

1995—No. 409

RESIDENTIAL TENANCIES ACT 1987—REGULATION

(Residential Tenancies (Tribunal) Regulation 1995)

NEW SOUTH WALES



[Published in Gazette No. 102 of 25 August 1995]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Residential Tenancies Act 1987, has been pleased to make the Regulation set forth hereunder.

FAYE LO PO, M.P.,
Minister for Consumer Affairs.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Residential Tenancies (Tribunal) Regulation 1995.

Commencement

2. This Regulation commences on 31 August 1995.

Definition

3. In this Regulation:

“the Act” means the Residential Tenancies Act 1987.

PART 2—JURISDICTION OF THE TRIBUNAL

Delegation of part of the jurisdiction of Tribunal: sec. 84

4. For the purposes of section 84 of the Act, the Chairperson may delegate to the Registrar or to a Deputy Registrar the exercise of such part of the Tribunal’s jurisdiction as is necessary to enable the delegate to do any of the following:

- (a) to make an order under section 16 (2) (e) of the Act, pending the determination of an application for compensation by the Tribunal;
- (b) to make an order under section 51 of the Act;
- (c) to hear applications for adjournments and to adjourn proceedings before the Tribunal;
- (d) to make interim orders in connection with the adjournment of proceedings;
- (e) to hear applications for stays of proceedings and to order that proceedings be stayed;
- (f) to hear applications for extensions of time for the doing of anything under the Act and to extend the period of time for the doing of any such thing;
- (g) to bring the parties to an application to the Tribunal to a settlement acceptable to them and to make an order under the Act giving effect to the terms of settlement;
- (h) to make orders under the Act before or during proceedings before the Tribunal and with the consent of all parties;
- (i) to make any ancillary order to any such order that the delegate thinks appropriate;
- (j) to vary or set aside, or stay or suspend the operation of, any order described in this clause;
- (k) to make any order, or do any thing, described in this clause in the absence of any party to the proceedings.

Jurisdiction of the Tribunal regarding rental bonds: sec. 85

5. For the purposes of section 85 (3) (a) and (b) of the Act, the amount prescribed in relation to an order arising out of the Tribunal's jurisdiction with respect to rental bonds (pursuant to section 85 (1) (b)) is \$20,000.

PART 3—APPLICATIONS

Applications to the Tribunal: sec. 86

6. (1) For the purposes of section 86 (1) of the Act, the prescribed particulars to be contained in an application made to the Tribunal under the Act are as follows:

- (a) the name and address of the applicant and whether the applicant is the landlord or tenant under the residential tenancy agreement;

- (b) the name and last known address of the other party and whether that party is the landlord or tenant under the residential tenancy agreement;
- (c) the address of the residential premises subject to the residential tenancy agreement;
- (d) a description of the order or orders sought by the applicant;
- (e) a concise statement containing particulars sufficient to enable the other party to know the nature of the claim.

(2) An application must be signed and dated by the applicant, unless this clause authorises another person to sign the application.

(3) An application made by a landlord may be completed, signed, dated and lodged by the landlord's agent.

(4) An application made by a tenant may be completed, signed, dated and lodged by:

- (a) the tenant's agent under section 31 of the Act; or
- (b) a person authorised in writing by the tenant to do so.

Applications to the Tribunal regarding retirement villages: sec. 86

7. (1) For the purposes of section 86 (1) of the Act, the prescribed particulars to be contained in an application made to the Tribunal under the Retirement Villages Act 1989 are as follows:

- (a) the name and address of the applicant and whether the applicant is the administering authority or resident of a retirement village;
- (b) the name and last known address of the other party and whether that party is the administering authority or resident of a retirement village;
- (c) the address of the residential premises subject to the residence contract concerned;
- (d) a description of the order or orders sought by the applicant;
- (e) a concise statement containing particulars sufficient to enable the other party to know the nature of the claim.

(2) An application must be signed and dated by the applicant, unless this clause authorises another person to sign the application.

(3) An application made by an administering authority may be completed, signed, dated and lodged by any person authorised in writing by the administering authority to do so.

(4) An application made by a resident of a retirement village may be completed, signed, dated and lodged by any of the following:

- (a) if the resident is a protected person within the meaning of the Protected Estates Act 1983, the Protective Commissioner;
- (b) if the resident has a guardian, the resident's guardian;
- (c) any other person authorised in writing by the resident to do so.

Application fee: sec. 86

8. (1) For the purposes of section 86 (1) of the Act, the prescribed fee to be lodged with an application made to the Tribunal is:

- (a) \$10, if an applicant is an eligible pensioner or a full-time student who receives a student assistance allowance from the Commonwealth; or
- (b) \$20 in any other case.

(2) In this clause, “**eligible pensioner**” means:

- (a) a person who receives a pension, benefit or allowance under Chapter 2 of the Social Security Act 1991 of the Commonwealth or a service pension under Part III of the Veterans, Entitlements Act 1986 of the Commonwealth, and who is the holder of a pensioner concession card issued by or on behalf of the Commonwealth Government; or
- (b) a person who receives a pension from the Commonwealth Department of Veterans, Affairs as:
 - (i) the widow or widower of a member of the Australian Defence or Peacekeeping Forces; or
 - (ii) the unmarried mother of a deceased member of either of those Forces; or
 - (iii) the widowed mother of a deceased unmarried member of either of those Forces,

and does not have income and assets that would prevent them from being granted a pensioner concession card (assuming they were eligible for such a card); or

- (c) a person who receives a special rate of pension under section 24 of the Veterans, Entitlements Act 1986 of the Commonwealth.

PART 4—PROCEEDINGS

Notice of hearing of proceedings: sec. 87

9. (1) For the purposes of section 87 (1) of the Act, the prescribed manner of notifying each party to the proceedings of the time and place of those proceedings is by giving each party:

- (a) a written notice of the time and place of the hearings; and
- (b) a copy of the application made to the Tribunal.

(2) The Registrar may, if the applicant requests, delete the applicant's address from the application before forwarding it to other parties to the proceedings.

(3) If a person who is a party to proceedings before the Tribunal under the Act is a protected person within the meaning of the Protected Estates Act 1983 or has a guardian, notice of proceedings must also be given to any person nominated by that person.

(4) Such additional notice is only required if the nomination was made to the Registrar at least 7 days before the commencement of the relevant proceedings.

Urgent hearings

10. The Chairperson may make arrangements to have an application heard on an urgent basis if of the opinion that it is necessary or desirable to do so.

Summons of witnesses: sec. 101

11. (1) A summons issued by the Registrar under section 101 of the Act must be served not later than 3 days before the day the person is required to attend in accordance with the summons.

(2) For the purposes of section 101 (4) of the Act, the prescribed fees and allowances are the fees and allowances to which a witness is entitled in civil proceedings before the District Court.

Applications to vary or set aside orders

12. An application to vary or set aside an order made by the Tribunal may not be made later than 14 days after the making of the order or 14 days after the applicant first receives notice of the order, whichever is the later.

Directions as to proceedings

13. (1) The Chairperson, a member of the Tribunal and the Registrar may each give directions as to the steps to be taken to make any application ready for hearing, including directions as to the following:

- (a) the service of documents on parties to the proceedings;
- (b) the calling of witnesses;

- (c) the furnishing of written submissions on any point of law to be argued before the Tribunal;
- (d) the furnishing of documents to a particular person;
- (e) the carrying out of any examination, inspection or inquiry in connection with the hearing.

(2) In addition to any such directions, the Registrar may, with the consent of the Chairperson, direct what manner or form of procedure for taking any step is to be followed in proceedings before the Tribunal.

(3) The Chairperson, member or Registrar, as appropriate, must cause any direction given under this clause to be noted on the Tribunal record.

Conduct of certain proceedings

14. (1) An application to the Tribunal may be heard in the following manner if all of the parties indicate that they do not intend to call witnesses and the Tribunal and all parties agree that the application should be heard in that manner:

- (a) each party may, in turn, present their case orally and unsworn and may be questioned by any other party;
- (b) each party may produce and tender evidence in support of their case, unless the Tribunal directs that any such evidence may not be tendered;
- (c) each party may comment on any other party's case after all parties have presented their cases;
- (d) each party may make a final submission.

(2) The order in which each party presents its case is to be as determined by the Tribunal.

(3) This clause does not affect the conduct of conciliation hearings. It applies only to the conduct of proceedings before the Tribunal.

General directions as to witnesses

15. (1) The Chairperson may give directions as to the stage of proceedings before the Tribunal at which parties are entitled to call witnesses to give evidence.

(2) A person who is called to give evidence in proceedings before the Tribunal in breach of any such direction is not entitled to give evidence unless the Tribunal consents.

(3) The Chairperson may revoke or vary a direction given under this clause.

Notification of orders

16. The Registrar is to notify all parties to proceedings of any orders made by the Tribunal in relation to those proceedings. That notice is to be given in writing.

Order for possession: sec. 73

17. For the purposes of section 73 of the Act, the prescribed form of warrant authorising a sheriff's officer to enter residential premises to enforce an order for possession is Form 1 in Schedule 1.

PART 5—RECORDS**Records to be kept by Registrar**

18. The Registrar is to have the care, custody and control of the following records of the Tribunal:

- (a) applications made to the Tribunal;
- (b) minutes of orders of the Tribunal;
- (c) written records of reasons given by the Tribunal for its decisions;
- (d) reports or copies of reports furnished to the Tribunal;
- (e) documents or copies of documents produced to the Tribunal in proceedings;
- (f) exhibits;
- (g) correspondence received by the Tribunal;
- (h) diaries and other records relating to the listing and hearing of proceedings before the Tribunal;
- (i) any transcript of evidence taken before the Tribunal;
- (j) such other records as may be determined by the Chairperson.

Access to records kept by Registrar

19. (1) Any person may apply to the Registrar for access to the Tribunal's records.

(2) The Registrar must grant access to all records relating to particular proceedings to any person who is a party to the proceedings, free of charge.

(3) The Registrar may grant access to a record to any other person who, in the opinion of the Registrar, has a sufficient reason for being given access to a record of the Tribunal on payment of a fee approved by the Minister.

(4) This clause does not apply to any note or other record made by or on behalf of a member of the Tribunal, other than a minute of an order of the Tribunal or a written record of reasons given by the member for a decision of the Tribunal.

PART 6—MEMBERS

Oath to be taken by members of Tribunal: Sch. 1, cl. 2 (2)

- 20.** For the purposes of clause 2 (2) of Schedule 1 to the Act:
- (a) the prescribed form of oath or affirmation to be taken by the Chairperson is set out in Part 1 of Schedule 2; and
 - (b) the prescribed form of oath or affirmation to be taken by a member is set out in Part 2 of Schedule 2.

Disclosure of members' interests

- 21. (1)** A member:
- (a) who has a direct or indirect interest in a matter the subject of present or proposed proceedings of the Tribunal; and
 - (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest to the Chairperson.

(2) If the member is the Chairperson, the nature of the interest must be disclosed to the Minister.

(3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or Chairperson otherwise determine, exercise, or continue to exercise, the jurisdiction of the Tribunal in the proceedings.

PART 7—GENERAL

Repeal

22. (1) The Residential Tenancies Tribunal Regulation 1989 is repealed.

(2) Any act, matter or thing which, immediately before the repeal of the Residential Tenancies Tribunal Regulation 1989, had effect under that Regulation continues to have effect under this Regulation.

SCHEDULE 1—FORMS
Form 1

(Cl. 17)

WARRANT FOR ENFORCEMENT OF ORDER FOR POSSESSION
(Residential Tenancies Act 1987)

To all sheriff's officers:

Why is this warrant being issued?

On the Residential Tenancies Tribunal sitting at made the following orders:

- (a) an order terminating the residential tenancy agreement between
..... and
- (b) an order for possession of the residential premises at
in New South Wales;
- * (c) an order that the operation of the order for possession be suspended for a
period of days from the date of the order;
- * (d) an order that the operation of the order for possession be terminated 14 days
after the date of issue of this warrant.

An application was made by the person in whose favour the order was made for the enforcement of the order for possession of the premises.

I am satisfied that the order has not been complied with, or that a condition of suspension of the order has not been complied with.

What does this warrant authorise?

This warrant authorises any sheriff's officer to enter the residential premises and take all steps that are reasonably necessary to give possession to the landlord.

Police assistance

A sheriff's officer may request that any member of the police force assist the sheriff's officer to enforce the order for possession.

Use of force

The sheriff's officer or member of the police force enforcing the order for possession is authorised to use such force as is reasonably necessary to enforce the order for possession.

Production of this warrant

The sheriff's officer or member of the police force enforcing the order for possession must produce this warrant if asked.

Issue details

Date of issue of warrant:

* This warrant must be executed within 14 days of its issue.

Signature

Signed by me:

Chairperson/Member/Registrar/Deputy Registrar (delete whichever is not applicable) of the Residential Tenancies Tribunal.

.....

(Print name)

.....

(Signature)

* Delete if not applicable

<i>Case information</i>
Residential Tenancies Tribunal Registry
Phone No:
Name and address of landlord/agent:
.....
Phone No. of landlord/agent:
Tenant's Phone No:
File No:

SCHEDULE 2—OATHS AND AFFIRMATIONS

(Cl. 20)

Part 1—Chairperson

Oath

I, swear that I will faithfully and impartially discharge the duties of the office of Chairperson of the Residential Tenancies Tribunal of New South Wales.

Affirmation

I, solemnly, sincerely and truly affirm and declare that I will faithfully and impartially discharge the duties of the office of Chairperson of the Residential Tenancies Tribunal of New South Wales.

Part 2—Other members**Oath**

I ,....., swear that I will faithfully and impartially discharge the duties of the office of a member of the Residential Tenancies Tribunal of New South Wales.

Affirmation

I,, solemnly, sincerely and truly affirm and declare that I will faithfully and impartially discharge the duties of the office of a member of the Residential Tenancies Tribunal of New South Wales.

NOTES**TABLE OF PROVISIONS****PART 1—PRELIMINARY**

1. Citation
2. Commencement
3. Definition

PART 2—JURISDICTION OF THE TRIBUNAL

4. Delegation of part of the jurisdiction of Tribunal: sec. 84
5. Jurisdiction of the Tribunal regarding rental bonds: sec. 85

PART 3—APPLICATIONS

6. Applications to the Tribunal: sec. 86
7. Applications to the Tribunal regarding retirement villages: sec. 86
8. Application fee: sec. 86

PART 4—PROCEEDINGS

9. Notice of hearing of proceedings: sec. 87
10. Urgent hearings
11. Summons of witnesses: sec. 101
12. Applications to vary or set aside orders
13. Directions as to proceedings
14. Conduct of certain proceedings
15. General directions as to witnesses
16. Notification of orders
17. Order for possession: sec. 73

1995—No. 409

PART 5—RECORDS

18. Records to be kept by Registrar
19. Access to records kept by the Registrar

PART 6—MEMBERS

20. Oath to be taken by members of Tribunal: Sch. 1, cl. 2 (2)
21. Disclosure of members' interests

PART 7—GENERAL

22. Repeal

SCHEDULE 1—FORMS

SCHEDULE 2—OATHS AND AFFIRMATIONS

EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, with minor modifications, the provisions of the Residential Tenancies Tribunal Regulation 1989. The new Regulation deals with the following matters:

- (a) the delegation of part of the jurisdiction of the Residential Tenancies Tribunal (clause 4);
- (b) the jurisdiction of the Tribunal in relation to rental bonds (clause 5);
- (c) the particulars to be contained in applications made to the Tribunal, including applications made in relation to retirement villages (clauses 6 and 7);
- (d) the fee for making such applications (clause 8);
- (e) the giving of notice of the hearing of proceedings and the conduct of proceedings (clauses 9–16);
- (f) the form of warrant for enforcement of an order for possession (clause 17 and Schedule 1);
- (g) the keeping of records by the Registrar and the granting of access to those records (clauses 18 and 19);
- (h) the membership of the Tribunal (clauses 20 and 21 and Schedule 2);
- (i) other formal matters (clauses 1–3 and 22).

This Regulation is made under the provisions of the Residential Tenancies Act 1987, including section 133 (the general regulation making power) and sections 73, 84, 85, 86, 87 and 101.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
