid out and then repaid by all the co-tenants.**
- This is because the original tenancy with the landlord is continuing, just with different co-tenants, and so the original bond remains valid.

- **The housemates must work out among themselves how much should be paid to any outgoing housemate, and how much must be paid by any incoming housemate.**
- This includes working out whether the person leaving is responsible for any damage to the property.

This system is designed to allow the housemates to manage their liabilities privately, without the agent or landlord becoming involved. Importantly, this means:

- Landlords or agents cannot require the housemates to move out and then move back in again before a new person can move in.
- **Landlords or agents cannot insist on:**
  - **doing an inspection of the property, or**
  - **requiring a new condition report**

  as a condition of agreeing to a person moving in or out. The landlord or agent need only do a final inspection and condition report at the end of the tenancy, when everyone is moving out.
- **The remaining housemates (and any new housemate) will be liable for any damage done to the property by outgoing housemates.**

In practice, if the housemates are concerned about damage to the property by an outgoing housemate, they have the option of repairing the damage at that time, using the money deducted from the bond payment to the outgoing housemate (such that it will no longer be a bond issue down the track). An example is provided below of how this might work.

The rules that the housemates must follow in managing the bond are set out below. These rules apply equally to fixed term and periodic tenancies.

A housemate is moving out

- **The other housemates must pay the person leaving their share of the bond (within 14 days of the person moving out) but may deduct any money reasonably owing by the person.**
- This includes any unpaid rent or the cost of any damage the person has caused to the property that would ordinarily come out of the bond (i.e. damage that is not just fair wear and tear).
- **The other housemates must then notify the ACT Revenue Office** that the person is leaving and has been paid their share of the bond.
- The ACT Revenue Office will then ensure that the person who has moved out is no longer recorded as having any interest in the bond.
- If there is a dispute between the housemates about how much the person leaving should be paid out, the person leaving can apply to ACAT to resolve the dispute (this can still be done after they have moved out).
- The housemates should keep written records of the payment made and the reasons for any deductions, as well as the notification to the ACT Revenue Office.

A new housemate is moving in

- **The new housemate must pay to the other housemates their share of the bond within 14 days of moving in.**
- **The new housemate must notify the ACT Revenue Office** that they have moved in and paid their share of the bond.
- The ACT Revenue Office will then ensure that the person who has moved in is recorded as having an interest in the bond.
- The housemates should keep written records of the payment made as well as the notification to the ACT Revenue Office.
- **The new housemate must be given a copy of the original condition report** no later than the day after they move in.
- **The new housemate will become liable for damage done to the property by existing or former housemates.** Because of this, they should review the original condition report carefully and compare it to the existing condition of the property. If the new housemate thinks that there has been damage to the property since the tenancy commenced (that has not been accounted for in the amount of bond they were asked to pay when moving in) they should raise this with the existing housemates.
- **If there is a dispute about how much money the new housemate is being asked to pay in bond, this dispute can be taken to ACAT.**

Help! What if my sharehouse is ending but my name isn't on the bond record?

Sometimes a share house can last for years with multiple changes in housemates, and everyone loses track of who owned the dusty boxes in the garage. It can happen that when the share house is being dissolved (the entire tenancy is ending), and it comes time to pay out the bond, the names of the tenants in the share house at that time do not match ACT Revenue's Office records about who has an interest in the bond.

In that case, the ACT Revenue Office will refer the matter to ACAT. ACAT will determine who is entitled to be paid out a share of the bond. This ensures that if the housemates at some point have failed to notify the ACT Revenue Office about people moving in and out of the share house, the problem can be fixed and the bond can be paid out correctly.

Example: Jonah is moving out and Azima is moving in. How do they manage the bond?

Jonah lives in a share house with Margot and Yuko as co-tenants. They paid a bond at the beginning of their tenancy of $3600, in equal shares of $1200 each. Jonah has decided to move out, and he will be replaced in the house by Margot's friend Azima. The landlord and all the housemates have consented in writing to these changes.

A while ago, Jonah damaged the wall in his bedroom while moving furniture. The housemates agree that the significant chips in the wall are not fair wear and tear and will likely be deducted from their bond at the end of the tenancy when everyone moves out.

Before Jonah moves out, he arranges a quote from a painter for patching and painting the damaged wall. The quote is for $200.

Within 14 days of Jonah moving out, Margot and Yuko pay him $1000 (his share of the bond less the estimated cost of the damage to the wall).

Margot and Yuko then have two choices:

1. Within 14 days of moving in, Azima pays Margot and Yuko $1200 as her share of the bond. Margot and Yuko recoup their payment to Jonah and use the additional $200 to pay for the tradesperson to fix the wall. The housemates notify the ACT Revenue Office that Jonah has moved out and Azima has moved in, so that the official bond record can be updated.

OR

2. Within 14 days of moving in, Azima pays Margot and Yuko $1000 as her share of the bond (or Margot and Yuko agree to Azima paying this money directly to Jonah). Azima is aware that at the end of the tenancy, when a deduction is made for damage to the property, the $200 would likely be deducted from the bond and that when the bond is paid out, she would receive $1000, while Margot and Yuko would receive $1200 each from the total bond (assuming no additional deductions are required). The housemates notify the ACT Revenue Office that Jonah has moved out and Azima has moved in, so that the official bond record can be updated.

DISPUTES BETWEEN HOUSEMATES: GOING TO ACAT

If major disputes (relating to right and obligations under the tenancy agreement) arise between housemates in a share house that cannot be resolved amicably, any one of the housemates can take the dispute to ACAT and seek orders in relation to bond or an order that one of the other housemates should be removed as a co-tenant from the tenancy agreement. In effect, this means the person will be required to move out.

This is a serious step. This ability to apply to ACAT might be used, for example, if one housemate is jeopardising the entire tenancy agreement because they are repeatedly not paying their share of rent or intentionally damaging the property, or using the premises for illegal activities.

ACAT will usually direct the housemates to attend mediation, and will always hear from all of the housemates (who wish to participate in the proceedings) before making any final decision.

Remember, housemates can always seek legal advice before going to ACAT.

WHAT IF I'M NOT A CO-TENANT?

The rules discussed above apply to share houses that are co-tenancies. However, you can set up or join a share house without being (or becoming) a co-tenant. The main alternatives are briefly mentioned here.

Your legal status is important, so it is best to have clear records in writing at the beginning, when you move into the share house, that show what you and other housemates and the landlord intend your status to be.

If you think your living arrangement may fall into one of these alternative categories, and you are unsure about your rights and obligations, you should seek legal advice.

Head tenant / sub-tenant

If one person has their name on the lease and assumes all the responsibilities of the tenancy towards the landlord, and then rents out rooms in the property to others, this person becomes a “head tenant” and the other residents are “sub-tenants”. This is called sub-letting.

The head tenant can only sub-let if the landlord consents in writing. Failure to seek the landlord’s consent is a breach of the residential tenancy agreement and the landlord may seek to end the tenancy. The person who moves in under an unauthorised subletting arrangement will have no rights as a tenant and may be evicted.

Provided the subletting is authorised by the landlord, then being the head tenant means you get to choose the sub-tenants. However, being a head tenant carries significant responsibilities. **The head tenant is basically a landlord towards the sub-tenants.** The head tenant must comply with all the rights and obligations of a landlord under the Act (e.g. collecting and paying rent on time, depositing the sub-tenants’ bond payments, arranging (through the main landlord) for repairs to be done, etc).

The sub-tenants have no legal relationship with the main landlord (only with the head tenant). This means that if one of the sub-tenants breaches the residential tenancy agreement (e.g. stops paying rent or damages the property), then the head tenant is ultimately liable for this breach to the main landlord.

Being a sub-tenant means you are not liable for the actions of the head tenant or other housemates. However, there are possible disadvantages. For example, if the head tenant moves out, then any sub-tenancies will automatically end. To remain in the property, the sub-tenant would need to start a new tenancy agreement with the main landlord or another person as head tenant. Also, the head tenant could potentially seek to end your tenancy if they have a lawful reason to do so (the grounds for ending tenancies are discussed later in the Renting Book).

Occupants

An occupant is someone who pays money for the right to live in a property as their home, but who is not a tenant and their accommodation instead falls within one of several categories. The categories of occupancy typically include:

- people living in the owner’s home while the owner also lives there
- student accommodation on (or associated with) the campus of an educational institution
- people renting a bedroom in shared properties where facilities or domestic services are provided to the residents

- some types of emergency or crisis accommodation, or accommodation provided under a housing support program
- accommodation provided through a club of which the person is a member, and
- accommodation (or site rental) in a residential park.

Occupancy agreements are subject to a different legal framework to residential tenancy agreements and so the Renting Book does not apply. Instead, there are specific provisions under the Act that set out the rights and obligations of occupants.

Note: it is not possible to have an occupancy agreement that sits under a residential tenancy agreement (i.e. a tenant cannot set up an occupancy agreement instead of a co-tenancy or sub-tenancy).

Licensees

A person who is paying money for their accommodation (e.g. a room in a house), but is not a tenant or occupant, will usually be what is known as a 'licensee'. The term comes from the idea that the person has a legal 'licence' to live in the property because of the contractual arrangement reached between them and the person who owns or controls the property.

Being a licensee may be suitable for people who want very short term or flexible accommodation. However, **a licensee has no rights under residential tenancy law** or occupancy law, and so they tend to have little control over their living arrangements – for example, they are vulnerable to increases in costs and to eviction. Licensees are not covered by residential tenancy law and so the Renting Book does not apply.

DISPUTES AND BREACHES OF THE AGREEMENT

This section of the Renting Book discusses what might happen if either a tenant or landlord breaches (fails to comply with) the residential tenancy agreement. For example:

- the landlord does not carry out repairs or the property does not comply with the ceiling insulation standard as required under the Act
- the landlord frequently attends the property without notice or consent from the tenant e.g. to do gardening or to conduct an inspection
- the landlord has refused requests to make modifications to the property or to keep a pet, without the approval of ACAT
- the tenant fails to pay rent on time
- the tenant causes significant damage to the property
- the tenant has a pet without asking the landlord for consent, if the agreement requires that consent be requested,
- the tenant unlawfully sub-lets the property (without the landlord's consent)
- the tenant continually interferes with the quiet enjoyment of their neighbours, or
- the tenant is breaching the owners corporation rules in an apartment building.

If the tenant and landlord cannot resolve the breach, it can lead to the residential tenancy agreement being ended.

There are a number of ways in which a residential tenancy agreement can end without there being any breach of the agreement. These are discussed in the next section on 'Ending Your Tenancy'.

For both tenants and landlords, you should always consider getting legal advice before taking steps to end a tenancy, especially for a breach. Be aware that the other party can take the dispute to ACAT. You could be liable for compensation if ACAT decides that there has not been any breach of the agreement or if the correct procedures to end a tenanct were not followed.

The rules outlined in this section apply to both fixed term and periodic tenancies.

LANDLORD IN BREACH: OPTIONS FOR TENANTS

If you think that your landlord is breaching your residential tenancy agreement, your main options as a tenant are as follows:

- Try to resolve the dispute informally by communicating with your landlord or real estate agent to reach an agreed outcome.

- Apply to ACAT for an order reducing your rent temporarily to compensate you for the breach.
- Issue a formal notice to the landlord requiring them to fix the breach within two weeks. This is called a 'notice to remedy'. If the landlord doesn't fix the breach, your options are:
    - apply to ACAT for an order that the breach be addressed (this is called a 'performance order') and that you are paid compensation, or
    - if the breach is serious enough and you want to move out of the property, you may then issue a 'notice of intention to vacate'. This allows you to end the tenancy within a further two weeks. Note – the landlord may decide to challenge this if they believe the breach is not serious enough.
- In exceptional circumstances, if the breach is serious enough, you can apply to ACAT for an order to end the tenancy.
- If you are on a periodic tenancy and you wish to leave the property, you have an additional option: you can always end your agreement by giving 3 weeks' notice to the landlord (see further below the section 'Ending Your Tenancy').

You may end up using more than one of these options.

Resolving disputes by agreement

Discussing the issue with your landlord or agent will usually be the best option initially. Many issues can be resolved constructively this way, provided that both parties can communicate respectfully.

If you and your landlord or agent agree on any actions to resolve the dispute, make sure these are recorded in writing (e.g. via email) so that both parties are clear about next steps. Such records may also be needed later as evidence if another dispute occurs.

Rent reductions by order of ACAT

If you are interested in this option, see the information on rent reductions above. Remember the basic point is that an ACAT order is needed for this option: you cannot just decide to withhold rent – if you do, you will be in breach of your agreement and your landlord may seek to evict you.

Issuing a notice to remedy / notice to vacate

If more informal methods have not worked or are not appropriate, and you are not interested in a rent reduction, you can issue a **notice to remedy** to your landlord.

The notice to remedy is basically a formal letter that gives the landlord **two weeks** to fix the breach of the residential tenancy agreement (if it is capable of being fixed).

- You cannot give your landlord less than two weeks to remedy a breach, but you could give a longer timeframe at your discretion.
- Your notice to remedy must clearly identify what the breach is and what needs to be done to fix it.

The main aim of the notice to remedy is to get the breach fixed (e.g. to get the necessary repair finalised) so that you don't need to leave the property. However, it is also a step you must take before you can end the tenancy because of the breach (assuming the breach is serious enough to justify ending the tenancy): you cannot give a notice of intention to vacate unless you have first given a notice to remedy.

If your landlord fixes the breach within the two week period, your tenancy continues. You cannot choose to vacate the property anyway.

If your landlord does not fix the breach within two weeks (or if the breach is not capable of being fixed), you can then issue **a notice of intention to vacate if the breach is serious enough to justify moving out**. The notice to vacate is basically a formal letter that tells the landlord you will be leaving the property.

- Your notice to vacate must state the date on which the tenancy will end (the date you will move out).
- You must give **two weeks**' notice at a minimum (you could give more notice if you wish).
- You must keep paying rent to the date you leave the property.

If your landlord fixes the breach within the two week period from the date of your notice of intention to vacate, you can choose whether you want to stay in the property and continue the tenancy, or you can terminate your tenancy from the date stated in your notice.
Make sure to let your landlord or agent know your decision.

Some general tips for both notices to remedy and notices of intention to vacate:

- Notices do not have to be in any particular form. The Tenancy Advice Service ACT makes sample notices available on its website that you may wish to use: https://www.legalaidact.org.au/tasact.
- Make sure you use your best efforts so that you will be able to prove that the landlord or agent received your notice. Check your residential tenancy agreement which will have an address for you to serve notices on your landlord or agent and make sure you (use that address, otherwise your notice may not be properly served under the law
- If you go down the route of issuing these notices to your landlord, **there is no need for you to get an order from ACAT terminating your tenancy**. Your tenancy will end on the date specified in your notice of intention to vacate. There is no need to pay a 'break lease' fee or compensation to your landlord if you terminate your tenancy in these circumstances.
- **However, be aware that your landlord may challenge your notice/s in ACAT if they disagree that there has been any breach of the agreement or if they think that it is not serious enough to justify ending the tenancy.**

Applying to ACAT for an order to end the tenancy

You can apply to ACAT to end your agreement without first issuing a notice to remedy to the landlord. ACAT will only make an order if it is satisfied that the breach is serious enough to

justify ending the tenancy. ACAT can order that the landlord remedy the breach instead of ending the agreement. You may wish to seek legal advice before pursuing an ACAT order.

TENANT IN BREACH

Tenant in breach: failure to pay rent

If you cannot pay your rent, consider speaking with your landlord or agent as soon as possible. You may be able to negotiate a payment agreement to allow you to catch up on your arrears. Make sure you record any agreement in writing.

If you fail to pay rent, your landlord may take steps to make you pay the outstanding rent or to end the tenancy if you do not pay. **There is a process that the landlord must follow**. The key steps are:

Notice to remedy

- The landlord must first issue you a written **notice to remedy** requiring you to pay the outstanding rent. The landlord can only give you this notice after the rent has been unpaid for one week. The notice should state how much rent is owing.
- If you pay the outstanding rent within **7 days** of receiving the notice, then the landlord may not take further action and your tenancy will continue. The notice must tell you this.

Note that if your landlord has previously given you two notices to remedy in relation to unpaid rent, and you fail to pay rent a third time, then your landlord does not need to issue a further notice to remedy and can simply issue you a notice to vacate after rent is unpaid for a week.

If you do not agree that you are in arrears (behind in your rent payments) you can request a copy of your rent records.

Notice to vacate / termination notice

- If you do not pay the outstanding rent within 7 days, the landlord may serve you with a **notice to vacate** that requires you to leave the property. This is also called a 'termination notice.'
- The landlord must give you a minimum of **two weeks' notice** (from the date of the notice).
- **If you move out of the property, your tenancy ends** on the date you move out.
    - You will not owe any additional rent after you move out in accordance with a notice to vacate.
    - However, your landlord may use the bond towards your unpaid rent.
    - If you owe more than the amount of bond (in rent or due to property damage) your landlord may seek an order from ACAT that you pay any amount exceeding the bond.
- You may be liable for compensation to your landlord (in addition to the unpaid rent) if you do not comply with a valid notice to vacate.

- **If you do not move out of the property, your landlord can apply to ACAT for an order terminating the tenancy and requiring you to leave.** This type of order is called a '**termination and possession order**'.
- You **cannot** be made to leave a tenancy without an ACAT order and ACAT has some discretion as to whether they make a termination and possession order (see further below). This means you may be able to stay in your rental property (even though you have breached your agreement) if ACAT considers it appropriate in the circumstances to let you stay.

ACAT order

You will be informed if your landlord makes an application to ACAT and you will receive a copy of their claim and have the opportunity to respond in ACAT.

ACAT may decide to do one of the following:

- make a termination and possession order, in which case **your tenancy will be terminated** and you are required to move out on the date specified in the order;
- make a **payment order** which allows you to remain in the tenancy but requires you to pay the outstanding rent, if ACAT is satisfied that you are reasonably likely to make the payment; or
- if you have paid the outstanding rent, **ACAT can decide not to make any order**, if ACAT considers that you are reasonably likely to pay rent on time in future and that not making any order is just and appropriate.

However, if you have repeatedly failed to pay your rent and your landlord has made more than 2 previous applications for a termination and possession order (for your failure to pay rent) in the past 12-month period, ACAT can decide to make a payment order that you pay future rent as it falls due (even if you do not owe any rent at the time ACAT makes its order). To make a payment order ACAT must be satisfied that you are reasonably likely to comply with the order so you will need some evidence of your ongoing capacity to pay rent.

If a payment order is made and you do not comply with it, your landlord can apply again to ACAT for a termination and possession order. If you have breached a payment order your landlord doesn't need to issue you with a new notice to remedy or notice to vacate before they apply back to ACAT for a termination and posession order.

If your tenancy is terminated, ACAT can also make orders in relation to your bond. If you owe more money than the amount of your bond, ACAT can also make an order that you pay any outstanding amount to your landlord.

Tenancy ended by ACAT

- If ACAT decides to end your tenancy by making a termination and possession order they can end the tenancy on the same day as the ACAT hearing or they can suspend the order to end your tenancy for **up to 3 weeks**.

> In deciding how much time to give you before your tenancy is ended ACAT will consider your situation and that of the landlord. They cannot suspend the order for longer than 3 weeks.

Warrant for eviction through ACAT

> If ACAT makes a termination and possession order, and you do not move out, your landlord may apply to ACAT for a warrant for your eviction, which can ultimately be enforced by the police.

You should consider seeking legal advice if your landlord issues you with notices in relation to unpaid rent and you are not able to pay the rent.

Other breaches by the tenant

If your landlord thinks you have breached your residential tenancy agreement in any way other than a failure to pay rent, (for example, you have caused considerable property damage or have engaged in repeated or serious anti-social behaviour towards your neighbours) your landlord may take steps to make you fix the breach, or end your tenancy if you do not. The process is similar to that outlined above for a failure to pay rent.

> The landlord may issue you with a **written notice to remedy** requiring you to fix the breach. **You must be given at least two weeks to fix the breach**. The notice should clearly state what the breach is and what you must do to fix it.

> If you fix the breach within two weeks (or otherwise come to an agreement with your landlord about the dispute – make sure you get it in writing), then your tenancy will continue.

> If you do not fix the breach within two weeks, your landlord may issue you a **notice to vacate** which requires you to move out. This is also called a 'termination notice'. **You must be given at least two weeks' notice**.

> **If you move out of the property after receiving the notice to vacate (and return the keys), your tenancy is will end** on the date you move out.

> If you do not move out of the property, your landlord can apply to ACAT for an order to end the tenancy. This type of order is called a '**termination and possession order**'.

> You will be informed if your landlord makes an application to ACAT, receive a copy of the application and you will have the opportunity to respond in ACAT.

ACAT may decide to do one of the following:

> make a termination and possession order, if ACAT is satisfied that you have breached the agreement in a sufficiently serious way to justify terminating it,

> refuse to make the order, if ACAT considers that you have not breached your agreement (or that the breach was not so serious that your tenancy should be ended), that you have fixed the breach, or that you will do so), or

> make a '**performance order'** which allows the tenancy to continue but requires you to comply with the terms of your agreement (for example by maintaining the property in good condition or by not interfering with the quiet enjoyment of your neighbours).

If ACAT makes a termination and possession order, they can suspend this order for **up to 3 weeks**. If you do not move out, your landlord may apply to ACAT for **a warrant for your eviction**, which can ultimately be enforced by the police.

This process must be followed strictly by the landlord, unless your landlord has previously given you two notices to remedy. If that has happened, and you breach the agreement a third time, then your landlord can simply issue you with a notice to vacate.

If ACAT makes a performance order and you breach that order, then your landlord may apply again to ACAT for a termination and possession order without having to first issue you with a new notice to remedy or notice to vacate. Here again, ACAT will be able to decide whether to issue a termination and possession order or to refuse to make the order (if you have remedied (or fixed) the breach or if you undertake to do so. If ACAT makes a termination and possession order, they can suspend this order for up to 3 weeks.

NOTE – if you do not believe the landlord's claim that you have breached the agreement, you can require the landlord to give details and provide evidence, and you can challenge any notice when you receive it and later through ACAT if it progresses that far.

ENDING YOUR TENANCY

If you want to leave your rental home, or the landlord wants you to leave, it is very important that you know your rights and responsibilities and follow the correct procedures under the Act. Disputes can arise easily if either party does not manage the situation in accordance with the law.

The previous section on 'Disputes and Breaches of the Agreement' discusses how a tenancy can end because one of the parties has not complied with the residential tenancy agreement.

This section discusses the most common ways a tenancy can end where neither party is at fault. The rules that apply depend on whether your agreement is for a fixed term or periodic and the reason for ending the tenancy.

In addition to the situations discussed below, remember:

> **a tenant and landlord can always end a tenancy** (whether the agreement is fixed term or periodic) at any time and without any compensation **if both parties agree in writing** to do this

> under the rules relating to co-tenancies it is possible for just one co-tenant to leave a tenancy agreement without the tenancy agreement ending for the other parties. If you would like to leave but your housemates would like to remain, see the section on share housing for more information.

See also at the end of this section where some 'Less Common Scenarios for Ending an Agreement' are noted.

WHEN CAN A TENANT END A TENANCY?

Tenant ending a fixed term agreement

Tenant ending a tenancy on or after the end of a fixed term

There is a common myth that the end of a fixed term means the end of your tenancy and that you must have permission from the landlord to remain in the property or that you must "renew" the agreement with a new fixed term. **This is not correct.**

A tenancy agreement is an ongoing agreement usually in two parts – fixed and then periodic. When the fixed term ends, **your agreement automatically becomes periodic** unless you decide to end it as detailed below.

If you have a fixed term agreement that is coming to the end of the fixed period, and **you want to move out** rather than signing a new lease or staying on in a periodic tenancy:

> You must give the landlord a 'notice of intention to vacate' with at least **3 weeks' notice** before the date you plan to move out (which cannot be before the end of the agreement).

The landlord cannot end a tenancy agreement just because the fixed term is ending. They also cannot require that you sign a new agreement.

If you have a fixed term agreement that is coming to the end of the fixed period, and you want to stay in the property, you can choose to do nothing and your tenancy will become a periodic tenancy automatically after the end of the fixed term.

See below on 'Requirements for Notices' for how to give a notice of intention to vacate.

See below on 'Landlord ending a fixed term agreement early' for additional circumstances in which your landlord maybe able to end your tenancy during a fixed term agreement.

Tenant ending a fixed term tenancy agreement early or 'breaking the lease'

If you want to **end your fixed term agreement early**, you can but you may need to pay compensation to your landlord. There are some limited situations where you can do this without having to pay compensation to the landlord. The more common of these situations are summarised in the table below.

In some of these situations, you can end your agreement simply by giving your landlord a 'notice of intention to vacate' that informs them you will move out on a certain date. See below on 'Requirements for Notices' for how to give a notice of intention to vacate. You must make sure you give your landlord the minimum required notice period.

In other situations, an ACAT order is required to end your agreement. You need to apply for the order, rather than issuing a notice to your landlord. ACAT will hear from you and from the landlord and decide whether to make an order ending your tenancy.

Remember that the co-tenancy rules also allow a single co-tenant to leave a fixed term agreement without bringing the tenancy to an end for the remaining parties. This requires consent from both the landlord and remaining co-tenant(s). See the section on share housing for more information.

You may wish to discuss your situation with your landlord and seek legal advice before going to ACAT.

When can you break the lease without paying compensation?

Reason for tenant wishing to leave	Notice of intention to vacate required?	ACAT order required?	Required notice period?
A court has made a protection order (interim or final) to protect you from **family or personal violence** and that order affects your living arrangements. ACAT has flexible powers to deal with the situation appropriately. For example, ACAT may either end the lease so you can move out, or end the lease and require the landlord to enter into a new lease with you, so that you can stay in the property and others may	✖	✓	Nil. Tenancy end date determined by ACAT

be required to move out.			
You are experiencing **significant hardship** that justifies you breaking your lease (this could be related to your health, safety, finances or other reasons).	✗	✓	Nil. Tenancy end date determined by ACAT.
You have accepted an offer to move into **social housing or into an aged care facility** and you wish to end your lease to take up that offer.	✓	✗	**14 days**
Your landlord wishes to **sell the property:** • within the first 6 months of your agreement and did not tell you this before you signed the agreement, **or** • at any time during your agreement, and the sale process requires access to the property for inspections for more than 8 weeks.	✓	✗	**14 days**
You have been **posted away from Canberra** for work. You must provide evidence of the posting e.g. a letter from your employer. This option applies only if your agreement contains the posting termination clause.	✓	✗	**8 weeks**
Your rental property **does not comply with the ceiling insulation standard by the required date and you wish to end the tenancy**	✗	✓	Nil. Tenancy end date determined by ACAT.

If none of the above situations apply – you may still wish to **break your lease early and pay compensation to the landlord.**

Paying compensation for breaking your lease early

If you end your fixed term agreement early, other than for a reason permitted under the Act (as listed above), you will generally need to compensate your landlord. If you have a 'break lease clause' in your residential tenancy agreement, this caps the amount you have to pay (the 'break lease fee').

There are two steps for calculating the break lease fee. First, work out whether you are more than half-way through your fixed term (e.g. whether 6 months has passed on a 12 month lease).

> If you are **less than half-way** through your fixed term, your break lease fee is a maximum of **6 weeks' rent**.

> If you are **more than half-way** through your fixed term, your break lease fee is a maximum of **4 weeks' rent**.

Second, your break lease fee will be lower if your landlord finds a new tenant to move in within a defined period after you vacate the property.

> If you are less than half-way through your fixed term, the defined period is 6 weeks.

> If you are more than half-way through your fixed term, the defined period is 4 weeks.

If your landlord has a new tenant move in during the defined period, then the break lease fee you have to pay is:

> **reduced** by the rent payable by the new tenant during the defined period (at the rate paid by the new tenant, even if higher than your rent), but

> **includes** the landlord's reasonable administrative costs of re-letting the property (e.g. advertising) up to a capped limit (**unless** you vacate the property less than 4 weeks before the fixed term ends, in which case the landlord cannot claim administrative costs).

The capped limit for the landlord's administrative costs is:

> one week's rent, if you are less than half-way through your fixed term, or

> two-thirds of one week's rent, if you are more than half-way through your fixed term.

Your landlord can only claim the amount of administrative costs actually spent (if they spend less than the capped amount, they cannot claim it regardless).

The landlord also cannot claim administrative costs if this would make the break lease fee exceed the maximum amount of 4 weeks' or 6 weeks' rent.

An example follows:

> Mark is a tenant who wants to break his fixed term agreement early. His agreement is for 12 months and it has a break lease clause. His rent is $600 per week. He has 4 months remaining on his agreement (so he is more than half-way through his fixed term).

> Mark's break fee will be a maximum of 4 weeks' rent, so $2400.

> Mark's landlord, Kate, finds a new tenant, Heather, who moves in 3 weeks after Mark moves out. This is within the defined period (of 4 weeks) under the break lease clause rules.

> Kate increases the rent for Heather to $610 per week. Heather will pay $610 in rent for the one week that remains of the defined period.

> Kate spends $550 on advertising and other fees associated with reletting the property.

> The break fee payable by Mark will be $2400 – $610 + $550 = $2340.

A fact sheet with more examples of how the break lease clause works is available on the Justice and Community Safety Directorate website at: https://www.justice.act.gov.au/renting-and-occupancy-laws/reforms-to-tenancy-and-occupancy-laws-in-2023/reforms-in-2019.

The break lease clause rules are designed to be fair to both landlords and tenants. They ensure that landlords cannot claim compensation for lost rent while a new tenant is paying rent, while compensating the landlord for costs incurred in having to re-let the property early.

To activate your break lease fee clause, you must notify your landlord of your intention to vacate on a particular date. You must pay rent up to that date as well as the break fee. See below on 'Requirements for Notices' for how to give a notice of intention to vacate.

Note that these break lease rules apply to residential tenancy agreements of 3 years or less. If your agreement is for more than 3 years, check the Act and your agreement and seek legal advice as necessary.

I don't have a break lease clause in my agreement

If you **do not have a break lease clause** in your agreement, and you wish to end your fixed term agreement early, you can still do this by notifying your landlord. Your landlord may apply to ACAT for compensation. However, in this situation, **your landlord is still only able to claim compensation for the actual losses they incur and they must actively try to reduce those losses** – this is called 'mitigating loss'.

Mitigating Loss

In any situation where either the landlord or tenant might be able to claim compensation for loss from the other, the person who intends to claim compensation must take active steps to try to reduce their loss (this is called the **duty to mitigate**). If they do not do this, then they will not be entitled to all or part of the compensation that they are seeking.

Any compensation claimed is also limited **to the actual amount lost**. This means that if you break your lease (regardless of whether you have a break lease clause), as soon as new tenants are found (who will pay the same amount, or a higher amount of rent than what you were paying) then your landlord will no longer be suffering any loss and so will be unable to claim compensation from you.

The **duty to mitigate** means that your landlord must try to find replacement tenants as soon as possible to try to reduce the amount that you will owe them in compensation.

If your landlord does not try to find replacement tenants (for example, if they do not advertise the property or if they unreasonably refuse replacement tenants) then they may not be able to claim the full amount of compensation that might otherwise have been owed to them.

Tenant ending a periodic tenancy agreement

You can end a **periodic residential tenancy agreement by giving 3 weeks' notice** of your intention to vacate to the landlord. You do not need to pay the landlord any compensation to do this. You also do not need to provide any reason for wanting to end the agreement. See below on 'Requirements for Notices' for how to give a notice of intention to vacate.

You do not need an order from ACAT to end your agreement – you just need to move out by the date you said you would on your notice to the landlord (and follow the end of tenancy inspection processes).

Remember that the co-tenancy rules also allow a single co-tenant to leave a periodic tenancy without bringing the tenancy to an end for the remaining parties. This requires

consent from both the landlord and remaining co-tenant(s). See the section on share housing for more information.

WHEN CAN A LANDLORD END A TENANCY?

Landlord ending a fixed term agreement early

A landlord can usually **end a fixed term residential tenancy agreement early** if:

- **You have breached the terms of your tenancy agreement** and you move out in accordance with a notice to vacate issued by your landlord or where ACAT makes a termination and possession order to end the tenancy (see the section on breaches).
- The **landlord is experiencing significant hardship and ACAT makes an order allowing them to end the agreement**. Examples of hardship might include if the landlord is facing bankruptcy or homelessness. ACAT will only make the order if the landlord's hardship is greater than the hardship that the tenant would suffer from the early termination of the tenancy. ACAT will determine the notice period required to the tenant.
- The **landlord has been posted back to Canberra for their work**. This option only applies if you have the 'posting termination clause in your agreement. The landlord must give the tenant 8 weeks' notice and evidence of the posting (e.g. a letter from their employer).

  See further below on 'Less common scenarios for ending an agreement'.

Landlord ending a periodic agreement

Aside from circumstances where the tenant has breached the agreement (see the section on breach), **a landlord can end a periodic residential tenancy agreement** in the situations listed in the following table.

Landlord's reason for ending the tenancy	Notice period required
The **landlord** genuinely intends to **live in the property.** A **relative or someone with a close relationship** with the landlord genuinely intends to **live in the property.** See clause 96 of the Standard Terms for how this category of people is defined.	**8 weeks**
The landlord genuinely intends to **sell the property.**	**8 weeks**
The landlord genuinely intends to **rebuild, renovate or make major repairs** to the property, which cannot reasonably be carried out with the tenant living there.	**12 weeks**
The landlord genuinely **requires the premises for a lawful use other**	**26 weeks**

than as a home (e.g. they want to use it as a place of business).	

Landlords cannot end a tenancy for no reason: they must give you a reason recognised under the law. For example, landlords cannot end a tenancy because they want to increase the rent and you do not agree.

For each of the above reasons the landlord must also provide you with some evidence about their genuine reliance on the ground for ending a tenancy that they have listed in the notice. For example, if your lanldord indicates that they want to end the tenancy because they want to renovate the property they will need to provide you with evidence that they intend to renovate.

The type of evidence provided may depend on the reason the lanldord wants to end the tenancy. Examples of evidence could include:

> A statutory declaration

> Quotes or architectural drawings for renovations

> Development application

> A sales contract for a property

If you receive a notice to vacate from your landlord, you can decide to leave the property earlier than the date set by the landlord, by giving your landlord notice of your intention to vacate:

> with 4 days' notice, if you leave at any time during the last two weeks of the landlord's notice period, or

> with 3 weeks' notice at any other time.

If you consider that your landlord is requiring you to vacate your property under one of these grounds for reasons that are not genuine, you may apply to ACAT to dispute the notice (or for compensation if you have moved out in accordance with the notice). You may wish to seek legal advice in relation to this option.

If you do not move out in accordance with the notice to vacate issued to you by your landlord, then they can apply to ACAT for a termination and possession order which is an order to end the tenancy.

REQUIREMENTS FOR NOTICES

Where a tenant issues a notice of intention to vacate to the landlord, or a landlord issues a notice to vacate to the tenant, there is no set form to use but the following basic requirements must be met.

The notice **must be in writing** . **The content of the notice must include**:

> the address of the property

- adequate details of the reason/s for issuing the notice (which must be one of the grounds for ending a tenancy that are permitted under the Act)
- for a notice issued by a tenant: the date on which the tenant intends to vacate the premises (the date must meet any minimum notice period requirements), or
- for a notice issued by a landlord: the date on which the tenant must vacate the property (the date must meet any minimum notice period requirements), and
- a statement that the tenancy will end on that date.

Notices of intention to vacate and notices to vacate are also called 'termination notices'.

The Tenancy Advice Service ACT makes sample notices available for use on its website (https://www.legalaidact.org.au/tasact).

Make sure you use your best efforts so that you will be able to prove that the landlord or agent received your notice. Check your residential tenancy agreement which will have an address for you to serve notices on your landlord or agent. You need to use that address, however, this does not prevent you from sending the notice in multiple ways (eg by post and email) if you want to..

Note: there are particular 'service requirements' for when a landlord issues a notice to vacate to a tenant.

Special service rules for notices to vacate issued by landlords to tenantss

As notices to vacate are such important notices (they can lead to a tenancy ending), there are special rules which require the landlord to give the notice to tenant in a particular way. These are called 'service' requirements. 'Service' is a legal term for the particular way a legal notice (such as a notice to vacate) is given to a person.

The rules require that notices to vacate must be served on the tenant by:

- delivering it to the tenant personally (e.g, handing it to them); or
- leaving it at, or posting it to, the place of residence or business of the tenant.

This means notices to vacate cannot be sent by email or text message (unless they are also served correctly in person or by post). It is possible to send other types of notices (such as notices of an inspection or repair) via email if the tenant has provided an email address as the address for service for a notice.

The timeframes for the required notice to vacate period begin from when the notice is served. A notice served by post is taken to have been served when the document would have been delivered in the ordinary course of post.

When something is delivered in the ordinary course of post may vary. The Australia Post website provides some guidance on delivery speeds. At the time of writing, Australia post indicated that regular letters sent within the same State will generally be **received 2-4 business days *after* the day they are posted**.

EXAMPLE 1

A landlord decides that they want to sell the rental property, which requires the landlord to give the tenant 8 weeks' notice to vacate. On 1 June 2023 the landlord posts a notice to vacate to the tenant. They allow **4 working** days *after* the day it was posted for the notice to arrive. This means the notice period should not begin until 7 June 2023. This means the vacate date on the notice cannot be before 2 August 2023. If a notice to vacate on the grounds of sale sent by post on 1 June 2023 had a vacate date before 2 August 2023 (8 weeks after 7 June) it may be considered an invalid notice.

EXAMPLE 2

If the landlord in EXAMPLE 1 instead decided to hand deliver the notice to vacate on 1 June 2023 it would be considered to have been served on the day of delivery (1 June 2023). This means this notice could list a vacate date of 27 July 2023 (8 weeks after 1 June 2023).

Note – it is possible to issue a notice in multiple different ways just to ensure it has been received. For example, your landlord may send you the notice by post, hand deliver it and send it via email. So long as one of the ways the notice is sent to you meets the service and notice period requirements, the notice will likely be considered valid.

If you are not sure if a notice to vacate you have received has been served correctly, you may wish to seek legal advice.

LESS COMMON SCENARIOS FOR ENDING AN AGREEMENT

There are a range of other less common situations where a residential tenancy agreement (whether fixed term or periodic) can be ended either by the tenant or the landlord. These include:

- The property is not fit for habitation (e.g. an internal wall has collapsed or the roof has blown off).
- The tenant lived in the property as part of an employment agreement that has ended and the landlord needs to use the property for another employee.
- The property is used as crisis accommodation by a registered crisis accommodation provider and the provider needs to use it for someone other than the current tenant.
- The landlord or the tenant entered into the agreement because of a false or misleading statement made by the other party.
- The landlord or the tenant has caused (or recklessly permitted) serious danger to the property, the property of the other party, or injury to the other party or a member of their family.
- The landlord or tenant has threatened, harrassed, intimidated or abused the other party.

- The tenant abandons the property (moves out and stops paying rent without giving a notice of intention to vacate to their lanldord). Note: If this occurs, the landlord may apply to ACAT for compensation.
- A person other than the landlord becomes legally entitled to possess the property (e.g. the person inherits the property following the landlord's death or the bank forecloses on the property following a mortgage default by the landlord). Note: this provision does not generally apply if the property is sold to someone else.
- The property has been identified by the Government as being affected by loose-fill asbestos (it is listed on the relevant Government register and/or it is eligible for the Government's buyback program). See further the information on Loose-Fill Asbestos section.
- The property is unavailable due to some action by the Government (e.g. part of a suburb has been evacuated in emergency circumstances or the Government has undertaken a compulsory acquisition of the property from the landlord).
- The tenant or landlord is unable or unwilling to perform their obligations under the tenancy agreement (this is known as **repudiation**).

If any of these situations may apply to you, check the Act for the specific rules that apply to ending tenancies on these grounds, and seek legal advice as necessary. In some cases an ACAT order will be necessary to terminate the tenancy.

WHEN DOES THE TENANCY AGREEMENT ACTUALLY END?

A tenancy agreement does not automatically end because:

- the tenant has given notice of intention to vacate
- the landlord has issued a notice to vacate
- the parties have agreed to an end date for the agreement, or
- the fixed term of a tenancy agreement has ended.

Where either the landlord or tenant has issued a notice to end the tenancy, or where the landlord and tenant have mutually agreed a tenancy end date, **the tenancy will only end on the vacate date listed in the notice (or the agreed tenancy end date) if the tenant actually moves out (and returns the keys) on or before the agreed end date**.

In the case of a fixed term agreement reaching the end of the fixed period, the tenancy will simply continue on as a periodic tenancy, unless the tenant issues a notice to their landlord indicating they want to end the agreement on or after the end of the fixed term (or they voluntarily agree to enter a new fixed term agreement).

What happens if the tenant does not move out?

If the tenant does not move out in accordance with the notice to vacate in accordance with a notice to vacate**, the landlord cannot just change the locks or remove the tenants**

belongings from the property. Instead, they will need to apply to the ACT Civil and Administrative Tribunal (ACAT) for an order to end the tenancy.

If ACAT makes an order to end the tenancy and the tenant still does not move out, the landlord can then apply to ACAT for a warrant for eviction. If ACAT issues a warrant it will be served on the tenant by the police. If the tenant does not move out after receiving the warrant, the police can execute the warrant and remove the tenant and their belongings from the property.

WHAT CAN I DO IF I THINK MY LANDLORD IS JUST ENDING MY TENANCY BECAUSE I ASSERTED MY RIGHTS IN SOME WAY (RETALIATORY EVICTIONS)?

Landlords are not permitted to end a tenancy because their tenant has asserted their legal rights in relation to the tenancy in particular ways. If a landlord does this, it is known as a '**retaliatory eviction.**'

For an eviction to be considered retaliatory, one of the following things must have occurred:

- You have applied to ACAT for an order in relation to your landlord (e.g., an order that your landlord undertake repairs or an order to challenge a rent increase)
- ACAT made an order in your favour against the landlord (e.g., the landlord ordered your landlord to stop attending your property without giving you notice)
- You have complained to a Government entity in relation to your landlord
- You took reasonable action to secure or enforce your rights (e.g., you sought legal advice or invited your landlord to participate in mediation)
- You have spoken to the media or published information yourself (e.g., by posting on social media) about your landlord, your tenancy agreement or the rental property (and the information was not false or misleading)

If, following one (or more) of the above situations, your landlord issued you with a notice to vacate, this may be a retaliatory eviction. If you are concerned that your landlord's reasons for issuing the notice to vacate are not genuine, and that they were instead motivated to end the tenancy because you asserted your rights, you can challenge this by application to ACAT.

Challenging a notice to vacate on the basis it is retaliatory

If you want to challenge a notice on the basis it is retaliatory, you can apply to ACAT for an order disallowing the notice. To do this, you must make an application to ACAT **before the vacate date stated in the notice to vacate** you received from your landlord. To make an order disallowing a notice to vacate, ACAT must be satisfied that one of the circumstances listed above has occurred, and that your landlord was motivated to issue the notice to vacate because you asserted your rights in one of those circumstances.

You will need to have evidence of your actions to give to ACAT. Your landlord may provide ACAT with evidence to demonstrate why their reliance on the ground for ending the tenancy listed in the notice was genuine. ACAT will then determine whether it is appropriate to make the order disallowing the notice.

If ACAT disallows the notice to vacate, your tenancy agreement will continue. If ACAT disagrees with you and decides the notice to vacate is genuine, you will have the remainder of the notice period to find alternate accommodation.

If you are considering challenging a notice to vacate on the basis it is retaliatory, you may wish to seek legal advice before making your application.

Landlord may apply to ACAT if you do not move out

If you think your eviction is retaliatory but you do not challenge the notice to vacate you received, and you do not move out of the property, your landlord may apply to ACAT for an order to end your tenancy (this is known as a Termination and Possession Order or a TPO). If your landlord has made this application, you will receive a copy of their application and have a chance to attend the hearing. At the hearing, you can tell the Tribunal if you think the eviction is retaliatory. ACAT can then refuse to make an order to end the tenancy if they are satisfied that your landlord was attempting a retaliatory eviction. Be aware that if ACAT disagrees with you and decides to make an order ending the tenancy, you may only have a very short period of time in which to leave the property (at most, ACAT can suspend the order for 3 weeks).

If you are in this situation, you may wish to seek legal advice before attending the ACAT hearing.

ADDITIONAL GROUNDS FOR ENDING A TENANCY: COMMUNITY HOUSING, SUBSIDISED ACCOMMODATION AND CRISIS ACCOMMODATION

Community Housing Providers (**CHPs**) are community organisations that provide accommodation programs for eligible community members. There is a national law that allows community housing organisations to be registered. Once registered, these organisations are referred to as 'registered community housing providers.'

These accommodation programs are often targetted at vulnerable or at-risk members of the community and may includes crisis accommodation or community-based social or affordable housing programs. In some circumstances, either the ACT or Commonwealth Government provides funding support to CHPs (or other accommodation providers) to make these accommodation programs available. The ACT Government will also sometimes make ACT Government-owned properties available to CHPs to manage as part of a community housing program.

There are certain circumstances where the CHP (or other Government funded accommodation provider) may need to end a tenancy, including **where the tenant is no longer eligible for the assistance** being provided to them or from the CHP. To help support the effective operation of these community-based accommodation **where the property owner requires the property back** programsand to ensure they are targeted at those most in need, tenancy laws allow a tenancy to be ended on the following grounds:

- Where your landlord is a Community Housing Provider (CHP) but the property is owned by someone else and the property owner needs the CHP to return the property to them.

- Where you do not provide the information needed to assess your ongoing eligibility for subsidised accommodation (or your accommodation provider's eligibility to receive Government funding or assistance where your provider's eligibility is based on you meeting certain criteria).

- You have stopped (or will stop) being eligible for subsidised accommodation, or your landlord has stopped (or will stop) being eligible for Government funding or assistance to provide the accommodation to you.

- Your landlord is a declared crisis accommodation provider and they need the accommodation for another person in need of emergency accommodation.

Each of these grounds is explained below.

WHEN THE PROPERTY OWNER REQUIRES THE PROPERTY BACK FROM THE CHP

In some circumstances the ACT Government or private property owners make their properties available to a CHP so that the CHP can use the property as part of a community social or affordable housing program or for crisis accommodation. Sometimes, the ACT Government or the private property owner may need to ask the CHP to return the property to them.

To this end, there is a ground for ending a tenancy which allows a CHP to issue a notice to vacate to you where the property owner advises the CHP that they need the property back for a reason identified in the provision. This provision will automatically be included in any tenancy agreement with a CHP where the rental property is owned by someone else. The amount of notice the CHP will need to give to you will depend on the reason the property owner needs the property back.

The reasons an owner can give for needing the property back and the amount of notice that must be given to you are:

- the owner genuinely intends to sell the property (8 weeks' notice)
- the owner (or a family member or someone close to the landlord) genuinely intends to live in the property (8 weeks' notice)
- the owner genuinely intends to rebuild, renovate or make major repairs to the property that cannot be done while the tenant is living at the property (12 weeks' notice); and
- (if the owner is not Housing ACT) the owner genuinely intends to stop using the property for community housing (26 weeks' notice).

These reasons to end a tenancy can only be used where the tenancy agreement is a periodic agreement.

A CHP is also able to end a tenancy (regardless of whether it is a fixed term or periodic tenancy) where Housing ACT has provided the property to the CHP under a housing assistance program and Housing ACT has withdrawn assistance from the CHP in accordance with the housing assistance program.

Evidence requirements

For each of these grounds to end a tenancy, the CHP must provide you with written evidence to support the owner's genuine reason for requiring the CHP to end the tenancy. This evidence must be given to you at the same time as the CHP gives you the notice to vacate. Examples of evidence could include a statutory declaration, a development application, quotes from a tradesperson in relation to renovations, or, a notice of decision from Housing ACT.

If you are a tenant in a community housing property and have received a notice to vacate because the owner wants the property back you may wish to seek legal advice about your rights.

SUBSIDISED ACCOMMODATION TENANCIES

What is 'subsidised accommodation'?

'Subsidised accommodation' is a term used to describe certain types of accommodation offered to eligible community members by non-Government accommodation providers. This term includes:

- tenancies offered by CHPs (including where the CHP is the landlord or where the CHP is managing the property for the owner); and
- tenancies where the owner of the property or the landlord receives Government funding or assistance to provide the premises to you.

This term captures tenancies offered under the National Rental Affordability Scheme, tenancies offered under the ACT Government's Community Affordable Housing program and other social and affordable housing tenancies offered by CHPs where you pay less than the 'market rate' in rent. It may also capture accommodation programs offered by CHPs on their own initiative.

The key feature of subsidised acommodation programs are that they are **provided to you based on eligibility criteria**. To ensure these programs are able to continue operating as intended, there are grounds for ending a tenancy where your are no longer eligible for the accommodation or where you do not provide your landlord with information that is reasonably necessary to assess your ongoing eligibility.

Information that must be provided to you at the start of the tenancy

To ensure you are aware of any criteria that you must meet during your tenancy, the Act requires that subsidised accommodation providers to tell you about the eligibility requirements **at the start of the tenancy**. This includes any rules or requirements against which:

- your eligibility to live in the property could be assessed during the tenancy, or
- your landlord's or property owner's eligibility to receive government funding or assistance in relation to the property could be assessed during the tenancy.

The Act refers to these as 'subsidised accommodation eligibility requirements.'

Information that must be provided to you during the tenancy: changes to eligibility criteria

If the subsidised accommodation eligibility requirements change during the tenancy, the accommodation provider must give you a copy of the changed requirements within 2 weeks:

- if the accommodation provider changes the requirements of their own volition - they must advise you of the change within 2 weeks of the change occurring; or
- if the Government funder changes the eligibility requirements - the accommodation provider must advise you within 2 weeks of when the accommodation provider is advised of the changed requirements.

For example, if the subsidised accommodation is provided to the tenant on the basis that your income falls within a certain income threshold, the applicable income threshold may be indexed each year. If the Government advises the subsidised accommodation provider of a

new income threshold, the provider must tell you of the changed income limit within 2 weeks of when they were advised by the Government.

You must provide information relating to eligibility requirements

To ensure subsidised accommodation can operate effectively, providers need to be able to request information from their tenants to assess their ongoing eligibility for the accommodation.

To allow them to do this, the law allows the accommodation provider to write to you to request any information that is reasonably necessary to assess eligibility (either your eligibility to live in the property or the provider or owner's eligibility for government funding or assistance). This means the accommodation provider can only request information that is relevant or necessary to assess eligibility (and not other, unrelated information).

Where the accommodation provider makes this request, they must give you a reasonable period in which to provide the information.

It is now a requirement in the standard terms for subsidised accommodation tenancies that you agree to give your accommodation provider the requested information as part of the tenancy agreement. However, the standard term also indicates that a failure to provide the information on request is **not** considered to be a breach of the agreement. This is because it is much faster to terminate a tenancy on the basis of a breach of the agreement than by following the process set out in the new termination ground of failure to provide information set out below. Clarifying that a failure to provide information is not a breach of the agreement ensures that accommodation providers must use the new termination ground so that you have the benefit of the additional procedural protections set out below.

ENDING SUBSIDISED ACCOMMODATION – WHERE YOU DO NOT PROVIDE INFORMATION NEEDED TO ASSESS ELIGIBILITY

Ground to end the tenancy and notice period

Subsidised accommodation providers can end a tenancy where they have requested information from you to assess your ongoing eligibility for to accommodation, but you have not provided the required information within the timeframe stated in the request (noting there is a requirement that you be given a **reasonable** amount of time to provide the information). In such circumstances, your accommodaiton provider can give the you a 26-week notice to vacate the property.

Requirements for the notice to vacate

The notice to vacate must include the following information:

- a statement that you did not give the landlord the requested information
- the name and contact details of a legal or advocacy service that may be able to provide you with advice about your legal rights, and
- a statement that the notice will be withdrawn if you give the requested information to the landlord before the end of the notice period.

This is so that you are aware of why your tenancy could be ended and so you have information about what you can do to prevent the tenancy ending.

Withdrawal of notice if tenant provides the requested information

If you provide **all** of the information requested to assess your eligibility before the end of the 26-week notice period, then the notice to vacate will automatically be withdrawn and the tenancy will continue. If you only provide some of the requested information, the notice to vacate will remain valid (until you provide all the required information).

Notice period if you are later found to be ineligible

Subsidised accommodation providers can also end a tenancy where you no longer meet the eligibility criteria (see further below). This normally requires a 26-week notice to vacate. However, in circumstances where:

- the landlord has already provided you with a notice to vacate on the basis that you have not provided the information required to assess your ongoing eligibility
- the notice has been automatically withdrawn because you provided the requested information, and
- your landlord determines on the basis of the information provided by you that you have stopped or will stop being eligible for the accommodation,

then the landlord can give you a new notice to vacate with a vacate date that is the later of:

- the date stated in the original notice to vacate on the ground you did not provide the requested information; or
- 12 weeks after the new notice to vacate is given on the ground you are ineligible.

Example

On 1 July, Poppy's landlord gives Poppy a notice to vacate because Poppy did not provide the landlord with information about Poppy's eligibility for subsidised housing within the required period. The notice to vacate gives Poppy the required 26 weeks' notice, meaning Poppy must vacate the premises by 30 December.

On 1 August, Poppy gives the landlord all the information the landlord requested and the first notice to vacate is taken to be withdrawn. Taking into account the new information, the landlord determines that Poppy is no longer eligible to live in the premises.

The landlord may give Poppy a second notice to vacate, but the second notice must not have a notice period that ends before 30 December.

Where a notice to vacate is given on the ground the you are no longer eligible, the notice must include certain information (see further below).

ENDING SUBSIDISED ACCOMMODATION – WHERE THE TENANT IS NO LONGER ELIGIBLE

Ground to end the tenancy and notice period

A subsidised accommodation provider can end a tenancy where:

- You have stopped or will stop being eligible to live in the property; or
- Your has landlord stopped or will stop being eligible to receive funding or assistance to provide the property to you.

The length or notice required may depend on the circumstances. Your landlord is required to give you notice with a vacate date which is the later of the following dates:

- 26 weeks from the date the notice is given to you; or
- if the notice is given on the basis that you have stopped or will stop being eligible to live in the premises —the day you stop being eligible to live in the premises; or
- if your landlord gives the notice because they have stopped, or will stop, being eligible to receive government funding or assistance to provide the property to you —the day your landlord stops being eligible for funding or assistance for the premises.

This variable notice period is designed to accommodate the operation of the National Rental Affordability Scheme (NRAS). The current National Rental Affordability Scheme Regulations 2020 (NRAS regulations) provides that a tenant will cease to be an eligible tenant if the combined gross household income exceeds the income limit for their household by 25% or more in two consecutive eligibility years.

In the case of an NRAS accommodation provider, the provider may anticipate that you will become ineligible where your income has already exceeded the income limit by 25 % for one year. In this situation, the accommodation provider could anticipate that you may ineligible if you exceed the income limit by 25 % for a second year.

The provider could then issue you a notice to vacate on the basis that you have exceeded the income limit by 25% or more and will stop being eligible for subsidised accommodation at the end of the 2 year period. You would then be required to vacate the property either at the end of the two-year period in which you have exceeded the income limit by 25% or more OR 26 weeks after you receive the notice to vacate– whichever is the later.

Requirements for the notice to vacate

If your landlord gives you a notice to vacate on the basis of eligibility, the notice must include the following information:

- if you have stopped, or will stop, being eligible to live in the property—the reason why; or

- if your landlord has stopped, or will stop, being eligible to receive government funding or assistance to provide the proprety to you —the reason why; and
- the name and contact details of a legal or advocacy service that may be able to provide you with advice about your legal rights.

This is so you are aware of why your tenancy could be ended, and so you have information about where you can go for advice in relation to your tenancy.

If you disagree with the landlord's assessment of your eligibility, then you could bring a tenancy dispute application to ACAT in relation to the notice to vacate.

ADDITIONAL ISSUES

This section discusses additional issues that should be considered when the CHP and subsidised accommodation grounds for ending a tenancy are used.

Note: this discussion does not apply to the crisis accommodation termination ground.

You can end the tenancy earlier than the date in the notice to vacate

Where you have been given a notice to vacate by your landlord on the CHP or subsidised accommodation termination grounds, you are able to end the tenancy earlier than the date stated in the landlord's notice to vacate. You can do this by giving your landlord a notice of intention to vacate that gives:

- at least 2 weeks' notice; or
- if there is less than 2 weeks left in the landlord's notice to vacate to you, you can give 4 days' notice.

This may assist you to avoid having to pay rent on two properties at once where you are able to find alternate accommodation before your original tenancy ends.

What is the reasonable and proportionate test for tenancy termination?

If you do not move out in accordance with the notice to vacate, your landlord will need to apply to the ACT Civil and Administrative Tribunal (ACAT) for an order to end the tenancy.

Where your landlord applies to end a tenancy on the CHP or subsidised accommodation termination grounds, ACAT must consider if ending the tenancy is reasonable and proportionate in the circumstances. This is an additional safeguard for you.
When deciding if it is reasonable and proportionate to end a community housing or subsidised accommodation tenancy, ACAT must take into account:

- the history and length of the tenancy
- the functions of the landlord in providing subsidised housing, including any funding requirements or contractual obligations on the landlord in relation to the provision of subsidised accommodation
- the landlord's interest in the efficient management of subsidised housing (including other premises) provided by the landlord
- the public interest in the efficient management and availability of subsidised housing
- the financial impact on the landlord or owner if the residential tenancy agreement is not terminated
- the conduct of the tenant and the landlord or owner in relation to matters that are relevant to the notice for termination being served on the tenant

- any hardship that the tenant will, or is likely to, suffer if the residential tenancy agreement is terminated, including—
    - financial hardship
    - difficulties in finding suitable alternative premises
    - any risk of the tenant experiencing a prolonged period of homelessness, and
    - impacts on the tenant's physical or mental health, and
- any other matter the ACAT considers relevant.

This range of factors is designed to give ACAT guidance on issues to consider when determining if it is reasonable and proportionate to end the tenancy.

Note: The reasonable and proportionate test only applies where a CHP or subsidised accommodation provider seeks to terminate a tenancy on the CHP or subsidised accommodation termination grounds. It does not apply to other grounds to end a tenancy that can be exercised by CHPs or subsidised accommodation providers (such as breach of the agreement).

ENDING CRISIS ACCOMMODATION – WHERE PROPERTY IS NEEDED FOR ANOTHER PERSON

What is a 'declared crisis accommodation provider'?

The Attorney-General may declare an organisation as a 'crisis accommodation provider', where the organisation:

- provides emergency accommodation for people in crisis, and
- provides information to people staying in the accommodation about alternative accommodation and other services that the person could access.

Information that must be provided to tenants at the start of the tenancy

Before a crisis accommodation provider can use this ground for ending a tenancy, they must, at the start of the tenancy, tell you in writing that they can end the tenancy on 4 weeks' notice if they need the property to provide crisis accommodation to someone else. This ensures you are aware, from the very start of the tenancy, that it could be ended at short notice.

Ending a crisis accommodation tenancy

Where an organisation (such as a CHP) has been declared as a 'crisis accommodation provider' they can use the crisis accommodation ground to end a tenancy. To use this ground, the crisis accommodation provider must:

- need the property to provide crisis accommodation to someone else
- give you information about alternative accommodation, and
- give you 4 weeks' notice to vacate the property.

END OF TENANCY PROCEDURES

This section discusses the things you need to take care of when moving out of your rental property. See also the 'End of Tenancy Checklist' at the beginning of the Renting Book.

Before reading this section, you should also consider if your tenancy is being ended lawfully. For example, consider whether you or your landlord have provided the correct notice to end the tenancy, if needed– refer to the section on Ending your tenancy for more information or seek legal advice).

FINAL INSPECTION AND CONDITION REPORT

You and the landlord must carry out a final inspection of the property at the end of the residential tenancy agreement. The purpose of the final inspection is to check that the property is in the same substantially the same state of cleanliness and repair as at the beginning of the tenancy (fair wear and tear excepted). This **inspection must be done jointly,** unless you or the landlord agree not to be there (or you fail to attend).

You are not required to use professional cleaning services at the end of a tenancy. The only exception is that you may be required to get the carpets professionally cleaned, if this requirement is stated in your residential tenancy agreement and your landlord has provided evidence that this was done at the start of your tenancy.

You and the landlord must **complete and sign a condition report** based on the inspection. A template condition report is available from the ACT Revenue Office website: https://www.revenue.act.gov.au/__data/assets/pdf_file/0020/1093043/Condition-Report.pdf.

The report may be signed by only one party only if the other party has been provided with a reasonable opportunity to be present and has chosen not to be present.

The condition report will be evidence of the state of the property so it is important you check it and note if you agree with it.

If you do not agree with aspects of the report – for example if you do not agree there is damage or if you think that something the landlord claims is damage is actually fair wear and tear (see below for definition of fair wear and tear) – you should note this on the report when you sign it. You may wish to take photos of any damage to the property that is raised as an issue at the final inspection. Make sure you keep a copy of the final condition report.

If your landlord suggests that you are responsible for any damage to the property and you agree you are responsible for it, you must be given a reasonable opportunity to fix it. If you and your landlord agree on any steps to be taken, record this in writing.

You should return all the keys at the final inspection. If you do not return your keys you may be considered to still be in possession of the property and your landlord may claim compensation for lost rent.

GETTING YOUR BOND BACK

Note: This section discusses how to get your bond back at the end of a tenancy agreement. If you are a co-tenant who is leaving a tenancy agreement while your other co-tenants are remaining in the property, a different process for getting your bond back applies. See the section on share housing for more information.

What can the bond be used for?

The landlord can generally only make deductions from the bond for:

- Damage to the property caused by the tenant (other than 'fair wear and tear').
- Replacing keys or changing locks if the tenant fails to return all sets of keys.
- Any rent owing – note that this only applies if the tenant moves out with rent owing. The tenant cannot decide to use the bond to cover their final weeks of rent.
- Any fuel (e.g. wood or gas) supplied to the property at the beginning or during the tenancy.

There is no fixed rule or definition about what is 'fair wear and tear'. Relevant considerations include how the damage occurred (was it through normal, everyday use of the property, e.g. carpet faded from sunlight or marked in a high traffic area like the entrance) and the severity of the damage (e.g. whether a wall has scuff marks or a hole in it).

If you and your landlord cannot agree on whether something is fair wear and tear, or damage requiring repairs that can be deducted from your bond, you may wish to seek legal advice about your position.

How do I get my bond back?

To get your bond back, a bond refund application needs to be made to the ACT Revenue Office. Either you or the landlord, or both of you jointly, can make this application. This is usually done after the tenancy ends. The exact procedure depends on who is making the application and whether there is any dispute about the bond.

Under the Act, once your tenancy ends, the landlord must give you a bond release application form signed by them. The ACT Revenue Office also allows your landlord to request the refund online. You will be notified by email or phone if the landlord is claiming all or part of your bond, so it is important for you to keep your contact details up to date with Rental Bonds. You can submit your contact details on the website under Rental Bonds Forms.

Note: If the landlord wants to make a claim against your bond, **they must state the reasons for the claim and the estimated cost of the repair or restoration**. They cannot just state a total amount for the claim without explaining the reason.

- **If the landlord proposes to refund the full amount of the bond**, they must give you the application form within **3 working days** after your tenancy ends.
- **If the landlord proposes to make a claim on the bond** (make deductions from the bond), the form must include the details of the reasons for the deduction/s and the

estimated costs of repairs. In this case, the landlord must give you the application form within **10 working days** after your tenancy ends. This additional time allows the landlord to obtain quotes as necessary to inform their claim on the bond.

- **If you agree with your landlord's proposed approach to the bond**, you (and any other tenants) may sign the application form. Make sure anyone who was named as a tenant when the bond was lodged at the beginning of your tenancy signs the form.
- Either you or the landlord can give the signed form to the ACT Revenue Office. Landlords must lodge bond refund applications through the online Rental Bonds Portal.
- The ACT Revenue Office will deposit the bond refund payable to you in accordance with the form into your nominated bank account (and pay out any amount owing to your landlord, if there are any deductions).

If you do not agree with your landlord's proposed approach to the bond, do not sign the bond application form given to you.

You can lodge your own bond refund form with the ACT Revenue Office. The ACT Revenue Office will notify any tenants who have not signed the form and the landlord of your proposed approach to the bond. If one of these parties notifies the ACT Revenue Office within 14 days that they dispute the proposed refund, the ACT Revenue Office will refer the dispute to ACAT.

Your landlord can also proceed to request the bond refund from the ACT Revenue Office. The ACT Revenue Office will notify you of the landlord's proposed approach to the bond. **You will be given 14 days to respond to inform the ACT Revenue Office if you wish to dispute the bond refund**. If you dispute the refund, the ACT Revenue Office will refer the dispute to ACAT. ACAT will contact you to resolve the dispute.

You can find information about the bond refund process on the ACT Revenue Office website: https://www.revenue.act.gov.au/rental-bonds.

What happens if my landlord does not give me a signed bond application form to fill in?

If your landlord does not give you a signed bond application form within the timeframes required, **you can go ahead and make an application to the ACT Revenue Office to refund your bond without waiting for your landlord or agent to give you a form.** The ACT Revenue Office can receive and process the application without the consent of your landlord.

The ACT Revenue Office will notify any tenants who have not signed the form and the landlord of your proposed approach to the bond. If one of these parties notifies the ACT Revenue Office within 14 days that they dispute the proposed refund, the ACT Revenue Office will refer the dispute to ACAT.

How is the bond refund distributed when there is more than one tenant?

If more than one tenant was named as a party to the bond when it was lodged at the beginning of the tenancy, the ACT Revenue Office will assume that the bond (or that part of the bond) owing to the tenants is to be distributed in equal shares.

If the tenants want the bond to be paid out other than in equal shares, they must advise the ACT Revenue Office. A signed statement and signed photo identification from all of the tenants will be required before the bond can be paid out in unequal shares.

Tip: make sure your contact details are up-to-date with ACT Revenue

If the contact details you provided to the ACT Revenue Office (e.g. your name or your email address) have changed since the start of your tenancy, make sure you advise the ACT Revenue Office as soon as possible.

If the ACT Revenue Office cannot contact you because your details are out of date, this may delay the refund of your bond or potentially even result in deductions from the bond being paid out to the landlord because you did not dispute their application.

If there has been a change of co-tenants during the tenancy agreement it is particularly important to ensure that the ACT Revenue Office has the correct contact details for the tenants who are part of the tenancy agreement when the agreement ends.

What happens if the names of the tenants on the tenancy agreement don't match the names listed with the ACT Revenue Office?

If at the end of the tenancy agreeement there is a discrepancy between the tenants on the tenancy agreement and the names listed with the ACT Revenue Office, then the ACT Revenue Office can refer the matter to ACAT. ACAT will then decide who the bond should be released to.

UTILITIES AND MAIL

It is your responsibility to arrange to get any utilities that are connected in your name (e.g. gas, electricity) disconnected by the date on which you will move out of the property. You will be responsible for paying those bills.

If there are any metered services to the property that are in the landlord's name (e.g. water), the landlord must arrange to get a final meter reading by the day after you move out of the property. If the landlord does not get the meter reading done by that date, the landlord is responsible for paying the bill since the date of the last reading.

You should also update your mailing address with any organisations that send you mail. You may wish to consider paying for a mail redirection through Australia Post for a period of time.

GOODS LEFT IN THE PROPERTY

You are responsible for removing all your goods from the property when you move out.

If you accidentally leave any goods behind in the property, and you want to collect them, contact your landlord or agent as soon as possible.

Under ACT law, goods left behind in a rental property become 'uncollected goods'. There are procedures a landlord must follow under the *Uncollected Goods Act 1996* to dispose of or sell the goods. More information about uncollected goods is available from the Access Canberra website: https://www.accesscanberra.act.gov.au/.

Be aware that if you leave goods behind you may be charged for the cost of their storage and disposal.

Landlords may wish to seek legal advice before disposing of or selling any goods left behind in a rental property by a former tenant, especially if the goods are of value.

DISPUTES: GOING TO ACAT

ACAT is a Tribunal – an independent body which decides disputes and makes other decisions based on the law. ACAT aims to resolve matters in a quick, informal and inexpensive way.

If you are in a dispute with your landlord, agent or the owners coporation in a unit titled property and you cannot reach an agreement to resolve it, you may wish to take the dispute to ACAT. Co-tenants who have a dispute between themselves (related to their tenancy agreement) can also take the dispute to ACAT. See the section on share housing for more information.

As well as resolving disputes, ACAT also makes other decisions about tenancies. In particular, it decides applications from tenants and landlords for endorsement of inconsistet terms in their residential tenancy agreements.

This section answers some basic questions about ACAT. You can find more information on ACAT's website at: https://www.acat.act.gov.au/. You can contact ACAT on (02) 6207 1740 or tribunal@act.gov.au.

Who can make an application to ACAT?

Both tenants and landlords can make applications to ACAT. Tenants can apply to ACAT to resolve a dispute between them and their landlord or to resolve a dispute between co-tenants.

Is there a fee?

An application fee will usually apply, although in some circumstances applicants may be exempt from fees or fees may be waived due to financial hardship.

Do I need a lawyer?

You do not need a lawyer to represent you in ACAT. However, it can be beneficial for you to seek legal advice before going to ACAT, or at an early stage of your matter being before ACAT. This can help you understand how ACAT might decide your matter based on the law and what information is most relevant for you to provide to ACAT.

Note that ACAT cannot give you legal advice about your dispute, but its members and staff can provide information about its processes. For some options for legal advice providers, see the 'Need More Help?' section below.

How does the ACAT process work?

ACAT has different processes depending on the type of residential tenancy dispute.

Applications to end a tenancy are usually scheduled for hearing within two weeks.

For other types of residential tenancy disputes, ACAT may require tenants and landlords to attend a mediation or 'preliminary conference' as the first step, so the parties can try to resolve their dispute by agreement in a facilitated professional environment. Many matters can be resolved at this stage.

If the parties cannot reach an agreement, ACAT will hold a hearing about the dispute. The parties will have the opportunity to present evidence and to explain their positions.

ACAT will then make a decision based on the law – meaning ACAT will apply the rules in the Act to your case. Previous decisions of ACAT may provide some guidance on how ACAT might decide your case. You can find published decisions of ACAT on the ACAT website or in an online searchable database on the Australasian Legal Information Institute website at: https://www.austlii.edu.au/.

ACAT has flexible powers to make a wide range of orders to resolve tenancy disputes fairly and appropriately. Some examples include orders that:

- endorse additional terms in a lease that are inconsistent with the Standard Terms, if both the tenant and landlord agree
- determine how a bond is to be refunded if the tenant and landlord are in dispute about damage to the property at the end of a lease
- allow a landlord access to inspect a property
- require a tenant to pay outstanding rent
- require compensation to be paid to a tenant or landlord if the other party has breached the Act
- allow a landlord to refuse consent to a tenant keeping a pet or making a special modification to the property
- require the landlord or tenant to act in accordance with the terms of the tenancy agreement (**a performance order**), for example, this could include orders such as:
    - an order that the landlord undertake repairs or that the landlord ensures that the property complies with minimum housing standards
    - an order that the landlord not interfere with the tenant's quiet use and enjoyment of the premises
    - an order that the tenant not interfere with the quiet enjoyment of their neighbours
- terminates (or ends) a residential tenancy agreement, or
- (if necessary) issue a warrant for the tenant's eviction.

Tenants and landlords are legally required to comply with ACAT's orders. In some circumstances, failure to comply with an ACAT order (such as a payment order or performance order) may be grounds of terminating the tenancy. Non-compliance may also result in ACAT imposing a penalty of up to 50 penalty units (currently, $8,000 for individuals or $40,500 for corporations). Further contraventions of ACAT orders may be criminal offences and attract higher penalties.

RESIDENTIAL TENANCY DATABASES

A Residential Tenancy Database is a commercially owned database which contains information about people who have been tenants and who have breached their agreements. These are sometimes called tenancy 'black lists'. The information has been supplied by real estate agents and landlords.

Many tenants may worry that they will be placed on a tenancy database if they attempt to assert their rights during the course of their tenancy agreement. However, this is not allowed. Under ACT law, a listing can only be made about a tenant in a database:

- **after** a tenancy agreement ends (not during the agreement), and
- if the tenant has committed a **serious breach** of the agreement.

A serious breach of the agreement means ONLY that:

- the tenant owed the landlord more money than the bond at the end of the lease (e.g. for significant outstanding rent or damage), or
- ACAT or a court made an order terminating the residential tenancy agreement because of the breach.

The information listed must be accurate and up-to-date and relate only to the breach. Listings must be removed after 3 years.

The agent, landlord or database operator **must tell the tenant about the listing at the time it is proposed**, and give the tenant opportunity to object to the listing in whole or in part.

Some agents and landlords check tenancy databases before entering into a residential tenancy agreement with a prospective tenant. Landlords and agents **must notify prospective tenants** if their usual practice is to use tenancy databases (and if so, which databases and how the prospective tenant can obtain information from the database).

Landlords and agents must inform a prospective tenant if a search of a database reveals information about them. The prospective tenant must be told: the name of the database, the name of the person who listed the information, and how the prospective tenant can have the listing removed or amended.

If you believe that information about you has been, or will be, listed in a tenancy database other than in accordance with the law, you may apply to ACAT for an order to prohibit, remove or amend a listing and for compensation.

The collection and use of information in tenancy databases is also governed by privacy laws.

PENALTIES

Tenants and landlords should be aware that the Act includes serious penalties for non-compliance with its rules. For example:

- There are several offences associated with advertising a rental property. These include publishing an advertisement for a rental property that:
  - does not contain a rental rate (e.g., the weekly rent) for the property
  - does not contain the energy efficiency rating for the property (if one exists) or a statement that the property does not have an energy efficiency rating;
  - includes false or misleading statements about the energy efficiency rating of a rental property
  - does not contain any non-standard tenancy terms that have been endorsed by ACAT (if applicable)
  - does not indicate that the lessor's consent is required to keep a pet (if the lessor wants to impose this requirement)* or does not indicate if the landlord has obtained prior approval from ACAT to impose on condition on their consent to the tenant keeping a pet
  - does not contain a statement that the premises are an adaptable housing dwelling (if applicable)
  - does not contain a statement about whether the premises comply with minimum housing standards or, if an exemption applies, a statement that the premises are exempt from compliance
  - includes false or misleading statements about the property's compliance with a minimum housing standard.

Each of these offences carry a maximum fine of $800 for individuals or $4,050 for corporations.

- It is an offence for a person to solicit or invite a tenant to offer more rent than the advertised rental rate for the property. This offence carries a maximum fine of $3200 for individuals or $16,200 for corporations.
- It is an offence for a landlord or agent to fail to lodge a bond within the required timeframe. The offence carries a maximum fine of $3200 for individuals or $16,200 for corporations.
- Non-compliance with an ACAT order may result in ACAT imposing a penalty of up to $8,000 for indivduals or $40,500 for corporations or imprisonment for 6 months or both. Further contraventions of ACAT orders may be criminal offences and attract higher penalties.

Know your rights and obligations and if in doubt, seek legal advice.

NEED MORE HELP?

WHERE TO GET LEGAL ADVICE

You are always entitled to seek legal advice, and landlords are prohibited from retaliating (taking action against you) if you seek to enforce your rights.

Tenancy Advice Service ACT

The Tenancy Advice Service ACT is operated by Legal Aid ACT. It is funded by the ACT Government to provide legal advice to tenants in the ACT.

You can contact them on **1300 402 512** or TAS@legalaidact.org.au. Legal advice from this service is free and confidential. It is not means-tested (the service is available to all ACT tenants regardless of income).

For more information, and a range of online resources for tenants, see: https://www.legalaidact.org.au/tasact

Canberra Community Law

If you are a tenant in public housing (from Housing ACT), crisis accommodation or social housing (provided by a community housing provider), or if you want to find out if you are eligible for these services, the Housing Law service at Canberra Community Law can provide you with free and confidential legal advice. You can contact them on **(02) 6218 7900** or info@canberracommunitylaw.org.au.

For more information, and a range of online resources for public housing tenants, see:

https://www.canberracommunitylaw.org.au/

THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

ACAT is an independent body which resolves tenancy disputes and makes other decisions on application by tenants or landlords. ACAT does not give legal advice but can provide information about its processes. See the section above on ‘Disputes: Going to ACAT’ for more information. For further information go to their website or contact ACAT on **(02) 6207 1740** or tribunal@act.gov.au.

ACT HUMAN RIGHTS COMMISSION

The Commission can handle complaints about discrimination in the provision of accommodation, which includes tenancy and occupancy arrangements. In the ACT is it unlawful to discriminate against someone because of a protected attribute they have when providing accommodation. Protected attributes include sex, race, disability, age and **accommodation status** which includes being a tenant or an occupant within the meaning of

the *Residential Tenancies Act 1997*. The Commission also handles complaints about occupancy disputes where less formal occupancy arrangements have been entered into such as student or share house accommodation. The Commission generally tries to resolve complaints through a quick, informal resolution process with the parties. If the matter cannot be resolved through the Commission's process, the complainant may ask the Commission to refer the complaint to ACAT to have the matter heard & determined. The Commission has experience working with tenants, occupants, landlords, real estate agents and Housing ACT to resolve matters, particularly where the parties want to maintain a tenancy or occupant arrangement.

You can call the Commission on 02 6205 2222 to discuss your concerns, or email HRCintake@act.gov.au or lodge a complaint online at www.hrc.act.gov.au.

HOUSING ACT TENANTS

Housing ACT operates this helpline for public housing tenants only. You can contact the helpline on **1800 950 255** Housing.CustomerService@act.gov.au.

SUPPORT FOR TENANTS IN HOUSING STRESS

There are services available in the ACT for tenants who may be facing difficulties in paying their rent or bills or are otherwise at risk of losing their tenancy or facing homelessness. These include:

- **Onelink** assists people who are homeless or at risk of homelessness (**1800 176 468**, info@onelink.org.au, www.onelink.org.au/)
- The **Supportive Tenancy Service** helps tenants who are worried about losing their tenancy as well as people who face barriers to securing a tenancy in the first place. Referrals to the Supportive Tenancy Service are made by contacting Onelink.
- The **Care Financial Counselling Service** assists people who may want help managing their expenses to make ends meet **(02) 6257 1788**, admin@carefcs.org, www.carefcs.org/financial-counselling)

RENTAL BOND HELP PROGRAM

If you want to start a tenancy but your income is low to moderate and you cannot afford to pay the bond upfront, you may be eligible for the ACT Government's Rental Bond Help Program. The Program offers to pay up to 100% of the rental bond for approved applicants, as a loan that is interest free and can be repaid over 24 months.

For more information, see the Housing ACT website at:
https://www.myaccount.act.gov.au/rentalbondhelp/s/

CONFLICT RESOLUTION SERVICE

The Conflict Resolution Service (CRS) is a nationally accredited mediation service that resolves conflict professionally, competently and compassionately. CRS have experience working with neighbours, landlords and residential tenants to provide a safe, structured, and confidential environment for discussion between parties. For more information contact CRS on **(02) 6189 0590** or visit www.crs.org.au.

REGULATION OF REAL ESTATE AGENTS AND ASSISTANT AGENTS

Access Canberra

Real estate agents are licensed and assistant agents are registered under ACT law. The *Agents Act 2003* imposes certain professional obligations on them. If a landlord or tenant thinks that a real estate agent or assistant agent may have engaged in sufficiently serious unprofessional conduct, they may wish to make a complaint about the agent to Access Canberra.

Access Canberra is responsible for regulating real estate agents and assistant agents and has powers to investigate complaints and take action in respect of an agent's licence or salesperon's registration if appropriate. You can report a complaint about an agent or salesperson to Access Canberra online at: https://www.accesscanberra.act.gov.au/ or call **13 22 81.**

Real Estate Institute of the ACT (REIACT)

REIACT is an industry body that represents the views of the real estate profession in the ACT. You can visit their website or contact REIACT on **0499 881 168** or admin@reiact.com.au.

SUPPORT WITH ENERGY EFFICIENCY MEASURES FOR RENTAL PROPERTIES

Renter's home energy program

The ACT Government's Renter's Home Energy Program can help with draught-proofing and other energy efficiency measures for your home. The program provides an online home energy assessment tool as well as free and tailored advice for renters either in-person, over the phone or via email. You can call the call the ACT Sustainable Home Advice Line on 1300 141 777 or email SustainableHomeAdviceProgram@act.gov.au.

Low-income household program

Low-income households can access help to draught-proof their home through the Low-Income household program currently delivered by St Vincent de Paul. You can contact the St Vincent de Paul enery outreach team on **6234 7408** or at energyefficiency.cg@vinnies.org.au.

ATTACHMENT A – STANDARD TERMS THAT APPLY TO ALL ACT TENANCY AGREEMENTS

Residential Tenancies Act 1997 – Schedule 1

Lessor and tenant must comply with terms of tenancy agreement

1 (1) This tenancy agreement is made under the *Residential Tenancies Act 1997* (the Residential Tenancies Act).

(2) The lessor and the tenant may agree to add additional clauses to the tenancy agreement but they must not be inconsistent with, or modify, existing clauses (except if permitted by the Act).

2 By signing this tenancy agreement, the lessor and the tenant agree to be bound by its terms during the period of the tenancy it creates.

3 A party to this tenancy agreement cannot contract out of it or out of the provisions of the Residential Tenancies Act, except as provided in that Act.

4 A fixed term tenancy must be for the single period specified in the tenancy agreement.

5 A periodic tenancy includes a tenancy that is not specified to be for a fixed term, including such a tenancy which commences on the expiration of a fixed term tenancy.

6 A reference in this tenancy agreement to a notice to vacate and a notice of intention to vacate is taken to be a reference to a termination notice under the Residential Tenancies Act.

Costs and procedures for establishing tenancy agreement

7 The lessor bears the cost of preparation and execution of this tenancy agreement.

8 The tenant is responsible for any legal costs that the tenant incurs in relation to preparation and execution of this tenancy agreement.

9 The lessor must give a copy of the proposed tenancy agreement to the tenant before the commencement of the tenancy.

10 The tenancy agreement must be signed by the tenant and by the lessor (or by their authorised agents).

11 The lessor must give a copy of the tenancy agreement, signed by each party, to the tenant as soon as possible after it has been signed by each party, but no later than 3 weeks after the tenant has returned a signed copy.

12 If the lessor does not return the tenancy agreement to the tenant, as provided by clause 11, the tenancy agreement has full effect in the terms signed by the tenant on occupation of the premises or acceptance of rent.

Information

13 (1) The lessor must provide to the tenant a copy of an information booklet about residential tenancies authorised by the director-general before the commencement of this agreement.

(2) If it is not possible to provide the tenant with a booklet, the lessor must inform the tenant of the booklet and where it may be obtained.

(3) If the premises are a unit within the meaning of the *Unit Titles Act 2001*, the lessor must give the tenant a copy of the owners corporation's rules before the commencement of this agreement.

Bond and condition report

Maximum bond

14 Payment of a bond is not necessary unless required by the lessor.

15 Only 1 bond is payable for the tenancy created by this tenancy agreement.

16 The amount of the bond must not exceed the amount of 4 weeks rent.

Lodgment of the bond with the Office of Rental Bonds

17 If the lessor requires a bond, the bond must be lodged with the Office of Rental Bonds.

18 Either party may lodge the bond with the Office of Rental Bonds.

If the lessor and tenant agree that the tenant is to lodge the bond

19 If the parties agree that the tenant is to lodge the bond, the following applies:

(a) the tenant, or the lessor on the tenant's behalf, must complete the bond lodgment form provided by the Office of Rental Bonds and lodge the form with the Office;

(b) the tenant must lodge the bond with the Office of Rental Bonds in the way permitted by the Office;

(c) the lessor may require lodgment of the bond before the lessor gives possession of the premises to the tenant and if this is the case, the tenant must be able to take possession of the premises and receive the keys to the premises as soon as the tenant provides the lessor with evidence of lodgment of the bond or the Office of Rental Bonds notifies the lessor that the bond was received by the Office.

If the lessor is to lodge the bond

20 If the lessor is to lodge the bond, the following applies:

(a) on receiving the bond, the lessor must give the tenant a receipt for the bond;

(b) the lessor must complete the bond lodgment form provided by the Office of Rental Bonds and lodge the form with the Office;

Note Under the *Electronic Transactions Act 2001*, s 8 (1), information required to be in writing may be given electronically in certain circumstances.

(c) the lessor must lodge the bond with the Office of Rental Bonds in the way permitted by the Office within—

(i) the later of 2 weeks after receiving the bond and the commencement of the tenancy; or

(ii) if the lessor's real estate agent lodges the bond—the later of 4 weeks after receiving the bond and the commencement of the tenancy.

Condition Report

21 (1) Within 1 day of the tenant taking possession of the premises, the lessor must give 2 copies of a condition report completed by the lessor to the tenant.

(2) The condition report must be on, or to the effect of, the condition report form published by the Territory.

22 (1) The tenant must examine the report and indicate on the report the tenant's agreement or disagreement with the items.

(2) Within 2 weeks after the day the tenant receives the report, the tenant must return 1 copy of the report to the lessor, signed by the tenant and indicating the tenant's agreement or disagreement with the report or parts of the report.

23 The lessor must keep the condition report for a period of not less than 1 year after the end of the tenancy.

End of tenancy—inspection and condition report

23A (1) At the end of the tenancy, an inspection of the premises must be carried out in the presence of the lessor and tenant.

(2) A condition report based on the inspection must be completed in the presence of, and signed by, the lessor and tenant.

(3) A party may complete and sign a condition report in the absence of the other party if the party has given the other party a reasonable opportunity to be present when the report is completed and signed.

Rent and other charges

Rent and bond only as payment for the tenancy

24 The lessor must not require any payment other than rent or bond for the following:

(a) the granting, extension, transfer or renewal of a tenancy or subtenancy;

(aa) consenting to—

(i) a person becoming a co-tenant; or

(ii) a co-tenant stopping being a party to the tenancy agreement;

(b) vacating of premises;

(c) obtaining a key to the premises;

(d) information on the availability of tenancies.

Holding deposits

25 The Residential Tenancies Act prohibits the taking of holding deposits.

Payment of rent

26 (1) The tenant must pay the rent on time.

(2) The tenant must not use the bond money to pay the rent for the last weeks of the tenancy.

(3) The tenant and the lessor may agree to change the way rent is paid (including, for example, where the rent is paid or whether it is to be paid into a nominated bank account or whether it is to be paid in person).

(4) The tenant and lessor may agree that rent is to be paid electronically.

27 The lessor must not require the tenant to pay rent by postdated cheque.

Maximum rent in advance

28 The lessor must not require an amount of rent paid in advance greater than 2 weeks or a longer period nominated by the tenant.

Rent receipts

29 If rent is paid in person to the lessor or a real estate agent, a receipt must be given at that time.

30 In other circumstances where rent is paid to the lessor, a receipt must be provided or sent by post within 1 week of its receipt.

31 (1) A receipt for payment of rent must specify the amount paid.

(2) A receipt should specify the following:

(a) the date of payment;

(b) the period in relation to which the payment is made;

(c) the premises in relation to which the payment is made;

(d) whether the payment is for bond or rent.

(3) If these particulars are not included in the receipt, the lessor must provide this information to the tenant within 4 weeks of a request by the tenant.

32 A receipt is not required if the rent is paid by the tenant directly into an account nominated by the lessor or real estate agent.

Rent records

33 (1) The lessor must keep, or cause to be kept, records of the payment of rent.

(2) Those records must be retained for a period of not less than 12 months after the end of the tenancy.

Increase in rent

34 The amount of rent must not vary from period to period except as provided by this tenancy agreement and the Residential Tenancies Act.

35 The rent may not be increased at intervals of less than 12 months from either the beginning of the tenancy agreement for the first increase, or after that, from the date of the last increase.

36 (1) This clause applies if—

(a) the housing commissioner is the lessor under this tenancy agreement; and

(b) the commissioner has decided to increase the rent after a review of rent under the *Housing Assistance Act 2007*, section 23.

(2) Despite clause 35, the housing commissioner may increase the rent.

(3) However, if a previous review of rent has been undertaken, the increase under subclause (2) must not take effect earlier than 1 year after the date the last rent increase for the premises took effect.

37 The restriction on increase in rent applies provided the identity of at least 1 of the tenants who occupy the premises remains the same as at the time of the last increase.

Review of excessive rent increases

38 The lessor must give the tenant 8 weeks written notice of intention to increase the rent and include in the notice the amount of the increase, and the date when it is proposed to increase the rent.

39 (1) The tenant may apply in writing to the tribunal for review of an excessive increase in rent (time limits for applying and the meaning of excessive is set out in the Residential Tenancies Act).

(2) On such application being made, no increase in rent is payable until so ordered by the tribunal.

40 If the tenant remains in occupation of the premises without applying to the tribunal for review, the increase in rent takes effect from the date specified in the notice.

41 If the tenant wishes to vacate the premises before the increase takes effect, the tenant must give 3 weeks notice to the lessor.

Lessor's costs

42 The lessor is responsible for the cost of the following:

(a) rates and taxes relating to the premises;

(b) services for which the lessor agrees to be responsible;

(c) services for which there is not a separate metering device so that amounts consumed during the period of the tenancy cannot be accurately decided;

(d) all services up to the time of measurement or reading at the beginning of the tenancy;

(e) all services after reading or measurement at the end of the tenancy providing the tenant has not made any use of the service after the reading.

43 (1) The lessor must pay for any physical installation of services (eg water, electricity, gas, telephone line).

(2) The tenant is responsible for the connection of all services that will be supplied in the tenant's name.

44 The lessor must pay the annual supply charge associated with the supply of water or sewerage.

45 If the premises are a unit under the *Unit Titles Act 2001*, the lessor is responsible for all owners corporation charges.

Tenant's costs

46 The tenant is responsible for all charges associated with the consumption of services supplied to the premises, including electricity, gas, water and telephone.

47 The tenant is not required by the lessor to connect or continue a telephone service.

Reading of metered services

48 (1) The lessor is responsible for undertaking or arranging all readings or measurement of services, other than those that are connected in the name of the tenant.

(2) The lessor must provide the tenant with an opportunity to verify readings and measurements.

49 If the lessor does not arrange reading or measurement of a service connected in the name of the lessor by the day after the date of expiry of notice to vacate given in accordance with this tenancy agreement or the Residential Tenancies Act, the lessor is be responsible for payment of the unread or unmeasured service after the date of the last reading or measurement.

50 (1) If the tenant vacates the premises without giving notice before departure, the lessor must arrange a reading or measurement of services connected in the lessor's name within a reasonable time of the lessor becoming aware of the departure of the tenant.

(2) The tenant is responsible for payment of services to the date of that reading or measurement.

Tenant's use of the premises without interference

51 The lessor guarantees that there is no legal impediment to the use of the premises for residential purposes by the tenant.

52 The lessor must not cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in the use by the tenant of the premises.

53 Unless otherwise agreed in writing, the tenant has exclusive possession of the premises, as described in the agreement, from the date of commencement of the tenancy agreement provided for in the agreement.

Lessor to install and maintain smoke alarms

Lessor to install and maintain smoke alarms

53A (1) The lessor must install and maintain smoke alarms in the premises.

(2) The installation of the smoke alarms must comply with the requirements prescribed by regulation for the Residential Tenancies Act, section 11B.

Lessor to make repairs

Lessor to provide premises in a reasonable state at the start of the tenancy

54 (1) At the start of the tenancy, the lessor must ensure that the premises, including furniture, fittings and appliances (unless excluded from the tenancy agreement), are—

(a) fit for habitation; and

(b) reasonably clean; and

(c) in a reasonable state of repair; and

(d) reasonably secure.

(2) An exclusion must be in writing and may, but need not, be included in the tenancy agreement (if in writing).

(3) The lessor or the tenant may change locks (at their own cost unless otherwise agreed) with the agreement of the other party (which will not be unreasonably withheld).

(4) The lessor or the tenant may change locks (at their own cost) in an emergency without the agreement of the other party.

(5) If the tenant, or a person living at the premises, is a protected person in relation to an interim or final order made under the *Family Violence Act 2016* or the *Personal Violence Act 2016*, the tenant or person may change locks (at their own cost) without the agreement of the other party.

(6) If a lock is changed, a copy of the key to the changed lock must be provided to the other party as soon as possible unless doing so would affect the safety of a protected person.

Lessor to make repairs

55 (1) The lessor must maintain the premises in a reasonable state of repair having regard to their condition at the commencement of the tenancy agreement.

(2) The tenant must notify the lessor of any need for repairs.

(3) This section does not require the tenant to notify the lessor about anything that an ordinary tenant would reasonably be expected to do, for example, changing a light globe or a fuse.

56 The lessor is not obliged to repair damage caused by the negligence or wilful act of the tenant.

57 Subject to clause 55, the lessor must make repairs, other than urgent repairs, within 4 weeks of being notified of the need for the repairs (unless otherwise agreed).

Repairs in unit title premises

58 If the premises are a unit under the *Unit Titles Act 2001*, and the tenant's use and enjoyment of the premises reasonably requires repairs to the common property, the lessor must take all steps necessary to require the owners corporation to make the repairs as quickly as possible.

Urgent repairs

59 The tenant must notify the lessor (or the lessor's nominee) of the need for urgent repairs as soon as practicable, and the lessor must, subject to clause 82, carry out those repairs as soon as necessary, having regard to the nature of the problem.

60 The following are urgent repairs in relation to the premises, or services or fixtures supplied by the lessor:

(a) a burst water service;

(b) a blocked or broken lavatory system;

(c) a serious roof leak;

(d) a gas leak;

(e) a dangerous electrical fault;

(f) flooding or serious flood damage;

(g) serious storm or fire damage;

(h) a failure of gas, electricity or water supply to the premises;

(i) the failure of a refrigerator supplied with the premises;

(j) a failure or breakdown of any service on the premises essential for hot water, cooking, heating, cooling or laundering;

(k) a fault or damage that causes the residential premises to be unsafe or insecure;

(l) a fault or damage likely to cause injury to person or property;

(m) a serious fault in any door, staircase, lift or other common area that inhibits or unduly inconveniences the tenant in gaining access to and use of the premises.

Tenant may authorise urgent repairs in certain circumstances

61 If the lessor (or the lessor's nominee) cannot be contacted, or fails to effect the urgent repairs within a reasonable time, the tenant may arrange for urgent repairs to be effected to a maximum value of up to 5% of the rent of the property over a year.

62 The following procedures apply to urgent repairs arranged by the tenant:

(a) the repairs arranged by the tenant must be made by the qualified tradesperson nominated by the lessor in the tenancy agreement;

(b) if the lessor has not nominated a tradesperson, or the nominated tradesperson cannot be contacted or is otherwise unavailable—the repairs must be performed by a qualified tradesperson of the tenant's choosing;

(c) if the repairs are arranged by the tenant in accordance with these procedures—the lessor is liable for the cost of repairs and the tradesperson may bill the lessor direct;

(d) if the tenant does not act in strict compliance with this clause—the tenant is personally liable for the cost of any urgent repairs arranged by the tenant.

Premises must comply with minimum housing standards

62A The lessor must ensure the premises comply with the minimum housing standards applying to the premises.

Note A regulation may prescribe minimum housing standards for premises, including in relation to physical accessibility, energy efficiency, safety and security, sanitation or amenity (see Residential Tenancies Act, s 19A (1)).

Tenant to look after the premises

The tenant must take reasonable care of the premises and keep the premises reasonably clean

63 During the tenancy, the tenant must—

(a) not intentionally or negligently damage the premises or permit such damage; and

(b) notify the lessor of any damage as soon as possible; and

(c) take reasonable care of the premises and their contents, and keep them reasonably clean, having regard to their condition at the time of the commencement of the tenancy and the normal incidents of living.

63A The tenant must replace the battery in a smoke alarm installed in the premises whenever necessary.

64 The tenant must leave the premises—

(a) in substantially the same state of cleanliness, removing all the tenant's belongings and any other goods brought onto the premises during the duration of the tenancy agreement; and

(b) in substantially the same condition as the premises were in at the commencement of the tenancy agreement, fair wear and tear excepted.

65 The lessor must not require the tenant to make alterations, improvements or renovations to the premises.

Tenant of unit to comply with owners corporation's rules

66 (1) If the premises are a unit under the *Unit Titles Act 2001*—

(a) the tenant must comply with the owners corporation's rules and with any notice served in accordance with the rules; but

(b) need not comply with the rules to the extent that they are inconsistent with the standard residential tenancy terms in this agreement.

(2) However, if the owners corporation's rules include a rule about keeping animals in the unit, the tenant must comply with the rule.

Tenant must make no alterations and must not add any fixtures or fittings without the consent of lessor

67 (1) The tenant must not, without the lessor's written consent, make any renovation, alteration or addition to the premises (time limits for the lessor to refuse consent to special modifications are set out in the Residential Tenancies Act).

(2) The lessor may give consent subject to a reasonable condition, including a requirement that the tenant use a suitably qualified tradesperson to undertake—

(a) the renovation, alteration, or addition; and

(b) any restoration at the end of the tenancy.

(3) Unless otherwise agreed, the tenant is liable for the cost of any renovation, alteration or addition to the premises.

(4) Unless otherwise agreed, at the end of the tenancy the tenant is responsible for restoring the premises to substantially the same condition as the premises were in at the commencement of the residential tenancy agreement, fair wear and tear excepted.

(5) The lessor and tenant may agree that any renovation, alteration or addition to the premises remains in place at the end of the residential tenancy agreement.

68 (1) The tenant must not add any fixtures or fittings to the premises without the consent of the lessor.

(2) The lessor's consent must not be unreasonably withheld.

(3) The tenant must make good any damage to the premises on removal of any fixtures and fittings.

(4) Any fixtures or fittings not removed by the tenant before the tenant leaves the premises becomes the property of the lessor.

Tenant must not use the premises for illegal purposes and must not disturb the neighbours

69 Unless otherwise agreed in writing, the tenant must only use the premises for residential purposes.

70 The tenant must not:

(a) use the premises, or permit them to be used, for an illegal purpose; or

Note The ACAT must not make a termination and possession order for a breach of this term unless satisfied of certain matters (see Residential Tenancies Act, s 48 (3) and (4)).

(b) cause or permit nuisance; or

(c) interfere, or permit interference, with the quiet enjoyment of the occupiers of nearby premises.

71 The tenant must not leave the premises vacant for more than 3 weeks without notifying the lessor.

Tenant must not sell, dispose of, or sublet tenancy without consent of lessor

72 (1) The tenant must not assign or sublet the premises or any part of them without the written consent of the lessor.

(2) Consent may be given at any time.

(3) No rights in relation to the premises may be created in any third party before consent is obtained from the lessor.

Co-tenant may leave tenancy agreement

72A (1) A co-tenant may stop being a party to the tenancy agreement—

(a) with the consent of the lessor and each remaining co-tenant under the agreement; or

(b) by order of the tribunal under the Residential Tenancies Act, section 35G (1) (a) or (d).

(2) The co-tenant must seek the consent of the lessor and each remaining co-tenant—

(a) by notice in writing; and

(b) at least 21 days before the day the co-tenant intends to stop being a party to the tenancy agreement (time limits for the lessor or each remaining co-tenant to refuse consent are set out in the Residential Tenancies Act).

(3) If consent is given to the co-tenant to stop being a party to the tenancy agreement—

(a) the agreement continues between the lessor and the remaining co-tenants; and

(b) the tenant's rights and obligations under the agreement end.

Becoming a new co-tenant to existing tenancy agreement

72B (1) Another person may become a co-tenant under the tenancy agreement—

(a) with the consent of the lessor and each other co-tenant; or

(b) under the Residential Tenancies Act, section 35D.

(2) An existing tenant must seek the consent of the lessor and any other co-tenant—

(a) by notice in writing; and

(b) at least 14 days before the day the person wants to become a co-tenant (time limits for the lessor or each other co-tenant to refuse consent are set out in the Residential Tenancies Act).

(3) If the person becomes a co-tenant—

(a) the agreement continues with the person becoming a co-tenant with the existing co-tenants; and

(b) the existing co-tenants must give the person a copy of the condition report for the premises not later than the day after the person becomes a co-tenant.

(4) This clause does not apply to a tenancy agreement in relation to a social housing dwelling or crisis accommodation.

Tenant may be responsible for damage or other breach of tenancy agreement by visitors or guests

73 The tenant is personally responsible for the actions or omissions of visitors, guests or other people on the premises if:

(a) the action or omission would if performed by the tenant have constituted a breach of this tenancy agreement; and

(b) the person is on the premises with the permission of the tenant.

74 The tenant is not personally responsible for the actions or omissions of a person who is on the premises:

(a) at the request of the lessor; or

(b) to assist the lessor perform any of the duties of the lessor under this tenancy agreement (whether at the request of the lessor or the tenant); or

(c) without the consent of the tenant.

Keeping animals on premises

74A (1) The tenant may keep an animal, or allow an animal to be kept, on the premises.

(2) The residential tenancy agreement may require the tenant to obtain the lessor's prior written consent to keep an animal, or allow an animal to be kept, on the premises (time limits for the lessor to refuse consent are set out in the Residential Tenancies Act).

74B The tenant is responsible for any repairs or additional maintenance to the premises required as a consequence of keeping an animal on the premises.

Lessor's access to premises

Lessor cannot enter premises except as provided in tenancy agreement

75 (1) The lessor must not require access to the premises during the tenancy except as provided by the law, this tenancy agreement, the Residential Tenancies Act, or an order of the tribunal.

(2) The tenant may permit access to the premises by the lessor at any time.

(3) If requested, the lessor or the lessor's agent must provide identification to the tenant.

76 The lessor must not have access to the premises—

(a) on Sundays; or

(b) on public holidays; or

(c) before 8 am and after 6 pm;

other than—

(d) for the purpose of carrying out urgent repairs or for health or safety reasons in relation to the premises; or

(e) with the consent of the tenant.

Access in accordance with tenancy agreement

Routine inspections

77 The lessor may inspect the premises twice in each period of 12 months following the commencement of the tenancy.

78 In addition to the inspections provided for in the previous clause, the lessor may make an inspection of the premises—

(a) within 1 month of the commencement of the tenancy; and

(b) in the last month of the tenancy.

79 (1) The lessor must give the tenant 1 week written notice of an inspection.

(2) The inspection must take place at a time agreed between the parties with reasonable regard to the work and other commitments both of the tenant and of the lessor (or their agents).

(3) If the parties are unable to agree on an appropriate time, the lessor or the tenant may apply to the tribunal for an order permitting access at a specified time.

Access for purchasers and new tenants

80 The tenant must permit reasonable access to the premises during the period of 3 weeks before the end of the tenancy, on the lessor giving 24 hours notice, to allow inspection of the premises by prospective tenants.

81 The tenant must permit reasonable access to the premises, on the lessor giving 48 hours notice, to allow inspection of the premises by prospective purchasers of the premises, but only if—

(a) the lessor intends to sell the premises; and

(b) the lessor has previously notified the tenant in writing of the lessor's intention to sell.

81A (1) The tenant must not unreasonably refuse an inspection of the premises by a prospective purchaser.

(2) However, a tenant is not required to agree to more than 2 inspections a week.

(3) The inspection must take place at a time agreed between the parties with reasonable regard to the work and other commitments both of the tenant and of the lessor (or their agents).

(4) If the parties are unable to agree on an appropriate time, the lessor or the tenant may apply to the tribunal for an order permitting access at a stated time.

Access for making or inspecting repairs or complying with minimum housing standards

82 (1) On giving the tenant 1 week's notice (or such other agreed period), the lessor may enter the premises at a reasonable time, taking into account the interests of the tenant and the lessor, for the purpose of—

(a) making or inspecting repairs; or

(b) inspecting the premises to ensure the premises comply with the minimum housing standards; or

(c) undertaking work, or inspecting work undertaken, to ensure the premises comply with the minimum housing standards.

(1A) However, the lessor must only enter premises for the purpose of an inspection, making repairs or undertaking work (the activity) if, taking into account the nature of the activity, it is reasonable and necessary to do so.

(2) For urgent repairs, the lessor must give reasonable notice and enter the premises at a reasonable time having regard to the interests of the tenant and the lessor.

Notice to vacate by lessor

83 A notice to vacate must be in writing, in the form required by the Residential Tenancies Act, and must include the following information:

(a) the address of the premises;

(b) the ground(s) on which the notice is issued, together with sufficient particulars to identify the circumstances giving rise to the ground(s);

(c) that the lessor requires the tenant to vacate the premises by the expiry of the required notice period and that the tenancy ends on the day that the tenant vacates the premises.

Notice of intention to vacate by tenant

84 (1) If the tenant serves a notice of intention to vacate and vacates the premises in accordance with the notice, the tenancy terminates on the date of vacating the premises.

(2) On receiving a notice of intention to vacate, the lessor may—

(a) accept the notice and accept that the tenancy ends on the date nominated in the notice; or

(b) apply to the tribunal for confirmation of the tenancy agreement, an order for compensation or both.

85 The notice of intention to vacate must be in the same form and contain the same information as a notice to vacate from the lessor except the notice must contain the statement that the tenant intends to vacate the premises on a certain date and the tenancy terminates on that date.

Termination where premises are not fit for habitation

86 (1) The lessor or the tenant may, by written notice, terminate the tenancy on a date specified in the notice on the following grounds:

(a) the premises are not fit for habitation;

(b) the premises are not available or will not be available because of Government action within a period of 4 weeks of the date that notice is given.

(2) However, a lessor or tenant must not terminate the tenancy under subclause (1) only because the lessor has failed to comply with the minimum housing standards applying to the premises.

Note A tenant may apply to the ACAT to terminate the tenancy if the lessor fails to comply with the minimum housing standards (see Residential Tenancies Act, s 46AA).

87 (1) In either case the lessor must give not less than 1 week's notice of termination of the tenancy, and the rent abates from the date that the premises are uninhabitable.

(2) The tenant may give 2 days notice of termination of the tenancy.

(3) If neither the lessor nor the tenant give notice of termination of the tenancy, the rent abates for the period that the premises are unable to be used for habitation, but the tenancy resumes when they are able to be used again.

Termination of tenancy by tenant

Termination on or after end of fixed term

88 (1) The tenant may give notice to terminate a periodic tenancy by giving the lessor not less than 3 weeks notice of the date when the tenant intends to vacate the premises.

(2) The tenancy ends on the date specified by the tenant.

89 (1) The tenant may give notice to terminate a fixed term tenancy at or after the end of the tenancy by giving 3 weeks notice of the date when the tenant intends to vacate the premises.

(2) The tenancy ends on the date specified by the tenant.

Termination for breach by lessor

90 If the lessor breaches the tenancy agreement, and the tenant wishes to terminate the tenancy agreement, the tenant may either—

(a) apply to the tribunal for an order terminating the tenancy; or

(b) give the lessor written notice of intention to terminate the tenancy, in accordance with clause 91.

91 If the tenant decides to proceed by way of notice to the lessor, the following procedures apply:

(a) the tenant must give the lessor a written notice that the lessor has 2 weeks to remedy the breach if the breach is capable of remedy;

(b) if the lessor remedies the breach within that 14-day period—the tenancy continues;

(c) if the lessor does not remedy the breach within the time specified in the notice, or if the breach is not capable of remedy—the tenant must give 2 weeks notice of intention to vacate;

(d) the tenancy agreement terminates on the date specified by the tenant;

(e) rent is payable to the date specified in the notice or to the date that the tenant vacates the premises, whichever is the later;

(f) if the lessor remedies the breach during the period of the notice of intention to vacate—the tenant, at the tenant's option, may withdraw the notice or may terminate the tenancy agreement on the date specified in the notice by vacating the premises on that date.

Termination of tenancy by lessor

Termination for failure to pay rent

92 The tribunal may order the termination of the tenancy and eviction of the tenant on the ground of nonpayment of rent in the following circumstances:

(a) rent has been unpaid for 1 week. The first day of this period concludes at midnight on the day when the unpaid rent was due;

(b) the lessor has served a notice to remedy on the tenant for the failure to pay the rent, being a notice—

(i) served not earlier than 1 week after the day when the rent was due; and

(ii) containing a statement that if the tenant pays the rent outstanding to the date of payment within 7 days of the date of service of the notice to remedy, no further action must be taken and the tenancy continues;

(c) if all rent is not paid within 1 week of the date of service of the notice to remedy—the lessor may then serve a notice to vacate on the tenant requiring the tenant to vacate the premises within 2 weeks of service of the notice to vacate;

(d) no earlier than the date when the notice to vacate is served, the lessor may apply to the tribunal for an order terminating the tenancy and evicting the tenant;

(e) the tribunal hearing of the application to terminate and evict must not be earlier than the end of the period specified in the notice to vacate;

(f) during any tenancy in which the lessor has previously issued 2 notices to remedy, the lessor may serve a notice to vacate 1 week after the day when the rent has fallen due without serving a notice to remedy.

Termination of tenancy for breach other than nonpayment of rent

93 The tribunal may order the termination of the tenancy and eviction of the tenant on the ground of breach of the tenancy agreement in the following circumstances:

(a) the lessor must serve a written notice requiring the tenant within 2 weeks after the day of service to remedy the breach if it is capable of remedy;

(b) if the breach is not remedied within 2 weeks after the day of service or if the breach is not capable of remedy—the lessor must give a notice to vacate the premises within 2 weeks after the date of service of the notice to vacate;

(c) if the tenant does not vacate the premises within the period of 2 weeks after the date of service of a notice to vacate—the lessor may apply to the tribunal for an order terminating the tenancy and for the eviction of the tenant;

(d) if the tenant breaches the terms of the tenancy on 3 occasions on any ground—on the 3rd occasion the lessor may serve a notice to vacate and need not give the tenant 2 weeks to remedy the breach.

Termination of periodic tenancy

96 (1) For a periodic tenancy, the lessor may give the tenant—

(a) if the lessor genuinely intends to live in the premises—8 weeks notice to vacate; or

(b) if the lessor genuinely believes the lessor's immediate relative intends to live in the premises—8 weeks notice to vacate; or

(c) if the lessor genuinely believes an interested person intends to live in the premises—8 weeks notice to vacate; or

(d) if the lessor genuinely intends to sell the premises—8 weeks notice to vacate; or

(e) if the lessor genuinely intends to reconstruct, renovate or make major repairs to the premises and the reconstruction, renovation or repairs cannot reasonably be carried out with the tenant living in the premises—12 weeks notice to vacate; or

(f) if the lessor genuinely requires the premises for a lawful use other than as a home—26 weeks notice to vacate.

(2) A notice to vacate under this clause must be accompanied by written evidence supporting the lessor's reason for the notice.

Examples—written evidence

statutory declaration, development application, quotes from a tradesperson for renovations, notice of decision from the housing commissioner

(3) In this clause:

immediate relative, of the lessor, means a son, daughter, son-in-law, daughter-in-law, mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law or sister-in-law.

interested person, for a lessor, means a person who is not an immediate relative of the lessor but who has a close family or personal relationship with the lessor and who has a reasonable expectation arising from that relationship that the lessor would provide accommodation for the person.

97 (1) If a tenant is required to vacate the premises in accordance with clause 96, the tenant may vacate the premises at any time during the 2 weeks before the date specified in the notice to vacate provided the tenant gives the lessor 4 days notice of intention to vacate.

(2) In this case, the tenancy terminates on the date that the tenant vacates the premises.

Notices of address for service

98 (1) At the commencement of the tenancy, the lessor and the tenant must each give an address for service of notices.

(2) If the address changes during the tenancy, the lessor or tenant must advise the other party of the new address for service within 2 weeks of the change.

99 On vacating the premises, the tenant must advise the lessor of a forwarding address.

100 If 2 or more people share a tenancy, except where this agreement otherwise provides, they do so as co-tenants.

ATTACHMENT B – STANDARD TERMS THAT APPLY TO CERTAIN TENANCY AGREEMENTS ONLY

Residential Tenancies Act 1997 – Schedule 2

2.1 Break lease fee clause

Termination before end of fixed term—fee for breaking lease

101 (1) If the tenant ends a fixed term agreement before the end of the fixed term (other than for a reason provided for by the Residential Tenancies Act or the agreement), the tenant must pay a fee (a ***break fee***) of the following amount:

(a) if the fixed term is 3 years or less—

(i) if less than half of the fixed term has expired—6 weeks rent; or

(ii) in any other case—4 weeks rent;

(b) if the fixed term is more than 3 years—the amount agreed between the lessor and tenant.

(2) The lessor agrees that the compensation payable by the tenant for ending a fixed term agreement before the end of the fixed term is limited to the amount of the break fee specified in subclause (1).

(3) However, the lessor and tenant agree that if, within the defined period after the tenant vacates the premises, the lessor enters into a residential tenancy agreement with a new tenant, the amount payable by the tenant is limited to—

(a) the amount of the break fee under subclause (1) less the amount of rent payable by the new tenant for the defined period; and

(b) if the tenant vacates the premises more than 4 weeks before the end of the fixed term—the lessor's reasonable costs (not exceeding the defined cost limit) of advertising the premises for lease and of giving a right to occupy the premises to another person.

(4) In this clause:

defined cost limit means—

(a) if half or more than half of the fixed term has expired—an amount equal to $^{2}/_{3}$ of 1 week's rent; or

(b) if less than half of the fixed term has expired—an amount equal to 1 week's rent.

defined period means—

(a) if subclause (1) (a) (i) applies—6 weeks; or

(b) if subclause (1) (a) (ii) applies—4 weeks; or

(c) if subclause (1) (b) applies—N weeks.

N is the number worked out as follows:

$$\frac{\text{break fee}}{\text{weekly rent payable at the time the tenant ends the agreement}}$$

2.2 Posting termination clause

Termination because of posting

102 (1) The tenancy agreement may be terminated—

(a) if the lessor is posted to the ACT in the course of the lessor's employment—by the lessor giving the tenant at least 8 weeks notice to vacate the premises; or

(b) if the tenant is posted away from the ACT in the course of the tenant's employment—by the tenant giving the lessor at least 8 weeks notice of the tenant's intention to vacate the premises.

(2) A notice under subclause (1) must be accompanied by evidence of the posting (for example, a letter from the employer of the lessor or tenant confirming the details of the posting).

(3) The residential tenancy agreement terminates—

(a) 8 weeks after the day the notice under subclause (1) is received; or

(b) if a later date is stated in the notice—on the stated date.

2.3 Community housing provider termination clause

Termination by community housing provider if premises required by owner

103 (1) For a periodic tenancy, the lessor may give the tenant—

(a) if the owner of the premises genuinely intends to sell the premises—at least 8 weeks notice to vacate; or

(b) if the owner of the premises genuinely intends to live in the premises—at least 8 weeks notice to vacate; or

(c) if the owner of the premises genuinely believes the owner's immediate relative intends to live in the premises—at least 8 weeks notice to vacate; or

(d) if the owner of the premises genuinely believes an interested person intends to live in the premises—at least 8 weeks notice to vacate; or

(e) if the owner of the premises genuinely intends to reconstruct, renovate or make major repairs to the premises and the reconstruction, renovation or repairs

cannot reasonably be carried out with the tenant living in the premises—at least 12 weeks notice to vacate the premises; or

(f) if the owner of the premises is not the housing commissioner and the owner genuinely intends to stop using the premises for community housing—at least 26 weeks notice to vacate the premises.

(2) For a fixed term or periodic tenancy, the lessor may give the tenant at least 26 weeks notice to vacate the premises if the housing commissioner—

(a) is the owner of the premises; and

(b) withdraws the premises in accordance with an approved housing assistance program.

(3) A notice to vacate under this clause must be accompanied by written evidence supporting the owner's genuine intention or belief for requiring the lessor to give the notice.

Examples—written evidence

statutory declaration, development application, quotes from a tradesperson for renovations, notice of decision from the housing commissioner

(4) If the tenant is given a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the notice to vacate (the lessor's notice to vacate date) provided the tenant gives the lessor—

(a) at least 2 weeks notice of the tenant's intention to vacate; or

(b) in the last 2 weeks before the lessor's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.

(5) The residential tenancy agreement terminates on the day the tenant vacates the premises.

(6) In this clause:

immediate relative, of the owner, means a son, daughter, son-in-law, daughter-in-law, mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law or sister-in-law.

interested person, for an owner, means a person who is not an immediate relative of the owner but who has a close family or personal relationship with the owner and who has a reasonable expectation arising from that relationship that the owner would provide accommodation for the person.

2.4 Public housing termination clauses

Termination if housing assistance cancelled or withdrawn

104 (1) This clause applies if—

(a) the tenant receives housing assistance under an approved housing assistance program in relation to the tenancy (other than a rebate of rent); and

(b) the housing commissioner decides—

(i) after reviewing the tenant's eligibility to receive the housing assistance, that the tenant is no longer eligible to receive the housing assistance under the program; or

(ii) after the tenant fails to comply with a request for information made by the housing commissioner in accordance with the *Housing Assistance Act 2007*, section 25 (2) (a), to cancel the tenant's housing assistance under that Act, section 25 (3); and

(c) the tenant is no longer able to ask for a review of the housing commissioner's decision.

(2) The lessor may give the tenant at least 26 weeks notice to vacate the premises.

(3) If the notice to vacate is given because of subclause (1) (b) (ii) and the tenant gives the lessor the information in accordance with the lessor's request for information before the end of the period in the notice, the notice is taken to have been withdrawn.

(4) Subclause (5) applies if—

(a) the tenant gives the lessor the information in accordance with the lessor's request for information before the end of the period in the notice given under subclause (2); and

(b) the housing commissioner decides, after reviewing the tenant's eligibility to receive the housing assistance, that the tenant is no longer eligible to receive the housing assistance under the program; and

(c) the tenant is no longer able to ask for a review of the housing commissioner's decision.

(5) Despite subclause (1) (b) (i), the lessor may give the tenant notice to vacate the premises provided that the notice is for the later of—

(a) the end of the period in the notice given under subclause (2); and

(b) 12 weeks after notice is given under this subclause.

Example

On 1 July, Ziggy's lessor gives Ziggy a notice to vacate because Ziggy did not provide the lessor with information about Ziggy's eligibility for housing assistance within the required period. The notice to vacate gives Ziggy the required 26 weeks notice, meaning Ziggy must vacate the premises by 30 December. On 1 August, Ziggy gives the lessor the information the lessor requested and the first notice to vacate is taken to be withdrawn. Taking into account the new information, the housing commissioner decides that Ziggy is no longer eligible to receive the housing assistance. Ziggy does not seek ACAT review of the commissioner's decision. The lessor may give Ziggy a second notice to vacate, but the second notice must not have a notice period that ends before 30 December.

(6) For this clause, a tenant is ***no longer able to ask for a review*** of the housing commissioner's decision if—

(a) the period in which the tenant may make an application for review of the decision has ended and the tenant has not made an application; or

(b) if the tenant applies for review of the decision—the commissioner's decision is confirmed.

(7) If the lessor gives a tenant a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the lessor's notice to vacate provided the tenant gives the lessor—

(a) at least 2 weeks notice of the tenant's intention to vacate; or

(b) in the last 2 weeks before the lessor's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.

(8) The residential tenancy agreement terminates on the day the tenant vacates the premises.

Termination if tenant refuses transfer to alternate rental premises

105 (1) This clause applies if—

(a) the housing commissioner gives the tenant written notice in accordance with an approved housing assistance program requiring the tenant to move to alternate rental premises; and

(b) the tenant has rejected, or failed to accept, an offer from the housing commissioner to enter into a tenancy agreement for the alternate rental premises; and

(c) the tenant is no longer able to ask for a review of the housing commissioner's decision to require the tenant to move to the alternate rental premises.

(2) The lessor may give the tenant at least 26 weeks notice to vacate the premises.

(3) To remove any doubt, this clause also applies if the housing commissioner requires the tenant to move to alternate rental premises when the tenant begins receiving ongoing housing assistance after the tenant's temporary housing assistance ends.

(4) For this clause, a tenant is ***no longer able to ask for a review*** of a decision to require the tenant to move to alternate rental premises if—

(a) the period under the approved housing assistance program in which the tenant may make an application for review of the decision has ended and the tenant has not made an application; or

(b) if the tenant applies for review under the approved housing assistance program of the decision—the commissioner's decision is confirmed.

(5) If the lessor gives a tenant a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the lessor's notice to vacate provided the tenant gives the lessor—

(a) at least 2 weeks notice of the tenant's intention to vacate; or

(b) in the last 2 weeks before the lessor's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.

(6) The residential tenancy agreement terminates on the day the tenant vacates the premises.

Termination if tenant is party to 2 tenancies

106 (1) This clause applies if—

(a) the tenant agrees to move to alternate rental premises; and

(b) the tenancy for the alternate premises has commenced in accordance with the tenancy agreement.

(2) The lessor may give the tenant at least 1 week's notice to vacate the first premises.

(3) The residential tenancy agreement terminates on the day the tenant vacates the premises.

2.5 Temporary housing assistance termination clause

Termination if housing commissioner decides tenant not eligible for ongoing housing assistance

107 (1) This clause applies if the housing commissioner provides temporary housing assistance to the tenant under an approved housing assistance program because the tenant is a remaining occupant in the premises after a former tenant has stopped living in the premises because they—

(a) have died; or

(b) are physically unable to live in the premises; or

(c) are legally unable to live in the premises; or

(d) no longer wish to live in the premises.

(2) If the housing commissioner decides that the tenant is not eligible for ongoing housing assistance under an approved housing assistance program, the lessor may give the tenant—

(a) if the housing commissioner makes the decision before the tenant's temporary housing assistance ends—at least 26 weeks notice to vacate the premises; or

(b) if the housing commissioner makes the decision after the tenant's temporary housing assistance ends—at least 12 weeks notice to vacate the premises.

(3) If the lessor gives a tenant a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the lessor's notice to vacate provided the tenant gives the lessor—

(a) at least 2 weeks notice of the tenant's intention to vacate; or

(b) in the last 2 weeks before the lessor's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.

(4) The residential tenancy agreement terminates on the day the tenant vacates the premises.

2.6 Subsidised accommodation clauses

What are *subsidised accommodation eligibility requirements*?

108 For this agreement, ***subsidised accommodation eligibility requirements***, in relation to premises under a residential tenancy agreement, means any rule or requirement against which—

(a) the tenant's eligibility to live in the premises will be assessable during the tenancy; or

(b) the lessor's eligibility to receive government funding or assistance in relation to the premises will be assessable during the tenancy.

Lessor's obligations in relation to eligibility requirements

109 If a subsidised accommodation eligibility requirement is amended during the tenancy, the lessor must give the tenant a copy of the amended requirements not later than 2 weeks after the lessor is informed of or makes the amendments.

Tenant must provide information relating to eligibility requirements

110 (1) The lessor may ask the tenant, in writing, to give the lessor any information that is reasonably necessary for assessing—

(a) the lessor's or owner's eligibility for government funding or assistance for the premises; or

(b) the tenant's eligibility to live in the premises.

(2) If the lessor makes a request under subclause (1), the lessor must give the tenant a reasonable period to comply with the request.

(3) The tenant agrees to give the lessor any information requested under subclause (1) within the period stated in the lessor's request.

(4) A tenant's failure to comply with subclause (3) is not taken to be a breach of this agreement.

Termination if tenant fails to provide information relating to eligibility requirements

111 (1) If the tenant does not give the lessor information in accordance with the lessor's request for information within the period stated in the lessor's request, the lessor may give the tenant at least 26 weeks notice to vacate the premises.

(2) A notice to vacate given under subclause (1) must include the following information:

(a) a statement that the tenant did not give the lessor the information requested by the lessor;

(b) the name and contact details of a legal or advocacy service that may be able to provide the tenant with advice about the tenant's legal rights;

(c) a statement that the notice will be withdrawn if the tenant gives the lessor the requested information before the end of the period stated in the notice.

(3) If the tenant gives the lessor the information in accordance with the lessor's request for information before the end of the period in the notice given under subclause (1), the notice to vacate is taken to have been withdrawn.

(4) Subclause (5) applies if—

(a) the tenant gives the lessor the information in accordance with the lessor's request for information before the end of the period in the notice given under subclause (1); and

(b) under the subsidised accommodation eligibility requirements for the premises—

(i) the tenant stops, or will stop, being eligible to live in the premises; or

(ii) the lessor stops, or will stop, being eligible to receive government funding or assistance to provide the premises to the tenant.

(5) Despite clause 112, the lessor may give the tenant notice to vacate the premises provided that the notice is for the later of—

(a) the end of the period in the notice given under subclause (1); and

(b) 12 weeks after notice is given under this subclause.

Example

On 1 July, Poppy's lessor gives Poppy a notice to vacate because Poppy did not provide the lessor with information about Poppy's eligibility for subsidised housing within the required period. The notice to vacate gives Poppy the required 26 weeks notice, meaning Poppy must vacate the premises by 30 December. On 1 August, Poppy gives the lessor the information the lessor requested and the first notice to vacate is taken to be withdrawn. Taking into account the new information, the lessor determines that Poppy is no longer eligible to live in the premises. The lessor may give Poppy a second notice to vacate, but the second notice must not have a notice period that ends before 30 December.

(6) A notice to vacate given under subclause (5) must include the name and contact details of a legal or advocacy service that may be able to provide the tenant with advice about the tenant's legal rights.

(7) If the lessor gives a tenant a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the lessor's notice to vacate provided the tenant gives the lessor—

(a) at least 2 weeks notice of the tenant's intention to vacate; or

(b) in the last 2 weeks before the lessor's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.

(8) The residential tenancy agreement terminates on the day the tenant vacates the premises.

Termination if tenant no longer eligible to live in premises

112 (1) This clause applies if, under the subsidised accommodation eligibility requirements for the premises—

(a) the tenant stops, or will stop, being eligible to live in the premises; or

(b) the lessor stops, or will stop, being eligible to receive government funding or assistance to provide the premises to the tenant.

(2) The lessor may give the tenant notice to vacate the premises provided that the notice is not less than the later of the following:

(a) 26 weeks after the day the lessor gives the notice to the tenant;

(b) if the lessor gives the notice because the tenant has stopped, or will stop, being eligible to live in the premises—the day the tenant stops being eligible to live in the premises;

(c) if the lessor gives the notice because the lessor has stopped, or will stop, being eligible to receive government funding or assistance to provide the premises to the tenant—the day the lessor stops being eligible for funding or assistance for the premises.

(3) A notice to vacate must include the following information:

(a) if the tenant has stopped, or will stop, being eligible to live in the premises—the reason why;

(b) if the lessor has stopped, or will stop, being eligible to receive government funding or assistance to provide the premises to the tenant—the reason why;

(c) the name and contact details of a legal or advocacy service that may be able to provide the tenant with advice about the tenant's legal rights.

(4) If the lessor gives a tenant a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the lessor's notice to vacate provided the tenant gives the lessor—

(a) at least 2 weeks notice of the tenant's intention to vacate; or

(b) in the last 2 weeks before the lessor's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.

(5) The residential tenancy agreement terminates on the day the tenant vacates the premises


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