

**Reprint**  
**as at 1 October 2010**

**Residential Tenancies Act 1986**

Public Act 1986 No 120  
Date of assent 17 December 1986

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

**This Act is administered in the Ministry of Housing**

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**An Act to reform and restate the law relating to residential tenancies, to define the rights and obligations of landlords and tenants of residential properties, to establish a tribunal to determine expeditiously disputes arising between such landlords and tenants, to establish a fund in which bonds payable by such tenants are to be held, and to repeal the Tenancy Act 1955 and the Rent Appeal Act 1973 and their amendments**

**1 Short Title and commencement**

- (1) This Act may be cited as the Residential Tenancies Act 1986.
- (2) This Act shall come into force on the 1st day of February 1987.

**2 Interpretation**

- (1) In this Act, unless the context otherwise requires,—  
**accommodation broker** means a person who, in the ordinary course of business, otherwise than as a solicitor or a letting agent acting on behalf of clients, informs other persons for fee or reward—
  - (a) of residential premises that are or may be available for letting; or
  - (b) of the names, addresses, or telephone numbers of persons who are or may be the proprietors or occupiers of residential premises that are or may be available for letting; or
  - (c) of the names, addresses, or telephone numbers of persons who wish or may wish to become tenants of residential premises:

**address for service** has the meaning given to it by section 13AB

**adult** means a person who has attained the age of 18 years, or who is under that age but is or has been married or in a civil union

**agent**, in relation to any person who is a landlord or a tenant, means an agent of that person in that person's capacity as land-

lord or tenant; and includes an employee of that person in that person's capacity as landlord or tenant

**application**, in relation to the Tribunal, includes—

- (a) an application made jointly by the landlord and the tenant of any premises; and
- (b) any complaint by the landlord against the tenant or by the tenant against the landlord; and
- (c) any claim by the landlord against the tenant or by the tenant against the landlord;
- (d) any complaint by the chief executive alleging a breach of this Act;
- (e) any other application that may be made to the Tribunal by virtue of any of the provisions of this Act or of any regulations made under this Act:

**approved form**, in relation to any application or other matter, means a form approved and made available by the chief executive for the purposes of that application or matter

**assignment** means a transfer to a person of all of the rights that a tenant has under a tenancy agreement

**boarding house, boarding house tenancy, boarding house tenancy agreement, and boarding room** have the meanings given to them in section 66B

**bond** means any sum of money payable or paid under a tenancy agreement as security for the observance and performance of the tenant's obligations under the agreement and this Act; but does not include any sum payable or paid by way of rent

**chief executive** means the chief executive of the department

**commercial premises** means premises that are not residential premises

**contact address**,—

- (a) in relation to a landlord, means an address or addresses (which may include telephone numbers) where the landlord or the landlord's agent is reasonably contactable by the tenant; and in addition
- (b) in relation to a landlord that is a company, includes (if the information is different from that given under paragraph (a) of this definition)—

- (i) the full name of the officer responsible to the company for the administration of the tenancy; and
- (ii) an address or addresses (which may include telephone numbers) where that officer or the landlord's agent is reasonably contactable by the tenant; and
- (iii) the address of the company's registered office:

**department** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**Deputy Principal Tenancy Adjudicator** means the Deputy Principal Tenancy Adjudicator appointed under section 67(2A):

**dispute**, in relation to a matter before, or to be brought before, the Tribunal, includes any claim, difference, question, or other matter, whether it requires a decision as between the parties or a declaration

**ethical belief** means the absence of a religious belief whether in respect of a particular religion or religions or all religions

**facilities**, in relation to a tenancy agreement (other than a boarding house tenancy agreement), includes all facilities provided by the landlord for the non-exclusive use and enjoyment of the tenant, otherwise than as part of the premises that are the subject of the agreement, such as the following

- (a) any land or buildings intended for use for storage space or for the parking of motor vehicles:
- (b) laundry facilities:
- (c) cooking facilities:
- (d) lifts and stairways:
- (e) rubbish storage and rubbish disposal facilities:
- (f) toilet and washing facilities:
- (g) appliances for heating or cooling premises:
- (h) communication facilities:
- (i) recreational areas:
- (j) lawns, gardens, and outhouses:

**fixed-term tenancy** means a tenancy for a fixed term; but, except as provided in section 7(3) and section 58(1), does not include such a tenancy that is terminable by notice

**the Fund** means the Residential Tenancies Fund established by section 127

**goods** means goods, baggage, and chattels of any description; and includes animals and plants; and also includes money, documents, and all other things of value

**guarantor**, in relation to a tenancy, means a person who guarantees the performance of the tenant's obligations, or who indemnifies the landlord against loss that he or she may incur in respect of the tenancy, or who assumes liability for the performance of the obligations of the tenant, and **guarantee** has a corresponding meaning

**key money** means any sum of money demanded by way of fine, premium, foregift, reimbursement of expenses, administration charges, or otherwise as consideration for the grant, continuance, extension, variation, or renewal of a tenancy agreement, or for consent to the surrender or disposition of the tenant's interest under a tenancy agreement or to a subletting by the tenant; but does not include any sum payable or paid by way of rent or bond

**landlord**, in relation to any residential premises that are the subject of a tenancy agreement, means the grantor of a tenancy of the premises under the agreement; and, where appropriate, includes—

- (a) a prospective landlord; and
- (b) a former landlord; and
- (c) a lawful successor in title of a landlord to the premises; and
- (d) the personal representative of a deceased landlord; and
- (e) an agent of a landlord:

**letting agent**, in relation to a tenancy, means a person who, in the ordinary course of business, acts, or who holds himself or herself out to the public as ready to act, for reward as an agent in respect of the grant or assignment of tenancies, whether or not that person carries on any other business

**member of the landlord's or owner's family** means any of the following:

- (a) the landlord's or owner's spouse or civil union partner:
- (b) the landlord's or owner's de facto partner:
- (c) any child of the landlord or owner or of any person referred to in paragraph (a) or (b):
- (d) any other child who is being, or is to be, cared for on a continuous basis by the landlord or owner or any person referred to in paragraph (a) or (b):
- (e) any parent of the landlord or owner or of any person referred to in paragraph (a) or (b):
- (f) any other person who is related (whether by blood or marriage) to the landlord or owner or to any person referred to in paragraph (a) or (b) and is residing, or is to reside, in the landlord's or owner's premises in accordance with an arrangement between that person and the landlord or the owner of a predominantly domestic or family nature rather than a predominantly commercial nature

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**minor** means any person who is not an adult

**officer of the Tribunal** means an officer of the department or the Ministry of Justice who is for the time being acting in the service of the Tribunal; and includes a Tenancy Mediator

**order**, in relation to the Tribunal, means any order, decision, determination, consent, approval, or ruling given or made by the Tribunal; and includes an order by the Tribunal dismissing an application

**periodic tenancy** means a residential tenancy other than a fixed-term tenancy

**possession order** means an order made by the Tribunal under section 64, 65, or 66Y granting possession of any premises to any person named in the order

**premises** includes (other than in relation to a boarding house tenancy, in which case the definition in section 66B applies)—

- (a) any part of any premises; and
- (b) any land and appurtenances, other than facilities; and
- (c) any mobile home, caravan, or other means of shelter placed or erected upon any land and intended for occupation on that land:

**prescribed** means prescribed by this Act or by regulations made under this Act

**Principal Tenancy Adjudicator** means the Principal Tenancy Adjudicator appointed under section 67(2)(a)

**prospective landlord** means a person who has offered to grant a tenancy to any other person, or who has entered into negotiations with any other person for the granting of a tenancy to that other person

**prospective tenant** means a person to whom any other person has offered to grant a tenancy, or with whom any other person has entered into negotiations for the granting of a tenancy to that person

**Registrar**, in relation to the Tribunal, means a Registrar of the Tribunal appointed under section 72; and includes a Deputy Registrar of the District Court who, by virtue of section 14(3) of the District Courts Act 1947, is acting in the place of the Registrar

**rent** means any money, goods, services, or other valuable consideration in the nature of rent to be paid or supplied under a tenancy agreement by the tenant; but does not include any sum of money payable or paid by way of bond

**residential premises** means any premises used or intended for occupation by any person as a place of residence

**service tenancy** means a tenancy granted under a term of, or otherwise as an incident of, a contract of service or a contract for services between the landlord as employer and the tenant as employee or contractor, whether or not a separate tenancy agreement is concluded in writing between the parties, and

whether or not any rent is payable for the tenancy; and includes—

- (a) any tenancy of that kind granted under or in accordance with any enactment; and
- (b) any tenancy of that kind granted by a company to an employee or contractor of an associated company (within the meaning of subsection (2)); and
- (c) any tenancy granted by the Armed Forces to any person subject to the Armed Forces Discipline Act 1971

**tenancy**, in relation to any residential premises, means the right to occupy the premises (whether exclusively or otherwise) in consideration for rent; and includes any tenancy of residential premises implied or created by any enactment; and, where appropriate, also includes a former tenancy

**tenancy agreement**, in relation to any residential premises, means any express or implied agreement under which any person, for rent, grants or agrees to grant to any other person a tenancy of the premises; and, where appropriate, includes a former tenancy agreement and any variation of a tenancy agreement

**Tenancy Mediator** means a Tenancy Mediator appointed under section 76

**tenant**, in relation to any residential premises that are the subject of a tenancy agreement, means the grantee of a tenancy of the premises under the agreement; and, where appropriate, includes—

- (a) a prospective tenant; and
- (b) a former tenant; and
- (c) a lawful successor in title of a tenant to the premises; and
- (d) the personal representative of a deceased tenant; and
- (e) an agent of a tenant:

**Tribunal** means the Tenancy Tribunal constituted by section 67

**unlawful act** means anything declared by any of the provisions of this Act to be an unlawful act

**witness summons** means a summons issued under section 98 requiring the person named in the summons to attend at a spe-

cified time and place and to give evidence or to produce any document or thing

**work order** means an order by the Tribunal to carry out any repairs to any premises or to any chattels, or to rectify any deficiency in the performance of any services, by doing such work or attending to such matters (including the replacement of chattels) as may be specified in the order

**working day** means any day other than—

- (a) a Saturday or Sunday; and
- (b) the Sovereign's Birthday, Anzac Day, Labour Day, and Waitangi Day; and
- (c) the day observed in the appropriate area as the anniversary of the province of which the area forms part; and
- (d) a day in the period commencing with Good Friday and expiring with the Tuesday after Easter; and
- (e) a day in the period commencing with the 24th day of December and expiring with the 3rd day of January.

- (2) For the purposes of paragraph (b) of the definition of the term **service tenancy** in subsection (1), two companies are associated if one is the wholly or partly owned subsidiary of the other.
- (3) For the purposes of this Act, where any premises that are subject to a legal or an equitable lease are used for both commercial and residential purposes, the premises shall be deemed to be residential premises unless it is proved that the premises were let principally for purposes other than residential purposes.

Compare: 1952 No 51 s 104A; 1955 No 50 s 2; 1973 No 26 s 2; 1975 No 36 s 4; Residential Tenancies Act 1978–1981 (South Australia), s 5

Section 2(1) **accommodation broker**: amended, on 1 October 2010, by section 4(5) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **address for service**: substituted, on 1 October 2010, by section 4(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **adult**: amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 2(1)(d) **application**: amended, on 18 August 1992, by section 2(1) of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 2(1) **approved form**: inserted, on 1 October 2010, by section 4(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **assignment**: inserted, on 1 October 2010, by section 4(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **bailiff**: repealed, on 1 October 2010, by section 4(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **boarding house**: inserted, on 1 October 2010, by section 4(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **boarding house tenancy, boarding house tenancy agreement, and boarding room**: inserted, on 1 October 2010, by section 4(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **chief executive**: substituted, on 1 October 2010, by section 4(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **contact address**: inserted, on 1 May 1996, by section 2(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 2(1) **corporation**: repealed, on 18 August 1992, by section 2(3) of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 2(1) **department**: inserted, on 1 October 2010, by section 4(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **Deputy Principal Tenancy Adjudicator**: amended, on 1 May 1996, by section 2(3) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 2(1) **Director-General**: repealed, on 18 August 1992, by section 2(3) of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 2(1) **dispute**: inserted, on 1 October 2010, by section 4(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **ethnic or national origins**: repealed, on 1 October 2010, by section 4(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **facilities**: amended, on 1 October 2010, by section 4(6) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **fixed-term tenancy**: amended, on 1 October 2010, by section 4(7) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **guarantor**: inserted, on 1 October 2010, by section 4(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **key money**: amended, on 1 May 1996, by section 2(5) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 2(1) **letting agent**: inserted, on 1 October 2010, by section 4(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **member of the landlord's family**: repealed, on 1 October 2010, by section 4(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **member of the landlord's or owner's family**: inserted, on 1 October 2010, by section 4(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **Minister**: substituted, on 1 October 2010, by section 4(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **Ministry**: repealed, on 1 October 2010, by section 4(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **officer of the Tribunal**: substituted, on 1 October 2010, by section 4(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **possession order**: amended, on 1 October 2010, by section 4(8) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **premises**: amended, on 1 October 2010, by section 4(9) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **protected tenancy**: repealed, on 1 May 1996, by section 2(5) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 2(1) **service tenancy**: substituted, on 1 October 2010, by section 4(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 2(1) **tenancy mediator**: amended, on 1 May 1996, by section 2(6) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 2(1) **Tenancy Officer**: repealed, on 1 October 2010, by section 4(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## Part 1

### Application of Act

#### 3 Act to bind the Crown

This Act shall bind the Crown.

Compare: 1951 No 51 s 104B; 1955 No 50 s 5; 1973 No 26 s 3; 1975 No 36 s 4

#### 4 Act generally to apply to all residential tenancies

This Act applies to every tenancy for residential purposes except as specifically provided.

Section 4: substituted, on 1 October 2010, by section 5 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### 5 Act excluded in certain cases

(1) This Act shall not apply in the following cases:

- (a) where the premises are commercial premises:
- (b) where the whole or a substantial part of the tenant's income is derived from the use of the premises for agricultural, pastoral, horticultural, or other similar purposes:
- (ba) where the premises are let for a fixed-term tenancy of at least 5 years, the tenancy was granted before the commencement, on 1 January 2008, of the Property Law Act 2007, and the tenancy agreement expressly provides that this Act shall not apply:

- (c) where the premises constitute part of a Corrections prison or police jail:
- (d) where the premises constitute part of any hospital, home, or other institution for the care of sick, disabled, or aged persons:
- (e) where the premises constitute part of Police barracks, or Police cells and lock-ups:
- (f) where the premises constitute any barracks conducted by the Armed Forces for the accommodation of persons subject to the Armed Forces Discipline Act 1971:
- (g) where the premises constitute any barracks or hostel conducted by an employer for the accommodation of employees of that employer or (where the employer is a company) for the accommodation of employees of any associated company (within the meaning of section 2(2)):
- (h) where the premises are used to provide accommodation to students—
  - (i) at a school hostel (being a hostel within the meaning of section 2 of the Education Act 1989); or
  - (ii) in accordance with the requirements of section 5B:
- (i) where the premises constitute part of a building occupied by a club and used by the club for the provision of temporary or transient accommodation to members of the club:
- (j) where the premises constitute part of any hotel in respect of which an on-licence is in force under the Sale of Liquor Act 1989:
- (k) where the premises—
  - (i) are intended to provide temporary or transient accommodation (such as that provided by hotels and motels), being accommodation that is ordinarily provided for periods of less than 28 days at a time; and
  - (ii) are subject to an agreement that has been entered into for the purpose of providing temporary or transient accommodation that continues to be provided under the agreement:

- (l) where the tenant occupies the premises under an occupation right agreement within the meaning of the Retirement Villages Act 2003:
- (m) where the premises are let for the tenant's holiday purposes:
- (n) where the premises, not being a boarding house, continue to be used, during the tenancy, principally as a place of residence by the landlord or the owner of the premises or by any member of the landlord's or owner's family:
- (o) where the tenant is the purchaser of the premises under an agreement for sale and purchase with the landlord as vendor, not being an agreement that is revocable at will by the vendor:
- (p) where any of the tenants is also the landlord or one of the landlords by virtue of an arrangement of a kind commonly known as a **cross-lease** or **lease-back** arrangement:
- (q) where the tenant's interest in the premises is a stratum estate in leasehold under the Unit Titles Act 1972:
- (r) where the tenancy arises wholly from or depends wholly upon the ownership by the tenant of any shares in a company that owns the premises:
- (s) where the tenancy agreement—
  - (i) is genuinely entered into to enable a tenant (the **sublandlord**) to sublet the premises to provide accommodation for other people for commercial gain or to provide accommodation for the sublandlord's employees or to provide social housing; and
  - (ii) is not entered into to provide accommodation for the sublandlord or to evade this Act or any of its provisions; and
  - (iii) expressly provides that the sublandlord will not personally occupy the premises:
- (t) where the premises comprise bare land (with or without facilities) on which the tenant has the right under the tenancy agreement to place or erect a mobile home, caravan, or other means of shelter:

- (ta) where the tenant occupies, under a tenancy agreement, a cabin, caravan, vehicle, tent, or other building or structure that—
    - (i) is located in a camping-ground subject to regulations under the Health Act 1956; and
    - (ii) is intended for human habitation for periods not exceeding 50 days in any continuous term of occupancy:
  - (tb) where temporary or transient accommodation is provided in a relocatable home under a tenancy agreement that has been entered into for the purpose of providing accommodation of that kind and that continues to be provided under the agreement:
  - (u) if the tenancy has been entered into by a leasing authority under section 7(1)(e), (f), (g), or (h) of the Public Bodies Leases Act 1969:
  - (v) if the Maori Trustee has leased a Maori reserve or township land under section 26 of the Maori Reserved Land Act 1955:
  - (w) if the lease provides for a perpetual right of renewal:
  - (x) if the lease is of land on which a dwellinghouse is erected and the lessee is entitled (whether beneficially or as trustee), on or before the termination of the tenancy, to remove the dwellinghouse or to receive compensation in respect of it.
- (2) In subsection (1)(s)(i), **social housing** means housing for—
- (a) persons on low incomes:
  - (b) persons with special housing needs:
  - (c) persons whose disabilities mean that they need support or supervision in their housing.
- (3) In subsection (1)(tb), **relocatable home** means a structure (other than a tent) that—
- (a) is located in a camping-ground subject to regulations under the Health Act 1956; and
  - (b) is designed to be relocatable; and
  - (c) comprises a group of rooms occupied or intended to be occupied either permanently or temporarily as the living quarters of a single housekeeping unit (whether consist-

ing of 1 or more persons), which is completely self-contained in respect of domestic equipment and facilities.

Compare: Residential Tenancies Act 1978–1981 (South Australia), s 7

Section 5(1)(b): substituted, on 1 May 1996, by section 3(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 5(1)(ba): inserted, on 1 December 1996, by section 3(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 5(1)(ba): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 5(1)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 5(1)(h): substituted, on 1 October 2010, by section 6(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 5(1)(j): substituted, on 1 April 1990, by section 230(1) of the Sale of Liquor Act 1989 (1989 No 63).

Section 5(1)(k): substituted, on 1 October 2010, by section 6(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 5(1)(l): substituted, on 1 October 2010, by section 6(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 5(1)(n): substituted, on 1 October 2010, by section 6(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 5(1)(s): substituted, on 1 October 2010, by section 6(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 5(1)(t): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 5(1)(ta): inserted, on 1 October 2010, by section 6(5) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 5(1)(tb): inserted, on 1 October 2010, by section 6(5) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 5(1)(u): added, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 5(1)(v): added, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 5(1)(w): added, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 5(1)(x): added, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 5(2): added, on 1 October 2010, by section 6(6) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 5(3): added, on 1 October 2010, by section 6(6) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**5A Certain excluded long fixed-term tenancies remain subject to repealed sections of Property Law Act 1952**

- (1) This section applies to a fixed-term tenancy of at least 5 years, and to which this Act does not apply because the tenancy—
  - (a) commenced before 1 December 1996 and is one to which section 6, as repealed by section 4(1) of the Residential Tenancies Amendment Act 1996, continues to apply in accordance with section 4(2) of that Amendment Act; or
  - (b) commenced on or after 1 December 1996 and before 1 January 2008 (which is the date on which the Property Law Act 2007 came into force) and is one to which section 5(ba) applies.
- (2) The tenancy—
  - (a) remains subject to sections 104A, 104B, 107B, and 116A to 116M (except section 116B(2)) of the Property Law Act 1952 (the **specified sections of the 1952 Act**), so far as those sections were applicable to the tenancy immediately before the commencement, on 1 January 2008, of the Property Law Act 2007, and as if those sections had not been repealed by that Act; and
  - (b) is subject to subsections (3) to (6).
- (3) No covenant or agreement, whether entered into before or after the commencement, on 19 September 1975, of the Property Law Amendment Act 1975 has, from that commencement, any force or effect to deprive the lessor or lessee of any dwellinghouse of any right, power, privilege, or other benefit provided for in any of the specified sections of the 1952 Act.
- (4) Subsection (3) does not apply in respect of any lease of a dwellinghouse if the rent thereby reserved does not exceed 50% of the equitable rent of the dwellinghouse.
- (5) Subsection (6) applies to a person who makes an assertion, for the purposes of subsection (4), that the rent reserved by the lease of a dwellinghouse does not exceed 50% of the equitable rent of that dwellinghouse.
- (6) It is for the person to prove the assertion by showing that the rent does not exceed 50% of the equitable rent of the dwellinghouse within the preceding period of 12 months as determined by a District Court—

- (a) on an application for the purpose by the person; and
- (b) applying section 8 of the Rent Appeal Act 1973.

Section 5A: inserted, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

### **5B Exempt student accommodation**

- (1) For the purposes of section 5(1)(h)(ii), this Act does not apply to premises if—
  - (a) the premises are used to provide accommodation exclusively for students of 1 or more tertiary education providers; and
  - (b) the premises are owned or operated by a person (an **accommodation provider**) who is—
    - (i) a tertiary education provider; or
    - (ii) a person who has entered into a written agreement of the kind described in subsection (5) with each tertiary education provider whose students are accommodated at the premises; and
  - (c) the accommodation provider complies with subsections (2) to (4).
- (2) The accommodation provider must provide services to the students accommodated in the premises that are over and above the services that a landlord must provide under Part 2 or 2A.
- (3) The accommodation provider must have in place house rules that aim to create an environment that fosters personal development and encourages a sense of community and association with fellow students.
- (4) The accommodation provider must take all reasonable steps to ensure that prospective and current student tenants are made aware of, and have access to copies of, the house rules.
- (5) An agreement referred to in subsection (1)(b) is one that sets out—
  - (a) the rights and obligations of the accommodation provider and the tertiary education provider; and
  - (b) a dispute resolution process by which disputes between the accommodation provider and the tertiary education provider may be resolved.
- (6) In this section, **tertiary education provider** has the same meaning as in section 159(1) of the Education Act 1989,

and, accordingly, includes universities, polytechnics, colleges of education, wananga, specialist colleges, private training establishments registered under Part 18 of that Act, and government training establishments.

Section 5B: inserted, on 1 October 2010, by section 7 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## 6 Long fixed-term tenancies

*[Repealed]*

Section 6: repealed, on 1 December 1996, by section 4(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

## 7 Short fixed-term tenancies

- (1) Subject to subsection (2), nothing in sections 25 to 28 and 51 shall apply to a fixed-term tenancy of not more than 90 days if, before the commencement of the tenancy, the parties agree in writing that the tenancy will not be extended or renewed to give a total length of the term in excess of 90 days.
- (2) Where such a tenancy is extended or renewed, whether once or more than once, with the result that the total length of the term exceeds 90 days, on the expiry of that period of 90 days the tenancy shall become subject to sections 25 to 28 and 51 (as well as all the other provisions).
- (2A) The parties may not enter into a fixed-term tenancy of not more than 90 days for the purpose of using that tenancy as a trial-period for ascertaining the desirability of extending or renewing the tenancy.
- (2B) The Tribunal may, on the application of a tenant or former tenant who is or who was a party to a fixed-term tenancy of not more than 90 days, order the extension or renewal of that tenancy on any terms that the Tribunal thinks just if the Tribunal is satisfied that—
  - (a) the tenancy was granted in breach of subsection (2A); and
  - (b) the proposed extension or renewal will not prejudice third parties who are not in any way involved in the breach.
- (3) For the purposes of this section, the term **fixed-term tenancy** includes such a tenancy terminable by notice.

Section 7(1): amended, on 1 October 2010, by section 8(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 7(2): amended, on 1 October 2010, by section 8(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 7(2A): inserted, on 1 October 2010, by section 8(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 7(2B): inserted, on 1 October 2010, by section 8(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **8 Parties to excluded tenancies may agree that Act shall apply**

- (1) Nothing in any of sections 5 to 7 shall prevent the parties to a tenancy that would otherwise be excluded from this Act by virtue of any of the provisions of those sections, being a tenancy of any premises used or intended to be used for residential premises, from agreeing in writing that all or any of the provisions of this Act shall apply in respect of the tenancy, either without modification or with such modifications as they may so agree.
- (2) Without limiting subsection (1), any such agreement may confer upon the Tribunal, in respect of the tenancy, all or any of the jurisdiction conferred on the Tribunal by this Act in respect of tenancies to which this Act applies.

## **9 Existing tenancies**

- (1) Subject to subsection (2) and to sections 5 to 7, in respect of every tenancy granted before the date of the commencement of this Act and still subsisting immediately before that date, this Act shall apply on and after that date.
- (2) Nothing in sections 12, 14, 23, 24, 30, 32, 39, 40, 44 to 46, 58, and 59 shall apply to—
  - (a) any fixed-term tenancy granted before the date of the commencement of this Act and still subsisting immediately before that date; or
  - (b) any service tenancy granted before that date and still subsisting immediately before that date, unless and until the tenancy is renewed or the tenant's interest under the tenancy agreement is lawfully assigned.

- (3) Subject to sections 5 to 7, in respect of any tenancy granted before the date of the commencement of this Act and still subsisting immediately before that date, the following provisions shall apply:
- (a) all the express or implied terms, provisions, covenants, and conditions of the tenancy agreement by which the tenancy was created shall continue to have the same force and effect as they had immediately before that date, except to the extent that they are inconsistent with any of the provisions of this Act (except, in the case of a fixed-term tenancy or a service tenancy, those provisions specified in subsection (2)) or are varied by agreement between the parties or by order made by the Tribunal under this Act:
  - (b) any proceedings instituted in relation to the tenancy before that date may be continued and completed as if this Act had not been passed:
  - (c) any notice issued before that date determining or forfeiting the tenancy shall have effect and may be enforced as if this Act had not been passed:
  - (d) any process or procedure commenced before that date whereby the rent payable for the tenancy could be varied may be continued and completed, and shall have effect to vary the rent, as if this Act had not been passed, but subject to any order made by the Tribunal under section 25:
  - (e) no person shall be liable in any civil or criminal proceedings by virtue of any of the provisions of this Act for anything lawfully done or lawfully omitted to be done before that date.

Compare: Residential Tenancies Act 1978-1981 (South Australia), s 7A

## **10 Onus of proof**

Where, in any proceedings before the Tribunal, any party contends that this Act does not apply in respect of any tenancy of any residential premises, it shall be for that party to establish the facts upon which it is contended that this Act does not apply.

**11 Act generally to apply despite contrary provisions**

- (1) Any agreement or arrangement, or any provision of any agreement or arrangement, entered into in respect of a tenancy to which this Act applies, that is inconsistent with any of the provisions of this Act, or that purports to exclude, modify, or restrict the operation of any such provision, shall be of no effect unless—
- (a) the inconsistency, exclusion, modification, or restriction is expressly permitted by this Act; or
  - (b) the Tribunal is satisfied that, having regard to the nature of the tenancy, the provisions of the tenancy agreement, the interests of the parties, and all other relevant circumstances of the case, the inconsistency, exclusion, modification, or restriction should be permitted.
- (2) Subsection (1) shall not prevent a landlord from waiving voluntarily all or any of the rights and powers conferred on landlords by this Act, or from voluntarily incurring more or more extensive obligations than those that are imposed on landlords by this Act.
- (3) Any purported waiver by a tenant of any right or power conferred upon tenants by this Act shall be of no effect.

Compare: 1952 No 51 s 104C; 1955 No 50 s 51; 1973 No 26 s 28; 1975 No 36 s 4; Residential Tenancies Act, 1978-81 (South Australia), s 89(1), (2)

## **Part 2**

### **Tenancy agreements**

#### *Preliminary matters*

**12 Discrimination to be unlawful act**

- (1) Each of the following is hereby declared to be an unlawful act:
- (a) discrimination against any person in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement in contravention of the Human Rights Act 1993; and
  - (b) the giving of an instruction or the stating of an intention in contravention of subsection (2).
- (2) A landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement,—

- (a) instruct any person to discriminate against any other person in contravention of the Human Rights Act 1993; or
  - (b) state an intention (whether by advertisement or otherwise) to discriminate against any person in contravention of that Act.
- (3) Nothing in section 21(1)(k) of the Human Rights Act 1993 shall apply to the termination of a service tenancy on the ground that the tenant has ceased to be, or is about to cease to be, employed by the landlord or (where the landlord is a company) by an associated company (within the meaning of section 2(2)).
- (4) In this section **tenancy agreement** includes a prospective tenancy agreement, regardless of whether or not a tenancy is granted.

Compare: 1952 No 51 ss 33A, 33B; 1955 No 50 s 52; 1965 No 16 s 2; 1973 No 26 s 24; 1977 No 119 s 2; Residential Tenancies Act, 1978-1981 (South Australia), s 58

Section 12: substituted, on 1 May 1996, by section 5(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

## **12A Choice of procedures**

- (1) Where the circumstances are such that any person would be entitled to make an application to the Tribunal and also a complaint under the Human Rights Act 1993, that person may take one, but not both, of the following steps:
- (a) the person may invoke, in relation to those circumstances, the procedures under this Act;
  - (b) the person may make, in relation to those circumstances, a complaint under the Human Rights Act 1993.
- (2) For the purposes of subsection (1)(b), a person makes a complaint when proceedings in relation to that complaint are commenced by the complainant or the Commission.

Compare: 1991 No 22 s 39; 1993 No 82 s 145

Section 12A: inserted, on 1 May 1996, by section 5(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 12A(2): substituted, on 1 January 2002, by section 71 of the Human Rights Amendment Act 2001 (2001 No 96).

**13 Form of tenancy agreement**

- (1) Every tenancy agreement shall be in writing and signed by both the landlord and the tenant.
- (2) The landlord shall, before the tenancy commences, provide the tenant with a copy of the tenancy agreement.

Section 13: substituted, on 1 December 1996, by section 6(1) of the Residential Tenancies Amendment Act 1996. *See* section 6(2) and (3) of the Residential Tenancies Amendment Act 1996 (1996 No 7) as to the transitional provisions.

**13A Contents of tenancy agreement**

- (1) Every tenancy agreement shall include the following minimum information:
  - (a) the full name and contact address of the landlord; and
  - (b) the full name and contact address (where that is different from the address of the premises to which the agreement relates) of the tenant; and
  - (c) the address of the premises; and
  - (d) the date of the tenancy agreement; and
  - (e) the date of commencement of the tenancy (where that is different from the date of the tenancy agreement); and
  - (f) the landlord's address for service; and
  - (g) the tenant's address for service; and
  - (h) whether the tenant is under the age of 18; and
  - (i) the amount of any bond; and
  - (j) the rent payable; and
  - (k) the frequency of the rent payments; and
  - (l) the place or bank account number where the rent is to be paid; and
  - (m) a statement (if applicable) that the tenant shall pay any fee or other charge for services rendered by any solicitor or letting agent relating to the grant or assignment of the tenancy; and
  - (n) *[Repealed]*
  - (o) a list of any chattels provided by the landlord; and
  - (p) if the tenancy is a fixed-term tenancy, the date on which the tenancy will terminate.
- (2) *[Repealed]*

Section 13A: inserted, on 1 December 1996, by section 6(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7). *See* section 6(2) and (3) of that Act as to the transitional provisions.

Section 13A(1)(m): amended, on 1 October 2010, by section 9(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 13A(1)(n): repealed, on 1 October 2010, by section 9(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 13A(2): repealed, on 1 October 2010, by section 9(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **13AB Address for service**

- (1) For the purposes of this Act, an **address for service** means an address given by the landlord or tenant under this Act as an address at which notices and other documents relating to the tenancy will be accepted by or on behalf of the landlord or tenant, as the case may be.
- (2) Whenever a party is required to give an address for service, the party—
  - (a) must give an address of a physical place in New Zealand; and
  - (b) may, in addition, specify a Post Office box number, email address, or facsimile number as one of the party's addresses for service.

Section 13AB: inserted, on 1 October 2010, by section 10(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **13B Variations and renewals of tenancy agreements**

- (1) Every variation of a tenancy agreement, and every renewal of a tenancy agreement, shall be in writing and signed by both the landlord and the tenant.
- (2) The landlord shall, before the date on which the variation or renewal of the tenancy is to take effect, provide the tenant with a copy of the variation or renewal.

Section 13B: inserted, on 1 December 1996, by section 6(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7). *See* section 6(2) and (3) of that Act as to the transitional provisions.

### **13C Tenancy agreements not unenforceable on grounds not in writing**

Notwithstanding anything to the contrary in any other enactment, no tenancy agreement, or variation or renewal of a tenancy agreement, shall be unenforceable on the grounds that it is not in writing.

Section 13C: inserted, on 1 December 1996, by section 6(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7). *See* section 6(2) and (3) of that Act as to the transitional provisions.

### **13D Exceptions to requirements relating to tenancy agreements**

Sections 13 to 13B (and, in the case of a boarding house tenancy, section 66C) do not apply to any of the following:

- (a) a tenancy at will created on or immediately after the determination or expiry of a tenancy:
- (b) a tenancy agreement that was in force immediately before the date of commencement of this Act:
- (c) any variation of a tenancy agreement made by, or at the direction of, the Tribunal.

Section 13D: inserted, on 1 December 1996, by section 6(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7). *See* section 6(2) and (3) of that Act as to the transitional provisions.

Section 13D: amended, on 1 October 2010, by section 11 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **14 Minors**

- (1) A person who has attained the age of 18 years or who is or has been married or in a civil union under that age shall have the same capacity in respect of tenancy agreements, and in respect of the settlement of disputes arising in relation to tenancy agreements, as persons of full age have.
- (2) Subject to subsection (3), where during a tenancy, the tenant attains the age of 18 years or marries or enters into a civil union for the first time under that age, the tenancy agreement shall thereafter have the same force and effect as it would have had if the tenant had been of full age at the time when the tenant entered into the agreement.
- (3) In any case to which subsection (2) applies, the tenant may, within 10 working days after the date on which the tenant attains the age of 18 years or marries or enters into a civil union, apply to the Tribunal for an order relieving the tenant of all or any of the obligations imposed on the tenant by the agreement.
- (4) Subject to subsections (1) and (2), the Tribunal shall have and may exercise, in respect of tenancy agreements, all the juris-

diction and powers conferred on the High Court or a District Court by the Minors Contracts Act 1969.

- (5) Except where any proceedings are transferred to a District Court under section 83(2) or an appeal is brought under any of sections 117, 119, and 120, no court shall have jurisdiction under the Minors Contracts Act 1969 in respect of any tenancy agreement.

Section 14(1): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 14(2): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 14(3): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

## **15 Notification of successor to landlord or tenant**

- (1) Where, during the term of any tenancy, the landlord's or tenant's interest passes to some other person, that other person shall, within 10 working days thereafter, cause the other party to the tenancy to be notified of—
- (a) the full name and contact address of that person; and
  - (b) an address for service, being the address at which notices and other documents relating to the tenancy will be accepted by or on behalf of the person.

- (2) *[Repealed]*

Section 15: substituted, on 1 December 1996, by section 7(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7). *See* section 7(2) and (3) of that Act as to the transitional provisions.

Section 15(2): repealed, on 1 October 2010, by section 10(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **16 Change of name or address**

- (1) Where the name and contact address, or address for service, of any person has been notified to the other party to the tenancy in accordance with this Act and that name or address subsequently changes (otherwise than in circumstances to which section 15 applies), the person shall, within 10 working days thereafter, cause notice of the new particulars to be given to the other party to the tenancy.

- (2) *[Repealed]*
- (3) The obligation in subsection (1) does not apply to a contact person whose name and contact details are contained in a boarding house tenancy agreement.

Section 16: substituted, on 1 December 1996, by section 7(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7). *See* section 7(2) and (3) of that Act as to the transitional provisions.

Section 16(2): repealed, on 1 October 2010, by section 10(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 16(3): added, on 1 October 2010, by section 12 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**16A Landlord must have agent if out of New Zealand for longer than 21 consecutive days**

- (1) A landlord who is out of New Zealand for longer than 21 consecutive days must ensure that the landlord has an agent in New Zealand.
- (2) A landlord who does not already have an agent and who knows that he or she will be out of New Zealand for longer than 21 consecutive days must appoint an agent before he or she departs from New Zealand.
- (3) A landlord who does not already have an agent and who has been out of New Zealand for longer than 21 consecutive days must promptly appoint an agent.
- (4) A landlord who appoints an agent under this section must, immediately after appointing the agent,—
- (a) notify the tenant of the agent's name, contact address, and address for service; and
  - (b) if a bond is held in respect of the tenancy, notify the chief executive in the approved form of those particulars.
- (5) An agent appointed under this section has, as against the tenant, all the rights and obligations of the landlord.
- (6) A contravention of any of subsections (1) to (4) is declared to be an unlawful act.

Section 16A: inserted, on 1 October 2010, by section 13 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**16B Body corporate rules part of tenancy agreement**

- (1) This section applies to residential premises that are held in a stratum estate under the Unit Titles Act 2010.
- (2) Body corporate operational rules made under the Unit Titles Act 2010 that affect a tenant of premises to which this section applies are taken to be terms of the tenancy agreement.
- (3) A tenancy agreement that creates or evidences the letting of premises to which this section applies must set out a statement of the rules referred to in subsection (2).
- (4) The landlord must promptly give the tenant written notice of any variation of the rules referred to in subsection (2).
- (5) As soon as the tenant is notified of a variation, the terms of the tenancy agreement are taken to be varied accordingly.
- (6) This section does not limit section 13A.

Section 16B: inserted, on 1 October 2010, by section 13 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

*Key money, bonds, and rents*

**17 Requiring key money prohibited**

- (1) Subject to subsection (4), no person shall, without the prior consent of the Tribunal, require the payment of key money in respect of—
  - (a) the grant, continuance, extension, variation, or renewal of any tenancy agreement; or
  - (b) the assignment of a tenant's interest under any tenancy agreement; or
  - (c) the subletting of the whole or any part of the premises by a tenant.
- (2) The Tribunal shall not give its consent under subsection (1) unless it is satisfied that, having regard to the special circumstances of the case, including the nature of the premises and any matters personal to the landlord or the tenant or the proposed assignee or the proposed subtenant, it would be fair and reasonable to allow the requirement of key money.
- (3) The requiring of key money in contravention of subsection (1) is hereby declared to be an unlawful act.
- (4) Subsection (1) shall not apply to any of the following:

- (a) any sum required or received for an option to enter into a tenancy agreement if the sum does not exceed 1 week's rent payable under the agreement, and, upon the option being exercised, the sum is refunded or is applied toward the rent:
- (b) any sum that the landlord is authorised by any other provision of this Act to require or receive:
- (c) any sum required to be paid by the tenant to or at the direction of the landlord in respect of any fee or other charge for services rendered by any solicitor or letting agent relating to the grant or assignment of the tenancy:
- (d) any payment of a prescribed class.

Compare: 1973 No 26 s 22; Residential Tenancies Act, 1978-1981 (South Australia), s 30

Section 17(4)(c): amended, on 1 October 2010, by section 14 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **18 Bonds to be no more than 4 weeks' rent**

- (1) A landlord shall not require payment by way of bond of an amount greater than 4 weeks' rent lawfully payable under the tenancy agreement.
- (2) On the lawful increase of the rent, the landlord may require payment by way of bond of a further sum not exceeding the amount by which the rent payable for 4 weeks has been increased.
- (3) On the decrease of the rent, the amount by which the total sum already paid by way of bond exceeds the rent payable for 4 weeks following the decrease shall, on application to the chief executive by the person who paid the bond, be refunded to the tenant.
- (4) Requiring payment by way of bond of an amount greater than that permitted by this section is hereby declared to be an unlawful act.

Compare: 1973 No 26 s 21; Residential Tenancies Act, 1978-1981 (South Australia), s 32(1), (1A), (1B)

Section 18(3): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

**18A Landlord must not require security other than permitted bond**

- (1) A landlord may not require a tenant to provide the landlord with any form of security to secure any payment or performance arising out of, or in connection with, the tenancy.
- (2) A requirement made in contravention of subsection (1) is declared to be an unlawful act.
- (3) In this section, **security**—
  - (a) means—
    - (i) any interest in real or personal property; or
    - (ii) the power to exercise a right of the tenant, including the authority to cause an account to be debited (for example, without limitation, by reference to a card, such as the imprint of a credit card or a PIN number) or the means to obtain money from a third party; but
  - (b) does not include—
    - (i) a payment by way of bond that is permitted under section 18; or
    - (ii) any guarantee.

Section 18A: inserted, on 1 October 2010, by section 15 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**19 Duties of landlord on receipt of bond**

- (1) Where any person pays to the landlord, or to any other person on behalf of the landlord, any amount by way of bond (whether the amount is for the whole or part of the bond), the following provisions shall apply:
  - (a) the person who receives the payment shall forthwith give to the payer a written receipt, signed by that person, showing—
    - (i) the address of the premises to which the payment relates; and
    - (ii) the amount and nature of the payment; and
    - (iii) the date of the payment; and
    - (iv) the name of the payer (if known to the person who receives the payment):
  - (b) the landlord shall, within 23 working days after the payment is made, forward the amount received to the chief

executive, together with a statement of particulars in the approved form signed by the landlord and the tenant.

- (1A) Subsection (1) does not apply if a bond of 1 week's rent or less is paid in respect of a boarding house tenancy. In that case, section 66D applies instead.
- (2) Failure to issue a receipt, or to forward any amount received, in accordance with this section is hereby declared to be an unlawful act.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 32(2)

Section 19(1): amended, on 1 October 2010, by section 16(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 19(1)(b): substituted, on 1 May 1996, by section 8(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 19(1)(b): amended, on 1 October 2010, by section 16(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 19(1A): inserted, on 1 October 2010, by section 16(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **20 Duties of chief executive in relation to bonds**

Where a landlord forwards to the chief executive any amount paid by way of bond, the chief executive shall—

- (a) deposit the money into the Residential Tenancies Trust Account;
- (b) give to the landlord a written receipt showing—
- (i) the address of the premises to which the payment relates; and
  - (ii) the name of the landlord; and
  - (iii) the name of the tenant; and
  - (iv) the amount and nature of the payment; and
  - (v) the date of the receipt by the chief executive of the payment:
- (c) give to the tenant a copy of the receipt issued in accordance with paragraph (b).

Section 20: substituted, on 18 August 1992, by section 4 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

## **21 Tenant may pay bond direct to chief executive with landlord's consent**

- (1) Notwithstanding anything in section 19 or section 20, but subject to subsection (2), any amount payable by way of bond

may, with the consent of the landlord, be paid direct to the chief executive.

- (2) Every such payment shall be accompanied by a statement of particulars in the approved form signed by the landlord and the tenant.
- (3) Where any amount payable by way of bond is paid direct to the chief executive, the chief executive shall—
  - (a) deposit the money into the Residential Tenancies Trust Account:
  - (b) give to the tenant a written receipt showing—
    - (i) the address of the premises to which the payment relates; and
    - (ii) the name of the landlord; and
    - (iii) the name of the tenant; and
    - (iv) the amount and nature of the payment; and
    - (v) the date of the receipt by the chief executive of the payment:
  - (c) give to the landlord a copy of the receipt issued in accordance with paragraph (b).

Section 21: substituted, on 18 August 1992, by section 4 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 21(2): substituted, on 1 May 1996, by section 9 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 21(2): amended, on 1 October 2010, by section 17 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **21A Notification of changes of address to chief executive**

- (1) Where a bond is being held in the Residential Tenancies Trust Account in respect of a tenancy agreement and the landlord or tenant changes his or her name or contact address or address for service, the landlord or the tenant, as the case may be, shall, within 10 working days thereafter, cause notice of the new particulars to be sent to the chief executive.
- (2) Where a bond is being held in the Residential Tenancies Trust Account in respect of a tenancy agreement and the landlord's or the tenant's interest under the tenancy agreement passes to some other person, that other person shall, within 10 working days thereafter, cause notice of the new particulars to be sent to the chief executive.

Section 21A: inserted, on 1 May 1996, by section 10(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

## **22 Agreed applications to chief executive for payment of bond**

- (1) This section applies if—
  - (a) at any time a landlord or a tenant applies in the approved form for payment of a bond, or part of a bond; and
  - (b) the application is made—
    - (i) with the agreement of the other party; or
    - (ii) in favour of the other party.
- (2) The chief executive must pay the bond (or, as the case requires, part of the bond) in accordance with the terms of the application.

Section 22: substituted, on 1 October 2010, by section 18 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **22A Applications to chief executive for payment of bond without agreement of other party**

- (1) This section applies to an application in the approved form for payment of a bond, or part of a bond, made by a party (**party A**) without the agreement of the other party (**party B**).
- (2) The application may be made at any time after the termination of the tenancy if party A is the tenant, but must be made within 2 months of the termination of the tenancy if party A is the landlord.
- (3) On receiving the application, the chief executive must notify party B of the application and invite party B to indicate, within 10 working days after being notified, whether or not party B wishes to contest the application.
- (4) An indication by party B must be in writing, unless the chief executive waives that requirement.
- (5) If party B indicates that he or she wishes to contest the application, the chief executive must tell the parties how to apply to the Tribunal for a determination of the dispute.
- (6) If party B does not respond to the invitation to indicate whether or not party B wishes to contest the application, the chief executive must—

- (a) pay the bond (or, as the case requires, part of the bond) in accordance with the application; or
  - (b) decline to make a decision and tell the parties how to apply to the Tribunal for a determination.
- (7) If party B agrees to the application, the chief executive must pay the bond (or, as the case requires, part of the bond) in accordance with the application.

Section 22A: inserted, on 1 October 2010, by section 18 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **22B Applications to, and orders by, Tribunal**

- (1) If there is a dispute between the parties as to the payment of a bond, either party may apply to the Tribunal for an order determining to whom the bond, or any part of it, is to be paid.
- (2) If the tenant applies to the Tribunal and the landlord seeks payment of the bond in whole or in part, the landlord must file an application with the Tribunal that sets out the landlord's counterclaim.
- (3) If, more than 2 months after the termination of a tenancy, the landlord seeks payment of a bond held in respect of that tenancy but does not have the agreement of the tenant, the landlord may apply to the Tribunal for an order determining to whom the bond, or any part of it, is to be paid.
- (4) If the chief executive is satisfied that a tenancy has terminated and no application for payment of a bond, or part of a bond, has been made within a reasonable time, the chief executive may apply to the Tribunal for an order determining to whom the bond, or any part of it, is to be paid.
- (5) If the Tribunal makes an order concerning the payment of a bond, or part of a bond, the chief executive must make the payment in accordance with the terms of the order.

Section 22B: inserted, on 1 October 2010, by section 18 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **22C Payments of bond to be made out of Residential Tenancies Trust Account**

The chief executive must make any payments of a bond under section 22, 22A, or 22B out of the Residential Tenancies Trust Account.

Section 22C: inserted, on 1 October 2010, by section 18 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **22D Chief executive may take steps to refund bonds**

- (1) The chief executive may take any steps that the chief executive considers reasonable in the circumstances to refund a bond held by the chief executive if the chief executive believes on reasonable grounds that—
  - (a) the tenancy to which the bond relates has terminated and no claim is made for the bond within 2 months of the termination; or
  - (b) an application for the refund of the bond has been approved but the bond money has not been collected within 2 months of the approval.
- (2) The steps that the chief executive takes under subsection (1) may include the publication of 1 or more of the following:
  - (a) the name of the person to whom the bond is to be refunded if the circumstances described in subsection (1)(b) apply;
  - (b) the name of the tenant in whose name the bond is held;
  - (c) the amount, or approximate amount, of the bond;
  - (d) the location of the premises to which the bond relates.
- (3) To avoid doubt, this section applies to all bond money held by the chief executive, whenever it is received.

Section 22D: inserted, on 1 October 2010, by section 18 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **22E Social Welfare may disclose address information for bond refund purposes**

- (1) In this section, unless the context otherwise requires,—

**address information**, in relation to a person, means the last known address and (if available) the telephone number of the person

**Social Welfare** means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964.
- (2) The purpose of this section is to facilitate the disclosure of address information by Social Welfare to the department to enable the chief executive to locate persons who are entitled to

bonds to which section 22D(1) applies and that the chief executive continues to hold despite previous attempts to refund them.

- (3) If the chief executive is satisfied that reasonable steps have been taken, under section 22D, to refund a bond but that those steps have not been successful, the chief executive may, for the purposes of this section, request Social Welfare, in accordance with arrangements made with the chief executive of Social Welfare,—
  - (a) to ascertain whether Social Welfare holds any address information about any person entitled to the bond who is named in the request; and
  - (b) if that is the case, to supply that information to the department.
- (4) On receipt of a request made under subsection (3), Social Welfare may supply the information requested to any officer or employee of the department who is authorised to receive that information.

Section 22E: inserted, on 1 October 2010, by section 18 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **23 Rent in advance**

- (1) A landlord shall not require the payment of any rent—
  - (a) more than 2 weeks in advance; or
  - (b) before the expiry of the period for which rent has been paid already.
- (2) Where, in the case of a service tenancy or of any other tenancy where the landlord is the employer of the tenant,—
  - (a) the landlord, by agreement with the tenant or pursuant to or in accordance with any enactment, regularly deducts from the tenant's pay for a standard pay period the amount of rent payable by the tenant for any standard rental period; and
  - (b) no such regular deduction is such as to constitute a contravention of subsection (1); and
  - (c) because of a forthcoming holiday period or for any other special reason, the landlord pays the tenant for a period longer than the standard pay period,—

the landlord may, notwithstanding subsection (1), deduct from the amount so paid the amount of rent payable by the tenant for any period longer than the standard rental period so long as the proportion of pay so deducted on account of rent does not exceed the proportion of pay regularly deducted.

- (3) A landlord shall not require any payment of rent to be made by postdated cheque or other similar postdated order.
- (4) The requirement of the payment of rent in contravention of this section is hereby declared to be an unlawful act.

Compare: 1973 No 26 s 21; Residential Tenancies Act, 1978-1981 (South Australia), ss 31, 39

## **24 Rent increases**

- (1) The rent payable in respect of any tenancy may be increased by the landlord provided all of the following conditions are complied with:
  - (a) the landlord shall give the tenant notice in writing of the increase; and
  - (b) that notice shall specify the amount of the increased rent and the day upon which the increased rent shall become payable; and
  - (c) the day upon which the increased rent shall become payable shall be not less than 60 days (or, in the case of a boarding house tenancy, not less than 28 days) after the date on which that notice is given; and
  - (d) the rent shall not be increased within 180 days after the date on which the last increase took effect; and
  - (e) in the case of a tenancy which is not subject to annual rent adjustment, the rent shall not be increased within 180 days after the date of the commencement of the tenancy; and
  - (f) in the case of a tenancy which is subject to annual rent adjustment, no rent increase shall take effect—
    - (i) less than 60 days (or, in the case of a boarding house tenancy, 28 days) after the notice required by paragraph (a) is given; and
    - (ii) other than on the specified date in any year or with effect on the next day on which any rent is

- to be paid within 28 days after the specified date in any year; and
- (g) a landlord under a fixed-term tenancy—
    - (i) may not increase the rent during the term of the tenancy unless permitted by the provisions of the tenancy agreement to do so; and
    - (ii) may do so only in accordance with this section and any such provisions of the tenancy agreement; and
  - (h) where the Tribunal has made an order under section 25 and that order is still in force, the rent shall not be increased to an amount in excess of the amount specified in the order.
- (1A) The provisions referred to in subsection (1)(g) may take the form of the provisions set out in Schedule 1.
- (2) For the purposes of subsection (1), a tenancy is subject to annual rent adjustment where—
- (a) it is the landlord's practice (the proof of which shall lie on the landlord)—
    - (i) to review the rent annually; and
    - (ii) to adjust the rent on a specified day in each year; and
  - (b) provision to that effect is included in the tenancy agreement or the tenant is otherwise informed of the practice in writing before the commencement of the tenancy.
- (3) A notice of an increase in rent lawfully given under this section shall, unless it is withdrawn by the landlord, have the effect of varying the tenancy agreement in accordance with the terms of the notice.
- (4) Where a landlord has given a notice to increase the rent and subsequently realises that, because of—
- (a) some error in calculating the day on which the increased rent is to become payable or in the manner in which that day is expressed in the notice; or
  - (b) some delay in serving the notice,—
- the day fixed in the notice for the increased rent to become payable is in contravention of subsection (1), the landlord may, with the agreement of the tenant or (failing such agreement) with the consent of the Tribunal, give to the tenant a further

notice varying the original notice so as to bring the terms of the original notice into accord with the provisions of that subsection.

- (5) Every notice given under subsection (4) shall be in writing, specifying the amount of the increased rent and the day upon which the increased rent shall become payable.
- (6) The Tribunal shall not give its consent under subsection (4) unless it is satisfied—
- (a) that the error or the delay was inadvertent; and
  - (b) that the landlord has sought to correct the matter as soon as practicable; and
  - (c) that it would not be unfair to the tenant to allow the original notice to be varied in the manner proposed.

Compare: Residential Tenancies Act 1978-1981 (South Australia), s 34

Section 24: substituted, on 1 May 1996, by section 12 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 24(1)(c): amended, on 1 October 2010, by section 19(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 24(1)(f)(i): amended, on 1 October 2010, by section 19(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 24(1)(g): substituted, on 1 October 2010, by section 19(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 24(1A): inserted, on 1 October 2010, by section 19(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **24A Expiry of temporary rent reduction**

If the parties to a tenancy agree that, during a specified period or until the occurrence of a specified event, the tenant is entitled to pay a lower rent,—

- (a) the agreement is a variation of the tenancy agreement to which sections 13B and 13C apply; and
- (b) on the expiry of the period or the occurrence of the event, the rent payable before the variation is reinstated; and
- (c) that reinstatement does not constitute a rent increase.

Section 24A: inserted, on 1 October 2010, by section 20 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**25 Market rent**

- (1) On an application made to it at any time by the tenant, the Tribunal may, in accordance with the succeeding provisions of this section, on being satisfied that the rent payable or to become payable for the tenancy exceeds the market rent by a substantial amount, make an order reducing the rent to an amount, to be specified in the order, that is in line with the market rent.
- (2) Notwithstanding anything in subsection (1), no application may be made under that subsection in respect of the rent payable under a fixed-term tenancy later than 3 months after—
  - (a) the date of the commencement of the tenancy or (in the case of a tenancy that was subsisting immediately before commencement of this Act) the date of the commencement of this Act; or
  - (b) the date of the last review of rent,—  
whichever is the later.
- (2A) Despite subsection (2), a tenant who is a party to a fixed term tenancy of premises held in a stratum estate under the Unit Titles Act 2010 may apply under subsection (1) within 3 months after the tenant is notified of a change or otherwise becomes aware of a change in the body corporate operational rules made under that Act, if that change affects the tenant.
- (3) For the purposes of this Act, the market rent for any tenancy shall be the rent that, without regard to the personal circumstances of the landlord or the tenant, a willing landlord might reasonably expect to receive and a willing tenant might reasonably expect to pay for the tenancy, taking into consideration the general level of rents (other than income-related rents within the meaning of section 42(1) of the Housing Restructuring and Tenancy Matters Act 1992) for comparable tenancies of comparable premises in the locality or in similar localities and such other matters as the Tribunal considers relevant.
- (4) An order made under this section shall take effect on and from a date to be specified in the order, which may be the date of the order or any earlier or later date, but being no earlier than the

date of the application for the order and no later than 30 days after the date of the order.

Compare: 1955 No 50 ss 20, 21; 1961 No 66 s 7; 1973 No 26 ss 6, 8; Residential Tenancies Act, 1978-1981 (South Australia), s 36(1) to (3)

Section 25(2A): inserted, on 1 October 2010, by section 21 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 25(3): amended, on 1 July 2006, by section 5(2)(g) of the Housing Restructuring and Tenancy Matters (Information Matching) Amendment Act 2006 (2006 No 34).

Section 25(3): amended, on 17 November 2000, by section 7(1) of the Housing Restructuring (Income-Related Rents) Amendment Act 2000 (2000 No 22).

## **26 Duration of order determining market rent**

- (1) Subject to the succeeding provisions of this section, every order made by the Tribunal under section 25 shall continue in force—
- (a) in the case of a periodic tenancy, for a period of 6 months or such shorter period as the Tribunal may specify in the order; or
  - (b) in the case of a fixed-term tenancy, for such period as the Tribunal may specify in the order.
- (2) The Tribunal may at any time, on the application of the landlord or the tenant, rehear any application made under section 25 if, in respect of any order made on that application, the Tribunal is satisfied that—
- (a) the order was procured by fraud or other dishonest conduct; or
  - (b) the Tribunal, in making the order, took into account any misleading or irrelevant evidence; or
  - (c) new and material evidence is available; or
  - (d) by any error or omission, an injustice has been occasioned by the order.

Compare: 1955 No 50 s 22; 1973 No 26 s 9; Residential Tenancies Act, 1978-1981 (South Australia), s 36(4), (5)

## **27 Rent in excess of market rent irrecoverable**

- (1) Where the Tribunal makes an order under section 25, the landlord shall not, in respect of any period during which the order is in force, require the payment of any sum by way of rent in excess of the amount specified by the Tribunal in the order.

- (2) Requiring the payment of any amount by way of rent in contravention of subsection (1) is hereby declared to be an unlawful act.
- (3) No amount by way of rent in excess of the amount so specified in any such order shall be payable or recoverable in respect of any period during which the order is in force.
- (4) Where the Tribunal is satisfied that the landlord of any residential premises has received any amount by way of rent that, by virtue of subsection (3), was not lawfully payable, it shall order that the whole of that amount be refunded by the landlord to the tenant, except to the extent (if any) that the Tribunal considers, having regard to the special circumstances of the case, it would be unjust to require such a refund in full.
- (5) Where the Tribunal makes an order under subsection (4) for the refund of any amount to the tenant of any residential premises, the tenant shall be entitled, in addition to any other remedy that the tenant may have, to deduct the whole or any part of the amount to be refunded from any sum that may become payable by the tenant to the landlord under the tenancy agreement at any time within 1 year after the date of the order.

Compare: 1955 No 50 s 23; 1973 No 26 ss 10, 11; Residential Tenancies Act, 1978-1981 (South Australia), s 36(6)

**28 Increase of rent by agreement or order in case of substantial improvements, improved facilities, or variation of terms**

- (1) The landlord and the tenant may agree to increase the rent if the landlord has, with the consent of the tenant,—
  - (a) made substantial improvements to the premises (not being general or necessary repairs) that increase the value of the premises and constitute a material benefit to the tenant:
  - (b) increased or improved the facilities or services (other than general or necessary repairs) provided for the tenant:
  - (c) agreed to a variation in the terms of the tenancy that benefits the tenant.

- (2) If the tenant does not agree to the increase proposed by the landlord, the landlord may apply to the Tribunal for an order increasing the rent.
- (3) The Tribunal may, on an application under subsection (2), make an order increasing the rent by any amount the Tribunal thinks fit, if the Tribunal is satisfied that (except for the absence of agreement on increasing the rent) subsection (1) applies to the tenancy.

Section 28: substituted, on 1 October 2010, by section 22 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **28A Increase of rent by order in case of unforeseen expenses**

The Tribunal may, on application by the landlord, make an order increasing the rent by any amount the Tribunal thinks fit if the landlord—

- (a) has incurred expenses in respect of the premises; and
- (b) the nature or the amount of those expenses could not reasonably have been foreseen when the rent was last fixed.

Section 28A: inserted, on 1 October 2010, by section 22 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **28B Effect of rent increases under section 28 or 28A**

- (1) An increase of rent agreed or ordered under section 28 or 28A does not affect the dates on which the rent may otherwise be reviewed or increased.
- (2) An increase of rent agreed or ordered under section 28 or 28A during the currency of any order made by the Tribunal under section 25—
  - (a) does not affect the expiry date of that order; and
  - (b) is to be treated as an amendment of that order.
- (3) Sections 28 and 28A override sections 24 and 26.

Section 28B: inserted, on 1 October 2010, by section 22 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **29 Receipts for rent**

- (1) Subject to subsection (3), every person who receives any rent payable under or in respect of any tenancy agreement shall

give or cause to be given to the person paying the rent a written receipt bearing—

- (a) the address of the premises, or an appropriate code or reference to identify the premises to which the payment relates; and
  - (b) the amount and nature of the payment; and
  - (c) the date of the payment; and
  - (d) the name (if known) of the person who made the payment.
- (2) The receipt shall be given to the person paying the rent—
- (a) forthwith, where payment is made in cash; or
  - (b) within 72 hours after payment, in any other case.
- (3) On the written request of the tenant, the landlord shall also give to the tenant a written statement of the period to which any payment of rent relates.
- (4) Nothing in subsection (1) shall apply—
- (a) to any rent paid out of a bank account in the name of the tenant by automatic payment through the bank or by way of a non-negotiable personal cheque or other similar non-negotiable instrument drawn on that account; or
  - (b) to any rent paid by the tenant into any account nominated by the landlord and operated by the landlord exclusively in respect of the tenancy, or exclusively in respect of the tenancy and any other tenancies of the landlord; or
  - (c) to any rent paid by way of deduction from the tenant's pay, or from any benefit to which the tenant is entitled under the Social Security Act 1964, and paid into a bank account nominated by the landlord.
- (5) Failure to give a receipt or written statement in accordance with this section is hereby declared to be an unlawful act.

Compare: 1973 No 26 s 23; Residential Tenancies Act, 1978-1981 (South Australia), s 37

Section 29(4)(b): substituted, on 1 May 1996, by section 13 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

### **30 Landlord to keep records**

- (1) Every landlord under a tenancy to which this Act applies shall keep or cause to be kept proper business records showing—

- (a) all payments of rent paid by or on behalf of the tenant, sufficient to enable the landlord to comply within a reasonable time with any request made by the tenant under section 29(3); and
  - (b) any amount by way of bond paid by or on behalf of the tenant on or after the 1st day of May 1996.
- (2) Failure to keep records in accordance with this section is hereby declared to be an unlawful act.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 38

Section 30(1): substituted, on 1 May 1996, by section 14 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

### **31 Apportionment of rent**

- (1) The rent payable under a tenancy agreement shall accrue from day to day.
- (2) Upon termination of the tenancy, the rent shall be apportioned accordingly, and the appropriate amount shall be payable or recoverable forthwith.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 40

### **32 Accelerated rent or damages prohibited**

- (1) Any provision in a tenancy agreement to the effect that, on breach by the tenant of any term of the agreement or of any of the provisions of this Act or of any other enactment, the tenant shall be liable to pay—
- (a) the whole or any part of the rent remaining payable under the agreement; or
  - (b) rent of an increased amount; or
  - (c) a sum specified in the agreement by way of damages or penalty,—
- shall be of no effect.
- (2) Any provision in a tenancy agreement to the effect that, if the tenant does not breach any term of the agreement or any of the provisions of this Act or of any other enactment, the rent shall or may be reduced or the tenant shall or may be granted or paid a rebate, refund, or other benefit, shall be construed as entitling the tenant to that reduction, rebate, refund, or other benefit in any event.

- (3) This section does not preclude a provision in a tenancy agreement requiring one party (the **debtor**) to reimburse the other party (the **creditor**) for any reasonable expenses or commissions paid or incurred by the creditor in recovering, or attempting to recover, any overdue payment that the debtor owes to the creditor under an order of the Tribunal.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 59

Section 32(3): added, on 1 October 2010, by section 23 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **33 Tenant's goods not to be seized**

- (1) The landlord shall not be entitled to seize or dispose of any of the tenant's goods—
- (a) as security for or in payment of any amount owing by way of rent; or
  - (b) for any other reason arising from the tenancy.
- (2) Seizing or disposing of any goods in contravention of subsection (1) is hereby declared to be an unlawful act.
- (3) Nothing in this section shall limit or affect the way in which any order of the Tribunal, or of any court on appeal from the Tribunal, may be enforced.
- (4) Nothing in this section applies to—
- (a) goods disposed of under sections 62 to 62C; or
  - (b) foodstuffs and other perishable goods if the landlord has reasonable cause to believe that the premises have been abandoned by the tenant.

Compare: 1952 No 51 s 107A; 1975 No 36 s 7; Residential Tenancies Act, 1978-1981 (South Australia), s 41

Section 33: substituted, on 1 May 1996, by section 15 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 33(4)(a): amended, on 1 October 2010, by section 24 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **34 Transitional provision relating to bonds**

*[Repealed]*

Section 34: repealed, on 1 May 1996, by section 16 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

**35 Transitional provisions relating to fair rents and equitable rents***[Repealed]*

Section 35: repealed, on 1 May 1996, by section 16 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

*Rights and obligations of parties***36 Legal impediments to occupation**

The landlord shall take all reasonable steps to ensure that, at the commencement of the tenancy, there is no legal impediment to the occupation of the premises for residential purposes.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 45

**37 Vacant possession**

(1) The tenant shall have vacant possession of the premises on the date on which, in accordance with the tenancy agreement, the tenant is entitled to enter into occupation of the premises.

(2) In this section **premises** does not include facilities.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 44

**38 Quiet enjoyment**

(1) The tenant shall be entitled to have quiet enjoyment of the premises without interruption by the landlord or any person claiming by, through, or under the landlord or having superior title to that of the landlord.

(2) The landlord shall not cause or permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant.

(3) Contravention of subsection (2) in circumstances that amount to harassment of the tenant is hereby declared to be an unlawful act.

(4) In this section **premises** includes facilities.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 47

**39 Responsibility for outgoings**

(1) The landlord is responsible for all outgoings in respect of the premises that—

- (a) are incurred whether or not the premises are occupied; and
  - (b) are incurred for common facilities.
- (2) Without limiting the generality of subsection (1), the landlord is responsible for the cost of—
- (a) the general rate (within the meaning of section 13 of the Local Government (Rating) Act 2002) payable in respect of the premises; and
  - (b) insurance premiums payable in respect of the premises; and
  - (c) any body corporate levies payable in respect of the premises.
- (3) The tenant is responsible for all outgoings in respect of the premises that are exclusively attributable to the tenant's occupation of the premises or to the tenant's use of the facilities.
- (4) Without limiting the generality of subsection (3), the tenant is responsible for the following charges, incurred during the tenancy, in respect of the premises:
- (a) electricity and gas;
  - (b) telephone and Internet;
  - (c) supply of water if the water supplier charges for water provided to the premises on the basis of consumption.
- (5) In this section, **premises** includes facilities that are exclusively for the use of the tenant.

Section 39: substituted, on 1 October 2010, by section 25 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### 40 Tenant's responsibilities

- (1) The tenant shall—
- (a) pay the rent as and when it is due and payable under the tenancy agreement; and
  - (b) ensure that the premises are occupied principally for residential purposes; and
  - (c) keep the premises reasonably clean and reasonably tidy; and
  - (d) notify the landlord, as soon as possible after discovery, of any damage to the premises, or of the need for any repairs; and
  - (e) on the termination of the tenancy,—

- (i) quit the premises; and
  - (ii) remove all his or her goods from the premises; and
  - (iii) leave the premises in a reasonably clean and reasonably tidy condition, and remove or arrange for the removal from the premises of all rubbish.
  - (iv) return to the landlord all keys, and security or pass cards or other such devices, provided by the landlord for the use of the tenant; and
  - (v) leave in or at the premises all other chattels provided by the landlord for the use of the tenant.
- (2) The tenant shall not—
- (a) intentionally or carelessly damage, or permit any other person to damage, the premises; or
  - (ab) cause or permit any interference with, or render inoperative, any means of escape from fire within the meaning of the Building Act 2004; or
  - (b) use the premises, or permit the premises to be used, for any unlawful purpose; or
  - (c) cause or permit any interference with the reasonable peace, comfort, or privacy of any of the landlord's other tenants in the use of the premises occupied by those other tenants, or with the reasonable peace, comfort, or privacy of any other person residing in the neighbourhood.
- (3) Where the tenancy agreement specifies a maximum number of persons that may ordinarily reside in the premises during the tenancy, the tenant shall ensure that no more than that number ordinarily reside in the premises at any time during the tenancy.
- (3A) The following are declared to be unlawful acts:
- (a) a failure, without reasonable excuse, to quit the premises in contravention of subsection (1)(e)(i):
  - (b) a contravention of subsection (2)(ab):
  - (c) a contravention of subsection (2)(b):
  - (d) a contravention of subsection (2)(c) in circumstances that amount to harassment of a tenant or a neighbour of the tenant:

- (e) a contravention, without reasonable excuse, of subsection (3).
- (4) Where any damage (other than fair wear and tear) to the premises is proved to have occurred during any tenancy to which this Act applies, it shall be for the tenant to prove that the damage did not occur in circumstances constituting a breach of subsection (2)(a).
- (5) In this section, unless the context otherwise requires, **premises** includes facilities.

Compare: 1952 No 51 s 116D; 1975 No 36 s 10; Residential Tenancies Act, 1978-1981 (South Australia), ss 42, 43

Section 40(1)(e)(iv): inserted, on 1 May 1996, by section 18 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 40(1)(e)(v): inserted, on 1 May 1996, by section 18 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 40(2)(ab): inserted, on 1 October 2010, by section 26(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 40(3): amended, on 1 October 2010, by section 26(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 40(3A): inserted, on 1 October 2010, by section 26(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 40(4): amended, on 1 October 2010, by section 26(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **41 Tenant's responsibility for actions of others**

- (1) The tenant shall be responsible for anything done or omitted to be done by any person (other than the landlord or any person acting on the landlord's behalf or with the landlord's authority) who is in the premises with the tenant's permission if the act or omission would have constituted a breach of the tenancy agreement had it been the act or omission of the tenant.
- (2) Where any person (other than the landlord or any person acting on the landlord's behalf or with the landlord's authority) intentionally or carelessly damages the premises while the tenant is in the premises, it shall be presumed that the tenant permitted that person to be in the premises unless the tenant proves that he or she took all reasonable steps to prevent that person from entering the premises or (as the case may require) to eject that person from the premises.

Compare: 1952 No 51 s 116E(6); 1975 No 36 s 10; Residential Tenancies Act, 1978-1981 (South Australia), s 52

**42 Tenant's fixtures**

- (1) The tenant shall not affix any fixture to the premises, or make any renovation, alteration, or addition of or to the premises, except—
  - (a) in accordance with the tenancy agreement; or
  - (b) with the prior written consent of the landlord.
- (2) The landlord shall not withhold that consent unreasonably.
- (3) The tenant may, at any time before the expiry of the tenancy, remove any fixture that the tenant has affixed to the premises during the term of the tenancy, unless the removal would cause irreparable damage to the premises.
- (4) Any fixtures affixed by the tenant to the premises but not removed by the tenant on the expiry of the tenancy become the property of the landlord.
- (5) Despite subsection (4), the tenant may remove any fixtures on or after the expiry of the tenancy if the tenant—
  - (a) does so in accordance with an agreement or arrangement reached with the landlord; or
  - (b) reasonably believes that he or she is entitled to do so because of anything the landlord has said or done.
- (6) If, on removing any fixture, the tenant causes any damage to the premises, the tenant must inform the landlord immediately and, at the landlord's option, either repair the damage or compensate the landlord for any reasonable expenses incurred by the landlord in repairing the damage.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 50

Section 42(4): substituted, on 1 October 2010, by section 27 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 42(5): added, on 1 October 2010, by section 27 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 42(6): added, on 1 October 2010, by section 27 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**43 Disposition of landlord's interest**

- (1) Where the landlord disposes of his or her interest in the premises to any other person (in this section referred to as the purchaser), the following provisions shall apply:
  - (a) the landlord shall give to the tenant written notice of the disposition, including the name and contact address of

the purchaser so far as those particulars are known to the landlord:

- (b) until that notice is received by the tenant, the tenant shall not be obliged to pay any rent to the purchaser, and shall not be liable to the purchaser in any proceedings in respect of any sum paid to the landlord on account of rent:
  - (c) from and after the date on which the tenant receives that notice, or such later date as may be specified in the notice, the tenant shall pay to the purchaser all sums due and payable by way of rent in respect of any period commencing after that date:
  - (d) subject to any lawful claim made to the Tribunal before the date of settlement, the landlord's interest in any bond paid by the tenant shall pass to the purchaser on the earlier of the date of settlement or the date of possession.
- (2) Nothing in subsection (1)(a) shall absolve the purchaser from the obligation imposed on the purchaser by section 15.

Section 43(1)(a): amended, on 1 May 1996, by section 19(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 43(1)(d): inserted, on 1 May 1996, by section 19(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 43(2): amended, on 1 May 1996, by section 19(3) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

#### **44 Assignment, subletting, or parting with possession by tenant**

- (1) There may be included in a tenancy agreement a provision that expressly and unconditionally prohibits the tenant from assigning, subletting, or parting with possession of the premises during the term of the tenancy.
- (2) In the absence of such a provision, the tenant may at any time during the tenancy assign, sublet, or otherwise part with possession of the premises with the prior written consent of the landlord and in accordance with any conditions attached to that consent by the landlord.
- (2A) A tenant commits an unlawful act if he or she assigns, sublets, or otherwise parts with possession of the premises—

- (a) in contravention of a provision of the kind described in subsection (1); or
  - (b) in any other case, without the prior written consent of the landlord.
- (3) The landlord shall not withhold that consent unreasonably, nor attach any unreasonable conditions to it.
- (4) Without limiting subsection (3), a landlord's consent shall be taken to have been withheld unreasonably if the withholding of the consent is an unlawful act under section 12.
- (5) On giving consent to any assignment, subletting, or parting with possession of the premises by the tenant, the landlord shall be entitled to recover from the tenant any expenses reasonably incurred by the landlord in respect of the proposed transaction.
- (6) Where a tenant assigns his or her interest under the tenancy agreement to any other person with the consent of the landlord and in accordance with any conditions attached to that consent by the landlord, the tenant shall, on the date on which the assignment takes effect, cease to be responsible to the landlord for the obligations imposed on the tenant by the agreement and this Act, but without prejudice to any liability already incurred by the tenant to the landlord in respect of anything done or omitted to be done before that date.

Compare: 1952 No 51 s 110; 1965 No 16 s 3; 1975 No 36 s 9(1); Residential Tenancies Act, 1978-1981 (South Australia), s 52

Section 44 heading: amended, on 1 October 2010, by section 28(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 44(2): amended, on 1 October 2010, by section 28(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 44(2A): inserted, on 1 October 2010, by section 28(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 44(4): substituted, on 1 May 1996, by section 6(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

#### **45 Landlord's responsibilities**

- (1) The landlord shall—
  - (a) provide the premises in a reasonable state of cleanliness; and
  - (b) provide and maintain the premises in a reasonable state of repair having regard to the age and character of the

- premises and the period during which the premises are likely to remain habitable and available for residential purposes; and
- (c) comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises; and
  - (ca) if the premises do not have a reticulated water supply, provide adequate means for the collection and storage of water; and
  - (d) compensate the tenant for any reasonable expenses incurred by the tenant in repairing the premises where—
    - (i) the state of disrepair has arisen otherwise than as a result of a breach of the tenancy agreement by the tenant and is likely to cause injury to persons or property or is otherwise serious and urgent; and
    - (ii) the tenant has given the landlord notice of the state of disrepair or made a reasonable attempt to do so; and
  - (e) take all reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.
- (1A) Failure by the landlord to comply with any of paragraphs (a) to (ca) of subsection (1) is declared to be an unlawful act.
- (2) The landlord shall not interfere with the supply of gas, electricity, water, telephone services, or other services to the premises, except where the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out.
- (2A) A contravention by the landlord of subsection (2) is declared to be an unlawful act.
- (3) The provisions of subsection (1) shall apply notwithstanding that the tenant has notice of the state of the premises at the time at which the tenancy agreement is entered into.
- (4) Nothing in subsection (1) shall impose upon the landlord any obligation to repair any damage, or compensate the tenant for any want of repair, arising out of any breach by the tenant of any obligation imposed on tenants by section 40.

(5) In this section **premises** includes facilities.

Compare: 1952 No 51 s 116H; 1975 No 36 s 10; Residential Tenancies Act, 1978-1981 (South Australia), s 46(1), (2), (4)

Section 45(1)(ca): inserted, on 1 October 2010, by section 29(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 45(1)(d)(ii): substituted, on 1 October 2010, by section 29(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 45(1A): inserted, on 1 October 2010, by section 29(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 45(2A): inserted, on 1 October 2010, by section 29(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### 46 Locks

- (1) The landlord shall provide and maintain such locks and other similar devices as are necessary to ensure that the premises are reasonably secure.
- (2) Neither the landlord nor the tenant shall alter any existing lock or similar device, or add to or remove from the premises any lock or similar device, without the consent of the other given at the time that, or a reasonable time before, the alteration, removal, or addition is carried out.
- (3) Failure to comply with subsection (1), and contravention of subsection (2), without reasonable excuse, is each hereby declared to be an unlawful act.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 48

#### 47 Landlord to give notice to tenant of intention to sell

- (1) If, at any time after entering into a tenancy agreement, the landlord puts the premises on the market for the purposes of sale or other disposition, the landlord shall forthwith give written notice of that fact to the tenant.
- (2) When a landlord is offering residential premises as available for letting, the landlord shall inform prospective tenants if the premises are on the market for the purposes of sale or other disposition.

Section 47(2): inserted, on 1 May 1996, by section 20 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

**48 Landlord's right of entry**

- (1) The landlord shall not enter the premises during the currency of the tenancy agreement, except—
- (a) with the consent of the tenant freely given at, or immediately before, the time of entry; or
  - (b) in any of the circumstances described in subsection (2) or subsection (3).
- (2) The landlord may enter the premises—
- (a) in any case of emergency; or
  - (b) for the purpose of inspecting the premises, at any time between 8 o'clock in the morning and 7 o'clock in the evening on a day specified in a notice given to the tenant not less than 48 hours nor more than 14 days before the intended entry, and not more frequently than once in any period of 4 weeks; or
  - (c) for the purpose of determining whether or not—
    - (i) the tenant has, within the period allowed by the landlord, completed satisfactorily any work required by the landlord to be done by the tenant to remedy any breach by the tenant of any of the provisions of the tenancy agreement or of this Act; or
    - (ii) the tenant has, within the agreed period, completed satisfactorily any work agreed to be done by the tenant,—  
at any time between 8 o'clock in the morning and 7 o'clock in the evening on any day (after the expiry of the period allowed for the work) specified in a notice given to the tenant not less than 48 hours nor more than 14 days before the intended entry; or
  - (d) for the purpose of carrying out necessary repairs to or necessary maintenance of, the premises, at any time between 8 o'clock in the morning and 7 o'clock in the evening of any day, after giving to the tenant notice of the intended entry and the reason for it at least 24 hours before the intended entry; or
  - (da) for the purpose of providing services agreed to under the tenancy agreement, but only if the entry complies

- with any conditions specified in the tenancy agreement;  
or
- (e) pursuant to an order of the Tribunal.
- (3) With the prior consent of the tenant, the landlord may enter the premises at any reasonable time for the purpose of showing the premises—
- (a) to prospective tenants; or
- (b) to prospective purchasers; or
- (c) to a registered valuer engaged in the preparation of a report on the premises; or
- (d) to a real estate agent engaged in appraising, evaluating, or selling or otherwise disposing of the premises; or
- (e) to an expert engaged in appraising or evaluating the premises; or
- (f) to a person who is authorised to inspect the premises under any enactment.
- (3A) For the purposes of subsection (3), the tenant—
- (a) may not withhold his or her consent unreasonably; and
- (b) may make the consent subject to any reasonable conditions.
- (4) The following are each hereby declared to be unlawful acts:
- (a) entry upon the premises by the landlord other than as permitted by or under any of subsections (1) to (3):
- (b) failure by the tenant, without reasonable excuse, to allow the landlord to enter upon the premises in any circumstances in which the landlord is entitled to enter under subsection (2) or subsection (3).
- (5) Notwithstanding anything in subsection (2) or subsection (3) or subsection (4), the landlord shall not use force or the threat of force to enter or attempt to enter the premises while the tenant, or any other person with the permission of the tenant, is in the premises.
- (6) Every landlord who breaches subsection (5) commits an offence and is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.
- (7) In this section **premises** does not include land or facilities.

- (8) Nothing in this section shall apply in respect of any tenancy granted by the Armed Forces to any person subject to the Armed Forces Discipline Act 1971.

Compare: 1952 No 51 s 116G; 1975 No 36 s 10; Residential Tenancies Act, 1978-1981 (South Australia), s 49

Section 48(1)(a): amended, on 1 October 2010, by section 30(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 48(2)(c): substituted, on 1 May 1996, by section 21(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 48(2)(d): amended, on 1 May 1996, by section 21(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 48(2)(da): inserted, on 1 October 2010, by section 30(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 48(2)(e): inserted, on 1 May 1996, by section 21(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 48(3): substituted, on 1 October 2010, by section 30(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 48(3A): inserted, on 1 October 2010, by section 30(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 48(4): substituted, on 1 May 1996, by section 21(4) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 48(6): amended, on 1 October 2010, by section 30(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **49 Mitigation of damage or loss**

Where any party to a tenancy agreement breaches any of the provisions of the agreement or of this Act, the other party shall take all reasonable steps to limit the damage or loss arising from that breach, in accordance with the rules of law relating to mitigation of loss or damage upon breach of contract.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 60

### *Termination of tenancies and recovery of possession*

#### **50 Circumstances in which tenancies are terminated**

Subject in the case of a subtenancy to section 57, no tenancy to which this Act applies shall terminate or be terminated otherwise than as follows:

- (a) in the case of a fixed-term tenancy, on the expiry of the term of the tenancy or, if any of sections 58(1)(d), (da),

59, or 59A apply, by giving notice in accordance with the applicable section:

- (ab) on the death of a sole tenant under a tenancy agreement or a sole tenant under a boarding house tenancy agreement, in accordance with section 50A or 66W, as the case requires:
- (b) by the giving of notice of a period no shorter than that required by this Act, in the case of a periodic tenancy or where provision is made in the tenancy agreement for termination by notice:
- (c) where the tenant acquires the landlord's interest in the premises:
- (d) where the tenant surrenders the tenancy, or delivers up vacant possession of the premises, to the landlord with the landlord's written consent:
- (e) by disclaimer, by any person having lawful power to disclaim:
- (f) by order of the Tribunal pursuant to the powers conferred on it by this Act.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 61(1)

Section 50(a): substituted, on 1 October 2010, by section 31 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 50(ab): inserted, on 1 October 2010, by section 31 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **50A Termination following death of sole tenant**

- (1) On the death of a sole tenant under a tenancy agreement (whether for a fixed-term tenancy or a periodic tenancy), the tenancy agreement terminates on the earliest of the following dates:
  - (a) the date that is the 21st day after the date on which the personal representative of the tenant or a person who is the tenant's next of kin gives the landlord written notice of the death of the tenant:
  - (b) the date that is the 21st day after the landlord gives the personal representative of the tenant or a person who is the tenant's next of kin written notice to vacate the premises that are the subject of the tenancy agreement:

- (c) the date that is agreed in writing by the landlord with the personal representative of the tenant or with a person who is the tenant's next of kin:
  - (d) the date determined as the termination date of the tenancy agreement by the Tribunal on the application of the landlord under subsection (2).
- (2) If a landlord is unable to give notice to vacate under subsection (1)(b), the landlord may apply, without notice, to the Tribunal for an order to terminate the tenancy.

Compare: Residential Tenancies Act 1997 s 228 (Vic)

Section 50A: inserted, on 1 October 2010, by section 32 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **51 Termination by notice**

- (1) Subject to sections 52, 53, 53A, 59, and 59A, the minimum period of notice required to be given by a landlord to terminate a tenancy shall be as follows:
- (a) where the owner of the premises requires the premises as the principal place of residence for the owner or any member of that owner's family, 42 days:
  - (b) where the landlord customarily uses the premises, or has acquired the premises, for occupation by employees of the landlord, that fact being clearly stated in the tenancy agreement, and the premises are required for occupation by such an employee, 42 days:
  - (c) where the owner is required, under an unconditional agreement for the sale of the premises, to give the purchaser vacant possession, 42 days:
  - (d) in any other case, 90 days.
- (2) Subject to sections 52 to 53A, 59, and 59A, the minimum period of notice required to be given by a tenant to terminate a tenancy shall be 21 days, in any case.
- (3) Every notice to terminate a tenancy shall—
- (a) be in writing; and
  - (b) identify the premises to which it relates; and
  - (c) specify the date by which the tenant is to vacate the premises; and
  - (ca) in any case where the tenant is given less than 90 days' notice, set out the reasons for the termination; and

- (d) be signed by the party giving the notice, or by that party's agent.
- (4) In a notice to terminate a tenancy, no special form of words shall be required; and no such notice shall be held invalid for any failure to comply strictly with the requirements of subsection (3) so long as the notice is in writing, the intention to terminate the tenancy on a particular date or on the expiry of a particular period is stated clearly in the notice, and that any non-compliance is not such as to mislead or affect unjustly the interests of the recipient.
- (5) A notice to terminate a tenancy may be given on any day, and the period of notice may be expressed to expire on any day, regardless of the date on which the tenancy commenced or of any date on which any rent is to be paid.
- (6) A party who has given an effective notice to terminate a tenancy—
- (a) may, at any time before the expiry of the period of notice, revoke the notice with the consent of the other party; but
- (b) may give a further notice to terminate the tenancy only if the prior notice is revoked.
- (7) Where a party has given a notice to terminate the tenancy and subsequently realises that, because of—
- (a) some error in the way in which the period of the notice or the date of the expiry of that period is expressed in the notice; or
- (b) some delay in serving the notice,—
- the period of notice given is less than the minimum prescribed by subsection (1) or (as the case may require) subsection (2), that party may, with the agreement of the other party or (failing such agreement) with the consent of the Tribunal, give to the other party a further notice varying the first notice so as to bring the period of notice given up to or above that minimum so required.
- (8) Every notice given under subsection (7) shall comply with the requirements of subsection (3).
- (9) The Tribunal shall not give its consent under subsection (7) unless it is satisfied—

- (a) that the error in the notice or the delay in serving the notice was inadvertent; and
- (b) that the party who gave the notice has sought to correct the matter as soon as practicable after realising that the period of notice given is inadequate; and
- (c) that it would not be unfair to the other party to allow the original notice to be varied in the manner proposed.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), ss 62, 64(1)(ca), (2), 65, 69, 70

Section 51(1): amended, on 1 October 2010, by section 33(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 51(1)(a): substituted, on 1 October 2010, by section 33(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 51(1)(c): substituted, on 1 October 2010, by section 33(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 51(2): amended, on 1 October 2010, by section 33(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 51(3)(ca): inserted, on 1 October 2010, by section 33(5) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 51(6): substituted, on 1 October 2010, by section 33(6) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **52 Provision for shorter notice may be made with consent of Tribunal**

With the consent of the Tribunal, the parties to a tenancy agreement may provide for the termination of the tenancy by the giving of notice of a specified period (being less than that required by section 51), or on the happening of any event to be specified in the agreement, or where the landlord requires possession of the premises for any purpose to be specified in the agreement.

## **53 Special provisions for notice terminating service tenancies**

- (1) The landlord or the tenant must give a minimum period of notice of 14 days to terminate a service tenancy if the contract of service or, as the case requires, the contract for services has been terminated or either party has given notice to terminate that contract (subject to subsections (2) to (7)).
- (2) Where the contract of service or, as the case requires, contract for services is terminated, or the tenant is transferred to an-

other district, on less than 14 days' notice, the landlord may terminate the service tenancy by the giving of notice of less than 14 days if—

- (a) the landlord believes on reasonable grounds that the tenant will cause substantial damage to the premises if the tenant is permitted to remain for 14 days; or
  - (b) it is necessary for the conduct of the landlord's business where the tenant was employed that a replacement employee be appointed within less than 14 days and no suitable alternative accommodation is available for the replacement worker during the period of 14 days.
- (3) No notice under this section shall have effect to terminate a service tenancy on a date preceding the date on which the termination of the contract of service or, as the case requires, contract for services or the transfer of the employee takes effect.
  - (4) Where the tenant of a service tenancy dies leaving any dependant residing in the premises, the minimum period of notice required to be given by the landlord to terminate the tenancy shall, subject to subsection (5), be 14 days.
  - (5) In any case to which subsection (4) applies, the landlord may terminate the tenancy by the giving of notice of less than 14 days, but not less than 5 days, if it is necessary for the conduct of the landlord's business at the place of business where the tenant was employed that a replacement employee be appointed within less than 14 days and no suitable alternative accommodation is available for the replacement worker during the period of 14 days.
  - (5A) Section 50A does not limit subsection (4) or (5).
  - (6) Without limiting anything in subsections (2) to (5), in respect of a service tenancy granted by the Armed Forces to any person subject to the Armed Forces Discipline Act 1971, the landlord may terminate the tenancy by giving less than 14 days' notice if the operational requirements of the Armed Forces so require.
  - (7) In any proceedings before the Tribunal in which the validity of a notice purporting to have been given under this section is in issue, the following provisions shall apply:

- (a) whether the contract of service or, as the case requires, contract for services was or was not terminated shall be a question of fact to be determined by the Tribunal, but the Tribunal shall not be concerned with the lawfulness or otherwise of that termination:
- (b) it shall be for the landlord to establish to the satisfaction of the Tribunal the matters referred to in paragraphs (a) and (b) of subsection (2), and in subsection (5), of this section:
- (c) in the case of a service tenancy granted by the Armed Forces to any person subject to the Armed Forces Discipline Act 1971, a certificate by the Secretary of Defence to the effect that operational requirements necessitated the giving of notice of less than 14 days shall be accepted by the Tribunal as conclusive proof of that matter.

Section 53(1): substituted, on 1 October 2010, by section 34(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 53(2): amended, on 1 October 2010, by section 34(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 53(3): amended, on 1 October 2010, by section 34(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 53(5A): inserted, on 1 October 2010, by section 34(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 53(7)(a): amended, on 1 October 2010, by section 34(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **53A Special provisions for notice terminating certain student tenancies**

- (1) In this section, **student tenancy** means a tenancy to which this Act applies that is granted by an institution (as defined in section 159(1) of the Education Act 1989) to a person who is eligible to be a tenant by virtue of the person being—
  - (a) a student; or
  - (b) a student of a particular educational institution.
- (2) The landlord of a student tenancy, or the tenant of a student tenancy, may terminate the tenancy on 14 days' notice if the tenant ceases to be eligible to be granted the tenancy.
- (3) In any proceedings before the Tribunal in which the validity of a notice under subsection (2) is in issue, the question of when

the tenant ceased to be eligible to be a tenant under the tenancy is a question of fact to be determined by the Tribunal.

Section 53A: inserted, on 1 October 2010, by section 35 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **54 Tribunal may declare retaliatory notice of no effect**

- (1) Within 14 working days after receipt of a notice terminating the tenancy, being a notice that complies with the requirements of section 51 (or, in the case of a boarding house tenancy, section 66U), the tenant may apply to the Tribunal for an order declaring that the notice is of no effect on the ground that, in giving the notice, the landlord was motivated wholly or partly by the exercise or proposed exercise by the tenant of any right, power, authority, or remedy conferred on the tenant by the tenancy agreement or by this or any other Act or any complaint by the tenant against the landlord relating to the tenancy.
- (2) If, on any such application, the Tribunal is satisfied that the landlord was so motivated in giving the notice, it shall declare the notice to be of no effect unless the Tribunal is satisfied that the purported exercise by the tenant of any such right, power, authority, or remedy, or the making by the tenant of any such complaint, was or would be vexatious or frivolous to such an extent that the landlord was justified in giving the notice.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 66

Section 54(1): amended, on 1 October 2010, by section 36 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **55 Termination on non-payment of rent, damage, or assault**

- (1) Subject to subsection (2), on any application made to it under this section by the landlord, the Tribunal shall make an order terminating the tenancy if the Tribunal is satisfied that—
  - (a) the rent was, at the date on which the application was filed under section 86, at least 21 days in arrear; or
  - (b) the tenant has caused, or has permitted any other person to cause, or has threatened to cause, substantial damage to the premises; or
  - (c) the tenant has assaulted, or has threatened to assault, or has caused or permitted any person to assault, or to threaten to assault, any of the following persons:

- (i) the landlord or any member of the landlord's family:
  - (ii) the owner of the premises or any member of the owner's family:
  - (iii) any agent of the landlord:
  - (iv) any occupier of any building of which the premises constitute a part:
  - (v) any neighbour of the premises or of any building of which the premises constitute a part.
- (1A) Notwithstanding section 78(3), the Tribunal may, instead of making a final termination order for the non-payment of rent under this section, make a conditional order if, but only if, it is satisfied that—
- (a) the tenant will pay any rent in arrear within a period specified by the Tribunal; and
  - (b) it is unlikely that the tenant will commit any further breach of a kind to which this section applies.
- (1B) Any conditional order referred to in subsection (1A)—
- (a) shall set out the terms of repayment of any rent in arrear or any other conditions attaching to the order; and
  - (b) shall automatically take effect as a final termination order if the conditions are not complied with; and
  - (c) shall lapse if the conditions are complied with.
- (2) The Tribunal may refuse to make an order under subsection (1) if, but only if, it is satisfied that the breach has been remedied (where it is capable of remedy), the landlord has been compensated for any loss arising from the breach, and it is unlikely that the tenant will commit any further breach of a kind to which this section applies.
- (3) It shall not be necessary for the landlord to give to the tenant notice of the landlord's intention to apply under this section for an order terminating the tenancy.
- (4) In this section **premises** includes facilities.

Section 55(1)(c): substituted, on 1 October 2010, by section 37 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 55(1A): inserted, on 1 May 1996, by section 22(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 55(1B): inserted, on 1 May 1996, by section 22(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 55(4): inserted, on 1 May 1996, by section 22(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

## **56 Termination for non-payment of rent and other breaches**

- (1) On an application made to it under this section by the landlord or the tenant, the Tribunal may make an order terminating the tenancy if the Tribunal is satisfied that—
- (a) the other party has committed a breach of any of the provisions of the tenancy agreement (including provisions relating to the payment of rent) or of this Act; and
  - (b) in the case of a breach capable of remedy,—
    - (i) the applicant gave to the other party a notice specifying the nature of the breach complained of and requiring the other party to remedy the breach within a reasonable period, being not less than 14 days commencing with the day on which the notice was given; and
    - (ii) the other party failed to remedy the default within the required period; and
  - (c) that the breach is of such a nature or of such an extent that it would be inequitable to refuse to make an order terminating the tenancy.
- (2) Where an application is made by a landlord under this section and the Tribunal is satisfied that at the time of determining the matter the landlord could have made an application under section 55, the Tribunal shall determine the matter as if an application had been made under that section.

Section 56 heading: substituted, on 1 October 2010, by section 38(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 56(1)(a): amended, on 1 October 2010, by section 38(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 56(1)(b)(i): amended, on 1 October 2010, by section 38(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 56(2): inserted, on 1 May 1996, by section 23 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

## **57 Effect on subtenancy of termination of head tenancy**

- (1) Except as provided in subsections (2) and (3), where any premises are subject to a tenancy and one or more subtenan-

cies, on the termination of the tenancy each subtenancy shall be deemed to be terminated.

- (2) Where—
- (a) the landlord has consented to a subletting by the tenant to a subtenant; and
  - (b) the landlord is giving to the tenant notice to terminate the tenancy in accordance with section 51 or section 52,—
- the landlord may, on the same date, give a copy of the notice to the subtenant, in which case the notice shall have effect to terminate the subtenancy on the date on which the tenancy will terminate.
- (3) Subject to subsection (2), where the landlord gives to the tenant notice to terminate the tenancy in accordance with section 51 or section 52, the following provisions shall apply in respect of each subtenancy to which the landlord has consented:
- (a) the subtenancy shall continue notwithstanding the giving or expiry of that notice:
  - (b) for the purposes of sections 15, 21A, and 43, the landlord under the tenancy shall be deemed to have acquired the sublandlord's interest under the subtenancy, and the provisions of those sections, with any necessary modifications, shall apply accordingly:
  - (c) the landlord under the tenancy shall have the same rights (if any) as the sublandlord had under the subtenancy agreement or this Act to give notice terminating the subtenancy or to apply to the Tribunal for an order terminating the subtenancy or for an order for possession of the premises:
  - (d) if, on the expiry of the notice given in respect of the tenancy, the subtenancy is still subsisting, the subtenancy shall be deemed to be a tenancy granted by the landlord to the subtenant.

Section 57(3)(b): amended, on 1 May 1996, by section 10(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

**58 Mortgagee or other person becoming entitled to possession**

- (1) Where a mortgagee or other person becomes entitled (as against the landlord) to possession of the premises, the following provisions shall apply:
- (a) the tenancy shall continue notwithstanding that the mortgagee or other person has become entitled (as against the landlord) to possession of the premises:
  - (b) for the purposes of sections 15, 21A, and 43, the mortgagee or other person shall be deemed to have acquired the landlord's interest in the premises, and the provisions of those sections, with any necessary modifications, shall apply accordingly:
  - (c) the mortgagee or other person shall have the same rights (if any) as the landlord had under the tenancy agreement or this Act to give notice terminating the tenancy or to apply to the Tribunal for an order terminating the tenancy or for an order for possession of the premises:
  - (d) without limiting paragraph (c), but subject to paragraph (e), in the case of a fixed-term tenancy, the mortgagee or other person shall have the same right to give notice terminating the tenancy as the landlord would have had if the tenancy had been a periodic tenancy:
  - (da) in the case of a fixed-term tenancy, the tenant has the same right to give notice terminating the tenancy as the tenant would have had if the tenancy had been a periodic tenancy:
  - (e) paragraph (d) shall not apply where the mortgagee or other person is bound by the tenancy or consented in writing to its creation.
- (2) Subsection (1) shall apply notwithstanding anything to the contrary in the Property Law Act 2007 or the Land Transfer Act 1952 or any other enactment.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 61(1)(c) to (c2)

Section 58(1)(b): amended, on 1 May 1996, by section 10(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 58(1)(da): inserted, on 1 October 2010, by section 39 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 58(2): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

**59 Destruction of premises**

- (1) Where, otherwise than as a result of a breach of the tenancy agreement (whether for a fixed-term tenancy or a periodic tenancy), the premises are destroyed, or are so seriously damaged as to be uninhabitable,—
  - (a) the rent shall abate accordingly; and
  - (b) either party may give notice to the other terminating the tenancy.
- (2) Where a landlord gives notice of termination under subsection (1), the period of notice shall be not less than 7 days.
- (3) Where a tenant gives notice of termination under subsection (1), the period of notice shall be not less than 2 days.
- (4) Where, otherwise than as a result of a breach of the tenancy agreement, the premises are partially destroyed, or part of the premises is so seriously damaged as to be uninhabitable,—
  - (a) the rent shall abate accordingly; and
  - (b) either party may apply to the Tribunal for an order terminating the tenancy, and the Tribunal may make such an order if it is satisfied that it would be unreasonable to require the landlord to reinstate the property or (as the case may require) to require the tenant to continue with the tenancy albeit at a reduced rent.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 71

Section 59(1): amended, on 1 October 2010, by section 40 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**59A Termination where breach renders premises uninhabitable**

- (1) This section applies if, as a result of a breach of the tenancy agreement (whether for a fixed-term tenancy or a periodic tenancy) by a party, the premises are destroyed or are so seriously damaged as to be uninhabitable.
- (2) If the tenant is not in breach, the rent abates.
- (3) The party who is not in breach may give notice to the other party terminating the tenancy.

- (4) When a landlord gives notice of termination under this section, the period of notice is not less than 7 days.
- (5) When a tenant gives notice of termination under this section, the period of notice is not less than 2 days.

Section 59A: inserted, on 1 October 2010, by section 41 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **60 Tenant remaining in possession after termination of tenancy**

- (1) Where a tenant remains in occupation of the premises after the tenancy has terminated or has been terminated, all the obligations of the tenant shall continue in force as if the tenancy were still subsisting until such time as the tenant ceases to occupy the premises.
- (2) If the landlord permits the tenant to remain in the premises for more than 90 days after the tenancy has terminated or has been terminated, without obtaining a possession order, or for more than 90 days after obtaining a possession order, the landlord shall be deemed to have granted, and the tenant shall be deemed to have accepted, as from the date on which that period of 90 days expired, a periodic tenancy of the premises on the same terms and conditions as pertained to the original tenancy immediately before its termination.
- (3) The landlord shall not be taken to have permitted the tenant to remain in possession, or to have given up the right to proceed under this Act in respect of any breach of the tenant's obligations, merely because the landlord accepts payment of rent in respect of any period after the tenancy has been terminated.

Compare: Residential Tenancies Act, 1978-81 (South Australia), s 61(2)

### **60A Fixed-term tenancy becomes periodic unless contrary notice given**

- (1) On the expiry of a fixed-term tenancy of more than 90 days, the tenancy continues as a periodic tenancy with the same terms as the terms contained in the expired tenancy so far as those terms are consistent with a periodic tenancy.
- (2) Subsection (1) does not apply if—
  - (a) the parties enter into a new tenancy agreement or agree to extend the existing tenancy agreement; or

- (b) within the effective period, either party gives the other written notice of the party's intention not to continue with the tenancy.
- (3) The **effective period** is the period that starts on the 90th day before the date on which the tenancy expires and ends with the 21st day before that date.
- (4) On an application by either party, the Tribunal may make an order specifying a date for the early termination of a tenancy that will continue, or is continuing, under subsection (1).
- (5) The Tribunal may only make an order under subsection (4) if satisfied that, without the order, the applicant would suffer greater hardship than the other party.
- (6) Where the Tribunal makes an order under subsection (4), the Tribunal may order that the applicant pay to the other party an amount determined by the Tribunal by way of reasonable compensation for any loss or damage to the other party that is likely to result from the early termination.

Section 60A: inserted, on 1 October 2010, by section 42 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**60B Tenant must exercise right to renew or extend tenancy not later than 21 days before expiry**

- (1) A tenant who wishes to exercise a right under the tenancy agreement to require the landlord to grant the tenant a renewal or an extension of the tenancy must exercise that right by giving the landlord written notice, in accordance with this section, of the tenant's intention to exercise the right.
- (2) The tenant must give notice of the tenant's intention not later than the 21st day before the date on which the tenancy would otherwise expire.
- (3) On an application, made before or after the expiry of the tenancy, by a tenant who has failed to comply with subsection (1) or (2) but who wishes to renew or extend the tenancy, the Tribunal may order the renewal or extension of the tenancy.
- (4) The Tribunal may make an order under subsection (3) only if satisfied that, without the order, the tenant would suffer greater hardship than the landlord.

- (5) If the Tribunal makes an order under subsection (3), the Tribunal may order that the tenant pay the landlord an amount determined by the Tribunal by way of reasonable compensation for any loss or damage to the landlord that has resulted from the tenant's failure to comply with subsection (1) or (2).

Section 60B: inserted, on 1 October 2010, by section 42 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**60C Notices and orders continue to apply to renewed or extended tenancies**

- (1) This section applies to a tenancy (the **current tenancy**) that results from the renewal or extension of a previous tenancy (the **previous tenancy**).
- (2) The rent payable at the commencement of the current tenancy in respect of that tenancy—
- (a) is the rent that is payable under the previous tenancy immediately before the commencement of the current tenancy; and
  - (b) is subject to any lawful notice or order, given or made before the commencement of the current tenancy, that varies that rent on or after that commencement; and
  - (c) may be increased only if any of sections 24 to 28B apply.

Section 60C: inserted, on 1 October 2010, by section 42 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**61 Abandonment of premises**

- (1) On the application of the landlord, the Tribunal may make an order terminating a tenancy where it is satisfied that the tenant has abandoned the premises and the rent is in arrear.
- (2) Where the Tribunal makes an order under subsection (1) in respect of a periodic tenancy, it shall determine, as best it can on the evidence before it, the date on which the landlord first became aware, or ought reasonably to have become aware, that the tenant had abandoned the premises, and shall specify that date in the order.
- (3) A tenant who abandons the premises shall, notwithstanding any rule of law to the contrary, be liable to pay the rent for any period up to and including, but not after, the following date:

- (a) in the case of a periodic tenancy,—
    - (i) the date of the expiry of the period of 21 days after the date specified by the Tribunal under subsection (2); or
    - (ii) the date of commencement of a new tenancy of the premises,—whichever is the earlier:
  - (b) in the case of a fixed-term tenancy,—
    - (i) the date of the expiry of the term; or
    - (ii) the date of commencement of a new tenancy of the premises,—whichever is the earlier.
- (4) Nothing in section 49 shall impose upon the landlord any obligation, on finding that the tenant has abandoned the premises, to make an application under this section or to grant a new tenancy of the premises.
- (5) It is declared that a tenant commits an unlawful act if, without reasonable excuse, he or she abandons the premises when the rent is in arrear.

Section 61(5): added, on 1 October 2010, by section 43 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **62 Goods left on premises on termination of tenancy**

- (1) Where, on the termination of the tenancy, the tenant leaves on the premises foodstuffs or other perishable goods, the landlord may, immediately after taking possession of the premises, dispose of those goods in any way the landlord thinks fit.
- (2) If the tenant leaves on the premises goods that are neither foodstuffs nor other perishable goods, the landlord must, immediately after taking possession of the premises, make all reasonable efforts to contact the tenant and to agree with the tenant on a period within which the tenant is to collect the goods.
- (3) If the landlord is unable to contact the tenant or to agree on a period with the tenant, or if the tenant fails to collect the goods within the agreed period, the landlord must ensure that any personal documents belonging to the tenant are stored securely and must deal with the other goods either—
  - (a) in accordance with section 62A; or

(b) by securing them in safe storage and by applying to the Tribunal in accordance with section 62B.

(4) In this section, **premises** includes facilities.

Section 62: substituted, on 1 October 2010, by section 44 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**62A Disposal of abandoned goods following assessment of market value**

- (1) The landlord may deal with the goods to which section 62(3) applies, other than personal documents belonging to the tenant, by making all reasonable efforts to assess the market value of those goods.
- (2) If the assessment under subsection (1) indicates that any of the goods have a value below the cost of storing, transporting, and selling them, the landlord may immediately dispose of those goods in any way the landlord thinks fit.
- (3) If the assessment under subsection (1) indicates that any of the goods have a value above the cost of storing, transporting, and selling them, the landlord must secure those goods in safe storage for not less than 35 days from the date on which the landlord first took possession of those goods.
- (4) If, before the landlord disposes of the goods under subsection (5), the tenant claims the goods and any personal documents belonging to the tenant or claims either the goods or the documents,—
  - (a) the landlord may require the tenant to pay the landlord's actual and reasonable costs arising out of the storage of the goods; and
  - (b) the landlord must release to the tenant any goods and personal documents claimed by the tenant, subject to payment of any costs required under paragraph (a); and
  - (c) the tenant must give the landlord a receipt for any goods and personal documents released to the tenant.
- (5) If, after the period of 35 days specified in subsection (3), the goods or any personal documents belonging to the tenant remain unclaimed, the landlord must—
  - (a) continue to secure those goods and personal documents in safe storage to await any claims by the tenant under subsection (4); or

- (b) do the following:
  - (i) take any personal documents belonging to the tenant to the nearest Police station and obtain a receipt for them from a Police employee; and
  - (ii) sell the other goods by public auction or by private contract at a reasonable market price.
- (6) If the landlord has sold the goods under subsection (5)(b)(ii), the landlord may apply to the Tribunal for an order specifying the amount (if any) owing to the landlord out of the proceeds of sale.

Section 62A: inserted, on 1 October 2010, by section 44 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**62B Disposal of abandoned goods in accordance with Tribunal order**

- (1) The landlord may apply to the Tribunal for an order for the disposal of the goods to which section 62(3) applies, including any personal documents belonging to the tenant.
- (2) On an application under subsection (1), the Tribunal must make an order—
  - (a) for the return of the goods to the tenant; or
  - (b) if that is not practicable, for the sale or other disposition of the goods.
- (3) Without limiting section 78(3), the Tribunal may, in making an order for the sale or other disposition of goods under this section, direct that the order is not to take effect unless the tenant has had the opportunity to collect the goods within a period specified in the order or unless another condition is met.
- (4) If the Tribunal makes an order for the sale of goods under this section, the order must state the amount owing (if any) to the landlord out of the proceeds of sale.

Section 62B: inserted, on 1 October 2010, by section 44 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**62C Application of proceeds of sale and recovery of amount owing**

- (1) In this section, **amount owing** means—
  - (a) where the landlord has sold the goods under section 62A(5)(b)(ii) but there is no order under section 62A(6),

- the cost of storage, transport, and sale reasonably incurred by the landlord:
- (b) where there is an order by the Tribunal under section 62A(6) or 62B(4) specifying the amount owing to the landlord out of the proceeds of sale, that amount.
- (2) The landlord may deduct any amount owing from the proceeds of any sale under section 62A(5)(b)(ii) or under an order made under section 62B(2)(b).
  - (3) The landlord must pay the proceeds of any sale, less any deduction made under subsection (2), to the chief executive, and the chief executive must pay those proceeds into the Residential Tenancies Trust Account.
  - (4) To the extent that any amount owing to the landlord is not fully reimbursed under subsection (2), the landlord may seek reimbursement, in accordance with section 22, 22A, or 22B, for that amount out of any bond held in the Residential Tenancies Trust Account in respect of the tenancy.
  - (5) To the extent that any amount owing to the landlord is not fully reimbursed under subsections (2) and (4), the landlord may recover those costs from the tenant.

Section 62C: inserted, on 1 October 2010, by section 44 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **62D Tenant may claim proceeds of sale**

At any time within 1 year after the date of a sale under section 62A(5)(b)(ii) or under an order made under section 62B(2)(b), the tenant may apply to the chief executive for the payment to the tenant of the proceeds of sale in the Residential Tenancies Trust Account, and the chief executive must either make that payment to the tenant or, if there are reasonable grounds to do so, refer the matter to the Tribunal for determination.

Section 62D: inserted, on 1 October 2010, by section 44 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **62E Responsibility of tenant unaffected**

Sections 62A to 62D do not absolve the tenant from any responsibility imposed on the tenant by the tenancy agreement or by section 40(1)(e) or by any rule of law to remove from the

premises on the termination of the tenancy all goods owned by the tenant that the tenant is entitled to possess.

Section 62E: inserted, on 1 October 2010, by section 44 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**62F Protection from liability**

- (1) The landlord is not liable in respect of goods sold or disposed of under section 62 or 62A, or under an order made under section 62B, unless it is shown that, at the time of the sale or disposition, the landlord had reason to believe that the goods were not owned by the tenant.
- (2) Any goods sold under section 62A(5)(b)(ii) or under an order made under section 62B(2)(b) are not recoverable from the purchaser unless it is shown that the purchaser acted otherwise than in good faith.

Section 62F: inserted, on 1 October 2010, by section 44 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**63 Entry without order of Tribunal prohibited**

- (1) No person shall enter into possession of any residential premises in the occupation of a tenant except with the consent of the tenant or pursuant to an order for possession made by the Tribunal and duly enforced in accordance with section 106.
- (2) Notwithstanding anything in section 57 of the Crimes Act 1961, every person who, otherwise than pursuant to a possession order duly enforced in accordance with section 106, enters onto any land or into any land, being residential premises to which this Act applies, for the purpose of taking possession of that land or building without the consent of the tenant commits an offence and is liable to a fine not exceeding \$2,000.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 80

Section 63(2): amended, on 1 October 2010, by section 45 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**64 Possession orders**

- (1) Subject to subsection (2), on the application of any person entitled to possession of the premises following the termination

of a tenancy, the Tribunal shall make an order granting possession of the premises to that person.

- (2) No possession order may be made more than 90 days after the date of the termination of the tenancy.
- (3) Every order of the Tribunal made under section 55 or section 56 or section 59 or section 61 terminating a tenancy shall have effect as a possession order granting possession of the premises to the landlord.
- (4) No possession order (including an order of a kind referred to in subsection (3)) shall be capable of being filed under section 106 more than 3 months after—
  - (a) the date of the order; or
  - (b) in the case of a conditional order under section 55(1A) or section 78(3) or section 88(2) which states that it is an order to which this paragraph applies, the date on which the conditional order takes effect as a final termination order.

Section 64(2): amended, on 1 October 2010, by section 46 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 64(4): substituted, on 1 May 1996, by section 25 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

## **65 Eviction of squatters**

- (1) Where, on the application of any person entitled to possession of any residential premises, the Tribunal is satisfied that any other person is in possession of the premises as a squatter or trespasser, or otherwise than pursuant to any right of occupation granted to that person by any person having lawful authority to grant that right to that other person, the Tribunal shall make a possession order granting possession of the premises to the applicant.
- (2) Nothing in subsection (1) shall limit or affect the provisions of the Trespass Act 1980, or any other remedy that may be available to the person lawfully entitled to possession of the premises.
- (3) To avoid doubt, the Tribunal has jurisdiction under this section even though the premises are not subject to a tenancy agreement.

Section 65(3): added, on 1 October 2010, by section 47 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**66 Reduction or termination of fixed-term tenancy**

- (1) On application by a party to a fixed-term tenancy, the Tribunal may make an order reducing the term of the tenancy by a period stated in the order, and making such variations in the terms of the tenancy as are necessary because of the reduction of the term, where it is satisfied that, because of an unforeseen change in the applicant's circumstances, the severe hardship which the applicant would suffer if the term of the tenancy were not reduced would be greater than the hardship which the other party to the tenancy would suffer if the term were reduced.
- (2) Where the Tribunal makes an order under subsection (1), the Tribunal may order that the applicant pay to the other party an amount determined by the Tribunal by way of reasonable compensation for any loss or damage to the other party which would result from the reduction in the term of the tenancy.
- (3) On an application by a tenant who is a party to a fixed-term tenancy, the Tribunal may make an order terminating the tenancy if the Tribunal is satisfied that the tenant has received a notice of a rent increase that—
  - (a) is substantial; and
  - (b) is of an amount that the tenant could not reasonably foresee when he or she entered into the tenancy agreement; and
  - (c) has caused, or will cause, serious hardship.
- (4) On an application by a tenant who is party to a fixed-term tenancy of premises held in a stratum estate under the Unit Titles Act 2010, the Tribunal may make an order terminating the tenancy if satisfied that—
  - (a) the tenant is adversely affected by a change to the body corporate operational rules made under that Act; and
  - (b) because of that change, it would be unreasonable to require the tenant to continue with the tenancy.

Section 66: substituted, on 1 May 1996, by section 27 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 66 heading: amended, on 1 October 2010, by section 48(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 66(2): amended, on 1 October 2010, by section 48(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 66(3): added, on 1 October 2010, by section 48(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 66(4): added, on 1 October 2010, by section 48(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **Part 2A**

### **Boarding house tenancies**

Part 2A: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### *Application*

Heading: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **66A Application of Part**

- (1) This Part sets out special provisions that apply only to boarding house tenancies.
- (2) The following provisions do not apply to boarding house tenancies unless otherwise specifically applied:
  - (a) section 7 (relating to short fixed-term tenancies):
  - (b) section 9(1) and (2) (relating to transitional provisions):
  - (c) sections 36 to 42 and 44 to 49 (relating to the rights and obligations of landlords and tenants):
  - (d) sections 50A, 51, and 55 to 57 (relating to the termination of tenancies):
  - (e) section 61 (relating to the abandonment of premises):
  - (f) section 64 (relating to possession orders).
- (3) When applying other provisions to boarding house tenancies, terms that are defined in section 66B have the meaning given by that section.

Section 66A: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **66B Interpretation for this Part**

In this Part, unless the context otherwise requires,—

**boarding house** means residential premises—

- (a) containing 1 or more boarding rooms along with facilities for communal use by the tenants of the boarding house; and
- (b) occupied, or intended by the landlord to be occupied, by at least 6 tenants at any one time

**boarding house tenancy** means a residential tenancy in a boarding house—

- (a) that is intended to, or that does in fact, last for 28 days or more; and
- (b) under which the tenant is granted exclusive rights to occupy particular sleeping quarters in the boarding house, and has the right to the shared use of the facilities of the boarding house

**boarding house tenancy agreement** means a tenancy agreement (as defined in section 2(1)) relating to a boarding house tenancy

**boarding room** means a room in a boarding house that is used as sleeping quarters by 1 or more tenants of the boarding house, and that is for use only by a tenant whose tenancy agreement relates to that room

**contact person** means a natural person or an organisation

**facilities** means the facilities provided by the landlord of a boarding house for the shared use by tenants of the boarding house, such as—

- (a) toilet and bathroom facilities:
- (b) cooking facilities:
- (c) general living, dining, or recreational areas:
- (d) laundry facilities:
- (e) lifts and stairways:
- (f) rubbish storage and rubbish disposal facilities:
- (g) appliances for heating or cooling premises:
- (h) communication facilities:
- (i) lawns, gardens, and outhouses:
- (j) any land or buildings intended for use for storage space or for the parking of motor vehicles

**premises** means the boarding house, comprising the boarding rooms and all the facilities of the boarding house; and includes any part of any premises.

Section 66B: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### *Boarding house tenancy agreements*

Heading: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **66C Content of boarding house tenancy agreements**

- (1) A boarding house tenancy agreement must comply with the requirements in section 13A and must, in addition, contain the following:
- (a) a statement of whether the tenancy is intended to last for 28 days or more:
  - (b) 1 or more telephone numbers at which the landlord may be contacted by the tenant at any reasonable time:
  - (c) the room number of the boarding room to which the tenancy agreement relates:
  - (d) a statement as to whether the boarding room that the tenant is renting is shared by other tenants and, if so, the maximum number of other tenants who may occupy the room:
  - (e) a statement of whether the tenancy is a joint tenancy and, if so, the names of the other people who will occupy the boarding room under the tenancy agreement:
  - (f) a statement of the services (if any) to be provided by the landlord:
  - (g) if the premises are managed by a person other than the landlord, the name and contact address (which must include a telephone number) of that person:
  - (h) a description of the fire evacuation procedures that apply to the premises.
- (2) A boarding house tenancy agreement may, in addition, provide for the tenant to supply, for the purposes of sections 62 to 62B and 66X, the name and contact details of a contact person.

Compare: Residential Tenancies Act 1997 s 125 (Vic)

Section 66C: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**66D Bond of 1 week's rent or less**

- (1) If 1 week's rent or less is received as bond under a boarding house tenancy,—
  - (a) the bond need not be lodged with the chief executive, and sections 19 to 22D do not apply; and
  - (b) the landlord must immediately give the tenant a receipt for the bond, and the receipt must comply with section 19(1)(a); and
  - (c) the landlord must refund the bond to the tenant when the tenancy terminates.
- (2) Despite subsection (1)(c), the landlord may retain out of a bond—
  - (a) any unpaid rent owing under the tenancy; and
  - (b) any other amount owing by the tenant to the landlord, such as (without limitation) costs associated with repairing damage attributable to the tenant, replacing lost keys, reimbursement for services provided by the landlord, or unpaid gas, electricity, water, or telephone charges.
- (3) If the landlord does not refund the bond, or withholds more of the bond than the tenant considers is justified, the tenant may apply to the Tribunal for an order.

Section 66D: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**66E Outgoings**

- (1) The landlord is responsible for all outgoings in respect of the boarding house that are incurred—
  - (a) whether or not the boarding house is occupied; or
  - (b) for common facilities; or
  - (c) in respect of rooms that are occupied by more than 1 tenant.
- (2) Without limiting the generality of subsection (1), the landlord is responsible for the cost of—

- (a) the general rate (within the meaning of section 13 of the Local Government (Rating) Act 2002) payable in respect of the boarding house; and
  - (b) insurance premiums payable in respect of the boarding house.
- (3) A tenant is responsible for all outgoing payments that are exclusively attributable to the tenant's occupation of a room that is exclusively occupied by the tenant.
- (4) Without limiting the generality of subsection (3), the tenant is responsible for the following charges, incurred during the tenancy, in respect of the premises:
- (a) electricity and gas supplied to the tenant's boarding room, if the supply is separately metered for that room;
  - (b) telephone and Internet connected to the tenant's boarding room.
- (5) If the landlord provides services to a tenant, and payment for those services is not included in the rent, the landlord must provide the tenant each week with an itemised account of the services provided and the amount payable by the tenant.

Compare: Residential Tenancies Act 1997 ss 108, 109 (Vic)

Section 66E: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **66F Tenancy not assignable by tenant**

A boarding house tenancy is not assignable by a tenant.

Compare: Residential Tenancies Act 1997 s 93 (Vic)

Section 66F: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### *Rights and obligations of landlords and tenants*

Heading: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **66G Quiet enjoyment**

- (1) Every tenant of a boarding house is entitled to the quiet enjoyment of the premises, without interruption by the landlord or another tenant of the boarding house.

- (2) The landlord must not cause or permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant.
- (3) The tenant must not cause or permit any interference with the reasonable peace, comfort, or privacy of any other tenant on the premises.
- (4) Contravention of subsection (2) or (3) in circumstances that amount to harassment of a tenant is declared to be an unlawful act.

Compare: Residential Tenancies Act 1997 ss 113, 122 (Vic)

Section 66G: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **66H Landlord's obligations at start of tenancy**

- (1) When a tenant enters into a boarding house tenancy agreement, the landlord must give the tenant—
  - (a) a copy of the current house rules; and
  - (b) if services are or may be provided by the landlord that are not covered by the rent, a list of the services and their cost.
- (2) When a tenant first takes occupation of a boarding room under a boarding house tenancy, the landlord must ensure that—
  - (a) the tenant has vacant possession of the room or, if the room is shared, of the tenant's sleeping quarters in the room; and
  - (b) the room is in a reasonable state of cleanliness; and
  - (c) there is no legal impediment to the tenant's occupation of the room.

Compare: Residential Tenancies Act 1997 s 109 (Vic)

Section 66H: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **66I Landlord's ongoing obligations**

- (1) The landlord of a boarding house must, at all times,—
  - (a) ensure that the facilities of the premises are in a reasonable state of cleanliness; and
  - (b) ensure that the premises are in a reasonable state of repair, having regard to the age and character of the premises and the period during which the premises are

- likely to remain habitable and available for residential purposes; and
- (c) comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises; and
  - (d) ensure that there are sufficient locks or similar devices to ensure that the premises are reasonably secure; and
  - (e) ensure that the tenant has access at all times to his or her room and to toilet and bathroom facilities in the premises; and
  - (f) ensure that the tenant has access at all reasonable hours to the other facilities in the premises; and
  - (g) ensure that copies of the house rules and fire evacuation procedures are on display in the premises at all times; and
  - (h) take all reasonable steps to ensure that the house rules are observed, and to enforce them in a fair and consistent manner.
- (2) Subsection (1) applies even if the tenant has notice, at the time when the tenancy agreement is entered into, of the state of the premises.
- (3) The obligations in subsection (1) are in addition to the obligation in section 66G(2).
- (4) Failure by the landlord to comply with any of paragraphs (a) to (c) of subsection (1) is declared to be an unlawful act.

Compare: Residential Tenancies Act 1997 ss 120–124, 127(2) (Vic)

Section 66I: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **66J Other obligations of landlord**

- (1) The landlord must not interfere with the supply of gas, electricity, water, telephone services, or other services to the premises, unless the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out.
- (2) The landlord must immediately tell the tenant if he or she puts the premises on the market and, if the premises are on the market, the landlord must advise any prospective tenant of that fact.

- (3) Before changing any lock or similar device, the landlord must tell every tenant of the boarding house who will be affected about the change.
- (4) Failure by the landlord to comply with subsection (1) or (2) is declared to be an unlawful act.

Section 66J: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**66K Obligations of tenant**

- (1) The tenant of a boarding house must—
  - (a) pay the rent when it is payable under the tenancy agreement; and
  - (b) ensure that the tenant's boarding room is occupied principally for residential purposes; and
  - (c) keep the tenant's room reasonably clean and reasonably tidy, and in a condition that does not create a health or safety hazard; and
  - (d) notify the landlord, as soon as possible after discovery, of any damage to the premises or of the need for any repairs; and
  - (e) observe the house rules; and
  - (f) compensate the landlord for any damage done by the tenant, or by any of his or her visitors to the premises, other than damage caused by general wear and tear.
- (2) The tenant of a boarding house must not—
  - (a) intentionally or carelessly damage, or permit any other person to damage, the premises; or
  - (b) cause or permit any interference with, or render inoperative, any means of escape from fire within the meaning of the Building Act 2004; or
  - (c) use the tenant's boarding room, or permit the room to be used, for an unlawful purpose; or
  - (d) cause or permit any interference with the reasonable peace, comfort, or privacy of any person residing in the neighbourhood; or
  - (e) affix any fixture to the premises, or make any renovation, alteration, or addition of or to the premises, without the prior written consent of the landlord; or

- (f) alter, add to, or remove from the premises any lock or similar device; or
  - (g) keep a pet on the premises without the permission of the landlord.
- (3) The obligations in this section are in addition to the obligation in section 66G(3).
- (4) The following are declared to be unlawful acts:
- (a) a contravention of subsection (2)(b):
  - (b) a contravention of subsection (2)(c):
  - (c) a contravention of subsection (2)(d) in circumstances that amount to harassment of a neighbour of the tenant.

Section 66K: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **66L Tenant's liability for damage caused by others**

- (1) The tenant of a boarding house is responsible for anything done or omitted to be done by any person who is on the premises with the tenant's permission if the act or omission would have constituted a breach of the tenancy agreement had it been the act or omission of the tenant.
- (2) Any damage done to a tenant's boarding room is presumed to have been caused by the tenant, unless the tenant proves otherwise or is not the only tenant of that room.
- (3) For the purposes of subsection (2), a person who enters the tenant's boarding room is presumed to be on the premises with the tenant's permission, unless the tenant proves otherwise or is not the only tenant of that room.

Section 66L: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **66M Tenant's obligations at end of tenancy**

On the termination of a tenancy, the tenant of a boarding house must—

- (a) quit the premises; and
- (b) remove all his or her goods from the premises; and
- (c) leave the tenant's boarding room in a reasonably clean and reasonably tidy condition, and remove all rubbish from the room; and

- (d) return to the landlord all keys, security or pass cards, and other such devices provided by the landlord for the use of the tenant; and
- (e) leave in or at the premises all other chattels provided by the landlord for the use of tenants of the boarding house.

Section 66M: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **66N Mitigation of damage or loss**

If a landlord or tenant breaches any provision of the tenancy agreement, the other party must take all reasonable steps to limit the damage or loss arising from the breach, in accordance with the rules of law relating to mitigation of loss or damage upon breach of contract.

Section 66N: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### *House rules*

Heading: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **66O Landlord may make house rules**

- (1) The landlord of a boarding house may make house rules relating to—
  - (a) the use and enjoyment of the premises; and
  - (b) the provision of services.
- (2) No house rule may—
  - (a) be inconsistent with this Act; or
  - (b) require or purport to permit anything that is or would be illegal and, in particular, must not—
    - (i) require or permit any form of discrimination in contravention of the Human Rights Act 1993; or
    - (ii) purport to permit anything that would breach the Privacy Act 1993.
- (3) The landlord may at any time change the house rules, but a new house rule does not come into effect until the landlord has given each tenant of the boarding house at least 7 days' written notice of the new house rule.

Compare: Residential Tenancies Act 1997 ss 126, 127 (Vic)

Section 66O: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**66P What tenant may do if he or she objects to house rules**

- (1) A tenant may apply to the Tribunal for an order declaring a house rule to be unlawful on the grounds that it breaches section 66O(2).
- (2) Subsection (1) applies even if, when the tenancy was entered into, the tenant had notice of the relevant house rule.
- (3) The Tribunal may, on the application of a tenant, make any of the following determinations in relation to a house rule:
  - (a) require the landlord to apply a house rule in a particular manner;
  - (b) vary the rule;
  - (c) set the rule aside.
- (4) A landlord commits an unlawful act if he or she, in breach of an order of the Tribunal made under this section,—
  - (a) adopts or maintains a house rule that has been declared unlawful; or
  - (b) refuses to apply a house rule in the manner ordered by the Tribunal; or
  - (c) does not give effect to a house rule as varied by the Tribunal; or
  - (d) purports to give effect to a house rule that has been set aside by the Tribunal.

Compare: Residential Tenancies Act 1997 s 128 (Vic)

Section 66P: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

*Landlord's right of entry*

Heading: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**66Q Landlord has right to enter premises at any time**

- (1) The landlord of a boarding house may enter the boarding house at any time.
- (2) The landlord must not use the facilities of the boarding house for his or her own domestic purposes unless the landlord resides at the boarding house.

Section 66Q: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**66R Landlord's right to enter boarding room is limited**

- (1) The landlord of a boarding house may enter a boarding room that is currently let to a tenant only in the following circumstances:
  - (a) with the consent of the tenant (or, if the room is let to more than 1 tenant, with the consent of any tenant of the room) freely given at, or immediately before, the time of entry:
  - (b) the landlord believes on reasonable grounds that there is an emergency and that immediate entry is necessary to save life or property:
  - (c) the landlord believes on reasonable grounds that there is a serious risk to life or property and that immediate entry is necessary to reduce or eliminate the risk:
  - (d) services are provided under the tenancy agreement and it is necessary to enter the room in order to provide them, but, in this case, the entry must be in accordance with any conditions specified in the tenancy agreement or the house rules:
  - (e) the Tribunal has ordered that the landlord may enter the room.
- (2) The landlord may also enter the room of a tenant if the landlord—
  - (a) gives the tenant (or, if the room is let to more than 1 tenant, any tenant of the room), at least 24 hours before the entry, a notice of entry that complies with section 66S; and
  - (b) enters the room only for the purpose set out in the notice of entry (which must be one of the purposes set out in section 66S(1)); and
  - (c) enters the room between 8 am and 6 pm.
- (3) A landlord entering a room under this section—
  - (a) must do so in a reasonable manner; and
  - (b) must not stay in the room longer than is necessary to achieve the purpose of the entry; and

- (c) must not interfere with the tenant's property unless it is necessary for the purpose of the entry.

Compare: Residential Tenancies Act 1997 ss 136, 138 (Vic)

Section 66R: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **66S Notice of entry**

- (1) The purposes for which a landlord may enter a boarding room under a notice of entry are—
  - (a) to show the room to a prospective tenant;
  - (b) to show the room to a prospective buyer or lender, or to a registered valuer, real estate agent, or an expert engaged in appraising or evaluating the boarding house, if the boarding house is to be sold or used as security;
  - (c) where entry to the room is necessary to enable the landlord to fulfil his or her obligations under this Act;
  - (d) where the landlord has reasonable grounds to believe that a tenant of the room has failed to comply with his or her obligations as a tenant under this Act;
  - (e) the landlord wishes to confirm whether or not a tenant of the room has abandoned the tenancy;
  - (f) the landlord wishes to inspect the room and no entry for that purpose has been made within the last 4 weeks;
  - (g) to inspect work that the landlord has required the tenant to carry out or that the tenant has agreed to carry out.
- (2) The tenant may be notified of the proposed entry orally or in writing.
- (3) The notice must—
  - (a) state the purpose of the entry, which must be one of the purposes listed in subsection (1); and
  - (b) identify the person or persons who will enter the room; and
  - (c) state the date on which entry will be made and the approximate time of entry.
- (4) If the notice is in writing, it must be served on the tenant by—
  - (a) giving it to the tenant in person; or
  - (b) putting it on the door of the tenant's room; or

- (c) putting it inside the tenant's room (for example, by sliding it under the door).

Compare: Residential Tenancies Act 1997 ss 137, 139 (Vic)

Section 66S: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**66T Consequence of abuse, or refusal, of right of entry**

- (1) The following are unlawful acts:
  - (a) entry into a tenant's room by a landlord otherwise than in accordance with section 66R:
  - (b) the use or threat of force by the landlord to enter or attempt to enter a tenant's room (other than as provided for in section 66R(1)(b) or (c)):
  - (c) failure by a tenant of a boarding room (or any person occupying the tenant's room with the tenant's permission) to permit the entry by the landlord into the tenant's room when the person entering is exercising a right of entry in accordance with section 66R.
- (2) A landlord who uses or threatens to use force to gain entry into a tenant's room in breach of subsection (1)(b) commits an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000.
- (3) If a landlord enters a tenant's room under section 66R(2), but does not comply with sections 66R(3) and 66S, the tenant may apply to the Tribunal for an order prohibiting the landlord from exercising the right to enter under section 66R(2) for a period specified in the order.
- (4) If a landlord damages any property of a tenant while in the tenant's room, the tenant may apply to the Tribunal for compensation for the damage.

Compare: Residential Tenancies Act 1997 ss 140, 141 (Vic)

Section 66T: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

*Termination*

Heading: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**66U Termination of tenancy by landlord**

- (1) The landlord of a boarding house may terminate a boarding house tenancy—
  - (a) immediately, if the tenant has—
    - (i) caused, or threatened to cause, serious damage to the premises; or
    - (ii) endangered, or threatened to endanger, people or property; or
    - (iii) caused, or threatened to cause, serious disruption to other tenants; or
  - (b) on 48 hours' notice, if—
    - (i) the landlord has, by written notice to the tenant, required the tenant to pay any rent in arrears within a stated period of not less than 10 days, commencing on the day the notice is given, and the tenant fails to pay the rent in arrears within the stated period; or
    - (ii) the tenant is using the premises for an illegal purpose; or
    - (iii) the landlord believes, having complied with section 66X, that the tenant has abandoned the room; or
  - (c) on 14 days' notice, if the tenancy is also a service tenancy, in which case section 53 applies; or
  - (d) on 28 days' notice, if no reason is given.
- (2) A notice of termination given by a landlord to a tenant of a boarding house must—
  - (a) be in writing; and
  - (b) state the date on which the notice is given; and
  - (c) state the date on which the termination takes effect; and
  - (d) state the reason for the termination (unless 28 days' notice is given, in which case no reason need be given); and
  - (e) state the name of the tenant; and
  - (f) state the name, contact address, and telephone number of the landlord or his or her agent.
- (3) Subsections (4) to (9) of section 51 apply, with all necessary modifications, to a notice of termination given by the landlord of a boarding house.

- (4) To avoid doubt, section 54 (which provides that the Tribunal may order that notice by a landlord is of no effect in certain circumstances) applies to boarding house tenancies.

Section 66U: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**66V When tenant may terminate tenancy**

- (1) A tenant under a boarding house tenancy may terminate the tenancy by giving at least 48 hours' notice to the landlord.
- (2) A tenant need not give notice in writing.
- (3) If a boarding house tenancy is also a service tenancy, the requirement in section 53(1) that a tenant give not less than 14 days' notice does not apply.

Section 66V: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**66W Termination of tenancy on death of sole tenant**

A boarding house tenancy terminates 48 hours after the death of a sole tenant under the tenancy.

Section 66W: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

*Abandonment*

Heading: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**66X Abandonment by tenant**

- (1) If the tenant of a boarding house is in arrear with the rent, and if the landlord has reason to believe that the tenant has abandoned the premises, the landlord—
- (a) may put a notice on the door of the tenant's boarding room advising the tenant that the landlord will enter the room 24 hours later to confirm whether or not the tenant has abandoned the tenancy; and
- (b) must make all reasonable efforts to contact the contact person (if any) identified in the tenant's tenancy agreement.
- (2) The landlord must not enter the room until at least 24 hours after putting the notice on the door.

- (3) If, after inspecting the room and making contact (if possible) with the tenant's contact person, the landlord considers, on reasonable grounds, that the tenant has abandoned the room, the landlord may terminate the tenancy by putting a notice of termination that complies with subsection (4) and section 66S(1) on the door of the tenant's room.
- (4) The notice of termination must specify the date and time on which the tenancy terminates, which must be a time no sooner than 48 hours after the notice is put on the door.
- (5) It is declared that a tenant commits an unlawful act if, without reasonable excuse, he or she abandons the premises when the rent is in arrear.

Section 66X: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **66Y Possession orders**

- (1) A landlord may apply to the Tribunal for a possession order if—
  - (a) the landlord has given the tenant notice under section 66U and the tenant has not quit the premises within the period specified in the notice; or
  - (b) the tenant has given the landlord notice under section 66V and the tenant has not quit the premises within the period specified by the tenant.
- (2) If the Tribunal is satisfied that the notice of termination was properly given and has not been withdrawn, it must make an order granting possession of the premises to the landlord.

Section 66Y: inserted, on 1 October 2010, by section 49 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **Part 3 The Tenancy Tribunal**

#### *Constitution and administration*

#### **67 Constitution of Tribunal**

- (1) For the purposes of this Act there is hereby constituted a tribunal, to be called the Tenancy Tribunal.
- (2) The Tribunal shall consist of—

- (a) one person, being a person who has held a required qualification for at least 5 years, who shall be appointed to be the Principal Tenancy Adjudicator:
  - (b) *[Repealed]*
  - (c) such number of other persons as may be required to ensure the efficient and expeditious exercise of the jurisdiction of the Tribunal throughout New Zealand, who shall be appointed to be Tenancy Adjudicators.
- (2A) One Tenancy Adjudicator, being a person who has held a required qualification for at least 5 years, may be appointed to be the Deputy Principal Tenancy Adjudicator.
- (3) Every Tenancy Adjudicator shall be appointed by the Governor-General on the joint recommendation of the Minister of Justice and the Minister.
- (4) *[Repealed]*
- (5) No person shall be eligible for appointment to the Tribunal unless that person—
- (a) has a required qualification; or
  - (b) is, in the opinion of the Minister of Justice and the Minister, otherwise capable by reason of special knowledge or experience of performing and exercising the duties, functions, and powers of a Tenancy Adjudicator.
- (6) In recommending persons for appointment to the Tribunal under subsection (2)(c), the Minister of Justice and the Minister shall ensure, so far as practicable, that—
- (a) *[Repealed]*
  - (b) there will be sufficient Tenancy Adjudicators who have a required qualification to ensure the efficient and expeditious dispatch of those cases that are directed by the Principal Tenancy Adjudicator, under section 84(3), to be heard and determined by a Tenancy Adjudicator who has a required qualification, whether sitting alone or with any other Tenancy Adjudicator.
- (7) The office of Tenancy Adjudicator shall not be held in conjunction with any office or employment in the Public Service, nor with any other office or employment that, in the opinion of the Minister of Justice and the Minister, is inconsistent with the office of Tenancy Adjudicator.

- (8) The duties, functions, and powers of the Tribunal shall not be affected by any vacancy in its membership.
- (9) In this section, the term a **required qualification** means—
- (a) a practising certificate as a barrister or solicitor, or as both a barrister and solicitor, of the High Court of New Zealand; or
  - (b) an equivalent qualification issued or recognised by the appropriate authority in any Commonwealth country, or in any other common law country or state.

Section 67(2)(b): repealed, on 1 May 1996, by section 28(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 67(2A): inserted, on 1 May 1996, by section 28(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 67(3): substituted, on 1 May 1996, by section 28(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 67(3): amended, on 1 October 2010, by section 50(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 67(4): repealed, on 1 October 2010, by section 50(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 67(5)(b): amended, on 1 October 2010, by section 50(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 67(5)(b): amended, on 1 May 1996, by section 28(3) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 67(6): amended, on 1 October 2010, by section 50(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 67(6): amended, on 1 May 1996, by section 28(4) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 67(6)(a): repealed, on 1 October 2010, by section 50(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 67(7): amended, on 1 October 2010, by section 50(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 67(7): amended, on 1 May 1996, by section 28(5) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

## **68 Term of office of Tenancy Adjudicators**

- (1) Every Tenancy Adjudicator shall be appointed for a term not exceeding 3 years commencing on the date of the appointment or on such other date as may be specified in the instrument of appointment.

- (2) *[Repealed]*
- (3) Any Tenancy Adjudicator may at any time be removed from office by the Governor-General for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.
- (4) Any Tenancy Adjudicator may at any time resign by writing addressed to the Minister of Justice.
- (5) Where the term of office of any Tenancy Adjudicator expires, that Adjudicator shall, unless sooner vacating office under subsection (3) or subsection (4), continue in office until—
- (a) that person is reappointed; or
  - (b) a successor to that person is appointed; or
  - (c) that person is informed in writing by the Minister of Justice and the Minister that that person is not to be reappointed and that a successor to that person is not to be appointed.
- (6) Every person who was a Tenancy Adjudicator shall, notwithstanding the expiry of that Tenancy Adjudicator's term of office or that Tenancy Adjudicator's retirement or resignation from office, be deemed to continue to be a Tenancy Adjudicator for the purpose of finally disposing of any matter that was still before the Tribunal on the date of expiry of the term of office, or the effective date of the retirement or the resignation, of that Tenancy Adjudicator.

Section 68(2): repealed, on 1 October 2010, by section 51(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 68(3): amended, on 1 January 2002, by section 70(1) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 68(5): substituted, on 1 May 1996, by section 29 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 68(5)(c): amended, on 1 October 2010, by section 51(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **69 Remuneration of Tenancy Adjudicators**

- (1) There shall be paid to the Principal Tenancy Adjudicator and the Deputy Principal Tenancy Adjudicator remuneration by way of salary, fees, or otherwise, and allowances and expenses, at such rate as the Remuneration Authority may from

time to time determine in accordance with the Remuneration Authority Act 1977.

- (2) There shall be paid to each Tenancy Adjudicator (other than the Principal Tenancy Adjudicator and the Deputy Principal Tenancy Adjudicator) remuneration by way of salary, fees, or otherwise, and allowances and expenses, at such rate as the Minister of Finance, from time to time determines by written instrument, and different forms of remuneration and different rates may be so determined for different classes of Tenancy Adjudicators.
- (3) The remuneration of a Tenancy Adjudicator shall not be diminished during the continuance of the Tenancy Adjudicator's appointment.
- (4) Any determination under subsection (2), and any provision of any such determination, may be made so as to come into force on a date to be specified in that behalf in the determination, being the date of the making of the determination or any other date, whether before or after the date of the making of the determination.
- (5) Every such determination, and every provision of any such determination, in respect of which no date is specified under subsection (4) shall come into force on the date of the making of the determination.

Section 69(1): amended, on 1 April 2003, by section 4(1) of the Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54).

## **70 Tenancy Adjudicators to be protected**

Every Tenancy Adjudicator, in the performance of the Tenancy Adjudicator's duties under this Act, shall have and enjoy the same protection as Justices of the Peace acting in their criminal jurisdiction have and enjoy under Part 7 of the Summary Proceedings Act 1957.

## **71 Conduct of Tribunal and stationing of Tenancy Adjudicators**

- (1) The Principal Tenancy Adjudicator shall be responsible for ensuring the orderly and expeditious discharge of the business of the Tribunal throughout New Zealand, and accordingly may, subject to subsection (2) and to such consultation with the

other Tenancy Adjudicators as is appropriate and practicable, give all such directions as are contemplated by the succeeding provisions of this section.

- (2) Sittings of the Tribunal must be held, as and when necessary for the dispatch of its business, at the places that the chief executive directs.
- (3) Each Tenancy Adjudicator shall be stationed at, and shall exercise the jurisdiction of the Tribunal in, such place or places as the Principal Tenancy Adjudicator may from time to time direct.
- (4) Notwithstanding anything in subsections (2) and (3), the fact that a Tenancy Adjudicator sits in any particular place shall be conclusive evidence of that Tenancy Adjudicator's authority to do so, and no exercise of any jurisdiction or power by any Tenancy Adjudicator shall be questioned on the ground that the Tenancy Adjudicator was not stationed at, or authorised to exercise the jurisdiction of the Tribunal in, the place where the Tenancy Adjudicator exercised the jurisdiction or power.
- (5) Sittings of the Tribunal for the dispatch of its business in any particular place shall, subject to any directions by the Principal Tenancy Adjudicator, be held on such days and at such times as may be appointed by the Tenancy Adjudicator, or one of the Tenancy Adjudicators, stationed at, and authorised to exercise the jurisdiction of the Tribunal in, that place.

Section 71(2): substituted, on 1 October 2010, by section 52 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **72 Registrars**

- (1) For each office of the Tribunal, there is a Registrar, who is the Registrar of the nearest District Court or any other officer of the Ministry of Justice that the chief executive of the Ministry of Justice designates for the purpose.
- (2) It is the responsibility of each Registrar—
  - (a) to arrange, in accordance with the instructions of the chief executive of the Ministry of Justice, for the provision of any secretarial and administrative services that may be necessary for the efficient and expeditious exercise of the Tribunal's jurisdiction at the place for which the Registrar is appointed; and

- (b) to ensure that adequate arrangements are made, in consultation with the chief executive, for the filing and processing of all applications and other documents required or authorised to be filed under this Act in the office of the Tribunal at that place; and
- (c) to arrange fixtures for cases to be dealt with by the Tribunal at that place; and
- (d) to carry out, in respect of the exercise of the Tribunal's jurisdiction at that place, the duties customarily carried out by a registrar of a judicial body.

Section 72: substituted, on 1 October 2010, by section 53 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **73 Seal of Tribunal**

- (1) The Tribunal shall have, in the custody of each Registrar, a seal which shall be the seal of the Tribunal and shall be used for sealing documents that require to be sealed, and any other document that any Tenancy Adjudicator elects to seal.
- (2) The form of the seal shall be such as the chief executive of the Ministry of Justice from time to time determines.
- (3) The seal of the Tribunal shall be judicially noticed by all courts and for all purposes.

Section 73(2): amended, on 1 October 2010, by section 54 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 73(2): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

### **74 Records of Tribunal**

- (1) Every Registrar shall be responsible for ensuring the safe custody of the records and papers of the Tribunal for the time being in the Registrar's possession or under the Registrar's control.
- (2) Except where the Tribunal otherwise orders under section 95(3), the records and papers of the Tribunal shall be available for public inspection, on payment of the prescribed fee (if any), at all reasonable times.
- (3) Any person may, on application to a Registrar and on payment of the prescribed fee (if any), require that Registrar to supply to that person a true copy of any record or paper of the Tribunal

for the time being in the custody or under the control of that Registrar and available for public inspection.

- (4) A certificate, given under the hand of a Tenancy Adjudicator or of any Registrar and sealed with the seal of the Tribunal, to the effect that any such copy is a true copy of the record or paper of the Tribunal to which it relates shall, in the absence of proof to the contrary, be sufficient evidence that it is a true copy of that record or paper.

## **75 Offices and Tenancy Officers**

*[Repealed]*

Section 75: repealed, on 1 October 2010, by section 55 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **76 Tenancy Mediators**

- (1) There shall from time to time be appointed under the State Sector Act 1988 such number of Tenancy Mediators as may be required for the purposes of this Act.
- (2) Every Tenancy Mediator appointed pursuant to subsection (1) shall be an officer of the department.
- (3) Without limiting subsection (1), the Minister must appoint as Tenancy Mediators sufficient persons who are not officers or employees of any of the State services to act in cases to which the Crown or any instrument of the Crown or the department is a party, and in any other cases that may from time to time be required.
- (4) *[Repealed]*
- (5) Tenancy Mediators shall have the following duties, functions, and powers:
- (a) where an application has been made for the exercise of the Tribunal's jurisdiction in respect of any dispute, to offer their services to the parties to the dispute and to assist the parties in bringing about a settlement:
  - (b) in giving such assistance, to inquire fully into any such dispute and all matters affecting its merits, and to make such suggestions and recommendations and do all such things as they think right and proper for inducing the parties to come to a fair and amicable settlement:

- (c) to carry out, in respect of disputes arising within the jurisdiction of the Tribunal, all such directions as the Tribunal may think fit to give:
  - (d) such other duties, functions, and powers as are conferred on Tenancy Mediators by this Act.
- (6) No Tenancy Mediator shall have power to determine any matter in dispute, whether with or without a request by the parties.
- (7) Subject to any directions of the Tribunal, no Tenancy Mediator shall have or exercise any duties, functions, or powers in respect of any dispute that is before the Tribunal.
- (8) For the purposes of subsection (7), a dispute is before the Tribunal from the time when the Registrar receives notice of the dispute until the time when the Tribunal makes a final determination in respect of the dispute.
- (9) In the performance of their duties, functions, and powers under this Act, Tenancy Mediators—
  - (a) shall be subject to the directions of, and responsible to, the Tribunal irrespective of whether or not they are officers or employees of any of the State services, provided that in all other respects Tenancy Mediators shall be subject to the terms and conditions, whether express or implied, of their employment contract or appointment; and
  - (b) shall be entitled to immunity from suit in respect of any act or matter done or omitted to be done by them in good faith.
- (10) Tenancy Mediators may perform and exercise their duties, functions, and powers at any place within New Zealand.
- (11) In respect of any Tenancy Mediator appointed under subsection (3), the following provisions shall apply:
  - (a) the appointment shall be for a term not exceeding 3 years, but any such appointee may be reappointed from time to time:
  - (b) any such appointee may be removed from office at any time by the Minister, and may at any time resign by notice addressed to the Minister:
  - (c) there shall be paid to every such appointee remuneration by way of fees, salary, or allowances and travelling al-

lowances and expenses in accordance with the Fees and Travelling Allowances Act 1951; and the provisions of that Act shall apply accordingly as if every such appointee were a member of a statutory Board within the meaning of that Act.

Section 76(1): substituted, on 1 May 1996, by section 31(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 76(2): substituted, on 1 May 1996, by section 31(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 76(2): amended, on 1 October 2010, by section 56(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 76(3): substituted, on 1 October 2010, by section 56(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 76(4): repealed, on 1 May 1996, by section 31(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 76(8): amended, on 1 October 2010, by section 56(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 76(9)(a): substituted, on 1 May 1996, by section 31(3) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 76(11)(b): amended, on 1 October 2010, by section 56(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### *Jurisdiction*

#### **77 Jurisdiction of Tribunal**

- (1) The Tribunal has, subject to the Limitation Act 1950, jurisdiction to determine in accordance with this Act any dispute that—
  - (a) exists between a landlord and a tenant or between a landlord and the guarantor of a tenant; and
  - (b) relates to any tenancy to which this Act applies or to which this Act did apply at any material time.
- (2) Without limiting the generality of subsection (1), the Tribunal shall have jurisdiction to do the following things:
  - (a) to determine whether any premises are or are not, or were or were not at any material time, residential premises to which this Act applies:
  - (ab) to determine whether any premises are or are not, or were or were not at any material time, a boarding house as defined in section 66B:

- (b) to determine whether there is or is not, or was or was not at any material time, a tenancy agreement to which this Act applies in force in respect of any residential premises, and to determine the terms of and the parties to any such agreement:
- (c) to determine whether any tenancy is or is not, or was or was not at any material time, a service tenancy:
- (d) to determine whether any rent that is, or that was at any material time, being charged in respect of any tenancy to which this Act applies does or does not or did or did not exceed the market rent for that tenancy by a substantial amount, and, where the rent does or did exceed the market rent by a substantial amount, to make such order relating to the rent as it thinks just:
- (e) where any rent is, was, or will be required wholly or partly in a form other than money, to determine in monetary terms the value of the rent so required:
- (f) to determine whether or not any notice purporting to terminate a service tenancy was or was not authorised by any of the provisions of this Act and given in the form and manner prescribed by or under this Act:
- (g) to determine whether any person is or is not entitled to possession of any premises by virtue of any provision of any tenancy agreement to which this Act applies, or by virtue of any breach by any other person of any provision of any such tenancy agreement, or on the expiry of any such tenancy agreement, and to make an order for the recovery of the premises by any person who is entitled to possession:
- (h) before the commencement of the tenancy, and on the application of either or both of the parties, to consent to the inclusion of any term in any tenancy agreement to which this Act applies, where the inclusion of that term would otherwise be contrary to any of the provisions of this Act:
- (i) during the tenancy, and on the application of both of the parties, consent to the inclusion of any term in any tenancy agreement to which this Act applies, where the inclusion of that term would otherwise be contrary to

any of the provisions of this Act, and to make an order varying the agreement accordingly:

- (j) to order that a provision of this Act shall not apply to, or in relation to, any tenancy agreement or any residential premises, or shall apply in such modified form as the Tribunal may specify in the order:
- (k) to order the tenant under any tenancy agreement to which this Act applies to pay to the landlord any sum found to be owing by the tenant to the landlord, whether by way of rent in arrear or otherwise pursuant to the tenancy agreement, and to order the landlord under any such tenancy agreement to pay to the tenant the whole or any part of any sum found to have been paid by way of rent in excess of the amount lawfully payable, or of any other sum demanded or received by the landlord in contravention of any of the provisions of this Act:
- (ka) to determine whether, and the extent to which, the guarantor of a tenant is liable to the landlord under the guarantee, and to order the guarantor to pay to the landlord any sum found to be payable under the guarantee:
- (l) to order the landlord or the tenant under any tenancy agreement to which this Act applies to do anything necessary to remedy the breach by that party of any express or implied provision of the tenancy agreement or any provision of this Act, or to do anything that that party is required to do by any such provision:
- (m) to order the landlord or the tenant under any tenancy agreement to which this Act applies to refrain from doing anything if the doing of that thing by that party would constitute a contravention or (as the case may require) a further contravention of any express or implied provision of the tenancy agreement or any provision of this Act:
- (ma) to make an order declaring a house rule of a boarding house unlawful, or requiring a landlord to apply a house rule in a particular manner, or to vary a house rule, or to set a house rule aside:

- (mb) to order the landlord to refrain from exercising the power under section 66R(2) to enter the boarding room of a tenant under a boarding house tenancy:
  - (mc) to make orders under section 62B concerning goods left on the premises on the termination of a tenancy:
  - (n) to order the landlord or the tenant under any tenancy agreement to which this Act applies to pay to the other party such sum by way of damages or compensation as the Tribunal shall assess in respect of the breach of any express or implied provision of the tenancy agreement or any provision of this Act:
  - (o) to consider and determine any complaint by any party to a tenancy agreement or by the chief executive that any person has committed an unlawful act, and, where it finds such a complaint to be proved, to order the payment of such sum in the nature of exemplary damages, not exceeding the maximum prescribed by this Act, as the Tribunal may think just:
  - (p) to approve the assignment by the tenant of the rights of the tenant under any tenancy agreement to which this Act applies, or the subletting by the tenant under any such tenancy agreement of the whole or any part of the premises, where the Tribunal finds that the landlord has withheld consent unreasonably and the assignment or subletting is not absolutely prohibited by the tenancy agreement:
  - (q) to make orders of a consequential or ancillary nature necessary to exercise or perfect the exercise of any of its jurisdiction.
- (3) The Tribunal shall have jurisdiction to make an order for the recovery by any person of any residential premises to which this Act applies, or the eviction of any person from any such premises, regardless of the value of the premises or the amount of any rent payable for the premises.
- (4) In respect of tenancy agreements, the Tribunal has jurisdiction to exercise, and may exercise, all the powers conferred on a court by section 264 of the Property Law Act 2007 (which relates to the granting of relief to the tenant against the land-

lord's refusal to enter into a renewal of a tenancy agreement or to sell the landlord's interest in the premises to the tenant).

- (4A) The Tribunal does not have jurisdiction to determine a dispute so far as it raises a question as to the landlord's conduct in the landlord's capacity as a provider of health or disability services and the conduct is of a kind about which a complaint may be made under the Health and Disability Commissioner Act 1994.
- (5) Despite subsection (1), the Tribunal does not have jurisdiction to require any party to pay any sum, or to do any work to a value, or otherwise to incur any expenditure, in excess of \$50,000.
- (6) Subsection (5) shall not prevent a party from abandoning so much of a claim as exceeds \$50,000 in order to bring the claim within the jurisdiction of the Tribunal; and, in any such case, an order of the Tribunal under this Act in relation to the claim shall operate to discharge from liability in respect of the amount so abandoned any person against whom the claim and the subsequent order is made.
- (7) Subsection (5) does not affect a claim relating to a tenancy that is for a balance of not more than \$50,000 that results from a set-off or any counterclaim in respect of the same tenancy, if the set-off or counterclaim is admitted by the claimant in the notice of claim.
- (8) A cause of action shall not be divided into 2 or more claims for the purpose of bringing it within the jurisdiction of the Tribunal.

Section 77(1): substituted, on 1 October 2010, by section 57(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 77(2)(ab): inserted, on 1 October 2010, by section 57(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 77(2)(ka): inserted, on 1 October 2010, by section 57(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 77(2)(ma): inserted, on 1 October 2010, by section 57(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 77(2)(mb): inserted, on 1 October 2010, by section 57(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 77(2)(mc): inserted, on 1 October 2010, by section 57(4) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 77(2)(o): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 77(2)(p): amended, on 1 October 2010, by section 57(5) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 77(4): substituted, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 77(4A): inserted, on 1 October 2010, by section 57(6) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 77(5): substituted, on 1 October 2010, by section 57(7) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 77(6): amended, on 1 October 2010, by section 57(8) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 77(7): substituted, on 1 October 2010, by section 57(9) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **78 Orders of Tribunal**

- (1) Without limiting the generality of section 77 or the nature or extent of orders that the Tribunal may make in the exercise of its jurisdiction, the Tribunal may, in respect of any claim within its jurisdiction, make one or more of the following orders:
- (a) an order in the nature of a declaration, whether as to the status for the purposes of this Act of any premises or of any agreement or purported agreement, or as to the rights or obligations of any party, or otherwise:
  - (b) an order that a party yield possession of any premises to any other party:
  - (c) an order that a party deliver any specific chattels to any other party:
  - (d) an order that a party pay money to any other party:
  - (e) a work order:
  - (f) where it appears to the Tribunal that an agreement between the parties, or any term of any such agreement, is harsh or unconscionable, or that any power conferred by an agreement between them has been exercised in a harsh or unconscionable manner, an order varying the agreement, or setting it aside (either wholly or in part):
  - (g) where it appears to the Tribunal that an agreement between the parties has been induced by fraud, misrepresentation, or mistake, or that any writing purporting to express the agreement between the parties does not accord with their true agreement, an order varying, or set-

ting aside, the agreement or the writing (either wholly or in part):

- (h) any other order that the High Court or a District Court may make under any enactment or rule of law relating to contracts:
  - (i) an order dismissing an application.
- (1A) A person with an interest in premises that are not subject to a tenancy agreement may apply, without notice, to the Tribunal for an order under subsection (1)(a) declaring the status of the premises for the purposes of this Act.
- (1B) An order made on an application under subsection (1A) is binding on all parties to any subsequent proceedings before the Tribunal, but the Tribunal may, on application made in any such proceedings, rescind the order if satisfied that the order is wrong or, because of a change in circumstances, no longer applicable.
- (2) Where the Tribunal makes a work order against a party, it—
- (a) shall, where the order is made otherwise than by consent; and
  - (b) may, where the order is made by consent,—
- at the same time make an order under subsection (1)(d) to be complied with as an alternative to compliance with the work order.
- (2A) Where the Tribunal makes an order under any of paragraphs (b), (c), or (h) of subsection (1), the Tribunal may at the same time make an order under subsection (1)(d) to be complied with as an alternative to compliance with the first-mentioned order.
- (2B) Where the Tribunal makes any 2 orders under subsection (2) or subsection (2A), it is the right of the person in whose favour the order is made to choose which order to enforce under section 107.
- (3) Any order made by the Tribunal may be unconditional or subject to such conditions (whether as to the time for, or mode of, compliance, or otherwise) as the Tribunal thinks fit to impose.

Section 78(1A): inserted, on 1 October 2010, by section 58 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 78(1B): inserted, on 1 October 2010, by section 58 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 78(2A): inserted, on 1 May 1996, by section 32 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 78(2B): inserted, on 1 May 1996, by section 32 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

## **79 Jurisdiction to make interim orders**

- (1) In respect of any matter in which the Tribunal has jurisdiction under this Act to make any final determination, the Tribunal may from time to time, on application by any party whether made ex parte or otherwise, make any interim order of a mandatory or prohibitory nature designed to preserve the position of the parties pending the final determination of the matter.
- (2) Where any such interim order is made on the ex parte application of any party, the other party may at any time apply to the Tribunal for the cancellation of that order.

## **80 Orders of Tribunal to be final**

Subject to sections 105 and 117 to 120, every order made by the Tribunal shall, unless it is expressed to be an interim order made under section 79, be final and binding on all parties to the proceedings.

## **81 Exclusion of Tribunal's jurisdiction prohibited**

- (1) A provision in any tenancy agreement to which this Act applies, or in any other agreement entered into by the parties to any such tenancy agreement, to exclude or limit—
  - (a) the jurisdiction of the Tribunal; or
  - (b) the right of any person to invoke that jurisdiction—shall be of no effect.
- (2) Without limiting the generality of subsection (1), the Tribunal shall have jurisdiction in respect of a claim notwithstanding any agreement relating to the matter that provides for—
  - (a) the submission to arbitration of any dispute or difference; or
  - (b) the making of an award upon such a submission to be a condition precedent to any cause of action accruing to a party to the agreement.

- (3) Subsection (1) does not apply where a cause of action has accrued, or is believed to have accrued, to a person and that person has agreed to the settlement or compromise of the claim based on that cause of action.

## **82 Exclusion of other jurisdictions**

- (1) Notwithstanding any other enactment or rule of law to the contrary, no court or other body shall have originating jurisdiction in respect of any matter that is within the jurisdiction of the Tribunal unless—
- (a) proceedings in respect of that matter were commenced before that court or other body before the commencement of this Act; or
  - (b) an order is made under section 83(2).
- (2) Where subsection (1)(a) applies to proceedings before a court or other body, the issues in dispute in the claim to which those proceedings relate (whether as shown in the initial claim or emerging in the course of the hearing) shall not be the subject of proceedings between the same parties before the Tribunal unless the proceedings are transferred to the Tribunal under subsection (3), or the claim before the court or other body is withdrawn, abandoned, or struck out.
- (3) In any case to which subsection (1)(a) applies, the court or other body before which the proceedings were being conducted immediately before the date of the commencement of this Act may, with the consent of each of the parties, instead of determining the matter itself, order that the proceedings be transferred to the Tribunal subject to such provision (if any) as to the payment of costs as the court or other body thinks fit.
- (4) Where proceedings are transferred to the Tribunal under subsection (3), the Tribunal may have regard to any notes of evidence transmitted to the Tribunal, and it shall not be necessary for that evidence to be given again before the Tribunal unless the Tribunal so requires.

## **83 Transfer of proceedings to District Court**

- (1) Where any proceedings have been commenced before the Tribunal that the Tribunal has no jurisdiction to hear and determine, the Tribunal may, instead of striking out the proceed-

ings, order that they be transferred to a District Court in its ordinary civil jurisdiction.

- (2) The Tribunal may order that any proceedings be transferred to a District Court in its ordinary civil jurisdiction if the Tribunal is satisfied that the proceedings would be more properly determined in that Court.
- (3) The Tribunal shall not make an order under subsection (1) or subsection (2) in respect of a claim if any agreement of a kind described in section 81(2) requires that the claim be submitted to arbitration.
- (4) Any proceedings transferred to a District Court under this section shall be deemed to have been commenced by action in that Court, and shall be dealt with by that Court accordingly.

Section 83(2): substituted, on 1 May 1996, by section 33 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

### **83A Referral of complaints to Health and Disability Commissioner**

If a dispute or part of a dispute raises a question as to the landlord's conduct in the landlord's capacity as a provider of health or disability services and the conduct is of a kind about which a complaint may be made under the Health and Disability Commissioner Act 1994, the Tribunal may—

- (a) consult with the Health and Disability Commissioner about the appropriateness of referring the dispute to the Health and Disability Commissioner; and
- (b) following that consultation, refer the dispute in whole or in part to the Health and Disability Commissioner for his or her consideration.

Section 83A: inserted, on 1 October 2010, by section 59 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **84 Jurisdiction of Tribunal generally exercisable by any Tenancy Adjudicator**

- (1) Subject to the succeeding provisions of this section, any Tenancy Adjudicator sitting alone, or any 2 or more Tenancy Adjudicators sitting together, may exercise all or any of the jurisdiction and powers of the Tribunal.

- (2) The Principal Tenancy Adjudicator may from time to time direct that any particular case or any particular class of cases shall be heard by any particular Tenancy Adjudicator or Adjudicators, or by any particular class of Tenancy Adjudicators, or by any specified number of members, of the Tribunal.
- (3) Without limiting subsection (2), the Principal Tenancy Adjudicator may direct that any particular case shall be heard by a Tenancy Adjudicator who has a qualification of a kind described in section 67(9), either sitting alone or with any other Tenancy Adjudicator or Tenancy Adjudicators, where the Principal Tenancy Adjudicator believes that the case raises or may raise important or difficult questions of law.

**85 Manner in which jurisdiction is to be exercised**

- (1) Subject to the provisions of this Act and of any regulations made under this Act, the Tribunal shall exercise its jurisdiction in a manner that is most likely to ensure the fair and expeditious resolution of disputes between landlords and tenants of residential premises to which this Act applies.
- (2) The Tribunal shall determine each dispute according to the general principles of the law relating to the matter and the substantial merits and justice of the case, but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

*Procedure*

**86 Filing of applications**

- (1) Proceedings before the Tribunal are commenced by filing an application in the approved form, with any prescribed fee, at the appropriate office of the Tribunal.
- (2) Before the chief executive approves a proposed form for the purposes of subsection (1), the chief executive must consult with the Principal Tenancy Adjudicator about the proposed form.
- (3) The chief executive must determine the appropriate office of the Tribunal for the purposes of subsection (1) by specifying geographical areas for which each office is responsible.

- (4) The chief executive may from time to time vary or replace a determination described in subsection (3).
- (5) The chief executive must publish every determination under subsection (3) and every variation or replacement under subsection (4) in the *Gazette* and on the Internet.

Section 86: substituted, on 1 October 2010, by section 60 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **87 Duties of chief executive on receipt of application**

- (1) When an application is filed in accordance with section 86, the chief executive may refer it to a Tenancy Mediator unless, in terms of any regulations made under this Act or of any directions given by the Principal Tenancy Adjudicator, the application is of a class that is to be referred directly to the Tribunal, in which case the chief executive must refer the application to the Registrar.
- (2) Despite subsection (1), if either party informs the chief executive that that party refuses to have the matter considered by a Tenancy Mediator, the chief executive must refer the application to the Registrar.

Section 87: substituted, on 1 October 2010, by section 60 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **88 Functions of Tenancy Mediators**

- (1) The primary function of a Tenancy Mediator in respect of an application referred to the Tenancy Mediator under section 87 is to attempt to bring the parties to the dispute to an agreed settlement.
- (2) Where an agreed settlement is reached, the Tenancy Mediator may, to give effect to the settlement, make any order or orders that the Tribunal could have made if the application had come before it.
- (3) If it appears to the Tenancy Mediator that it is unlikely that an agreed settlement can be reached within a reasonable time, the Tenancy Mediator—
  - (a) shall report accordingly to the chief executive who shall refer the application to the Registrar for determination by the Tribunal; and

- (b) shall, wherever practicable, after consultation with the chief executive and the Registrar, inform the parties of the date on which the Tribunal is likely to be able to hear the matter.
- (4) In any case to which subsection (3)(a) applies, the Tenancy Mediator may include in his or her report to the chief executive any statement of facts agreed to by the parties, a summary of the points settled in mediation and those still requiring determination by the Tribunal, and any comments that the Tenancy Mediator may wish to make on the conduct of the parties so far as that may be relevant to the question of costs before the Tribunal in accordance with section 102(2)(c), but shall in all respects strictly observe the provisions of sections 89 and 90.
- (5) Where a Tenancy Mediator makes any order to give effect to an agreed settlement, a copy of the order may be filed in the appropriate office of the Tribunal, and, except in a case to which subsection (6) applies, a Tenancy Adjudicator shall seal the copy of the order accordingly.
- (6) Where that Tenancy Adjudicator believes that the order made by the Tenancy Mediator is outside the powers of the Tenancy Mediator to make, the Tenancy Adjudicator shall, instead of sealing the copy of the order,—
  - (a) decline to seal the order, and direct the chief executive to refer the matter to a Tenancy Mediator for further consideration in accordance with any directions given by the Tenancy Adjudicator; or
  - (b) direct that the matter be reconsidered and determined by the Tribunal.
- (7) Where any copy of an order made by a Tenancy Mediator is sealed under this section, it shall have effect as an order of the Tribunal, and shall be enforceable accordingly.

Section 88(3)(a): amended, on 1 October 2010, by section 61(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 88(3)(b): amended, on 1 October 2010, by section 61(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 88(4): amended, on 1 October 2010, by section 61(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 88(5): amended, on 1 October 2010, by section 61(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 88(6)(a): substituted, on 1 October 2010, by section 61(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**89 Statements made in mediation to be subject to privilege**

- (1) This section applies to any oral or written statement (including a statement contained in a document) made in the course of, and for the purposes of or in connection with, the mediation by a Tenancy Mediator of any dispute.
- (2) No action in defamation shall lie against any person in respect of any statement to which this section applies.
- (3) No evidence of any statement to which this section applies shall be admissible in any proceedings before any court or tribunal, or any person acting judicially.
- (4) Nothing in subsection (3) shall apply if—
  - (a) the parties to the dispute consent to the admission of the statement; or
  - (b) the statement is otherwise admissible in any criminal proceedings and the defendant in those proceedings adduces it; or
  - (c) the statement is otherwise admissible in any criminal proceedings in which a person is charged with an offence—
    - (i) against the person; or
    - (ii) against rights of property; or
    - (iii) of threatening, conspiring, or attempting to commit an offence against the person or against rights of property,—  
being an offence arising from an act or omission occurring after the statement was made; or
  - (d) the statement is otherwise admissible in any criminal proceedings in which a person is charged with an offence arising from the making of the statement.

**90 Tenancy Mediator to observe confidentiality**

- (1) Every Tenancy Mediator commits an offence and is liable to a fine not exceeding \$1,000 who discloses to any other person any information or statement received by or made to the Tenancy Mediator in the course of, and for the purposes of or in connection with, the mediation of any dispute.

- (2) Nothing in subsection (1) shall apply if—
- (a) the person from whom the information is received or by whom the statement is made consents to the disclosure; or
  - (b) there are reasonable grounds to believe that disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property; or
  - (c) the information or statement is given in evidence pursuant to section 89(4); or
  - (d) the disclosure is reasonably required for the purpose of facilitating the mediation; or
  - (e) the disclosure is made to the Tribunal in good faith.

Section 90(1): amended, on 1 October 2010, by section 62 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 90(2)(d): amended, on 1 May 1996, by section 35 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 90(2)(e): inserted, on 1 May 1996, by section 35 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

## **91 Notice of hearing by Tribunal**

- (1) Where any application is referred to, or directed to be reconsidered and determined by, the Tribunal under section 87 or section 88, the Tribunal shall cause to be given to each party to the dispute reasonable notice of the time, place, and purpose of the hearing to be held in respect of the application.
- (2) The notice of the hearing shall be in writing, and shall include the following:
- (a) a statement of such particulars as will fairly inform the party to whom it is given of the substance of the matters to be dealt with at the hearing;
  - (b) a reference to the relevant provision of the Act or regulations under the authority of which the hearing will be held;
  - (c) a statement of where information on the procedure of the Tribunal may be obtained;
  - (d) a statement warning each party to whom the notice is given that if that party does not attend the hearing, the Tribunal may proceed to determine, dismiss, or adjourn the matter in that party's absence.

Section 91(2)(d): amended, on 1 May 1996, by section 36(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

### **91A Service on tenants following application**

- (1) If a landlord files an application within 2 months after the termination of the tenancy to which it relates, any notice or other document required to be served on the tenant in connection with the application is deemed to have been properly served on the tenant if—
  - (a) it is sent by post addressed to the tenant at the address or the Post Office box given by the tenant as an address for service in accordance with this Act or to a contact address that the tenant has supplied to the landlord in writing within the 2 months before the application; or
  - (b) it is delivered to the premises to which any address for service relates or to that contact address and either placed in the mailbox or attached to the door in a prominent position; or
  - (c) it is given to or served on the tenant personally; or
  - (d) it is given to or served on the tenant in accordance with section 136(2); or
  - (e) it is transmitted to the email address or facsimile number given by the tenant as an address for service.
- (2) If the landlord files an application more than 2 months after the termination of the tenancy to which it relates, any notice or other document required to be served on the tenant relating to the application must be given to or served on the tenant—
  - (a) personally; or
  - (b) by posting it to a contact address that the tenant has supplied to the landlord in writing within the 2 months before the application; or
  - (c) by delivering it to the place where the tenant now lives and giving it to any person appearing to be aged 16 years or older who appears to be residing at that place and who confirms that the tenant resides there; or
  - (d) by giving it to any solicitor or other agent of the tenant duly authorised by the tenant to receive service on his or her behalf.
- (3) This section overrides section 136(1) and (2).

Section 91A: inserted, on 1 October 2010, by section 63 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**91B Hearing may proceed even if party not served**

If a notice or other document that is required to be served on a party is not served in accordance with this Act, the Tribunal may nonetheless hear and determine, or dismiss or adjourn, the matter if it is satisfied that—

- (a) all reasonable efforts have been made to serve the party as required by this Act; and
- (b) the failure to serve the party as required is not due to any fault or unreasonable delay by the applicant.

Section 91B: inserted, on 1 October 2010, by section 63 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**92 Non-attendance at hearing after due notice**

- (1) Where notice of a hearing has been given to a party in accordance with section 91 and that party does not attend at the hearing, the Tribunal may hear and determine, or dismiss or adjourn, the matter in the absence of that party.
- (2) Where subsection (1) applies and neither the applicant nor the other party attends the hearing, the Tribunal may determine the matter only if it is satisfied that it has before it all the written information that it needs to make a proper determination.

Section 92(1): amended, on 1 May 1996, by section 36(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 92(2): added, on 1 October 2010, by section 64 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**93 Right of audience**

- (1) At any hearing before the Tribunal, every party shall be entitled to attend and be heard, to call evidence, and to examine, cross-examine, and re-examine witnesses.
- (2) Except as provided in the succeeding provisions of this section, no party shall be entitled to be represented at the hearing by counsel or by a representative, except where—
  - (a) the other party consents; or
  - (b) the amount in dispute exceeds \$6,000; or

- (c) the other party is, or the other party's case is being conducted by, the chief executive acting under section 124.
- (3) The Tribunal may allow any party to be represented by counsel if it considers that it would be appropriate to do so, having regard to—
  - (a) the nature and complexity of the issue involved; or
  - (b) any significant disparity between the parties affecting their ability to represent their respective cases.
- (4) Where any party to any proceedings before the Tribunal is represented by counsel, any other party to those proceedings may be represented by counsel.
- (5) The following parties may be represented by a representative who is approved by the Tribunal:
  - (a) the Crown, if the representative is an officer or employee of the Crown;
  - (b) a corporation or an unincorporated body of persons, if the representative is an officer or employee or a member of the corporation or body or holds a majority interest in it;
  - (c) a person jointly liable or entitled with another or others, if the representative is one of the persons jointly liable or entitled or, in the case of a partnership, is an employee of those persons;
  - (d) a minor, or other person under disability;
  - (e) any other person, if the Tribunal is satisfied that for sufficient cause that person is unable to appear in person or is unable to present his or her case adequately.
- (6) Where a representative of a party is proposed for the Tribunal's approval, the Tribunal shall satisfy itself that the person proposed has sufficient knowledge of the case and sufficient authority to bind the party.
- (7) The Tribunal shall not appoint under section 94(2)(a), or approve under this section, as a representative of a party a person who is or has been enrolled as a barrister and solicitor, or who, in the opinion of the Tribunal, is, or has been, regularly engaged in advocacy work before other tribunals; but this prohibition does not apply where—

- (a) the person proposed for approval is a person or one of the persons jointly liable or entitled with another or others; or
- (b) the party seeking to be represented is a company and the person proposed for approval is the majority shareholder of the company; or
- (c) the person proposed for approval is a person—
  - (i) who is managing; and
  - (ii) who was, before the proceedings were commenced before the Tribunal, managing—  
the party's affairs because of the party's absence, age, or disability.

Section 93(2)(b): amended, on 1 October 2010, by section 65 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 93(2)(c): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 93(7)(b): amended, on 1 May 1996, by section 37 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 93(7)(c): inserted, on 1 May 1996, by section 37 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

#### **94 Minors and persons under disability**

- (1) Subject to this section, a minor may be a party to, and shall be bound by, proceedings before the Tribunal as if the minor were a person of full age and capacity.
- (2) Where a minor is a party to any proceedings before the Tribunal, the Tribunal may, if it considers it would be in the interests of the minor to do so,—
  - (a) at any time appoint to represent the minor a person who is willing to do so and who is not disqualified by section 93(7), and authorise that person to control the conduct of the minor's case; or
  - (b) when approving a representative under section 93(5) or at any time thereafter, authorise that representative to control the conduct of the minor's case.
- (3) In any proceedings before the Tribunal, any manager or person appointed to administer another's affairs under the Protection of Personal and Property Rights Act 1988 shall, subject to that Act, control the conduct of the case of the person whose affairs they manage or administer.

- (4) A person who is empowered by or under this section to control the conduct of the case of another person may do all such things in the proceedings as the person so empowered could do if that person were a party to the proceedings in place of that other person.
- (5) Nothing in this section shall restrict the application of section 12 of the Minors Contracts Act 1969 to—
- (a) a settlement agreed to by or on behalf of a minor; or
  - (b) a payment made or proposed to be made by, or on behalf of, or to, or for the benefit of, a minor,—
- after proceedings have been commenced before the Tribunal.
- (6) In this section **proceedings before the Tribunal** means—
- (a) proceedings before the Tribunal or on appeal from the Tribunal; and
  - (b) a settlement agreed to in the course of any proceedings before the Tribunal or on appeal from the Tribunal; and
  - (c) proceedings under section 108 for enforcement of a work order of the Tribunal;—
- and also includes any order made in any such proceedings.

Section 94(3): substituted, on 1 May 1996, by section 38 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

## **95 Proceedings usually to be in public**

- (1) Except as provided in subsection (2), the proceedings of the Tribunal shall be conducted in public.
- (2) The Tribunal may, on the application of any party to the proceedings or on its own initiative, and after having due regard to the interests of the parties and to the public interest, order that the whole or any part of the hearing shall be held in private.
- (3) The Tribunal may, on the application of any party to the proceedings or on its own initiative, and after having due regard to the interests of the parties and to the public interest, make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings at any hearing before it (whether held in public or in private); but no such order shall prohibit the publication of any decision of the Tribunal.

- (4) Notwithstanding any order made under subsection (3), the Tribunal may permit a report or description of the proceedings or of any part of the proceedings to be included in any publication that is of a bona fide professional or technical nature.

Section 95(2): amended, on 1 October 2010, by section 66 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 95(3): amended, on 1 October 2010, by section 66 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**96 Further provisions relating to procedure generally**

- (1) The Tribunal may adjourn a hearing at any time and from time to time and place to place, upon the application of either party to the proceedings or of its own motion, and on such terms as it thinks fit.
- (2) The Tribunal may, on the application of any party to any proceedings before the Tribunal,—
- (a) extend any time limit; or
  - (b) if it is satisfied that the other party will not be prejudiced thereby, waive compliance by the applicant with any other procedural requirement,—
- prescribed by or under this Act and relating to the proceedings.
- (3) The Tribunal may extend any such time limit notwithstanding that the application for the extension is not made until after the expiration of the time appointed or fixed.
- (4) Except as expressly provided in this Act or in any regulations made under this Act, the Tribunal may regulate its own procedure in such manner as it thinks fit.
- (5) Subject to the provisions of this Act and of any regulations made under this Act, and to any directions of the Principal Tenancy Adjudicator, the Tenancy Adjudicator who is sitting in any particular case, or, where 2 or more Tenancy Adjudicators are sitting, the Tenancy Adjudicator who is presiding, may give all such directions and do all such things as are necessary or desirable for the expeditious and just hearing and determination of the case.

**97 Evidence**

- (1) The Tribunal shall not have the power to administer an oath but may require a person giving evidence at a hearing to make a statement promising to tell the truth.
- (2) Where a witness is required to make such a statement under subsection (1), a Tenancy Adjudicator or an officer of the Tribunal shall put to the witness the following questions, or words of similar effect, to which the witness shall indicate assent:  
“Do you promise to tell the truth? And do you understand that if you fail to tell the truth you will be liable to prosecution for giving false evidence?”
- (3) The Tribunal may permit a party or witness to give evidence by tendering, or tendering and reading, a written statement and, if the Tribunal so requires, stating it to be the truth.
- (4) Subject to section 89, the Tribunal may call for and receive as evidence any statement, document, information, matter, or thing that in its opinion may assist it to deal effectually with the matters before it, whether or not the same would be admissible in a court of law.
- (5) The Tribunal may in any proceedings make use of any facts that may be judicially noticed.
- (6) The Tribunal shall have power to refuse to accept any evidence or submission that is irrelevant or repetitious.
- (7) Without limiting section 101, every person appearing before the Tribunal shall have the same privileges as witnesses have in courts of law in relation to the following matters:
  - (a) the giving of any evidence and the answering of any questions:
  - (b) the giving to the Tribunal of any information or statement:
  - (c) the production to the Tribunal of any document or thing.

**98 Witness summons**

- (1) For the purposes of a hearing before the Tribunal, the Tribunal may of its own motion, and shall on the application of any party to the proceedings, issue in writing a witness summons requiring the person named in the witness summons to attend before the Tribunal and to give evidence, or to produce any

document or thing in that person's possession or under that person's control, relevant to the proceedings.

- (2) The power to issue a witness summons under subsection (1) may be exercised by the Tribunal, or by the Registrar acting by the direction, or with the authority, of the Tribunal.
- (3) A witness summons shall be served at least 5 working days before the date on which the attendance of the witness is required, unless in special circumstances the Tribunal directs otherwise.
- (4) Every witness attending a hearing of the Tribunal pursuant to a witness summons shall be entitled to a sum for that witness's travelling allowances, travelling expenses, and fees at the rate for the time being prescribed, except that, in any particular case, the Tribunal may disallow the whole or any part of that sum if it considers it just to do so.
- (5) The allowances, travelling expenses, and fees payable to a witness pursuant to subsection (4) shall be paid by such party or parties to the proceedings as the Tribunal shall order or, if the Tribunal so decides, shall be paid out of money appropriated by Parliament for the purpose.
- (6) A witness summons may be set aside by the Tribunal or by the Principal Tenancy Adjudicator if the Tribunal or the Principal Tenancy Adjudicator considers that the summons relates to documents in respect of which any person may have a claim of privilege against disclosure, or that the summons is oppressive, whether because it is too wide or too uncertain or because of lack of time for the person served with the summons to have a reasonable opportunity to comply with it, or for any other reason.
- (7) Every witness summons shall include a statement informing the person summoned of the right to apply to the Tribunal under subsection (6) to have the summons set aside on the ground that it relates to privileged documents or that compliance with it would be oppressive to that person.

**98A Other witness expenses**

- (1) The Tribunal may order that a witness attending a hearing of the Tribunal (other than a witness attending pursuant to a witness summons) shall be entitled to a sum for that witness's

travelling allowances, travelling expenses, and fees as prescribed by any rules made under section 116.

- (2) The allowances, travelling expenses, and fees payable to a witness pursuant to subsection (1) shall be paid by such party or parties to the proceedings as the Tribunal shall order or, if the Tribunal so decides, shall be met from any appropriation by Parliament for that purpose.

Section 98A: inserted, on 1 May 1996, by section 39 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

**99 Tribunal may require inquiry and report by Tenancy Mediator or suitable person**

- (1) The Tribunal may, at any stage of any proceedings before it, require a Tenancy Mediator (not being one who has acted in any mediation of the dispute to which the proceedings relate) to inquire into, and report in writing to the Tribunal upon, any matter of fact having a bearing upon the proceedings, and may give to the Tenancy Mediator all such directions as to the nature, scope, and conduct of the inquiry as the Tribunal thinks fit.
- (2) Without limiting subsection (1), where, during any proceedings before it, the Tribunal is satisfied that the parties may be brought to an agreed settlement in respect of any matter in issue with the assistance of independent mediation, the Tribunal may refer the matter in dispute to a Tenancy Mediator accordingly; and the provisions of subsections (2) to (7) of section 88, with any necessary modifications, shall apply, except that, if an agreed settlement is not reached the Tenancy Mediator shall report to the Registrar rather than to the chief executive.
- (3) The Tribunal may, instead of appointing a Tenancy Mediator under subsection (1), appoint a person who, in the opinion of the Tribunal, is suitably qualified or experienced, and on such an appointment—
- (a) the person appointed is deemed to be a Tenancy Mediator for the purpose of the appointment; and
  - (b) has, for that purpose, all the functions, duties, and powers of a Tenancy Mediator.

Section 99 heading: amended, on 1 October 2010, by section 67(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 99(2): amended, on 1 October 2010, by section 67(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 99(3): added, on 1 October 2010, by section 67(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**100 Tenancy Mediator or Tribunal may require valuer's report in certain proceedings**

- (1) A Tenancy Mediator or the Tribunal may, at any stage of any proceedings under section 25, require the chief executive to obtain and submit to the Tenancy Mediator or the Tribunal a report by a registered valuer.
- (2) In any case where the Crown or any instrument of the Crown is a party, the registered valuer shall not be an employee of the Crown.

Section 100: substituted, on 18 August 1992, by section 7 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

**101 Protection of persons appearing, etc**

- (1) All parties, counsel, representatives, and witnesses in any proceedings before the Tribunal shall have and enjoy the same privileges and immunities as they would have had if the proceedings were held in a court.
- (2) The privileges and immunities referred to in subsection (1) shall extend and apply to—
  - (a) every Tenancy Mediator in the exercise of any power or jurisdiction under any of the provisions of this Act; and
  - (b) any other person in respect of any dealings with any Tenancy Mediator.

**102 Costs**

- (1) Except in a case to which any of subsections (2), (4), or (5) apply, the Tribunal shall have no power to award costs to or against any party to proceedings before it.
- (2) The Tribunal may make an order of a kind referred to in subsection (3) in any of the following cases:

- (a) where, in the opinion of the Tribunal, the proceedings are frivolous or vexatious or ought not to have been brought:
  - (b) where any of the parties was represented by counsel:
  - (c) where, in the opinion of the Tribunal, the matter in dispute ought reasonably to have been settled before the Tenancy Mediator but that the party against whom the order is to be made refused, without reasonable excuse, to take part in proceedings before a Tenancy Mediator or acted in any such proceedings in a contemptuous or improper manner:
  - (d) where any applicant to the Tribunal, after receiving notice of the hearing, fails to attend the hearing without good cause.
- (3) In any case to which subsection (2) applies, the Tribunal may order a party to pay—
- (a) to the Crown, any one or more of the following:
    - (i) the reasonable costs of the Tribunal hearing:
    - (ii) the fees and expenses of any witness that have been paid or are payable by the Crown:
    - (iii) the reasonable fees and expenses of any Tenancy Mediator in relation to the preparation of a report under section 99:
    - (iv) the reasonable fees and expenses of any valuer in relation to the preparation of a report under section 100; or
  - (b) to another party, the reasonable costs of that other party in connection with the proceedings.
- (4) If the applicant—
- (a) has been wholly successful in his or her claim, the Tribunal must order that the respondent pay the applicant the filing fee paid for the application:
  - (b) has been partly successful in his or her claim, the Tribunal may order that the respondent pay the applicant the filing fee paid for the application.
- (5) The Tribunal may make an order to give effect, in whole or in part, to a provision in a tenancy agreement requiring one party (the **debtor**) to reimburse the other party (the **creditor**) for any reasonable expenses or commissions paid or incurred by the

creditor in recovering, or attempting to recover, any overdue payment that the debtor owes to the creditor under an order of the Tribunal.

Section 102(1): amended, on 1 October 2010, by section 68(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 102(2)(a): amended, on 1 May 1996, by section 41(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 102(2)(d): inserted, on 1 May 1996, by section 41(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 102(3)(a): substituted, on 1 May 1996, by section 41(3) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 102(4): added, on 1 October 2010, by section 68(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 102(5): added, on 1 October 2010, by section 68(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **103 Reference of questions of law to High Court**

The Tribunal may state a case for the opinion of the High Court on any question as to the jurisdiction of the Tribunal or on any question of law arising in proceedings before it; and for that purpose the Tribunal may either conclude the proceedings subject to that opinion, or adjourn the proceedings until after that opinion is given.

### **104 Decision of Tribunal**

- (1) The Tribunal shall give its final decision in any proceedings, together with its reasons for the decision, in writing.
- (2) The Tribunal shall provide both parties to the proceedings with a copy of its decision and its reasons for the decision, and with written notice of the rights of appeal (if any) against its decision, including any time limits on those rights.

### **105 Rehearings**

- (1) The Tribunal shall in all proceedings have the power to order a rehearing of the whole or any part of the proceedings on the ground that a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur.
- (2) An application for a rehearing shall be lodged with the appropriate Registrar of the Tribunal within 5 working days after the

date of the decision, or within such further time as the Tribunal may allow.

- (3) A copy of an application for a rehearing under this section shall be sent by the Tribunal to the other party to the proceedings as soon as practicable after it has been lodged with the Tribunal.
- (4) An application for a rehearing under this section shall not operate as a stay of proceedings unless the Tribunal so orders.
- (5) The Tribunal may grant an application for a rehearing under this section on such terms as it thinks fit, and may in the meantime stay proceedings.
- (6) Nothing in this section shall apply to proceedings under section 25.

#### *Enforcement and offences*

##### **106 Enforcement of possession orders**

- (1) Every possession order shall, on being filed in the appropriate District Court, have effect as if it were a warrant for the recovery of the premises issued by the Registrar of the Court under the District Courts Act 1947.
- (2) Where any such order is filed in a District Court, section 79(5) of the District Courts Act 1947 shall apply as if the reference to a District Court Judge were a reference to a Tenancy Adjudicator.

##### **107 Enforcement of orders other than possession orders and work orders**

- (1) Every order made by the Tribunal other than a possession order or a work order shall be deemed to be an order of the District Court, and, subject to this section, may be enforced accordingly.
- (2) Where application is made to a District Court for the issue of any process to enforce an order provided for by subsection (2) or subsection (2A) of section 78 (requiring a party to pay money to another as an alternative to compliance with a work order or an order other than a monetary order), the Registrar shall give written notice of the application to the party against whom enforcement is sought.

- (3) If that party does not file in the Court, within 10 working days after receiving notice of the application, a notice of objection, the order may, after the expiry of that period, be enforced pursuant to subsection (1).
- (4) The notice referred to in subsection (3) may be given only on the ground that it is the belief of the party giving it that the order of the Tribunal has been fully complied with and that the party therefore disputes the entitlement of the applicant to enforce it.
- (5) If the party against whom enforcement is sought files the notice referred to in subsection (3) within the prescribed time, the Registrar shall refer the matter to the Tribunal to be heard and determined under section 108(2).
- (6) The chief executive may advance to any person who seeks to enforce an order pursuant to subsection (1) the amount of any filing fee payable by that person; and, where the chief executive does make any such advance, the amount of the advance shall be recoverable from the other party as a debt due to the Crown.

Section 107(2): substituted, on 1 May 1996, by section 42 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 107(3): amended, on 1 October 2010, by section 69 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 107(6): substituted, on 18 August 1992, by section 8 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

## **108 Enforcement of work orders**

- (1) Where—
  - (a) a party in whose favour a work order has been made considers that the work order has not been complied with by the other party; and
  - (b) that other party has not complied with the alternative money order provided for by section 78(2),—

the party in whose favour the work order was made may, instead of applying to the District Court for the issue of a process of enforcement pursuant to section 107(1), lodge with the Tribunal an application for the enforcement of the work order.
- (2) Subsequent proceedings shall be taken on an application for enforcement under subsection (1), and on a notice under sec-

tion 107(5), as if such application or notice were an application filed under section 86; and, upon the hearing of the matter, the Tribunal may—

- (a) vary the work order, or make a further work order or any other order that is authorised by section 78; or
  - (b) grant leave to the party in whose favour the work order was made to enforce the alternative money order provided for by section 78(2), or so much of that order as the Tribunal may allow, without compliance with the provisions of section 107(2); or
  - (c) make an order empowering the party in whose favour the work order was made to undertake the necessary work and to charge the cost of doing so (up to the amount specified by the Tribunal) to the other party; or
  - (d) discharge or amend any order previously made by the Tribunal.
- (2A) A person who intentionally breaches a work order commits an unlawful act.
- (3) Where any order is made under subsection (2)(c)—
- (a) in favour of the landlord, the cost incurred by the landlord in undertaking the work (up to the amount specified by the Tribunal) shall be deemed to be rent in arrear and enforceable accordingly; or
  - (b) in favour of the tenant, the tenant may set off the cost incurred in undertaking the work (up to the amount specified by the Tribunal) against rent payable by the tenant.
- (4) Without limiting subsection (3)(b), where any order is made under subsection (2)(c), the tenant may pay to the chief executive any sum that would otherwise be payable by way of rent, up to the amount specified by the Tribunal, until sufficient has been accumulated to enable the tenant to undertake the work.
- (5) Where any sum is paid to the chief executive under subsection (4), the chief executive shall give to the tenant a receipt showing the particulars of the payment, and shall send a copy of the receipt to the landlord.
- (6) Any money paid to the chief executive under subsection (4) shall be paid by the chief executive into the Residential Ten-

ancies Trust Account, and shall be paid out of that Account by the chief executive to the tenant if the chief executive is satisfied that the money is to be applied by the tenant to meet the cost of the work.

- (7) After the expiration of 12 months from the date of a work order, it shall not be enforced without the leave of the Tribunal.

Section 108(2A): inserted, on 1 October 2010, by section 70 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 108(4): amended, on 18 August 1992, by section 9(1) of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 108(5): amended, on 18 August 1992, by section 9(2) of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 108(6): substituted, on 18 August 1992, by section 9(3) of the Residential Tenancies Amendment Act 1992 (1992 No 79).

## **109 Unlawful acts**

- (1) A landlord or a tenant, or the chief executive acting on behalf of a landlord or a tenant, or the chief executive acting as the person responsible for the general administration of this Act, may apply to the Tribunal for an order requiring any other person to pay to the applicant an amount in the nature of exemplary damages on the ground that that other person has committed an unlawful act.
- (2) No application may be made under subsection (1) later than—
- (a) 12 months after the termination of the tenancy in the case of—
    - (i) an unlawful act to which section 19(2) refers; or
    - (ii) a failure to keep records in respect of bonds that is an unlawful act to which section 30(2) refers;or
  - (b) 12 months after the date of commission of the unlawful act in the case of any other unlawful act.
- (3) If, on such an application, the Tribunal is satisfied that the person against whom the order is sought committed the unlawful act intentionally, and that, having regard to—
- (a) the intent of that person in committing the unlawful act; and
  - (b) the effect of the unlawful act; and
  - (c) the interests of the landlord or the tenant against whom the unlawful act was committed; and

- (d) the public interest,—  
it would be just to require the person against whom the order is sought to pay a sum in the nature of exemplary damages, the Tribunal may make an order accordingly.
- (4) The maximum amount that a person may be ordered to pay under this section for any unlawful act referred to in any section shown in the first column of Schedule 1A is the amount shown opposite that section in the second column of that schedule.
- (4A) The Tribunal may make an order against a person on the ground that the person committed an unlawful act even though the conduct that formed part of that act also formed part of an offence or an alleged offence against section 109A(4) in respect of which the person has been charged, convicted, or acquitted.
- (5) Any amount ordered by the Tribunal to be paid under this section on the application of a landlord or a tenant, or on the application of the chief executive acting on behalf of a landlord or a tenant, shall be paid to that landlord or that tenant, and shall be in addition to any sum payable to that landlord or that tenant by way of compensation in respect of the unlawful act.
- (6) Any amount ordered by the Tribunal to be paid under this section on the application of the chief executive acting as the person responsible for the general administration of this Act shall be paid to the Crown.
- (7) Notwithstanding subsection (5) and section 124(4)(d), if the chief executive is acting under section 124(3)(b), any amount ordered by the Tribunal to be paid under this section on the application of the chief executive shall be paid to the chief executive and retained by the Crown.

Section 109(1): amended, on 18 August 1992, by section 10(1) of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 109(2): substituted, on 1 May 1996, by section 43(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 109(4): substituted, on 1 October 2010, by section 71 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 109(4A): inserted, on 1 October 2010, by section 71 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 109(5): amended, on 18 August 1992, by section 10(1) of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 109(6): substituted, on 18 August 1992, by section 10(3) of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 109(7): inserted, on 1 May 1996, by section 43(3) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

**109A Tribunal may restrain further commissions of unlawful acts**

- (1) If the Tribunal makes an order against a person under section 109 on the ground that the person has committed an unlawful act, the Tribunal may, if satisfied that it is in the public interest to do so, make an order restraining the person from committing a further act of the same kind.
- (2) The Tribunal may make an order under subsection (1) on its own initiative or on the application of the applicant who applied for the order, under section 109, against the person sought to be restrained.
- (3) The Tribunal must specify the term of the order, which may not exceed 6 years.
- (4) Every person commits an offence who, being subject to an order under this section, intentionally contravenes the order.
- (5) A person who commits an offence against subsection (4) is liable on summary conviction to a fine not exceeding \$2,000.

Section 109A: inserted, on 1 October 2010, by section 72 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

**110 Failing to answer witness summons**

- (1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who, having been summoned to attend to give evidence before the Tribunal or to produce to the Tribunal any document or thing, without reasonable cause,—
  - (a) fails to attend in accordance with the summons; or
  - (b) refuses to promise to tell the truth, or refuses to give evidence, or refuses to answer any question that the person is lawfully required by the Tribunal to answer concerning the subject of the proceedings; or
  - (c) fails to produce any such document or thing lawfully required to be produced.

- (2) No person who is summoned shall be convicted of an offence against subsection (1) unless at the time of the service of the summons, or at some other reasonable time before the date on which that person was required to attend, there has been paid or tendered to that person a sum for travelling expenses according to the scale for the time being prescribed.

Section 110(1): amended, on 1 October 2010, by section 73 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **111 Giving false evidence**

Every person commits an offence and is liable on indictment to imprisonment for a term not exceeding 3 years who, after promising to tell the truth pursuant to section 97(2), makes any assertion as to a matter of fact, opinion, belief, or knowledge knowing that assertion to be false and intending thereby to mislead the Tribunal.

### **112 Contempt**

- (1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who—
- (a) wilfully assaults, insults, or obstructs a Tenancy Adjudicator, or any witness or any officer of the Tribunal during a sitting of the Tribunal or while a Tenancy Adjudicator, a witness, or an officer of the Tribunal is going to, or returning from, a sitting of the Tribunal; or
  - (b) wilfully assaults, insults, or obstructs any person in attendance at a sitting of the Tribunal; or
  - (c) wilfully interrupts, or otherwise misbehaves at, a sitting of a Tribunal; or
  - (d) wilfully and without lawful excuse disobeys any order or direction of the Tribunal (other than an order mentioned in section 78 or section 108(2)) in the course of any hearing of any proceedings.
- (2) A Tenancy Adjudicator may order the exclusion from a sitting of the Tribunal of any person whose behaviour, in the opinion of the Tenancy Adjudicator, constitutes an offence against subsection (1), whether or not such person is charged with the offence; and any Registrar, or other officer under a Registrar's

control, or constable may take such steps as are reasonably necessary to enforce such exclusion.

- (3) Notwithstanding anything in section 93, where any party to the proceedings is removed under this section the proceedings may be continued in the absence of that party.

Section 112: substituted, on 1 May 1996, by section 44 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 112(1): amended, on 1 October 2010, by section 74 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### *Contact information for enforcement purposes*

Heading: inserted, on 1 October 2010, by section 75 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **112A Interpretation**

In this section and in sections 112B to 112F,—

**contact information** means information that is—

- (a) held or supplied by a specified agency; and
- (b) about a judgment debtor named in a Tribunal order; and
- (c) of a type that the Secretary for Justice has, by notice in the *Gazette*, identified as being information that is likely to assist in locating judgment debtors for the purpose of enforcing Tribunal orders

**judgment debtor** means a person who is required under a Tribunal order to pay money to the **judgment creditor** named in the order

**specified agency** means any of the following:

- (a) the Department;
- (b) the Ministry of Social Development;
- (c) the Ministry of Justice

**specified database** means a database operated by a specified agency and prescribed by regulation as a specified database for the purposes of section 112C(2).

Section 112A: inserted, on 1 October 2010, by section 75 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **112B Application for contact information**

- (1) The judgment creditor named in a Tribunal order may apply to the chief executive for contact information about a judgment

debtor named in the order to be made available to the court in which enforcement proceedings against the judgment debtor have been, or may be, commenced.

- (2) The application must—
  - (a) be on a form approved for the purpose by the chief executive; and
  - (b) be accompanied by any prescribed fee; and
  - (c) have a copy of the relevant Tribunal order attached.
- (3) The applicant must supply the following information in the application:
  - (a) the full name of the judgment debtor;
  - (b) the number of the Tribunal order;
  - (c) the judgment debtor's last known address, to the best of the applicant's knowledge;
  - (d) the date on which the applicant believes the judgment debtor last lived at the last known address;
  - (e) any other information known to the applicant that is likely to assist in a search by a specified agency for contact information about the judgment debtor, such as date of birth and any other names by which the judgment debtor is known;
  - (f) the steps taken by the applicant to find any contact information about the judgment debtor.
- (4) If a judgment creditor is entitled under an enactment to recover any costs relating to the enforcement of an order, then the prescribed fee paid by an applicant under this section is to be treated as a cost that is recoverable, unless the judgment debtor proves that the information was publicly available at the time the applicant applied for the information.

Section 112B: inserted, on 1 October 2010, by section 75 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **112C Application referred to specified agency**

- (1) The chief executive must refer an application under section 112B to a specified agency if—
  - (a) the application is properly completed, any prescribed fee is paid, and a copy of the relevant order is attached; and

- (b) the chief executive is satisfied that the applicant has, before making the application, made reasonable efforts to find contact information about the judgment debtor; and
  - (c) the chief executive believes on reasonable grounds that a search by a specified agency may find contact information about the judgment debtor that may assist in the enforcement of the Tribunal order.
- (2) A specified agency that receives an application forwarded by the chief executive must search its specified databases in order to find contact information that relates to the judgment debtor identified in the application.
- (3) After searching its specified databases, the specified agency must,—
- (a) if it finds contact information about the judgment debtor, forward it to the chief executive; or
  - (b) if it does not find contact information about the judgment debtor, or if it believes that the judgment debtor is dead, advise the chief executive of that fact.

Section 112C: inserted, on 1 October 2010, by section 75 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **112D Response to applicant**

- (1) If the chief executive receives contact information from a specified agency in response to an application, the chief executive must—
- (a) forward the contact information to the Secretary for Justice; and
  - (b) advise the applicant that information has been forwarded to the Secretary for Justice.
- (2) If the chief executive receives advice that the specified agency has not found contact information about the judgment debtor, the chief executive must—
- (a) advise the applicant accordingly; or
  - (b) if the chief executive believes on reasonable grounds that another specified agency may hold contact information about the judgment debtor, forward the application to that specified agency, in which case section 112C(2) and (3) and this section apply again.

- (3) If the chief executive receives advice that the specified agency believes the judgment debtor is dead, the chief executive must advise the applicant accordingly.
- (4) If the chief executive does not advise the applicant under any of subsections (1) to (3) within 30 days of receipt of the application, the chief executive must write to the applicant explaining the reason for the delay.

Section 112D: inserted, on 1 October 2010, by section 75 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **112E Specified information sent to District Court**

When the Secretary for Justice receives contact information from the chief executive, he or she must—

- (a) determine in which District Court enforcement proceedings should be commenced; and
- (b) send the contact information to the Registrar of that District Court; and
- (c) advise the applicant—
  - (i) that the information has been sent to the Registrar of that District Court; and
  - (ii) that enforcement proceedings may be commenced in that District Court or, if they have already been commenced in that or any other District Court, that enforcement proceedings may now continue in, or be transferred to, that District Court.

Section 112E: inserted, on 1 October 2010, by section 75 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **112F Non-disclosure of contact information**

- (1) If contact information has been sent to the Registrar of a District Court in connection with enforcement proceedings relating to a Tribunal order, neither the Registrar nor the Court staff may disclose the contact information unless the disclosure is necessary for the purpose of enforcing the order or for determining any proceedings associated with enforcement of the order.
- (2) No person may search, inspect, or copy any court file that contains contact information, unless a Judge directs otherwise.

- (3) A Judge may make a direction under subsection (2) only if satisfied that the contact information contained on the file is—
- (a) already known to the person seeking to search, inspect, or copy the record; or
  - (b) no longer current.

Section 112F: inserted, on 1 October 2010, by section 75 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### *Miscellaneous provisions*

#### **113 Chief executive to provide assistance**

The chief executive must ensure that assistance is reasonably available from his or her staff to any person who seeks it in completing any forms required by this Act or any rules made under section 116, or in doing anything in relation to the filing of an application or an appeal against an order of the Tribunal, or the enforcement of an order of the Tribunal.

Section 113: substituted, on 1 October 2010, by section 76 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **114 Powers of entry of Tenancy Mediators**

- (1) Subject to the succeeding provisions of this section, every Tenancy Mediator shall, in the performance of his or her functions under section 99(1) in relation to any dispute, have power at any reasonable time to enter the residential premises to which the dispute relates and to inspect those premises and any fixtures, fittings, and chattels in those premises.
- (2) In respect of premises in any defence area (within the meaning of the Defence Act 1990), the exercise by a Tenancy Mediator of the power conferred by subsection (1) shall be subject to such conditions relating to security as the officer in charge of the defence area may require.
- (3) Except with the written authority of the Tribunal given in any particular case, no Tenancy Mediator shall exercise the power conferred by subsection (1) without first giving to each party to the dispute at least 24 hours' written notice of intention to do so.
- (4) Every notice given under subsection (3) shall state—
  - (a) that it is given pursuant to this section; and
  - (b) the address of the premises to which it relates; and

- (c) the time at which and the date on which the Tenancy Mediator proposes to inspect the premises.
- (5) Any party to the dispute shall be entitled to accompany, or have an agent accompany, the Tenancy Mediator while the Tenancy Mediator is inspecting the premises, whether or not that party would otherwise be entitled to enter or be in the premises.
- (6) A Tenancy Mediator who enters any premises under this section must,—
  - (a) on initial entry, produce evidence of his or her identity; and
  - (b) while subsequently on the premises, produce that evidence to any person who reasonably requests to see it.
- (7) Every person commits an offence and is liable to a fine not exceeding \$2,000 who, without reasonable excuse, obstructs or hinders any Tenancy Mediator in the exercise of the power conferred by subsection (1).

Section 114(2): amended, on 1 April 1990, pursuant to section 105(2) of the Defence Act 1990 (1990 No 28).

Section 114(6): substituted, on 1 October 2010, by section 77(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 114(7): amended, on 1 October 2010, by section 77(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **115 Principal Tenancy Adjudicator may issue practice directions**

For the purpose of ensuring that the application and administration of this Act is consistent throughout New Zealand, the Principal Tenancy Adjudicator may from time to time issue, for the guidance of other Tenancy Adjudicators, officers of the Tribunal, and parties before the Tribunal, any directions, notes, guidelines, or suggestions (not being inconsistent with this Act or any rules made under section 116) that the Principal Tenancy Adjudicator considers necessary or desirable.

### **116 Rules of procedure**

- (1) The Governor-General may from time to time, by Order in Council, make rules for all or any of the following purposes:
  - (a) regulating the practice and procedure of the Tribunal:

- (b) prescribing such things (including fees) as are required by this Act to be prescribed:
  - (c) prescribing such other matters as are necessary or desirable for carrying out the provisions of this Part of this Act.
- (2) Without limiting the generality of subsection (1), rules may be made providing for the following:
- (a) the keeping of records by the Tribunal and the form of such records:
  - (b) the form of documents to be issued by the Tribunal and the sealing of its documents:
  - (c) the form and content of documents to be used by parties and intending parties, and the service of documents and the giving of notices by such persons:
  - (d) the duties, functions, and powers of the Tribunal, Registrars, and chief executive in relation to—
    - (i) the service of documents and the giving of notices:
    - (ii) the enlargement of dates of hearing:
    - (iii) the adjournment of proceedings:
    - (iv) the reports of Tenancy Mediators:
  - (e) the withdrawal and amendment of applications:
  - (f) the summoning of witnesses, and the payment of witnesses from public funds or otherwise:
  - (g) the duties, functions, and powers of chief executive and Tenancy Mediators:
  - (h) the transfers of proceedings from the Tribunal to a District Court:
  - (i) the filing of orders of the Tribunal in a District Court for enforcement:
  - (j) the searching of the records of the Tribunal.

Section 116(2)(d): amended, on 1 October 2010, by section 78 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 116(2)(g): amended, on 1 October 2010, by section 78 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

*Appeals***117 Appeal to District Court**

- (1) Subject to subsection (2), any party to any proceedings before the Tribunal who is dissatisfied with the decision of the Tribunal in the proceedings may appeal to a District Court against that decision.
- (1A) A decision referred to in subsection (1) includes the decision to grant, or refuse to grant, an application under section 105 for a rehearing.
- (2) No appeal shall lie—
  - (a) against an interim order made under section 79; or
  - (b) against an order, or the failure to make an order, for the payment of money where the amount that would be in dispute on appeal is less than \$1,000; or
  - (c) against a work order, or the failure to make a work order, where the value of the work that would be in dispute on appeal is less than \$1,000.
- (3) A District Court shall have jurisdiction to hear and determine an appeal under this section notwithstanding any limits imposed on such courts in their ordinary civil jurisdiction by sections 29 to 34 of the District Courts Act 1947.
- (4) The provisions of section 85, with any necessary modifications, shall apply in respect of the hearing and determination by a District Court of an appeal brought under this section.
- (5) An appeal under this section shall be brought by the filing of a notice of appeal in the District Court nearest to the place at which the Tribunal sat in the proceedings to which the appeal relates.
- (6) Every such notice of appeal shall be filed within 10 working days after the date of the decision to which the appeal relates.
- (7) As soon as practicable after a notice of appeal has been filed under this section, the Registrar of the Court shall cause a copy of the notice to be lodged with the Tribunal's records relating to the proceedings to which the appeal relates, and, on receipt of that copy, the Registrar of the Tribunal shall send the Tribunal's file on the matter to the Court.
- (8) The Registrar of the Court shall fix the time and place for the hearing of the appeal and shall notify the appellant.

- (9) A copy of every notice of appeal together with a notice of the time and place for hearing the appeal shall be served by the Registrar on the other party to the proceedings before the Tribunal, and that party may appear and be heard.
- (10) The filing of a notice of appeal under this section shall not operate as a stay of proceedings, unless the Tribunal or a District Court Judge, on application, so determines.
- (11) Where the appeal relates to an order terminating the tenancy made on the ground of non-payment of rent, a stay of proceedings shall not be granted unless the application for stay is supported by a receipt or other written evidence tending to show that the rent was not in fact in arrear at the date of the hearing before the Tribunal.

Section 117(1A): inserted, on 1 October 2010, by section 79(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 117(2)(b): substituted, on 1 May 1996, by section 45 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 117(2)(c): inserted, on 1 May 1996, by section 45 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 117(5): amended, on 1 October 2010, by section 79(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **118 Powers of District Court Judge on appeal**

- (1) On the hearing of an appeal under section 117, a District Court Judge may—
  - (a) quash the order of the Tribunal and order a rehearing of the claim by the Tribunal on such terms as the Judge thinks fit; or
  - (b) quash the order, and substitute for it any other order or orders that the Tribunal could have made in respect of the original proceedings; or
  - (c) dismiss the appeal.
- (2) In ordering a rehearing under subsection (1)(a), the District Court Judge may give to the Tribunal such directions as the Judge thinks fit as to the conduct of the rehearing.
- (3) The procedure at an appeal under this section shall be such as the Judge may determine.

**119 Appeal on questions of law to High Court**

- (1) Any party to an appeal under section 117 who is dissatisfied with the decision of the District Court Judge as being erroneous in point of law may appeal to the High Court on that question of law.
- (2) Every appeal under this section shall be dealt with in accordance with the High Court Rules.

**120 Further appeal to Court of Appeal**

- (1) Any party to an appeal under section 119 may, with the leave of the High Court or (if that leave is refused) with special leave of the Court of Appeal, appeal to the Court of Appeal against the determination of the High Court.
- (2) An application to the High Court for leave to appeal to the Court of Appeal under this section shall be brought, in accordance with the rules of Court, within 15 working days after the determination of the High Court, or within such further time as the High Court may allow; and the High Court may grant leave accordingly if, in its opinion, the appeal involves a question of law that, because of its general or public importance or for any other reasons, ought to be submitted to the Court of Appeal for decision.
- (3) Where the High Court refuses leave to any party to appeal to the Court of Appeal under this section, that party may, within 15 working days after the refusal of the High Court or within such further time as the Court of Appeal may allow, apply to the Court of Appeal, in accordance with the rules of that Court, for special leave to appeal to that Court, and the Court of Appeal may grant leave accordingly if, in its opinion, the appeal involves a question of law that, because of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.
- (4) On any appeal to the Court of Appeal under this section, the Court of Appeal shall have the same power to adjudicate on the proceedings as the High Court had.
- (5) The decision of the Court of Appeal on any appeal under this section shall be final; and the same judgment shall be entered in the High Court, and the same consequences and proceedings

shall follow thereon, as if the decision of the Court of Appeal had been given in the High Court.

- (6) The decision of the Court of Appeal on any application to that Court for leave to appeal shall be final.

## **Part 4**

### **Administration**

#### *Functions and powers of chief executive*

Heading: substituted, on 18 August 1992, by section 11 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

#### **121 Chief executive responsible for administration of Act**

The chief executive is responsible for the general administration of this Act.

Section 121: substituted, on 18 August 1992, by section 11 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

#### **122 Director-General may delegate powers**

*[Repealed]*

Section 122: repealed, on 18 August 1992, by section 12 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

#### **123 General functions and powers of chief executive**

- (1) For the purposes of this Act, the chief executive may perform and exercise the following functions and powers:
- (a) the investigation of, and the conduct of research into, any matters generally affecting or that may affect the interests of parties to tenancy agreements, or any such matters arising in any particular case:
  - (b) the publication of reports, the dissemination of information, and the taking of such steps as the chief executive thinks proper for informing members of the public of the rights and obligations of parties to tenancy agreements and of the general operation of this Act:
  - (c) the giving of opinions and advice to persons on any provisions of this Act or of any other enactment or rule of law relating to tenancy agreements:
  - (d) the investigation, whether on the complaint of a party or not, of any alleged breach of this Act, or of any tenancy

- agreement, and the taking of such action, whether involving prosecution or other proceedings, negotiation, or arbitration, as the chief executive thinks proper:
- (da) to supervise the operations of the office of the Tribunal and to work in close co-operation with the Registrar to ensure that disputes arising within the jurisdiction of the Tribunal are dealt with efficiently and expeditiously:
  - (e) the making of reports to the Minister on any matter relating to residential tenancies that the Minister may require, or that the chief executive thinks should be drawn to the attention of the Minister.
- (2) Except as required by the Minister under paragraph (e) of subsection (1), whether or not to perform or exercise any of the functions and powers specified in that subsection in any particular case shall be a matter for the chief executive's discretion, and in no circumstances shall the chief executive be obliged to perform or exercise any such function or power.
- Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 11(1)
- Section 123(1): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).
- Section 123(1)(da): inserted, on 1 October 2010, by section 80 of the Residential Tenancies Amendment Act 2010 (2010 No 95).
- Section 123(2): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

#### **124 Chief executive may take or defend proceedings on behalf of any party**

- (1) Subject to subsection (3), the chief executive may, on being satisfied that there is a cause of action and that it is in the public interest to do so, on behalf of any party to a tenancy agreement do all or any of the following:
- (a) defend any civil proceedings brought against that party under this Act:
  - (b) initiate any such proceedings against any other person:
  - (c) assume the conduct of any such proceedings already brought by or against that party:
  - (d) generally take all such steps as may be necessary to enforce or protect the rights of that party in relation to any infringement or suspected infringement of any of those rights under the tenancy agreement or this Act.

- (2) Without limiting the generality of the provisions of subsection (1), the chief executive may, on behalf of any tenant, institute proceedings or assume the conduct of proceedings already commenced by the tenant for an order by the Tribunal determining the market rent of the premises.
- (3) The chief executive shall not exercise the powers conferred by subsection (1) or subsection (2)—
  - (a) unless the written consent of the party concerned has first been obtained which, once given, shall be irrevocable except with the chief executive's written consent; or
  - (b) unless—
    - (i) the chief executive determines that it is in the public interest to exercise the power without the party's consent; and
    - (ii) the written consent of the party concerned has not been refused and cannot reasonably be obtained.
- (4) In relation to any proceedings referred to in subsection (1) or subsection (2), the following provisions shall apply:
  - (a) the chief executive shall, on behalf of the relevant party, have in all respects the same rights in, and control over, the proceedings, including the right to settle the action or any part of the action, as the party would have in the conduct of the proceedings:
  - (b) the chief executive may, without consulting or seeking the consent of the party, conduct the proceedings in such manner as the chief executive considers to be appropriate and proper:
  - (c) in the case of any proceedings already commenced, the Tribunal or court hearing the matter shall, on the chief executive's application, substitute the chief executive for the party as a party to the proceedings:
  - (d) any money (excluding costs) recovered by the chief executive shall, without any deduction, be paid by the chief executive to the person on whose behalf the chief executive is acting:
  - (e) if any party to the proceedings alleges another cause of action, or if the party on whose behalf the proceedings are being defended has another cause of action, the Tri-

bunal or Court shall, on the chief executive's application, order that the other cause of action be heard separately and that the party be a party to those other proceedings in his or her own right.

- (5) Any certificate given by the chief executive in relation to any matter referred to in subsection (1) or subsection (2) or subsection (3) and relating to the chief executive's powers, shall, in the absence of proof to the contrary, be sufficient evidence of the matters referred to in the certificate.
- (6) Any money that the chief executive becomes liable to pay by virtue of this section shall be paid out of Part B of the Fund.
- (7) Notwithstanding anything contained in subsection (1) or subsection (2), the chief executive shall not exercise any power conferred by this section, in relation to a tenancy agreement that has terminated, upon the request or complaint of any person who was a party to the agreement unless the request or complaint is made in writing within a period of 12 months after the termination of the agreement.

Section 124(1): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 124(2): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 124(3): substituted, on 1 May 1996, by section 46(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 124(4): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 124(4)(c): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 124(4)(e): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 124(5): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 124(6): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 124(7): amended, on 1 May 1996, by section 46(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 124(7): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

## **125 Immunities**

No personal liability shall attach to the chief executive or to any delegate of the chief executive for any act or omission by the chief executive or the delegate made in good faith and in the exercise, or purported exercise, of all or any of the functions or powers of the chief executive under this Act, or in the discharge, or purported discharge, of all or any of the chief executive's duties under this Act, but without prejudice to any liability that the Crown may incur for the acts or omissions of any employee or agent of the Crown.

Section 125: amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

## **126 Annual report**

- (1) The chief executive shall, as soon as practicable after the 30th day of June in each year, submit to the Minister a report on the administration of this Act during the year ending on that day; and shall include that report in the annual report of the department prepared pursuant to section 43 of the Public Finance Act 1989.
- (2) The report shall show separately—
  - (a) the audited consolidated financial statements for the Residential Tenancies Trust Account for the year to which the report relates, consisting of such statements as may be necessary to show the financial position of that Account and the financial results of the operation of the Account during that year; and
  - (b) the auditor's report on those financial statements.

Section 126: substituted, on 18 August 1992, by section 13 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 126(1): amended, on 1 October 2010, by section 81 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 126(1): amended, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

Section 126(2): substituted, on 1 May 1996, by section 47 of the Residential Tenancies Amendment Act 1996 (1996 No 7).

*Residential Tenancies Trust Account***127 Residential Tenancies Trust Account**

- (1) The following sums shall be deemed to be trust money for the purposes of Part 7 of the Public Finance Act 1989:
  - (a) all sums paid to the chief executive by way of bond under section 20 or section 21, as the case may be;
  - (b) all rent money that is, by virtue of any of the provisions of this Act or of any order of the Tribunal, to be paid into the Residential Tenancies Trust Account;
  - (c) any other money that, by virtue of any such provision or any such order, is to be or may be credited to that Account,—  
and shall be paid into a Trust Bank Account called the Residential Tenancies Trust Account under that Part of that Act.
- (2) Subject to subsection (3), the trust money in the Residential Tenancies Trust Account shall be managed and invested in accordance with Part 7 of the Public Finance Act 1989.
- (3) Nothing in subsection (2) of section 68, and sections 69 and 70 of the Public Finance Act 1989 applies in respect of the Residential Tenancies Trust Account.
- (4) Subject to sections 22 to 22D and to subsection (5), no money shall be paid out of the Residential Tenancies Trust Account except—
  - (a) pursuant to an order of the Tribunal; or
  - (b) with the chief executive's prior written consent.
- (5) If, in respect of any sum of money that is credited to the Residential Tenancies Trust Account, the chief executive is uncertain who is entitled to it, or whether or not any such sum should be paid out of that Account to any person, the chief executive may apply to the Tribunal for an order determining who is so entitled or whether or not any such sum should be so paid out.
- (6) Where any money is paid out of the Residential Tenancies Trust Account in conformity with any such order of the Tribunal, neither the Crown nor the chief executive shall incur any liability in respect of the payment.
- (7) All interest, dividends, and other gains (whether in the nature of income or capital, and whether in money or otherwise, and whether realised or not) arising from any investment of money

in the Residential Tenancies Trust Account shall belong to the Crown and be treated as departmental revenue.

- (7A) All money paid into the Residential Tenancies Trust Account as bond money belongs to the Crown and must be paid into a Crown Bank Account if the money—
- (a) is not claimed within 6 years of the end of the tenancy to which the bond relates; or
  - (b) is to be refunded under an approval given by the chief executive, but has not been collected within 6 years of the date of that approval.
- (7B) Despite subsection (7A), during the first year after the commencement of this section, payment of money into a Crown Bank Account may be delayed to enable the chief executive to exercise the powers under section 22D.
- (8) All money credited to Part A of the Residential Tenancies Fund immediately before the commencement of the Residential Tenancies Amendment Act 1992 shall be deemed to be credited to the Residential Tenancies Trust Account.
- (9) All money credited to Part B of the Residential Tenancies Fund immediately before the commencement of the Residential Tenancies Amendment Act 1992 shall be deemed to be the property of the Crown.

Section 127: substituted, on 18 August 1992, by section 14 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 127(4): amended, on 1 October 2010, by section 82(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 127(7A): inserted, on 1 October 2010, by section 82(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 127(7B): inserted, on 1 October 2010, by section 82(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

## **128 Auditor-General to be auditor of residential tenancies trust account**

- (1) The Residential Tenancies Trust Account is to be treated as a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.
- (2) Without limiting subsection (1), the chief executive may, after consultation with the Auditor-General, appoint a person or

firm that is qualified for appointment as an auditor to be an additional auditor of the Residential Tenancies Trust Account.

Section 128: substituted, on 1 July 2001, by section 53 of the Public Audit Act 2001 (2001 No 10).

### **129 Part B of the Fund**

*[Repealed]*

Section 129: repealed, on 18 August 1992, by section 15 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

### **130 Corporation may make money available**

*[Repealed]*

Section 130: repealed, on 18 August 1992, by section 15 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

### **131 Corporation may borrow**

*[Repealed]*

Section 131: repealed, on 18 August 1992, by section 15 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

### **132 No execution**

No money from time to time standing to the credit of the Residential Tenancies Trust Account shall be taken in or be subject to execution, whether by way of garnishee or otherwise, without the written consent of the chief executive.

Section 132: substituted, on 18 August 1992, by section 16 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

## **Part 5**

### **Miscellaneous provisions**

#### **133 Tribunal or chief executive may require terms of tenancy agreement**

- (1) The Tribunal or the chief executive may, at any time during the currency of a tenancy agreement or within 12 months after its termination, by notice in writing, require the landlord to inform the Tribunal or the chief executive of the provisions of the agreement.

- (2) Every person who, without reasonable excuse, fails to comply with such a notice within 10 working days after receiving it commits an offence and is liable to a fine not exceeding \$400.

Section 133 heading: amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 133(1): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 133(2): amended, on 1 October 2010, by section 83 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **134 Waiver by landlord of breach by tenant**

A waiver by the landlord of any breach by the tenant, or a failure by the landlord to enforce any obligation by the tenant, shall not,—

- (a) where the breach is of a continuing nature, prevent the landlord from enforcing the obligation in future; or
- (b) where the breach is not of a continuing nature, prevent the landlord from exercising any remedy in the event of a subsequent breach by the tenant;—

but any such waiver or failure to enforce may be taken into consideration by the Tribunal if the landlord subsequently applies to the Tribunal for an order terminating the tenancy.

### **134A Method of payment**

Any amount that is, by virtue of any provision of this Act or of any order of the Tribunal, to be paid to the chief executive shall be paid by such method as may be prescribed by regulations made under section 140.

Section 134A: inserted, on 1 May 1996, by section 49(1) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

### **135 Recovery of money paid by mistake**

- (1) Subject to subsection (2), where one party to a tenancy agreement pays any amount to the other party under a mistake of law or fact relating to the agreement, that party may, upon application to the Tribunal, recover that amount from the other party.
- (2) In any case to which subsection (1) applies, the Tribunal may decline to order the repayment of the amount in question, in whole or in part, if the Tribunal is satisfied that the person who

received the money did so in good faith, and has so altered his or her position in reliance on the validity of the payment that, in the opinion of the Tribunal, having regard to all possible implications in respect of other persons, it would be unfair to order the repayment of the whole or any part of that amount.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 90

### **136 Service of documents**

- (1) Where any notice or other document is required or authorised by this Act to be given to or served on a landlord or a tenant, it shall be sufficient if it is given or served in any of the following ways:
  - (a) it may be given to or served on the landlord or the tenant personally;
  - (b) it may be sent by post addressed to the landlord or the tenant at the address or the Post Office box given by the landlord or the tenant as an address for service in accordance with this Act;
  - (c) it may be delivered to the premises to which any address for service relates, and either placed in the mailbox or attached to the door in a prominent position;
  - (d) it may be transmitted to the email address or facsimile number given by the landlord or the tenant as an address for service.
- (2) Without limiting the provisions of subsection (1), any notice or other document required or authorised by this Act to be given to or served upon any tenant may be served on a tenant:
  - (a) at the premises to which the tenancy agreement relates, if the tenant resides at those premises, as follows:
    - (i) by posting it addressed to the tenant at those premises; or
    - (ii) by delivering it to those premises and either placing it in the mailbox or attaching it to the door of those premises in a prominent position; or
    - (iii) by giving it to any person appearing to have attained the age of 16 years and to be residing at those premises; or
  - (b) at any other place of residence of the tenant, by giving it to any person appearing to have attained the age of

- 16 years and to be residing at those premises and who confirms that the tenant resides at the premises; or
- (c) at the premises to which any address for service given by the tenant relates, by giving it to any person appearing to have attained the age of 16 years and to be residing at those premises; or
  - (d) by giving it to the person who ordinarily pays the rent under the tenancy agreement; or
  - (e) by giving it to any solicitor or other agent of the tenant duly authorised by the tenant to receive the same.
- (2A) Section 91A overrides subsections (1) and (2) in relation to service on tenants in the circumstances set out in that section.
- (3) Without limiting the provisions of subsection (1), any notice or other document required or authorised by this Act to be given to or served upon any landlord shall be deemed to have been duly given or served if it is given—
- (a) to any person appearing to have attained the age of 16 years and to be residing at the place of residence of the landlord; or
  - (b) to the person (not being a bank or similar institution) who ordinarily receives the rent payable under the agreement; or
  - (c) to any solicitor or other agent of the landlord duly authorised by the landlord to receive the same.
- (4) Where 2 or more persons are landlords or tenants under a residential tenancy agreement, it shall be sufficient compliance with a provision of this Act requiring or authorising a notice or other document to be given to or served upon the landlord or the tenant if the notice or other document is given or served, in accordance with this Act, to or upon any one of the landlords or any one of the tenants.
- (5) A witness summons may be served on the witness—
- (a) personally; or
  - (b) by sending it by post addressed to the witness at the witness's last-known place of residence or business.
- (6) Where any document is sent by post in accordance with any of the foregoing provisions of this section, it shall be deemed, in the absence of evidence to the contrary, to have been given or served on the 4th working day after the date on which it was

posted; and, in proving service, it shall be sufficient to prove that the letter was properly addressed and posted.

- (7) Where any document is delivered to any address in accordance with any of the foregoing provisions of this section, it shall be deemed, in the absence of evidence to the contrary, to have been given or served on the 2nd working day after the date on which it was delivered; and, in proving service, it shall be sufficient to prove that the letter was properly addressed and delivered.
- (8) Where any document is transmitted by facsimile in accordance with this section after 5pm on any day, it shall be deemed, in the absence of evidence to the contrary, to have been given or served on the next working day after the date on which it was transmitted; and, in proving service, it shall be sufficient to prove that the document was properly transmitted by facsimile machine to the person concerned.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 93

Section 136(1)(b): substituted, on 1 October 2010, by section 84(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 136(1)(c): substituted, on 1 October 2010, by section 84(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 136(1)(d): substituted, on 1 October 2010, by section 84(1) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 136(2): substituted, on 1 May 1996, by section 50(3) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 136(2)(c): substituted, on 1 October 2010, by section 84(2) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 136(2A): inserted, on 1 October 2010, by section 84(3) of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 136(3): amended, on 1 May 1996, by section 50(4) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 136(4): amended, on 1 May 1996, by section 50(5) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 136(7): amended, on 1 May 1996, by section 50(6) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 136(8): inserted, on 1 May 1996, by section 50(7) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

### 136A Calculation of periods

Where this Act requires notice to be given of any thing and prescribes a following period within which, or on the expiry of

which, a thing is required or permitted to be done, or a change in the parties' rights, obligations, interests, or status is to take effect, the period—

- (a) commences on the first day after the notice is given or deemed to be given under section 136; and
- (b) ends with the close of the last day of the period.

Section 136A: inserted, on 1 October 2010, by section 85 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

### **137 Prohibited transactions**

- (1) No person shall—
  - (a) enter into any transaction, or make any contract or arrangement, purporting to do, whether presently or at some future time or upon the happening of any event or contingency, anything that contravenes or will contravene any of the provisions of this Act; or
  - (b) enter into any transaction or make any contract or arrangement, whether orally or in writing, or do anything, for the purpose of or having the effect of, in any way, whether directly or indirectly, defeating, evading, or preventing the operation of any of the provisions of this Act.
- (2) Requiring any person to enter into any transaction, or to make any contract or arrangement, in contravention of subsection (1) is hereby declared to be an unlawful act.
- (3) Subject to subsection (4), any provision of any transaction, contract, or arrangement entered into in contravention of subsection (1) that would have the effect of, in any way, whether directly or indirectly, defeating, evading, or preventing the operation of any of the provisions of this Act shall be of no effect.
- (4) All money paid and the value of any other consideration for the tenancy provided by the tenant (not being rent lawfully recoverable by the landlord) or, where the transaction takes the form of an option to purchase the premises to which the transaction relates, by the person on whom the option to purchase is conferred, shall be recoverable as a debt due to the tenant or prospective purchaser by the landlord.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 89(3)

**138 Offences triable summarily**

- (1) Every offence against any of the provisions of this Act, except section 111, or against any regulations made under this Act, shall be punishable on summary conviction.
- (2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act, or against any regulations made under this Act, may be laid at any time within 1 year after the time when the matter of the information arose.

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 94

**139 Regulations relating to accommodation brokers**

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) providing for the registering, licensing, or approval of accommodation brokers, including the qualifications required of, and the conditions to be met by, persons intending to set up business as accommodation brokers, and for the disciplining of accommodation brokers who are so registered, licensed, or approved:
- (b) requiring persons carrying on or intending to carry on business as accommodation brokers to provide bonds to secure the proper conduct of their businesses:
- (c) conferring on the Tribunal jurisdiction in respect of all or any of the matters referred to in paragraphs (a) and (b):
- (d) regulating the conduct of business by accommodation brokers, including advertising carried on in the course of, or in relation to, such business:
- (e) conferring on the chief executive in respect of any disputes and proceedings arising under the regulations all or any of the powers conferred on the chief executive by section 124 in respect of proceedings under this Act:
- (f) prescribing fees payable in respect of any matters under any regulations made under this section:
- (g) prescribing offences in respect of the contravention of or non-compliance with any regulations made under this section, and the amounts of fines that may be im-

posed in respect of any such offences, which fines shall be an amount not exceeding \$5,000, and, where the offence is a continuing one, a further amount not exceeding \$500 for every day or part of a day during which the offence has continued.

Section 139(e): amended, on 18 August 1992, by section 19 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

#### **140 Regulations relating to other matters**

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing forms to be used for any purposes under this Act:
  - (b) prescribing fees to be paid in respect of any matter under this Act, and specifying the circumstances in which any such fee may be waived or remitted in whole or in part:
  - (c) requiring the provision of specified information by the landlord to the tenant at the commencement of a tenancy agreement:
  - (d) providing for the payment of bonds by instalments; and providing for a landlord to be indemnified or protected in some other way from any loss arising out of the failure by the tenant to pay all the required instalments:
  - (da) prescribing the method by which payments are to be made to the chief executive:
  - (e) prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$1,000 and, where the offence is a continuing one, a further amount not exceeding \$100 for every day or part of day during which the offence has continued:
  - (ea) prescribing specified databases for the purposes of section 112C(2):
  - (f) providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) Regulations under this section that prescribe the circumstances in which a fee may be waived or remitted in whole or in part may specify, as circumstances in which fees payable by land-

lords and tenants may be waived or remitted in whole or in part,—

- (a) the fact that a bond of not less than a prescribed number of weeks' rent has been paid in accordance with section 19 or section 21, as the case may be:
  - (b) the fact that an address for service has been notified under section 15 or section 16, as the case may be.
- (3) Nothing in subsection (2)(a) limits or affects section 18(1).

Compare: Residential Tenancies Act, 1978-1981 (South Australia), s 95

Section 140(1)(da): inserted, on 1 May 1996, by section 49(2) of the Residential Tenancies Amendment Act 1996 (1996 No 7).

Section 140(1)(ea): inserted, on 1 October 2010, by section 86 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 140(2): inserted, on 18 August 1992, by section 17 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

Section 140(3): inserted, on 18 August 1992, by section 17 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

#### **141 Schedule 1 may be amended by Order in Council**

*[Repealed]*

Section 141: repealed, on 1 October 2010, by section 87 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

#### **142 Effect of Property Law Act 2007**

- (1) Nothing in Part 4 of the Property Law Act 2007 applies to a tenancy to which this Act applies.
- (2) However, the Tribunal, in exercising its jurisdiction in accordance with section 85, may look to Part 4 of the Property Law Act 2007 as a source of the general principles of law relating to a matter provided for in that Part (which relates to leases of land).

Section 142: substituted, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

#### **143 Housing Corporation Act 1974 amended**

*[Repealed]*

Section 143: repealed, on 18 August 1992, by section 18 of the Residential Tenancies Amendment Act 1992 (1992 No 79).

**144 Repeals, revocations, and amendments**

- (1) The enactments specified in Schedule 2 to this Act are hereby repealed.
- (2) The regulations specified in Schedule 3 to this Act are hereby revoked.
- (3) The enactments specified in the first column of Schedule 4 to this Act are hereby amended in the manner indicated in the second column of that Schedule.

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**Schedule 1**

s 24(1A)

**Clauses for rent increases in fixed-term  
tenancy agreements**

Schedule 1: substituted, on 1 October 2010, by section 88 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

*Select one of the following:*

*Provision A*

The landlord may review the rent from time to time and may increase the rent in accordance with section 24 of the Residential Tenancies Act 1986. No increase will take effect within 180 days after the date of the commencement of the tenancy or within 180 days after the date on which the last increase took effect.

*Provision B*

The rent will be reviewed from time to time and may be increased once in each year to take effect on [date] if prior notice of the increase has been given in accordance with section 24(1)(a) to (c) of the Residential Tenancies Act 1986.

*Provision C*

The rent will increase by \$[amount] on [date], being a date that is at least 180 days after the commencement of the tenancy, and will then increase by the same amount on [date/dates], being [a date that is] [dates that in each case are] at least 180 days after the previous rent increase.

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## Schedule 1A

### Amounts for unlawful acts

s 109(4)

Schedule 1A: inserted, on 1 October 2010, by section 88 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section		Amount (\$)
12	(Unlawful discrimination)	4,000
16A(6)	(Landlord failing to appoint agent when outside New Zealand for longer than 21 consecutive days)	1,000
17	(Requiring key money)	1,000
18	(Landlord requiring bond greater than amount permitted)	1,000
18A	(Requiring unauthorised form of security)	1,000
19(2)	(Breach of duties of landlord on receipt of bond)	1,000
23	(Landlord requiring rent more than 2 weeks in advance or before rent already paid expires)	1,000
27(2)	(Landlord requiring rent in excess of market rent order)	200
29	(Failure by landlord to give receipts for rent)	200
33	(Landlord seizing or disposing of tenant's goods)	2,000
38(3)	(Interference with privacy of tenant)	2,000
40(2)(ab)	(Interference, etc, with means of escape from fire)	3,000
40(3A)(a)	(Failing to observe, without reasonable excuse, the tenant's duties upon termination)	1,000
40(3A)(c)	(Using or permitting premises to be used for unlawful purpose)	1,000
40(3A)(d)	(Harassment of tenant or neighbour)	2,000
40(3A)(e)	(Tenant failing to ensure number of residents does not exceed maximum allowed)	1,000
44(2A)	(Assigning or subletting a tenancy when prohibited to do so or without the landlord's written consent)	1,000
45(1A)	(Landlord's failure to meet obligations in respect of cleanliness, maintenance, or building, or health and safety requirements)	3,000
45(2A)	(Landlord interfering with supply of services to premises)	1,000
46(3)	(Altering locks without consent of other party)	1,000
48(4)(a)	(Unlawful entry by landlord)	1,000

Amounts for unlawful acts—*continued*

<b>Section</b>		<b>Amount (\$)</b>
61(5)	(Abandonment of premises without reasonable excuse)	1,000
66G(4)	(Harassment of tenant in boarding house)	2,000
66I(4)	(Landlord of boarding house failing to meet obligations in respect of cleanliness, maintenance, or building, or health and safety requirements)	3,000
66J(4)	(Landlord of boarding house interfering with services or failing to advise that premises on the market)	1,000
66K(2)(b)	(Interference, etc, with means of escape from fire)	3,000
66K(4)(b)	(Using or permitting premises to be used for unlawful purposes)	1,000
66K(4)(c)	(Harassment of neighbour)	2,000
66P(4)	(Landlord of boarding house failing to comply with order relating to house rules)	2,000
66T(1)	(Contraventions relating to entry, or attempted entry, of tenant's room in boarding house)	1,000
66X(5)	(Abandonment of premises without reasonable excuse)	1,000
108(2A)	(Intentional breach of work order)	3,000
137(2)	(Contracting to contravene or evade the provisions of this Act)	1,000

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**Schedule 2**

s 144(1)

**Enactments repealed**

**Tenancy Act 1955 (1955 No 50) (RS Vol 11 p 471)**

**Tenancy Amendment Act 1964 (1964 No 23) (RS Vol 11 p 516)**

**Tenancy Amendment Act 1968 (1968 No 122) (RS Vol 11 p 524)**

**Rent Appeal Act 1973 (1973 No 26)**

**Tenancy Amendment Act 1977 (1977 No 56) (RS Vol 11 p 527)**

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**Rent Appeal Amendment Act 1977 (1977 No 57)**

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**Schedule 3  
Regulations revoked**

s 144(2)

**The Emergency Forces Tenancy Regulations 1950 (1950/229)****The Tenancy Regulations 1956 (1956/187)****The Rent Appeal Act Commencement Order 1974 (1974/14)****The Rent Appeal (Fee) Regulations 1978 (1978/126)****The Rent Limitations Regulations 1984 (1984/17)****The Rent Limitations Regulations 1984 Amendment No 1  
(1984/92)****The Rent Limitations Regulations 1984, Amendment No 2  
(1984/243)**

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**Schedule 4  
Enactments amended**

s 144(3)

Schedule 4: amended, on 1 February 1992, by section 159(2) of the Legal Services Act 1991 (1991 No 71).

**Housing Act 1955 (1955 No 51) (RS Vol 7, p 297)***Amendment(s) incorporated in the Act(s).***The Public Trust Office Act 1957 (1957 No 36) (Reprinted 1976,  
Vol 5, p 4361)***Amendment(s) incorporated in the Act(s).*

**Summary Proceedings Act 1957 (1957 No 87) (RS Vol 9, p 583)**

*Amendment(s) incorporated in the Act(s).*

**The Legal Aid Act 1969 (1969 No 47) (Reprinted 1975, Vol 3,  
p 2111)**

*Amendment(s) incorporated in the Act(s).*

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## Residential Tenancies Amendment Act 2010

Public Act 2010 No 95  
Date of assent 22 July 2010  
Commencement see section 2

### 1 Title

This Act is the Residential Tenancies Amendment Act 2010.

### 2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.

## Part 2 Transitional provisions

### 89 Existing tenancies

(1) In this Part,—

**boarding house tenancy** has the same meaning as in section 66B of the principal Act

**existing tenancy**, in relation to a provision of the principal Act amended, substituted, or inserted by this Act, means a tenancy (including a boarding house tenancy) that—

(a) was granted before the commencement of the provision of this Act that made the amendment, substitution, or insertion; and

(b) subsisted immediately before that commencement.

(2) A provision of the principal Act as amended, substituted, or inserted by this Act, so far as it is applicable to any tenancy, applies to the tenancy even if the tenancy is an existing tenancy.

### 90 Existing tenancies not affected by certain amendments

(1) A provision of the principal Act that is listed in subsection (2), so far as it is applicable to an existing tenancy, applies to the

tenancy in the way the provision read immediately before the amendment or substitution of the provision by this Act came into force.

- (2) The provisions are as follows:
  - (a) the definition of **service tenancy** in section 2(1) of the principal Act:
  - (b) section 7 of the principal Act (which relates to short fixed-term tenancies):
  - (c) section 25 of the principal Act (which relates to market rent):
  - (d) section 39 of the principal Act (which relates to out-goings):
  - (e) section 48 of the principal Act (which relates to the landlord's right of entry):
  - (f) section 51 of the principal Act (which relates to termination by notice):
  - (g) section 53 of the principal Act (which relates to the termination of service tenancies):
  - (h) section 58 of the principal Act (which relates to a mortgagee or other person becoming entitled to possession):
  - (i) section 66 of the principal Act (which relates to the reduction of fixed-term tenancies).
- (3) The following sections of the principal Act as inserted by this Act do not apply to existing tenancies:
  - (a) section 16B (which deems body corporate rules to be part of tenancy agreements):
  - (b) section 18A (which prohibits the requiring of certain securities):
  - (c) section 53A (which relates to the termination of certain student tenancies).
- (4) This section overrides section 89.

## **91 Application of certain provisions to existing tenancies deferred**

- (1) During the period of 6 months after the commencement of section 13 of this Act, section 16A of the principal Act (which requires a landlord to have an agent if out of New Zealand for longer than 21 consecutive days) does not apply to existing

tenancies, but applies to those tenancies after the expiry of that period.

- (2) During the period of 12 months after the commencement of section 42 of this Act, sections 60A to 60C of the principal Act (which relate to the circumstances in which fixed-term tenancies become periodic tenancies) do not apply to existing tenancies, but apply to those tenancies after the expiry of that period.
- (3) This section overrides section 89.

## **92 Goods abandoned in case of tenancies terminated before relevant commencement**

- (1) This section applies to goods left on the premises by a tenant under a tenancy that is terminated before the commencement of section 44 of this Act.
- (2) The principal Act applies to the goods as if sections 24 and 44 of this Act had not been enacted.

## **93 Boarding house tenancies**

- (1) This section applies to boarding house tenancies.
- (2) If, on the commencement of Part 2A of the principal Act, a landlord, or any person on behalf of the landlord, holds a bond paid in respect of an existing tenancy, the following provisions apply:
  - (a) in the case of a bond of more than 1 week's rent, section 19(1) of the principal Act must be complied with within 23 working days of the commencement of Part 2A of the principal Act:
  - (b) in the case of a bond of 1 week's rent or less, section 66D(1)(b) of the principal Act must be complied with within 5 working days of the commencement of Part 2A of the principal Act.
- (3) Sections 13, 13A, and 66C of the principal Act (which relate to the form and content of boarding house tenancy agreements) do not apply to existing tenancies.
- (4) Section 66E of the principal Act (which relates to outgoings) does not apply to existing tenancies.

- (5) Section 9(2) and (3) of the principal Act (which are transitional provisions) apply to existing tenancies as if the references in those provisions to the commencement of this Act were references to the commencement of Part 2A of the principal Act.

**94 References to Part 2A to be disregarded before its commencement**

- (1) Until the commencement of Part 2A of the principal Act, section 50(ab) of the principal Act must be read as if it did not refer to a sole tenant under a boarding house tenancy agreement or to section 66W of the principal Act.
- (2) Until the commencement of Part 2A of the principal Act, Schedule 1A of the principal Act must be read as if it did not contain the items that relate to sections located in Part 2A of the principal Act.

**95 References to Unit Titles Act 2010 before operation of that Act**

- (1) Until the commencement of the Unit Titles Act 2010, the references in sections 16B(1), 25(2A), and 66(4) of the principal Act to a stratum estate under the Unit Titles Act 2010 must be read as references to a stratum estate under the Unit Titles Act 1972.
- (2) Until section 37 of the Unit Titles Act 1972 ceases, by operation of sections 218, 220, and 221 of the Unit Titles Act 2010, to be in force in respect of any premises held in a stratum estate, the references in sections 16B(2), 25(2A), and 66(4) of the principal Act to body corporate operational rules must be read as references to rules prescribed by or under section 37 of the Unit Titles Act 1972.

**96 Bond refund applications**

If an application for payment of a bond under section 22 of the principal Act (as in force before the commencement of this section) is received by the chief executive and appears to have been posted or lodged before that commencement, then the application must be dealt with under the principal Act as in force before that commencement.

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**97 Proceedings before Tribunal**

- (1) Every application filed with the Tribunal under section 86 of the principal Act before the commencement of this section must be dealt with under the principal Act as in force before that commencement.
- (2) The Tribunal may not determine or otherwise deal with any dispute that arose before the commencement of this Act unless the Tribunal could have determined or otherwise dealt with that dispute at the time it arose.
- (3) The Tribunal may not make any order in respect of a matter that arose before the commencement of this Act unless the Tribunal could have made that order at the time the matter arose.

**98 Unlawful acts**

Whenever a question arises whether an act or omission constitutes an unlawful act under the principal Act, the question must be determined in accordance with the principal Act as it read at the time of the act or the omission.

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## **Notes**

### **1 General**

This is an eprint of the Residential Tenancies Act 1986. The eprint incorporates all the amendments to the Act as at 1 October 2010. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

### **2 About this eprint**

This eprint has not been officialised. For more information about eprints and officialisation, please *see* <http://www.pco.parliament.govt.nz/eprints/>.

### **3 List of amendments incorporated in this eprint (most recent first)**

Residential Tenancies Amendment Act 2010 (2010 No 95)  
Property Law Act 2007 (2007 No 91): section 364(1)

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