

Residential Tenancies Amendment (Review) Act 2018 No 58

[2018-58]



New South Wales

Status Information

Currency of version

Historical version for 1 March 2019 to 25 November 2019 (accessed 25 November 2024 at 10:08)

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2019 No 14](#) (not commenced — to commence on 5.12.2019)
- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2019](#)
- **Note**
Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

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File last modified 21 November 2019

Residential Tenancies Amendment (Review) Act 2018 No 58



New South Wales

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Residential Tenancies Amendment (Review) Act 2018 No 58



New South Wales

An Act to amend the *Residential Tenancies Act 2010* relating to the rights and obligations of landlords, tenants and co-tenants, including to give effect to recommendations of the statutory review of the Act; and for other purposes.

1 Name of Act

This Act is the *Residential Tenancies Amendment (Review) Act 2018*.

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 3 Definitions

Insert in alphabetical order in section 3 (1):

break fee—see section 107.

domestic violence offence has the same meaning as it has in the *Crimes (Domestic and Personal Violence) Act 2007*.

separately metered means that there is, in respect of residential premises, a meter:

- (a) that satisfies an Australian Standard prescribed by the regulations dealing with electrical, gas, oil or water metering equipment, and
- (b) that has been installed in accordance with the manufacturer's instructions for installation or industry practice, and
- (c) that measures the quantity of electricity, gas, oil or water that is supplied to, or used at, only those residential premises, and
- (d) that enables a separate bill to be issued by the supplier for all charges for the supply and use of the electricity, gas, oil or water at those residential premises, and

- (e) if the meter is to measure the supply of electricity—in respect of which an NMI, within the meaning of the *National Energy Retail Law (NSW)*, has been assigned, and
- (f) if the meter is to measure the supply of gas—in respect of which an MIRN or a delivery point identifier, within the meaning of the *National Energy Retail Law (NSW)*, has been assigned.

[2] Section 26 Disclosure of information to tenants generally

Insert after section 26 (2):

(2A) **Disclosure or provision of strata scheme information** If the residential tenancy agreement relates to residential premises that comprise or include a lot in a strata scheme (within the meaning of the *Strata Schemes Management Act 2015*)—a landlord or landlord’s agent must, before the tenant enters into the residential tenancy agreement:

- (a) give the tenant a copy of the by-laws for the strata scheme, and
- (b) if a strata renewal committee is currently established in relation to the strata scheme under the *Strata Schemes Development Act 2015*, disclose that fact to the tenant.

[3] Section 26 (3)

Omit “Subsection (2) does”. Insert instead “Subsections (2) and (2A) (b) do”.

[4] Section 29 Condition reports

Omit section 29 (2). Insert instead:

(2) The landlord or landlord’s agent must, before or at the time the tenant signs the residential tenancy agreement, give to the tenant 2 copies, or one electronic copy, of the completed condition report.

Maximum penalty: 20 penalty units.

[5] Section 29 (3)

Omit “receiving it”. Insert instead “taking possession of the residential premises”.

[6] Section 29 (3A)

Insert after section 29 (3):

(3A) Subsection (3) does not apply to the tenant if the landlord or landlord’s agent has

failed to give to the tenant copies of the condition report in accordance with this section.

[7] Section 31A

Insert after section 31:

31A Landlord's information statement

- (1) A landlord must not enter into a residential tenancy agreement unless the landlord or the landlord's agent has signed an acknowledgment on the residential tenancy agreement that the landlord has read and understood the contents of an information statement in the approved form that sets out the landlord's rights and obligations under this Act and any other Act or law in relation to the proposed residential tenancy (a ***rights and obligations information statement***).

Maximum penalty: 20 penalty units.

- (2) A landlord's agent must not sign an acknowledgment on the residential tenancy agreement unless the landlord's agent has first obtained from the landlord a statement in writing that the landlord has read and understood the contents of the rights and obligations information statement.

Maximum penalty: 20 penalty units.

[8] Section 36 Rent receipts

Insert "or send it by email to an email address specified by the tenant for the service of documents of that kind" after "premises" in section 36 (2).

[9] Section 41 Rent increases

Insert after section 41 (1):

- (1A) Subsection (1) does not apply to a fixed term agreement for a fixed term of less than 2 years that specifies the date on which, and the amount by which, the rent payable under that agreement will be increased. This subsection does not affect the operation of subsection (2) in relation to the renewal of a fixed term agreement.

- (1B) The rent payable under a periodic agreement may not be increased more than once in any period of 12 months.

[10] Section 52 Landlord's general obligations for residential premises

Insert after section 52 (1):

- (1A) Without limiting the circumstances in which residential premises are not fit for habitation, residential premises are not fit for habitation unless the residential premises:
- (a) are structurally sound, and
 - (b) have adequate natural light or artificial lighting in each room of the premises other than a room that is intended to be used only for the purposes of storage or a garage, and
 - (c) have adequate ventilation, and
 - (d) are supplied with electricity or gas and have an adequate number of electricity outlet sockets or gas outlet sockets for the supply of lighting and heating to, and use of appliances in, the premises, and
 - (e) have adequate plumbing and drainage, and
 - (f) are connected to a water supply service or infrastructure that supplies water (including, but not limited to, a water bore or water tank) that is able to supply to the premises hot and cold water for drinking and ablution and cleaning activities, and
 - (g) contain bathroom facilities, including toilet and washing facilities, that allow privacy for the user.
- (1B) For the purposes of subsection (1A) (a), residential premises are structurally sound only if the floors, ceilings, walls, supporting structures (including foundations), doors, windows, roof, stairs, balconies, balustrades and railings:
- (a) are in a reasonable state of repair, and
 - (b) with respect to the floors, ceilings, walls and supporting structures—are not subject to significant dampness, and
 - (c) with respect to the roof, ceilings and windows—do not allow water penetration into the premises, and
 - (d) are not liable to collapse because they are rotted or otherwise defective.
- (1C) The Secretary may exempt any specified premises or any specified class of premises from the operation of all or any part of this section. An exemption may be unconditional or subject to conditions.

[11] (Repealed)

[12] Section 55 Access generally by landlord to residential premises without consent

Insert after section 55 (2) (d):

(d1) to take photographs, or make a visual recording, of the interior of the premises for the purposes of advertising the residential premises for sale or lease not more than once in the period of 28 days preceding the commencement of marketing the residential premises for sale or lease or the termination of the agreement, if the tenant is given:

- (i) reasonable notice, and
- (ii) a reasonable opportunity to move any of the tenant's possessions that can reasonably be moved out of the frame of the photograph or the scope of the recording.

[13] Section 55A

Insert after section 55:

55A Publishing photographs of residential premises with tenant's consent

(1) A landlord or landlord's agent must not publish any photograph taken or visual recording made of the interior of residential premises in which any of the tenant's possessions are visible without first obtaining the written consent of the tenant.

Maximum penalty: 20 penalty units.

(2) A tenant must not unreasonably withhold consent required to be obtained under this section.

(3) Without limiting subsection (2), it is not unreasonable for the tenant to withhold consent if the tenant is in circumstances of domestic violence, within the meaning of section 105B.

(4) In this section, a photograph or visual recording is **published** if it is:

- (a) publicly exhibited in, on, over or under any building, vehicle or place (whether or not a public place and whether on land or water), or in the air in view of persons being in any street or public place, or
- (b) disseminated by means of a website, email or other electronic communication, or
- (c) in the case of a photograph:
 - (i) inserted in any newspaper, periodical publication or other publication, or
 - (ii) contained in any flyer or other document sent or delivered to any person

or thrown or left on premises occupied by any person.

- (5) A photograph or visual recording is not published if it is disseminated solely between the landlord and the landlord's agent for purposes relating to carrying out an inspection of the residential premises, maintenance or repairs.
- (6) This section is a term of every residential tenancy agreement.

[14] Section 64A

Insert after section 64:

64A Carrying out repairs to smoke alarms as a matter of urgency

- (1) Repairs to a smoke alarm must only be carried out by a landlord.
- (2) A landlord must carry out repairs to a smoke alarm:
 - (a) in the manner prescribed by the regulations, and
 - (b) within the time period prescribed by the regulations.Maximum penalty: 20 penalty units.
- (3) Despite subsection (1), a tenant may carry out:
 - (a) repairs to a smoke alarm of a kind prescribed by the regulations, and
 - (b) the kinds of repairs prescribed by the regulations.
- (4) A tenant who carries out repairs to a smoke alarm under subsection (3) is entitled to reimbursement in accordance with the regulations.
- (5) This section is a term of every residential tenancy agreement.
- (6) In this section, ***repairs to a smoke alarm***, includes maintenance of a smoke alarm in working order by installing or replacing a battery in the smoke alarm.

[15] Section 65 Tenants' remedies for repairs—Tribunal orders

Insert after section 65 (1) (b):

- (c) an order that the landlord reimburse the tenant an amount for repairs to a smoke alarm carried out by the tenant under section 64A (3).

[16] Section 65 (3)

Omit the subsection. Insert instead:

- (3) In deciding whether to make an order under this section, the Tribunal:
- (a) must take into consideration the regulations, if any, made under subsection (6), and
 - (b) may take into consideration whether the landlord failed to act with reasonable diligence to have the repair carried out.
- (3A) The Tribunal must not determine that a landlord has breached the obligation unless it is satisfied that the landlord had notice of the need for the repair or ought reasonably to have known of the need for the repair.

[17] Section 65 (6)

Insert after section 65 (5):

- (6) **Guidelines relating to reasonable time for repairs** The regulations may provide for guidelines relating to reasonable times within which repairs to, and maintenance of, residential premises required to be carried out by the landlord under the residential tenancy agreement, this Act or any other Act or law should be carried out.

[18] Part 3, Division 5A

Insert after Division 5 of Part 3:

Division 5A Rectification orders

65A Definitions

In this Division:

landlord rectification order—see section 65C.

rectification order means a tenant rectification order or a landlord rectification order.

tenant rectification order—see section 65B.

65B Damage to premises—investigation by Secretary

- (1) On application in writing by a landlord, the Secretary may cause an investigator to investigate whether the tenant:
- (a) has intentionally or negligently caused or permitted damage to the residential premises, and
 - (b) without reasonable excuse, has refused or failed to repair, or satisfactorily repair, the damage.

- (2) An application may only be made under this section if:
- (a) the landlord has requested the tenant by notice in writing to repair damage to the residential premises intentionally or negligently caused or permitted by the tenant, and
 - (b) the written notice contains particulars of the damage, and
 - (c) the tenant has, without reasonable excuse, refused or failed to repair, or satisfactorily repair, the damage, and
 - (d) the application is accompanied by the fee prescribed by the regulations.
- (3) An investigation may be carried out only if the tenant has consented to the investigation within 7 days of being requested by the Secretary to do so.
- (4) If, after an investigation is completed, the Secretary is satisfied that the tenant:
- (a) has intentionally or negligently caused or permitted damage to the residential premises and, in doing so, has breached the residential tenancy agreement, and
 - (b) has, without reasonable excuse, refused or failed to repair, or satisfactorily repair, the damage,
- the Secretary may, by notice in writing, order the tenant to take the steps specified in the order to ensure that the repairs specified in the order are carried out, rectified or completed (a **tenant rectification order**).
- (5) The tenant rectification order:
- (a) may specify conditions to be complied with by the landlord before the requirements of the order must be complied with, and
 - (b) may specify stages in which the requirements of the order must be complied with, and
 - (c) must specify a date by which the requirements of the order must be complied with or a date by which the requirements of any stage of the order must be complied with, subject to the landlord's compliance with any condition referred to in paragraph (a), and
 - (d) must state the reasons for the Secretary's decision to make a tenant rectification order, including particulars of the results of the investigation, and
 - (e) must indicate that the tenant and the landlord each has a right to apply:
 - (i) to the Secretary for a review of the Secretary's decision to issue a tenant

rectification order or the terms of the tenant rectification order, or

- (ii) to the Tribunal in respect of the matter giving rise to the making of the tenant rectification order, and
 - (f) must indicate that the order will be suspended if the matter giving rise to the order becomes the subject of an application by the tenant or landlord to the Secretary or Tribunal.
- (6) The Secretary must give the landlord a copy of the tenant rectification order.
 - (7) The tenant rectification order may be amended by a further order of the Secretary on the application of the landlord or tenant made within 7 days of the date on which the tenant was given the tenant rectification order.
 - (8) If an application is made under subsection (7), the tenant rectification order is suspended until the Secretary determines the application.
 - (9) This section does not apply to a tenant or co-tenant who has immunity from liability for damage given under section 54 (1A) or (1B).
 - (10) This section does not affect any other rights of the tenant or landlord under this Act for breaches of the residential tenancy agreement.

65C Breaches of landlord's general obligation—investigation by Secretary

- (1) On application in writing by a tenant, the Secretary may cause an investigator to investigate whether the landlord in respect of those premises has breached the landlord's obligations under section 63.
- (2) An application may be made under this section only if:
 - (a) the tenant has requested the landlord by notice in writing to carry out repairs to the residential premises necessary to provide and maintain the residential premises in a reasonable state of repair, and
 - (b) the written notice contains particulars of the repairs, and
 - (c) the landlord has, without reasonable excuse, refused or failed to carry out, or carry out satisfactorily, the repairs, and
 - (d) the application is accompanied by the fee prescribed by the regulations.
- (3) If, after an investigation is completed, the Secretary is satisfied that the landlord has breached the landlord's obligations under section 63, the Secretary may, by notice in writing, order the landlord to take the steps specified in the order to ensure that the repairs specified in the order are carried out, rectified or completed (a **landlord rectification order**).

- (4) A landlord rectification order:
- (a) may specify conditions to be complied with by the tenant before the requirements of the order must be complied with, and
 - (b) may specify stages in which the requirements of the order must be complied with, and
 - (c) must specify a date by which the requirements of the order must be complied with or a date by which the requirements of any stage of the order must be complied with, subject to the tenant's compliance with any condition referred to in paragraph (a), and
 - (d) must state the reasons for the Secretary's decision to make a landlord rectification order, including particulars of the results of the investigation, and
 - (e) must indicate that the tenant and the landlord each has a right to apply:
 - (i) to the Secretary for a review of the Secretary's decision to issue a landlord rectification order or the terms of the landlord rectification order, or
 - (ii) to the Tribunal in respect of the matter giving rise to the making of the landlord rectification order, and
 - (f) must indicate that the order will be suspended if the matter giving rise to the order becomes the subject of an application by the tenant or landlord to the Secretary or Tribunal.
- (5) The Secretary must provide the tenant with a copy of the landlord rectification order.
- (6) A landlord rectification order may be amended by a further order of the Secretary on the application of the landlord or tenant made within 7 days of the date of the landlord rectification order.
- (7) If an application is made under subsection (6), the landlord rectification order is suspended until the Secretary determines the application.
- (8) The landlord must comply with the requirements of a landlord rectification order.
Maximum penalty: 20 penalty units.
- (9) This section does not affect any other rights of the tenant or landlord under this Act for breaches of the residential tenancy agreement.

65D Application to Tribunal

- (1) A landlord or tenant may make an application to the Tribunal in respect of the matter giving rise to the making of a rectification order (the **relevant rectification order**) within 14 days of the date of the relevant rectification order or, if the relevant rectification order is amended, the date of the amended relevant rectification order.
- (2) If a landlord or tenant makes an application under this section, the operation of the relevant rectification order is suspended:
 - (a) pending the determination of the application by the Tribunal, or
 - (b) if the application is withdrawn—until the date of the withdrawal.
- (3) The relevant rectification order ceases to have effect on the day on which the Tribunal makes an order under this section.

[19] Section 66 Tenant must not make alterations to premises without consent

Insert after section 66 (2):

- (2A) The regulations may make provision for or with respect to the following:
 - (a) the kinds of alterations that are of a minor nature in relation to which it would be unreasonable for a landlord to withhold consent,
 - (b) the circumstances in which the giving of consent by the landlord to the alteration may be conditional on the alteration only being carried out by a person appropriately qualified to carry out alterations of that kind.

[20] Section 80 Definitions

Insert in alphabetical order:

employee or caretaker residential tenancy agreement means an agreement or arrangement taken to be a residential tenancy agreement under section 9.

[21] Section 85 Termination of periodic agreement—no grounds required to be given

Insert after section 85 (2):

- (2A) Despite subsection (2), in the case of an employee or caretaker residential tenancy agreement, the termination notice must specify a termination date that is:
 - (a) on or after the end of the period of notice for termination agreed to by the landlord and the employee or caretaker in that agreement or arrangement, or

- (b) not earlier than 28 days after the day on which the notice is given, whichever is the later date.

[22] Section 88 Termination notices for non-payment of rent or charges

Omit section 88 (1). Insert instead:

- (1) A termination notice given by a landlord on the ground of a breach of the residential tenancy agreement arising solely from a failure to pay:
 - (a) rent, or
 - (b) water usage charges, or
 - (c) charges for the supply of electricity, gas or oil (**utility charges**), payable by the tenant (a **non-payment termination notice**) has no effect unless the rent has, or the water usage charges or utility charges have, remained unpaid in breach of the agreement for not less than 14 days before the non-payment termination notice is given.

[23] Section 88 (2) and (3)

Insert “, water usage charges or utility charges” after “rent” wherever occurring.

[24] Section 89 Repayment of rent and charges owing following issue of non-payment termination notice

Insert “, water usage charges or charges for the supply of electricity, gas or oil (**utility charges**)” after “rent” in section 89 (2).

[25] Section 89 (3), (4) and (6)

Insert “, water usage charges or utility charges” after “rent” wherever occurring.

[26] Section 89 (5) and (5A)

Omit section 89 (5). Insert instead:

- (5) The Tribunal may, on application by a landlord, make a termination order despite subsection (2) or (3) if it is satisfied that the tenant has frequently failed to pay either or both of the following amounts owing to the landlord for the residential premises:
 - (a) rent, on or before the day set out in the residential tenancy agreement,
 - (b) water usage charges in accordance with section 39.

- (5A) The Tribunal may make a termination order under subsection (5) on the grounds set out in subsection (5) (b) only if the landlord has, on each relevant occasion, requested payment from the tenant within 3 months of the issue of the bill for those charges by the water supply authority.

[27] Section 92A

Insert after section 92:

92A Termination by Tribunal—tenant rectification orders

- (1) The Tribunal may, on application by a landlord, make a termination order if it is satisfied that:
 - (a) a tenant rectification order was given to a tenant in accordance with section 65B, and
 - (b) the tenant has failed to comply with the tenant rectification order.
- (2) The Tribunal must not make the order if the tenant satisfies the Tribunal that there are exceptional circumstances that justify the order not being made.
- (3) Subsection (1) does not limit any other order the Tribunal may make on an application under Division 5A of Part 3.

[28] Section 98A

Insert after section 98:

98A Contravention by landlord of information disclosure provisions—termination notice by tenant

- (1) A tenant may give a termination notice on the ground that the landlord has contravened section 26.
- (2) The termination notice must specify a termination date that is not earlier than 14 days after the day on which the notice is given.
- (3) The termination notice may specify a termination date that is before the end of the fixed term of the residential tenancy agreement if it is a fixed term agreement.
- (4) The Tribunal may, on application by a landlord made before the termination date, revoke a termination notice by a tenant if satisfied that it is appropriate, in the circumstances of the case, to continue the tenancy.

[29] Section 100 Early termination without compensation to landlord

Insert after section 100 (1) (b):

(b1) that the residential premises:

- (i) have been listed on the LFAI Register during the term of the residential tenancy agreement, or
- (ii) were listed on the LFAI Register prior to the agreement being entered into and that fact was not disclosed to the tenant,

[30] (Repealed)

[31] Section 100 (5)

Insert after section 100 (4):

- (5) In this section, **LFAI Register** means the register of residential premises that contain or have contained loose-fill asbestos insulation that is required to be maintained under Division 1A of Part 8 of the *Home Building Act 1989*.

[32] Section 103A

Insert after section 103:

103A Contravention by landlord of information disclosure provisions—termination by Tribunal

- (1) The Tribunal may, on application by a tenant, make a termination order if it is satisfied that:
 - (a) the landlord has contravened section 26, and
 - (b) the contravention is, in the circumstances of the case, sufficient to justify termination of the agreement.
- (2) A tenant may make an application under this section without giving the landlord a termination notice.
- (3) The Tribunal may make a termination order under this section that takes effect before the end of the fixed term if the residential tenancy agreement is a fixed term agreement.
- (4) The Tribunal may order the landlord to compensate the tenant for any costs incurred by the tenant as a result of the termination of the residential tenancy agreement under this section.

[33] (Repealed)

[34] Section 107

Omit the section. Insert instead:

107 Landlord's remedies on abandonment

- (1) The Tribunal may, on application by a landlord, order a tenant to pay compensation to the landlord for any loss (including loss of rent) caused by the abandonment of the residential premises by the tenant.
- (2) The landlord must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by taking those steps. This subsection does not apply in the case of a fixed term agreement for a fixed term of not more than 3 years.
- (3) The compensation payable by a tenant under this section in respect of a fixed term agreement for a fixed term of not more than 3 years is the amount of the applicable break fee for the tenancy calculated under subsection (4).
- (4) The **break fee** for a fixed term agreement for a fixed term of not more than 3 years is:
 - (a) if less than 25% of the fixed term had expired when the premises were abandoned—an amount equal to 4 weeks rent, or
 - (b) if 25% or more but less than 50% of the fixed term had expired when the premises were abandoned—an amount equal to 3 weeks rent, or
 - (c) if 50% or more but less than 75% of the fixed term had expired when the premises were abandoned—an amount equal to 2 weeks rent, or
 - (d) if 75% or more of the fixed term had expired when the premises were abandoned—an amount equal to 1 week's rent.
- (5) The amount of any money paid to a landlord by a tenant on terminating a fixed term agreement before the end of the fixed term or before otherwise abandoning the premises (other than money previously due to the landlord under the residential tenancy agreement) is to be deducted from any amount payable to the landlord under this section.
- (6) This section does not prevent a landlord from obtaining an occupation fee under Division 2 of Part 6 for goods left on the residential premises.

[35] Section 186 Rental Bond Interest Account

Insert after section 186 (3) (e):

(f) other consumer protection purposes.

[36] Section 196 Powers of entry and other powers

Insert at the end of section 196 (1) (b):

, or

(c) carrying out an investigation under section 65B or 65C.

[37], [38] (Repealed)

[39] Section 216 Provision of copies of listed personal information

Omit section 216 (3). Insert instead:

(3) A database operator must not charge a fee for giving personal information under subsection (2).

Maximum penalty: 10 penalty units.

[40] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provision consequent on enactment of [Residential Tenancies Amendment \(Review\) Act 2018](#)

Application of substitution of section 107

Section 107, as substituted by the [Residential Tenancies Amendment \(Review\) Act 2018](#), does not apply to a residential tenancy agreement entered into before the substitution of that section.