



Changes to the *Residential Tenancies Act 1997* (effective from 24 August 2017)

Please note that our Factsheets and other information on our website is being updated to incorporate these changes

“BREAK LEASE” FEE (TENANT TERMINATING A FIXED TERM EARLY)

There is a new opt-in provision (section 8) for a tenant terminating an agreement before the end of the fixed term, often referred to as “breaking the lease”. If the lessor **AND** tenant agree, a clause can be included in a new tenancy agreement that the tenant will pay a fixed amount (a “break fee”) if they end their fixed-term agreement early.

If you have this term in your lease, you will not have to pay any additional costs if you end your lease early without grounds.

How much will I owe?

- If the fixed-term is for less than 3 years and less than half the fixed term has expired (eg 3 months into a 12 month fixed term), the amount is equivalent to 6 weeks rent,
- If the fixed-term is for less than 3 years and more than half the fixed term has expired (eg 8 months into a 12 month fixed term), the amount is equivalent to 4 weeks rent,.
- If the fixed-term is for more than 3 years, the amount is as agreed between the lessor and tenant.

What if I don't want the clause in my agreement?

This is not part of the standard tenancy agreement, it is an opt-in clause. This means that you do not have to agree to its inclusion in the tenancy agreement. If it is included and you have signed the agreement or initialled the clause, it is likely you will be held to have agreed to the clause unless you can demonstrate duress or undue influence.

NOTE - If you do not have this clause, the amounts you are liable for are limited in different ways ([see our ending a tenancy and breaking a lease factsheet](#)).

POSTING CLAUSE (TENANT OR LESSOR TERMINATING A FIXED TERM EARLY)

The other opt-in clause is the posting clause (section 8) that allows a tenant or lessor to terminate a fixed term agreement early if they are posted away from the ACT or back to the ACT. It has been amended so that tenants and lessors have to provide 8 weeks written notice. The notice must also be accompanied by evidence of the posting such as a letter from the employer confirming the posting.

The Tenants' Union understands that the new provisions apply only to new tenancy agreements. Existing tenancy agreements will continue to apply the 4 week clause until the tenancy ends.

SMOKE ALARMS

All rental properties are required to have smoke alarms (section 11B).

- If you enter a new tenancy agreement from 24 August 2017, the property **MUST** have smoke alarms.
- If you are in an existing tenancy without smoke alarms, the lessor has until 24 August 2018 comply.

Installation and maintenance - A lessor is responsible for installing and maintaining smoke alarms. Tenants are responsible for replacing the battery in a smoke alarm.

If your lessor or agent tells you that you need to allow access for the smoke alarm to be checked, you do not have to agree to this if it is not part of a routine inspection ([see access and privacy](#)). Contact the Tenants' Union ACT for more detailed advice.

FINAL INSPECTIONS AND CONDITION REPORTS – NEW END OF TENANCY REQUIREMENTS

A clear process for end of lease (new section - 30A)

- A final inspection is to be done in the presence of the lessor (or agent) and the tenant.

As a tenant, it is in your interest to attend the final inspection. You should also take photographs/video of the condition of the premises.

- The lessor and tenant must together complete and sign a condition report based on the inspection.
- One party may complete and sign the condition report in the absence of the other party if they have given the other party a reasonable opportunity to be present when the report is completed and signed, eg if you have advised your lessor/agent you will have property ready for the final inspection and they don't attend, or if they have advised you and you don't attend.

If you disagree with what the lessor (or agent) has written in the condition report, you should note this either on the condition report or in an email sent ASAP after the final inspection.

BONDS

A new cost a lessor can claim for and clarification in the Act about the bond process.

New deduction (section 31 (b))

If a tenant does not return the keys for the premises at the end of the tenancy, the lessor may claim the reasonable cost of securing the premises. This will usually mean changing the locks.

Bond release process

The Act sets out the steps in the bond release process. Bond release application forms are available to tenants and lessors through the Office of Rental Bonds [here](#)

Lessor's obligations (section 34):

When a tenancy agreement ends, the lessor (or agent) **must**:

- give the tenant a signed bond release application form, and

If a lessor is making claims from the bond they **must** provide:

- a written statement of the reasons for the deduction; **and**
- if claiming for the **reasonable** costs of repairs or for the **reasonable** cost of securing the property if the tenant fails to return the keys at the end of the tenancy, the lessor **must** also provide a written estimate of the costs.

When does the bond release application form have to be provided by the lessor?

- the lessor must provide the form within 3 working days after the tenancy agreement ends; or
- If the lessor is claiming for repairs, restoration or securing the property, the form must be provided within 10 working days after the tenancy agreement ends.

Lodging the bond release application form with the Office of Rental Bonds (ORB)

Under the new provisions, a bond release application can be lodged by:

- the tenant/s and lessor jointly (s34A),
- the lessor (s34C).
- the tenant/s (s34B), or

- When the tenant/s agree with the lessor's claim:

If a tenant is provided with a form signed by the lessor and the tenant/s agree with any deductions the lessor is claiming, the tenant/s can sign the form and either the lessor or tenant can lodge the form with ORB. All tenants must sign the form.

- Only 1 tenant agrees:

If a tenant is provided with a form signed by the lessor and the tenant agrees with any deductions the lessor is claiming, but the other tenants do not agree, the tenant can fill in their own bond release application form and lodge it with ORB.

- If the tenant/s do not agree with claim:

If a tenant is provided with a form signed by the lessor and the tenant disagrees with any deductions the lessor is claiming, **DO NOT SIGN THE FORM**. The tenant can fill in their own bond release application form and lodge it with ORB.

- WHEN NO FORM IS PROVIDED BY THE LESSOR:

The tenant can fill in their own bond release application form and lodge it with ORB.

- If tenant does not return the signed form:

If the tenant does not return the form within 10 working days, the lessor can fill in their own bond release application form and lodge it with ORB. A lessor can also lodge a bond release application form if they have taken all reasonable steps to try and give the form to the tenant but have been unable to do so.

What happens when the bond is disputed?

If ORB receives a bond release application form that is not signed by the lessor or all tenants:

- ORB will notify the other party that a claim has been lodged;
- The other party will have 10 working days to dispute the release;
- If they do not receive notice of dispute the bond will be paid in accordance with the application
- If the other party disputes the claim, the matter will be referred to the ACT Civil and Administrative Tribunal (ACAT).

ABANDONMENT AND LESSOR ENTERING THE PROPERTY (SECTION 61A)

If a lessor has taken all reasonable steps to contact the tenant and believes, on reasonable grounds, that the premises have been abandoned by the tenant, the lessor may, without the tenant's consent and without giving notice to the tenant, enter the premises to confirm whether the premises have been abandoned.

A lessor cannot enter on Sunday, a public holiday, before 8am or after 6pm.

If a lessor (or agent) enters your property without your consent, please contact the Tenants' Union ACT for advice.

UNCOLLECTED GOODS

The [Uncollected Goods Act 1996](#) has been amended to end uncertainty about the application of that Act to the storage and disposal of possessions left on premises at the end of a tenancy. There are a couple of scenarios under which goods may be left on rental premises by the tenant at the end of a residential tenancy agreement:

1. the tenant has agreed with the relevant person (lessor/agent) that they will collect the goods at a later date; or
2. the tenant has left the goods with no indication of when they will be collected.

The amendments (s21) ensure that where the goods left on the premises at the end of a tenancy are personal documents (e.g. passports, birth certificates and the like) they are dealt with appropriately. These documents cannot be disposed of at public auction. They must be returned to the authority that issued the document or, if this is not practicable, in any other lawful way that the possessor thinks appropriate. The documents must not be disposed of in a way that results in personal information about the owner becoming publicly available.

If you have an issue with your lessor or agent holding your goods, please contact the Tenants' Union ACT. If you are a co-tenant and have an issue with goods left behind by a co-tenant, please contact Legal Aid ACT for advice.

ENERGY EFFICIENCY RATING (S11A)

When advertising a property for rent the ad must contain a statement about the energy efficiency rating:

- if there is an EER it must state the EER
- if there isn't an EER the ad must state this. Failure to do so is now an offence.

CHANGING TO A TENANCY WHEN THERE IS VIOLENCE

The ACT sets out several processes related to tenancies where there is violence.

Ending a tenancy

Significant hardship (section 44)

A tenant can apply to the ACAT to terminate their tenancy if there has been violence. Evidence of the violence (interim or final protection order, police reports, letter from a support service, etc) will be necessary.

Family Violence and Protection Orders (section 85A)

If the Magistrates Court has made an interim or final protection order and the respondent in the Magistrates Court proceedings is a party to a tenancy agreement, the protected person can apply to the ACAT for an order to end the tenancy agreement.

The protected person can be either a tenant or a person living in the premises as their home.

The respondent will need to have given an undertaking to the Magistrates Court to leave the premises OR the interim or final protection order MUST contain an exclusion clause or a condition prohibiting the respondent from being within a particular distance from the protected person.

When considering the application, ACAT will consider the following:

- the length of the protection order and the length of time remaining on the term of the existing agreement
- the interests of any other tenant (other than the respondent) and, particularly, whether the other tenants support the protected person's application

What about bond?

If the agreement is terminated, ACAT can determine the liabilities of the respondent, the protected person or any other tenants in relation to the bond.

Staying in the Property and changing the Tenancy Agreement

Family Violence and Protection Orders (section 85A)

If the Magistrates Court has made an interim or final protection order and the respondent in the Magistrates Court proceedings is a party to a tenancy agreement, the protected person can apply to the ACAT for an order:

- to end the tenancy agreement; and
- requiring the lessor to entering into a new tenancy agreement with the protected person and any other person mentioned in the application.

The protected person can be either a tenant or a person living in the premises as their home.

The respondent will need to have given an undertaking to the Magistrates Court to leave the premises OR the interim or final protection order MUST contain an exclusion clause or a condition prohibiting the respondent from being within a particular distance from the protected person.

When deciding the application, ACAT will consider the following:

- the length of the protection order and the length of time remaining on the term of the existing agreement;
- the interests of any other tenant (other than the respondent) and, particularly, whether the other tenants support the protected person's application;
- if the protected person or their children would be likely to suffer significant hardship if the protected person had to leave the premises and this hardship is greater than the hardship the lessor would suffer;
- the protected person and any other person mentioned in the application could reasonably be expected to comply with the terms of the agreement (eg pay rent); and
- if another person is mentioned in the application, the lessor has been given an opportunity to consider the person's suitability as a tenant

What will the new tenancy agreement look like?

If the ACAT terminates the existing tenancy and makes an order that the lessor enter into a new tenancy agreement, the new tenancy agreement must:

- be subject to the same rent and frequency of rent payments as the existing agreement.
- if the existing agreement is for a fixed term, the new agreement cannot run for a term longer than the remainder of the fixed term.
- otherwise be on the same terms as the existing agreement subject to any changes ACAT decides.

When will the new tenancy agreement start?

ACAT cannot create a new tenancy agreement. It can only order that the lessor enter into a new agreement with specified persons.

The existing residential tenancy agreement will end when the new tenancy agreement is signed by the parties to the new agreement.

What about bond?

If the agreement is terminated, ACAT can determine the liabilities of the respondent, the protected person or any other tenants in relation to the bond.

Changing the locks

A protected person may change the locks (at their own cost) without the agreement of the other party. If a lock is changed, a copy of the key must be provided to the other party as soon as possible unless doing so would affect the safety of the protected person.

If you are a protected person and there is no exclusion provision in the protection order or the respondent has not given an undertaking to the Magistrates Court to leave the premises, please contact the Tenants' Union ACT to get advice about changing the locks.

NEW RENTING BOOK

The ACT Government's guide to rights and responsibilities for tenants, property owners and real estate agents – The Renting Book, has been updated to reflect the amendments to the Act. A copy of the new book can be found [here](#).