



New South Wales

Residential Tenancies and Housing Legislation Amendment (Public Housing— Antisocial Behaviour) Act 2015 No 34

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New South Wales

Residential Tenancies and Housing Legislation Amendment (Public Housing— Antisocial Behaviour) Act 2015 No 34

Act No 34, 2015

An Act to amend the *Residential Tenancies Act 2010* and the *Housing Act 2001* to facilitate the termination of public housing tenancies for antisocial behaviour and for other purposes. [Assented to 22 October 2015]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Residential Tenancies and Housing Legislation Amendment (Public Housing—Antisocial Behaviour) Act 2015*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Residential Tenancies Act 2010 No 42

[1] Section 87 Breach of agreement

Omit “Section 152” from the note to the section. Insert instead “Section 154E”.

[2] Part 7, Division 5, heading

Omit “—additional grounds”.

[3] Part 7, Division 5, Subdivision 1, heading

Insert before section 143:

Subdivision 1 Eligibility ground

[4] Sections 143, 146, 147, 151 and 154

Omit “Division” wherever occurring. Insert instead “Subdivision”.

[5] Part 7, Division 5, Subdivision 2, heading

Insert before section 148:

Subdivision 2 Alternative premises ground

[6] Section 152 Termination by Tribunal of social housing tenancy agreements for breach

Omit the section.

[7] Part 7, Division 5, Subdivision 3, heading

Insert before section 153:

Subdivision 3 Behaviour ground

[8] Part 7, Division 5, Subdivisions 4 and 5

Insert after section 154:

Subdivision 4 Breach of agreement

154A Termination notice for non-payment of amount payable on variation or cancellation of rent rebate

If a tenant owes a landlord under a social housing tenancy agreement a debt arising under section 57 of the *Housing Act 2001* or otherwise as a consequence of the variation or cancellation of a rent rebate, sections 87, 88 and 89 apply as if the amount owed were rent and the failure to pay were a breach of the agreement.

154B Tribunal must have regard to breaches of prior social housing tenancy agreements and to series of breaches

(1) In determining under section 87 whether to terminate a social housing tenancy agreement on the ground of a breach of the agreement by the tenant, the Tribunal must have regard to:

- (a) any breaches by the tenant of a prior social housing tenancy agreement with the same or a different landlord, and

- (b) whether a series of breaches by the tenant of the social housing tenancy agreement or any prior social housing tenancy agreement with the same or a different landlord justifies termination of the agreement even though, taken alone, the circumstances of each breach would not justify termination of an agreement.
- (2) This section does not limit any other matter that may be considered by the Tribunal under this Act.

154C Scheme for recording strikes against tenant for breaches

- (1) If a landlord under a social housing tenancy agreement is satisfied that a tenant has breached the agreement but is not satisfied that the circumstances of the breach taken alone justify termination of the agreement, the landlord may issue a strike notice to the tenant and record a strike against the tenant.
- (2) A strike notice:
 - (a) must be in writing, and
 - (b) must inform the tenant that a strike has been recorded against the tenant, and
 - (c) must set out details of the alleged breach of the agreement for which the strike has been recorded, and
 - (d) must remind the tenant of any strikes that have been recorded (and not withdrawn) against the tenant within the previous 12 months (including strikes recorded for breach of a prior social housing tenancy agreement with the same or, to the extent that relevant information is known by the landlord, a different landlord), and
 - (e) must warn the tenant that, if a third strike is recorded against the tenant within 12 months, a termination notice may be given to the tenant, and
 - (f) must inform the tenant that, if the tenant disagrees with the statement of details of the alleged breach of the agreement for which the strike has been recorded, or any aspect of those details, the tenant should make submissions to the landlord setting out the grounds of the disagreement, and
 - (g) must specify how the submissions may be made and the date before which they must be made (being a date not less than 21 days after the date of the strike notice), and
 - (h) must inform the tenant that, if the tenant does not make any such submissions, the details of the alleged breach of the agreement set out in the strike notice will be taken, in proceedings before the Tribunal, to have been conclusively proved and the tenant will not be able to challenge the accuracy of those details.
- (3) A landlord may withdraw a strike against a tenant at any time.
- (4) If, after considering submissions made by a tenant as set out in a strike notice, the landlord decides not to withdraw the strike, the landlord must give the tenant a notice in writing:
 - (a) informing the tenant of that decision and that the tenant may apply for review of the strike notice, and
 - (b) specifying how the application may be made and the date before which it must be made (being a date not less than 21 days after the date of the notice).

- (5) If an application for review of a strike notice is made by a tenant, the landlord must refer the matter to a review panel comprised of one or more persons who were not substantially involved in the process of making the decision under review and who are, in the opinion of the landlord, otherwise suitably qualified to deal with the issues raised by the application.
- (6) On a review, the review panel must consider any information submitted by the tenant and may:
 - (a) confirm the strike against the tenant, or
 - (b) require the strike against the tenant to be withdrawn.
- (7) A landlord is bound by a decision of a review panel requiring a strike against a tenant to be withdrawn.
- (8) A landlord must, on application by a tenant, provide the tenant with information about any strikes recorded (and not withdrawn) against the tenant (unless that information has already been provided to the tenant within the last 3 months and no further strikes have been recorded against the tenant since the information was last provided).
- (9) If 2 strikes have been recorded against the tenant within the previous 12 months and the landlord is satisfied that the tenant has breached the social housing tenancy agreement and that a further strike notice could be issued to the tenant, the landlord may:
 - (a) record a strike against the tenant without issuing a further strike notice, and
 - (b) give a termination notice under section 87 on the basis that the landlord is satisfied that a series of breaches by the tenant of the agreement or any prior social housing tenancy agreement with the same or a different landlord justifies termination of the agreement with the tenant.
- (10) The termination notice:
 - (a) must inform the tenant that a strike has been recorded against the tenant and set out details of the alleged breach of the agreement for which the strike has been recorded, and
 - (b) must remind the tenant of the details of any other strikes relied on by the landlord for giving the notice.

154D Tribunal required to make termination order in certain circumstances

- (1) Subject to subsection (3), the Tribunal must make a termination order on the application of a landlord under a social housing tenancy agreement if:
 - (a) an application for the order is made under section 90 and the Tribunal is satisfied of the matters set out in section 90 (1) (b) and the injury constitutes grievous bodily harm within the meaning of the *Crimes Act 1900*, or
 - (b) an application for the order is made under section 91 and the Tribunal is satisfied of the matters set out in section 91 (1) (a), or
 - (c) an application for the order is made under section 91 and the Tribunal is satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the social housing premises, has intentionally or recklessly caused or permitted the social housing premises or any property adjoining or adjacent to the premises (including any property that is available for use by the tenant in common with others) to be used for the purposes of:

- (i) storing a firearm for which a licence or permit is not held under the *Firearms Act 1996*, or
 - (ii) a show cause offence within the meaning of the *Bail Act 2013*, and the tenant or other person has been charged with an offence relating to those circumstances (whether or not the person is or has been found guilty of the offence).
- (2) Subject to subsection (3), the Tribunal must make a termination order on the application of a landlord if:
 - (a) an application for the order is made under section 90 and the Tribunal is satisfied of the matters set out in section 90 (1) (and subsection (1) of this section does not apply), or
 - (b) an application for the order is made under section 91 and the Tribunal is satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the social housing premises, has intentionally or recklessly caused or permitted the social housing premises or any property adjoining or adjacent to the premises (including any property that is available for use by the tenant in common with others) to be used:
 - (i) as a brothel within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (ii) for the purposes of an offence against section 91H (Production, dissemination or possession of child abuse material) of the *Crimes Act 1900*, or
 - (iii) for the purposes of an offence against section 154G (Facilitating organised car or boat rebirthing activities) of the *Crimes Act 1900*, or
 - (c) an application for the order is made under section 91 and the Tribunal is satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the social housing premises, has intentionally or recklessly caused or permitted the social housing premises or any property adjoining or adjacent to the premises (including any property that is available for use by the tenant in common with others) to be used for any other unlawful purpose and that the use is sufficient to justify the termination.
- (3) However:
 - (a) subsection (1) (a) does not apply if the application for the termination order is based on an act of a person who although not a tenant is occupying or jointly occupying the residential premises and not on an act of the tenant, and
 - (b) subsections (1) and (2) do not apply if the Tribunal is satisfied that the termination order would be likely to result in undue hardship being suffered by a child, a person in whose favour an apprehended violence order could be made or a person suffering from a disability within the meaning of the *Anti-Discrimination Act 1977* who is occupying or jointly occupying the social housing premises, and
 - (c) subsection (2) does not apply if the tenant satisfies the Tribunal that there are other exceptional circumstances that justify the order not being made.
- (4) For the purposes of the application of section 91 (1) (b) to social housing premises under this section:

- (a) the reference to residential premises in section 91 (1) (b) is to be taken to be a reference to the social housing premises or any property adjoining or adjacent to the premises (including any property that is available for use by the tenant in common with others), and
- (b) if the Tribunal is satisfied that an offence of a kind referred to in subsection (1) (c) or (2) (b) has been committed by a person on the social housing premises or any property adjoining or adjacent to the premises (including any property that is available for use by the tenant in common with others), the Tribunal must assume that:
 - (i) the premises or property has been used for an unlawful purpose, and
 - (ii) the use is sufficient to justify termination of the agreement.
- (5) If the Tribunal does not make a termination order as a consequence of subsection (3), the Tribunal must provide written reasons for the decision.

154E Exercise of discretion to make termination order

- (1) In considering whether to make a termination order for a social housing tenancy agreement, the Tribunal must have regard to the following:
 - (a) the effect the tenancy has had on neighbouring residents or other persons,
 - (b) the likelihood that neighbouring residents or other persons will suffer serious adverse effects in the future if the tenancy is not terminated,
 - (c) the landlord's responsibility to its other tenants,
 - (d) the history of the current tenancy and any prior tenancy arising under a social housing tenancy agreement with the same or a different landlord,
 - (e) whether the tenant, wilfully or otherwise, is or has been in breach of an order of the Tribunal.
- (2) This section does not limit any other matter that may be considered by the Tribunal under this Act.

154F Neighbourhood impact statement

- (1) If the Tribunal finds that a tenant under a social housing tenancy agreement has breached the agreement and the Tribunal is considering whether to make a termination order, the Tribunal is to give the landlord an opportunity to submit a neighbourhood impact statement and is to have regard to any such statement that is submitted.
- (2) A neighbourhood impact statement:
 - (a) is a summary of statements made by neighbouring residents or other persons relevant to the requirement for the Tribunal to have regard to the effect the tenancy has had on them, and
 - (b) should not identify the neighbouring residents or other persons.
- (3) Every effort must be made in the proceedings to ensure that information tending to identify a neighbouring resident or other person who has made a statement that is summarised in a neighbourhood impact statement is not disclosed in the proceedings without the consent of that person.

Subdivision 5 Miscellaneous

154G Order for possession

- (1) If an order is made for termination of a social housing tenancy agreement, the order for possession must not specify a day that the order for possession is to take effect that is later than 28 days after the day on which the termination order is made unless the Tribunal is satisfied that there are exceptional circumstances justifying a later day.
- (2) The order for possession cannot be suspended for a period that would result in it taking effect later than 28 days after the day on which the termination order was made unless the Tribunal is satisfied that there are exceptional circumstances justifying a longer period of suspension.

[9] Part 7, Division 7

Insert after Division 6 of Part 7:

Division 7 Evidentiary certificates

156A Evidentiary certificate for strike notice

- (1) In proceedings before the Tribunal, a landlord under a social housing tenancy agreement may submit a certificate certifying as to:
 - (a) the issuing of a strike notice to the tenant, and
 - (b) the details of the alleged breach of the agreement set out in the strike notice, and
 - (c) whether or not the tenant made submissions as allowed for in the strike notice, and
 - (d) whether or not the tenant made an application for review of the strike notice and the outcome of any such review.
- (2) Subject to subsection (3), in proceedings before the Tribunal, a certificate under subsection (1) constitutes proof, in the absence of proof to the contrary, of the matters certified in the certificate.
- (3) If, in proceedings before the Tribunal, the Tribunal is satisfied that the tenant was issued a strike notice and did not make submissions as allowed for in the strike notice, a certificate under subsection (1) constitutes conclusive proof of the matters certified in the certificate under subsection (1) (b).

156B Evidentiary certificate of cost of work

In proceedings before the Tribunal:

- (a) a landlord under a social housing tenancy agreement may submit a certificate certifying as to the cost of work undertaken by the landlord on or in connection with the social housing premises, and
- (b) the Tribunal must accept the certificate as conclusive proof of the reasonable cost of the work.

[10] Section 228

Insert after section 227:

228 Review of sections 154D and 154G

- (1) The Minister is to review sections 154D and 154G to determine whether the policy objectives of the sections remain valid and whether the terms of the sections remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 2 years from the commencement of this section.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

Schedule 2 Amendment of Housing Act 2001 No 52

[1] Section 69C

Insert after section 69B:

69C Power to obtain information, documents and evidence to prevent or investigate fraud

- (1) For the purposes of preventing or investigating fraud against the Corporation, the Corporation may, by written notice, require a person to provide information, produce documents or appear before a person to give evidence and produce documents, as specified in the notice.
- (2) The Corporation is not to make any such requirement if it appears to the Corporation that:
 - (a) the person concerned does not consent to compliance with the requirement, and
 - (b) the person would not, in court proceedings, be required to comply with a similar requirement on the grounds of public interest, privilege against self-incrimination or legal professional privilege.
- (3) A person who, without reasonable excuse, fails to comply with the terms of a notice given to the person under this section is guilty of an offence.
Maximum penalty: 20 penalty units.

[2] Section 74 Proceedings for offences

Insert after section 74 (2):

- (3) Proceedings for an offence against section 69 or 69A must be commenced not later than 12 months after evidence of the alleged offence first came to the attention of a member of the staff of the Corporation.
- (4) If proceedings for an offence against section 69 or 69A are commenced later than 12 months after the offence was alleged to have been committed, the court attendance notice or application must contain particulars of the date on which evidence of the offence first came to the attention of a member of the staff of the Corporation.
- (5) In proceedings for an offence against section 69 or 69A, the court attendance notice or application is proof, in the absence of proof to the contrary, of the date on which evidence of the offence first came to the attention of a member of the staff of the Corporation.

[Second reading speech made in—

Legislative Assembly on 5 August 2015

Legislative Council on 13 October 2015]