



Residential Tenancy

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Introduction

Rental agreements, whether they are for residential tenancies or rooming accommodation, are made between the lessor or provider and the tenant or resident. Once an agreement is signed there are a number of rights and responsibilities the tenants, lessors, residents, providers and agents have to adhere to. These are set out in the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) (RTRA Act).

The Residential Tenancies and Rooming Accommodation Act

The RTRA Act sets out the rights and responsibilities of tenants, lessors, residents, providers and agents. The RTRA Act applies to residential tenancy agreements and rooming accommodation agreements for renting of premises such as houses, flats, units, houseboats, caravans, moveable dwellings and rooming accommodation. However, it does not cover boarding and lodging (except if a bond is paid, in which case the RTRA Act will apply in relation to the bond only), accommodation for school students or holiday lettings.

Parties in a residential tenancy agreement may have different rights and obligations under the RTRA Act than those in a rooming accommodation agreement.

Tenancy and Accommodation Rental Agreements

Residential tenancy agreements

Residential tenancy agreements are made between the lessor (the person who gives the right to occupy residential premises) and a tenant (the person to whom the right to occupy residential premises is given). The lessor may employ an agent who is authorised by the lessor to act on the lessor's behalf (see sch 2 of the RTRA Act for a definition of 'agent').

While it is unlawful for a lessor or agent not to put an agreement in writing (s 61 RTRA Act), the RTRA Act still applies to agreements not in writing. Non-payment of rent does not disqualify coverage under the RTRA Act.

For periodic tenancies that arise at the end of a fixed-term agreement, all terms and conditions of the fixed-term agreement still apply except for the start and end date. An agreement must contain standard terms as set out in the *Residential Tenancies and Rooming Accommodation Regulation 2009* (Qld) to the RTRA Act. The Residential Tenancies Authority (RTA) publishes an agreement incorporating these terms (Form 18a). For public housing tenants, a state tenancy agreement is used. Special terms can also be included, provided they do not conflict with or contract out of the provisions of the RTRA Act.

A copy of the agreement must be given to the tenant, and the tenant must sign and return it within five days of receipt (s 62(2) RTRA Act). A penalty applies if the lessor or agent then fails to provide the tenant with a copy signed by both parties within 14 days of receipt (s 62(3) RTRA Act).

According to the RTRA Act, certain other information must also be provided to the tenant:

- an entry condition report about the condition of the premises as at the start of the tenancy (which must be filled in by the tenant and a copy returned to the lessor or agent within three days after moving in) (s 65)
- an RTA Information Statement (s 67)
- a copy of any applicable by-laws (s 69)
- for moveable dwelling tenancies, a copy of any park rules that apply; for long-term tenancies, park rules are given when the agreement is given to the tenant for signing; for short-term tenancies, park rules are provided at the start of the agreement (s 68).

Rooming accommodation agreements

Rooming accommodation agreements are made between the provider (the person who provides rooming accommodation) and a resident (the person who occupies one or more rooms in a rental premises, shares facilities with other residents, and who is not the provider or related to the provider). A provider may employ or authorise a person as their agent.

Providers and residents can choose to sign a residential tenancy agreement and be covered under the residential tenancy provisions of the RTRA Act (s 18).

A provider is obliged to ensure that an agreement is put in writing (s 77(1) RTRA Act), however, the RTRA Act will still apply to an oral or implied agreement (s 16).

A copy of the agreement must be given to the resident, and the resident must sign and return it to the provider. Within three days of receipt, the provider must provide the resident with a copy of the agreement signed by both parties (s 78(2) RTRA Act).

If a bond is payable, then the provider must give the resident an entry condition report. The resident must complete the report and return it to the provider within three days after moving in (s 81 RTRA Act).

Types of tenancies

Residential tenancy agreements and rooming accommodation agreements can be:

- fixed term—where the parties agree on a tenancy over a fixed term. It will expire automatically and revert to a periodic tenancy at the end of that term, unless the agreement provides for continuation, the lessor issues a notice to leave or the tenant issues a notice of intention to leave
- periodic—where there is a recurring period from rent payment day to rent payment day. If a fixed-term tenancy rolls over into a periodic agreement, all terms and conditions of the previous fixed term will still apply, except for the start and end date.

Rent

Rent can be paid by cash, cheque, deposit to a financial institution, EFTPOS, credit card or by deduction from pay, pension or other benefit. These are defined as approved ways of paying rent (ss 83, 98(4) RTRA Act). The lessor/provider and the tenant/resident can make an agreement to pay rent in another way. However, before such an agreement is entered into, the lessor/provider must first

outline any costs associated with the new rent payment method and give the tenant/resident a choice of two other approved ways of paying rent (ss 84, 99 RTRA Act).

During the tenancy, the place of payment can be changed by the lessor/provider as long as the new place is reasonable, but the method of payment can only be changed by agreement of both the tenant/resident and the lessor/provider (ss 83(3), 98(3) RTRA Act).

Receipts must be given at the time of payment if rent is paid in cash. Where rent is paid by cheque, a receipt must be issued within three working days if requested by the tenant/resident. A lessor/provider must keep a rent payment record, which must be made available to the tenant/resident within seven days if requested, except when rent is paid in cash or by cheque, and a receipt is given for the payment.

Rent in advance

For fixed-term residential tenancy agreements (except moveable dwelling tenancies), a tenant must not be required to pay more than one month rent in advance. For periodic residential tenancy agreements, moveable dwelling tenancies and rooming accommodation, the limit is two weeks rent in advance. A tenant/resident does not have to pay rent for a period for which rent has already been paid (ss 87(2), 101(2) RTRA Act).

Rent increase

For residential tenancies, a lessor must provide a two-month written notice of a rent increase. For fixed-term residential tenancies, rent may be increased only if the agreement provides for a rent increase and states the amount of the increase or how the increase is to be worked out. In rooming accommodation, a resident must be given at least four weeks written notice of a rent increase.

Where a new fixed-term agreement is being offered with an increased rent at the end of an earlier fixed-term agreement, no notice of increase is applicable, because it is the offer of a new agreement, which the tenant/resident is not obliged to accept.

If a tenant in a residential tenancy agreement considers a rent increase excessive, they may apply to the Queensland Civil and Administrative Tribunal (QCAT) for an order within 30 days of receiving the rent increase notice (s 92 RTRA Act). The tribunal must have regard to the range of market rents charged for comparable premises, the proposed increased rent compared to the current rent, the length of the tenancy, the time since the previous rent increase, the state of repair of the premises and any other relevant matter. There are no similar provisions for rooming accommodation.

Rent decrease

According to s 94 of the RTRA Act, the tenant/resident may request a rent decrease if:

- a premises is destroyed or made completely or partially unfit to live in
- a premises cannot be used lawfully as a residence
- a premises is compulsorily acquired by an authority
- there is a substantial decrease in amenity or in the standard of residential premises or rooming accommodation, which is not related to damage caused by the tenant/resident

- facilities or services are no longer available or withdrawn, and the cause is not the result of a breach of the agreement.

However, tenants/residents should pay the correct amount of rent until there is an agreement in writing with the lessor/provider or an order from QCAT is obtained.

Outgoings

In residential tenancies, the lessor must pay all outgoing charges, levies, premiums, rates or taxes (subject to state exemptions), except for service charges such as electricity, gas and water, which may be payable by the tenant. If a premises is not individually metered for a general service (other than water), the agreement must state that the tenant must pay for the general service, how the bill will be apportioned and how the money may be recovered from the tenant. A tenant may have to pay for all water consumption charges if the premises is individually metered and certain water saving devices are installed. Otherwise, a tenant must be provided with a reasonable quantity of water without charge (s 166(4) RTRA Act). In calculating what is reasonable, regard is given to the number of approved occupants and any other responsibilities under the agreement that may affect water usage (s 166(5) RTRA Act). Tenants in premises that are not individually metered cannot be charged for water (s 166(2) RTRA Act).

In rooming accommodation, a resident may only be required to pay service charges if the resident's room is separately metered, and the amount to be paid is not more than the amount charged by the service supplier (s 170 RTRA Act).

Applications

In residential tenancies, a property must be advertised for a fixed amount of rent (s 57 RTRA Act). It is an offence for a lessor to accept a bond from a tenant where the property is advertised without stating a fixed amount of rent.

A prospective tenant must be given a copy of the proposed tenancy agreement before:

- accepting a document that may commit the tenant to enter into the tenancy
- accepting an amount in relation to the tenancy
- entering into a residential tenancy agreement for the tenancy.

The lessor cannot take money from a prospective tenant unless it is a holding deposit, a key deposit, a bond or rent.

There are no equivalent provisions for rooming accommodation.

Holding deposits

Money securing an option to enter into a residential tenancy agreement is called a holding deposit (s 159 RTRA Act). A person receiving a holding deposit must ensure that the property is available if the tenant wishes to proceed with the tenancy. Once the option is exercised, the tenant and lessor must take reasonable steps to enter into a tenancy agreement, and the lessor must apply any holding deposit to bond and then to rent. If the option is not exercised, the holding deposit must be returned in full within three days, unless the tenant fails to give advice within the agreed time of their decision not to

rent the property, or if the tenant indicates that they will rent the property and then does not enter into a tenancy agreement. If no time period applying to the option is noted on the receipt, the time is 48 hours after the receipt is given.

There are no equivalent holding deposit provisions for rooming accommodation.

Key deposits

In residential tenancies, a prospective tenant may be asked to pay an amount as a deposit for a key in order to enter and inspect a proposed rental property. The deposit must be refunded in full when the key is returned (ss 156–158 RTRA Act).

Bond

Bond is money paid to the lessor/provider as financial protection against the tenant/resident breaching the agreement (s 111 RTRA Act). Bond must be paid to the RTA within 10 days, and the person receiving the rental bond must issue a receipt when the money is received (ss 116, 145(4) RTRA Act). Failure to do either is an offence. In residential tenancies, if an organisation receives assistance from the state to supply rental accommodation and the bond is paid in instalments, the bond must be paid to the RTA within 10 days of receiving the last instalment (s 117 RTRA Act). In rooming accommodation, if a resident pays a rental bond in instalments, the provider must pay all monies to the RTA within 10 days after receiving the last instalment (s 118 RTRA Act). Failure to do so is an offence.

Money paid as rent in advance is not a rental bond. Head-tenants and people in residential share housing need to consider whether or not money they receive from former tenants or new tenants amounts to a rental bond. A payment made by a sub-tenant to a head-tenant for financial security is a rental bond and is quite distinct from a bond that may have been paid by the head-tenant to the lessor.

The maximum that can be charged for bond will differ depending on the type of tenancy. In residential tenancies (other than moveable dwelling tenancies), the maximum bond payable is the equal to four weeks rent.

The Department of Housing and Public Works provides loans for rental bonds in certain circumstances. Information about this program can be obtained from the department's housing service centres or its website.

Refund of rental bond

Either party can lodge an application for a refund of rental bond (Form 4) with the RTA, however, under s 139 of the RTRA Act, the bond cannot be paid out until after the handover day stated on the notice to leave or notice of intention to leave. If the parties agree on the refund, they can make a joint application for a refund. Tenants/residents should always keep their contact details updated with the RTA.

Disputes over rental bond

If there is a dispute over the bond and only one party's signature is on the form, the RTA processes the first application for refund of rental bond received from either the tenant/resident or the lessor/provider. The RTA usually sends a notice of claim and a dispute resolution request (Form 16)

to the other party. The party receiving the notice of claim has 14 days in which to notify the RTA (by returning Form 16) of their wish to dispute the claim through conciliation (s 136 RTRA Act). If the RTA does not receive Form 16 within 14 days, it will pay the disputed amount according to the instructions on the refund of rental bond form.

If the RTA receives a Form 16, it will usually pay out any undisputed monies to the appropriate party and hold the disputed part of the bond until the result of the conciliation is known. If conciliation is successful, the bond will be paid out in accordance with the conciliated agreement. If conciliation is unsuccessful, the RTA will issue a notice of unresolved dispute to the party who filed Form 16, giving them seven days in which to apply to QCAT for a hearing. If this occurs, the RTA holds the bond until advised by QCAT of the decision.

If an application for a hearing is not lodged with QCAT, or the RTA is not notified by the applicant within the time limit, the disputed amount will be paid out to the party who originally applied for it (using Form 4).

A rental bond may be transferred from one tenancy to another if the tenant/resident and the lessor/provider of the previous property agree and sign a Change of rental property form (previously known as a transfer of bond form) (Form 3). A bond lodgement form (Form 2) still needs to be completed and lodged with the RTA.

Rights and Obligations of Tenants and Landlords

The lessor has certain obligations under ch 3 of the RTRA Act. These are to ensure that:

- there are no legal impediments to the tenant occupying the premises
- the tenant has vacant possession on the commencement date of the tenancy
- reasonable steps are taken to ensure the tenant has quiet enjoyment of the premises and not to interfere with the tenant's peace, comfort and privacy
- the premises are of a fit standard for living
- the premises and inclusions are clean at the start of the tenancy
- the premises and inclusions are in good repair (both at the start and during the tenancy), and that the premises comply with all applicable health and safety laws
- locks and keys necessary to reasonably secure the premises are supplied and maintained (s 210).
- What is reasonable may be dependent upon things such as the crime rate and what an insurance company would require in order to insure the property for contents.

A provider of rooming accommodation has similar obligations (ch 4 RTRA Act). However, a provider also has to:

- take reasonable steps to ensure the resident has access to their room, bathroom, toilet facilities and common areas
- not unreasonably restrict the resident's guests in visiting the resident

- ensure that the times during which the provider can be contacted by the resident are reasonable.

The tenant's obligations under the RTRA Act are:

- to complete the entry condition report supplied to them by the lessor
- to pay the rent on time and in the manner prescribed by the agreement
- to report any damage to the lessor
- to use the premises mainly as a residence
- not to use the premises for an illegal purpose
- not to cause nuisance or to interfere with the reasonable peace, comfort or privacy of neighbours
- to keep the premises and inclusions clean, having regard to their condition at the start of the tenancy
- not to maliciously damage the premises or inclusions, or allow someone else to do so.

At the end of the tenancy, the tenant must:

- leave the premises and inclusions, as far as possible, in the same condition they were in at the start of the tenancy, fair wear and tear excepted
- hand all keys back
- remove all their belongings from the premises
- prepare and complete an exit condition report and provide a copy to the lessor
- if requested in writing, provide details of their new residential address, unless the tenant has a reasonable excuse (s 205).

Residents must comply with s 253 of the RTRA Act, which requires residents to:

- use their room and common areas as a place of residence
- not use their room for illegal purposes
- not interfere with the reasonable peace, comfort or privacy of another resident
- pay rent when due
- not keep an animal on the premises without permission
- not intentionally or recklessly damage or destroy the premises or allow someone else to do so
- keep their room and inclusions clean, having regard to their condition at the start of the tenancy
- maintain their room in a condition that does not give rise to a fire or health hazard
- leave the premises at the end of the agreement in the same condition they were in at the start of the agreement, fair wear and tear excepted.

Emergency repairs

The emergency repair provisions of the RTRA Act (ss 214–221) only apply to residential tenancies.

Emergency repairs are defined in s 214 of the RTRA Act and include broken hot water systems or stoves, or a burst water pipe. In the case of emergency repairs, the tenant must contact the lessor or the lessor's nominated repairer and give them notice of the need for repair. In general, a tenant of a residential tenancy or a long tenancy of a moveable dwelling can arrange for the emergency repairs to be done, and either get the repairer to bill the lessor directly or pay the cost and seek reimbursement from the lessor (to a maximum value of two weeks rent), if neither the lessor or their nominated repairer can be contacted or they do not take action within a reasonable time (this is subject to the nature of the repair). Ideally, the tenant should get two or three quotes first. The tenant must give a copy of the invoice or receipt to the lessor who must reimburse the tenant or pay the invoice within seven days. If the lessor does not do so, the tenant may directly apply to QCAT for an order regarding the issue (without going through the RTA conciliation process). Tenants cannot withhold rent if the lessor fails to reimburse them on request.

Non-urgent repairs

Tenants/residents must notify the lessor/provider of the need for routine repairs. Tenants/residents may give a notice to remedy breach (Form 11 for residential tenancies and Form R11 for rooming accommodation) to give the lessor/provider some time to carry out the repairs.

In residential tenancies, the minimum remedy period for a repair breach is seven days. In rooming accommodation, this period is five days. If the repairs are not carried out within the remedy period on the breach notice, the tenant/resident can then send a dispute resolution request to the RTA for conciliation.

If the RTA cannot facilitate an agreement between the parties, the tenant/resident can apply to QCAT for an order about the matter. In residential tenancies, tenants can terminate agreements for an unremedied breach, however, QCAT needs to be satisfied that the tenant took steps to have the repair attended to, and the issue was serious enough to warrant termination.

In residential tenancies, if the lessor has failed to act on a notice to remedy breach for their maintenance obligations under ss 185(3) or 186(4) of the RTRA Act, and the issue affects the health and safety of tenants or other persons, the tenant can make a direct application to QCAT for an order (without going through the RTA conciliation process) (s 191 RTRA Act). There are no equivalent provisions for rooming accommodation.

Alterations

Tenants/residents can install fixtures or make alterations with the written and informed consent of the lessor/provider (ss 207, 254 RTRA Act). This should state if the fixture is permanent and whether the tenant/resident is responsible for restoring any damage caused by a fixture's removal. If consent for a fixture is unreasonably withheld, tenants/residents can apply to the RTA for conciliation and/or to QCAT. Fixtures or alterations made without consent may be a breach of the agreement.

Entry

Lessors and providers have a right of entry to the premises for certain purposes and circumstances described in the RTRA Act (ss 192–202 for residential tenancies and ss 257–265 for rooming accommodation).

Unless a tenant/resident otherwise agrees, an approved entry notice (Form 9 for residential tenancies and Form R9 for rooming accommodation) must be given for each entry. Entry without consent and without notice may occur if:

- in residential tenancies—there is a genuine emergency, or the lessor reasonably believes that the entry is necessary to protect the premises from damage
- in rooming accommodation—there is a genuine emergency, urgent repairs need to be carried out or the provider reasonably believes the resident has abandoned the room.

Sections 203 and 204 of the RTRA Act apply to residential tenancies only. These provisions prohibit a lessor without the tenant’s written consent to:

- use a photo of a rental property in an advertisement, if the photo shows something belonging to the tenant
- conduct an auction or open house.

Sale or transfer

In residential tenancies, a lessor must issue a notice of intention to sell prior to entering and showing prospective purchasers through the rental property. Where a lessor sells premises over which there is a periodic tenancy, the lessor may give the tenant four weeks notice to leave while there is a sale contract on the property. The handover day must be at least four weeks after the notice is given. To terminate a periodic tenancy without grounds, two months notice must be given. A fixed-term tenancy cannot be terminated for sale of the premises except at the end of the fixed term or by mutual agreement.

In rooming accommodation, the provider cannot terminate a resident’s fixed-term tenancy due to sale of the premises, however, if the resident is on a periodic tenancy, the provider can issue the resident with a notice to leave without grounds. The handover day must be at least 30 days from when the notice is given.

Under s 185 of the *Land Title Act 1994* (Qld) (Land Title Act), if a lessor sells a residential property during the period of a fixed-term tenancy and the fixed-term lease is less than three years, the new owner must take over the residential property subject to the terms of the existing tenancy agreement. Prospective purchasers should be notified in writing by the lessor of the existence of a tenancy agreement in the contract of purchase.

Domestic violence

For residential tenancies, the RTRA Act has provisions to protect others against domestic violence not named on a residential tenancy agreement (e.g. co-tenants, spouses of tenants and same-sex couples in domestic violence situations). A victim of domestic violence may apply to QCAT to terminate the

tenancy of their spouse and/or to recognise them as a tenant because their spouse has committed domestic violence against them. The tribunal will need some evidence of the violence, although not necessarily a protection order. An application can also be made to have an interim restraining order put in place.

Section 322 of the RTRA Act also allows an occupant who fears that the tenant is likely to intentionally or recklessly cause serious damage or injury, to apply to QCAT for termination.

There are no equivalent provisions for rooming accommodation.

Breaches of Tenancy or Rooming Accommodation Agreements

Residential tenancies

In residential tenancies, a lessor may issue a notice to remedy breach (Form 11) if:

- the rent payable under the agreement is at least seven days in arrears (except in short-term moveable dwelling tenancies, where there is no minimum period of rent arrears before a tenant may be given the breach notice)
- the tenant has breached another term of the agreement.

For long-term moveable dwelling tenancies, a breach notice must give the tenant at least five days to remedy a breach of rent arrears. There is no minimum rent arrears remedy period for short-term moveable dwellings. In all other cases, a tenant must be given at least seven days to rectify rent arrears.

If the breach is not remedied by the due date, the lessor can issue a notice to leave for unremedied breach. Different notice periods apply depending on the type of breach and whether or not the tenancy is a moveable dwelling tenancy (see ss 329–332 RTRA Act for applicable notice periods).

If the tenant fails to leave by the handover date on the notice to leave, the lessor can apply to QCAT to terminate the tenancy. That application must be made within two weeks after the handover date on the notice to leave.

If a notice to remedy breach is received and the tenant does not agree, the tenant can issue a dispute resolution request (Form 16).

If a tenant remedies the breach after the notice to leave has been given, the lessor may either accept the remedy and continue on with the agreement, or may proceed with the notice to leave and apply to QCAT seeking termination if the tenant fails to leave by the handover date.

A tenant may issue a notice to remedy breach giving the lessor seven days to remedy any breach of the tenancy agreement. If the lessor fails to remedy within this period, the tenant may then issue a dispute resolution request (Form 16) to the RTA. If the RTA does not resolve the matter and a notice of unresolved dispute is received, the tenant can apply to QCAT for an order. It is possible to issue a notice of intention to leave after a breach goes unremedied. However, tenants should be cautious with this as QCAT needs to be satisfied that reasonable action was taken to resolve the matter, and that the matter was serious enough to break the tenancy agreement. If the lessor remedies the breach only after

the tenant issued a notice of intention to leave, the tenant can either waive the breach and continue with the tenancy, with the lessor's agreement, by giving written notice to the lessor on or before the handover date, or proceed to hand over vacant possession of the premises on the handover date.

In regard to some breaches, if two notices to remedy breach are issued and a third instance of the same breach occurs within 12 months, with each breach being remedied within the remedy period on the respective notice to remedy breach, the party issuing the breach notices can apply directly to QCAT for a termination order for repeated breaches. Under the RTRA Act, this applies when the lessor breaches:

- quiet enjoyment (s 183)
- obligations generally (s 185)
- obligations for facilities or sites in moveable dwelling parks (ss 186–187)
- entry provisions of premises (s 202)
- a provision of an agreement providing for the payment of rent;

and the tenant breaches:

- their use of the premises (s 184)
- obligations generally (s 188)
- obligations for facilities or sites in moveable dwelling parks (ss 189–190)
- a provision of an agreement providing for the payment of rent.

At no time can a lessor seize, hold or dispose of a tenant's property as payment for outstanding rent or other moneys owing.

Rooming accommodation

A provider can issue the resident with a notice to remedy breach if the provider reasonably believes the resident has breached the terms of the rooming accommodation agreement. The breach notice must state the particulars of the breach and state the day by which the breach must be remedied.

If the breach was non-payment of rent and, at the time rent was due, the resident had been a resident for:

- less than 28 days, the resident must be given at least two days to remedy the breach
- 28 days or more and the rent was two days in arrears, the resident must be given at least four days to remedy the breach.

For all other breaches, the resident must be given at least five days to rectify the breach.

Similarly to residential tenancies, if the breach is not remedied by the due date, the provider can issue a notice to leave for unremedied breach.

If the breach is in relation to rent arrears (as opposed to non-payment of rent) and, at the time rent was due, the resident had been a resident for:

- less than 28 days, the provider can require the resident to leave immediately
- 28 days or more, the resident must be given at least four days notice to leave.

In all other instances, the resident must be given at least two days notice to leave the premises for an unremedied breach.

If the provider reasonably believes the resident:

- has used the resident's room or common areas for an illegal purpose
- has intentionally or recklessly:
 - destroyed or seriously damaged the premises or a facility in the premises
 - endangered another person in the rental premises
 - significantly interfered with the reasonable peace, comfort or privacy of another resident,

the provider can give the resident a written notice to leave, requiring the resident to leave the premises immediately for a serious breach.

If the provider issues the resident with a notice to leave and the resident refuses to leave, the provider, in the presence of a police officer, can use reasonable force to remove the resident from the premises (s 375 RTRA Act).

A resident can issue the provider with a breach notice, giving the provider at least five days to rectify the breach. If the provider fails to remedy the breach by the due date, the resident can issue a notice of intention to leave with seven days notice. If a resident intends to terminate an agreement for unremedied breach, the resident should be mindful of whether the breach was serious enough to warrant the termination, and whether reasonable steps were taken to resolve the issue.

The reference to the making of an application about a dispute issue includes a reference to the making of a dispute resolution request.

Similar to residential tenancies, if two notices to remedy breach are issued and a third instance of the same breach occurs within 12 months, with each breach being remedied within the remedy period on the respective notice to remedy breach, the party issuing the breach notices can apply directly to QCAT for a termination order for repeated breaches. According to the RTRA Act, a provider or resident can only terminate for repeated breaches if the breaches are breaches by the provider of:

- their general obligations (s 247)
- quiet enjoyment (s 249)
- entry provisions (s 265)
- a provision of an agreement providing for the payment of rent,

or breaches by the resident of:

- their obligations generally (except the obligation to leave their room in the same condition as at the start of the tenancy, fair wear and tear excepted) (s 253)

- a provision of an agreement providing for the payment of rent.

Termination of Residential Rental Agreements

Residential tenancies

- A residential tenancy agreement can only be ended in accordance with the provisions of ch 5 of the RTRA Act. Termination may occur:
 - without grounds at the end of a fixed-term agreement or during a periodic agreement
 - when the lessor and tenant both agree in writing to end the tenancy
 - when the lessor gives a valid notice to leave and the tenant hands over vacant possession of the premises on or after the handover day
 - when the lessor issues an abandonment termination notice, and this is not challenged by the tenant in the prescribed manner
 - when the tenant gives the lessor a valid notice of intention to leave and hands over vacant possession of the premises on or after the handover date
 - when QCAT makes an order terminating the tenancy
 - if, after receiving a notice from a mortgagee, the tenant vacates or is removed from the premises
 - when a sole tenant dies.

See ss 281–300, 302 and 304–316 of the RTRA Act for grounds to issue a notice to terminate a tenancy and grounds to apply to QCAT for termination.

Either party can give notice to terminate the agreement because the premises have been wholly or partially destroyed (unless the premises are destroyed because of a breach of the agreement), the premises have been compulsorily acquired by an authority or can no longer be used legally as a dwelling. The notice must be given within one month of the premises becoming unliveable.

When agreements are terminated outside of the provisions of the RTRA Act or because of a party being in breach of their obligations, the other party may seek compensation for any resulting out-of-pocket expenses. However, there is also an obligation to mitigate loss (s 362 RTRA Act).

Either party can seek to end the agreement by application to QCAT that the tenancy be ended due to excessive hardship (s 295 RTRA Act lessor, s 310 RTRA Act tenant). The tribunal may also order that compensation be paid for any losses arising from the termination of the agreement.

A periodic tenancy can be terminated by the tenant (without giving reasons) by giving a notice of intention to leave (Form 13) to the lessor with two weeks notice. A lessor may terminate a periodic tenancy without giving grounds by giving the tenant two months notice to leave (Form 12) (s 329(2)(j) RTRA Act). If no termination notice is issued prior to the expiry of a fixed-term tenancy, then it becomes periodic the day after a fixed-term agreement ends.

A lessor may not end an agreement without grounds if it is to retaliate against the tenant enforcing their rights. A tenant may dispute a notice of this type through an urgent application to QCAT under s

292 of the RTRA Act within four weeks after the notice to leave without grounds was given to the tenant.

At no time can a tenant be removed from the premises without a warrant of possession from QCAT (s 353 RTRA Act). This is the case even if a valid notice to leave was served and the tenant did not leave on the expiry date. Lessors are prohibited from physically forcing tenants to leave (self-eviction). Police enforce warrants of possession, and they will notify the tenant of the day they intend to execute the warrant of possession.

Either party can apply to QCAT for an order for termination of the tenancy. If a lessor's application is successful, QCAT may also issue a warrant of possession to allow the lessor to regain possession of the premises. A warrant of possession authorises a police officer to enter the premises and give possession of it to the lessor. The QCAT registrar must give notice to the tenant that an order for possession has been made. The warrant of possession will be executable within three days from the date of the order (nominated by the adjudicator or member) and will remain executable for 14 days. Police will receive a copy and attend the premises on a nominated day and time (usually a few days before the order ceases) and ensure the tenant has left.

Rooming accommodation

Section 366 of the RTRA Act outlines the ways in which a rooming accommodation agreement may end. Termination can occur when:

- both the resident and provider make a written agreement to end the agreement
- the provider gives the resident a notice to leave and the resident leaves the premises
- the resident gives the provider a notice of intention to leave, with the handover date being the end date of the agreement
- the resident abandons the room and the period for which the rent has been paid has ended
- after the resident is given a notice from the mortgagee, the resident vacates the premises
- a sole resident dies
- QCAT makes an order terminating the agreement.

It is an offence for a person to terminate a rooming accommodation agreement other than in accordance with the provisions of the RTRA Act (s 367).

See ss 369–377 and 379–383 of the RTRA Act for grounds to issue a notice to terminate a tenancy and grounds to apply to QCAT for termination.

A provider can, in the presence of a police officer, use reasonable force to remove the resident from the premises in certain circumstances (s 375 RTRA Act).

Mortgagees

A tenancy agreement may be registered under the Land Title Act to obtain priority over any subsequent interests. A prior or subsequent registered mortgagee will only become bound by such a tenancy if the mortgagee consents to it. Such consent is rare. Although the mortgagee retains a prior

interest and is not bound by the tenancy, a mortgagee must give the required two-month written notice to a tenant in residential tenancies and a 30-day written notice to a resident in rooming accommodation, before seeking to take possession of the rental premises pursuant to the mortgage. Acceptance of rent by the mortgagee does not operate as consent to the tenancy. Problems can arise when a dispute arises between the mortgagee and mortgagor regarding a default, and the legal right of possession is contested.

Abandonment

Residential tenancies

In residential tenancies, if a lessor believes on reasonable grounds that the tenant has abandoned the premises, the lessor may give an abandonment termination notice (s 355 RTRA Act). If the tenant does not take action to dispute the notice within seven days after the notice being issued, the premises is assumed to be abandoned. The tenant has up to 28 days after the notice is given to apply for compensation or another order if the abandonment is disputed (s 356 RTRA Act).

Alternatively, the lessor can make a direct application to QCAT declaring that the tenant has abandoned the premises.

The right to deal with any abandoned goods is based on the tenancy having ended. Goods (other than cash and personal papers) may be sold or disposed of if (s 363 RTRA Act):

- their market value is less than \$1500
- storage would be unhealthy or unsafe, or storage would result in substantial depreciation of the goods
- the cost of removing, storing and selling the goods would exceed the proceeds of sale.

However, if the owner claims possession by written notice before the goods are disposed of, the former lessor must allow the owner of the goods to reclaim them on paying any reasonable removal and storage costs.

In any other case, the goods must be stored for one month and then sold by auction or as prescribed by QCAT. It is an offence to sell and dispose of the goods in contravention of the RTRA Act or to fail to allow tenants to reclaim possession on paying reasonable storage costs. The sale proceeds can then be used as payment of the:

- reasonable costs of removal, storage and sale
- balance to the Public Trustee.

Abandoned personal documents or money must be given to the Public Trustee if the lessor cannot give the personal documents or money to the owner.

The owner of the goods, personal documents or money can apply to QCAT for an order if they are dissatisfied with the way their belongings have been dealt with (s 365 RTRA Act).

Rooming accommodation

A provider can sell or dispose of goods (other than personal documents or money) if:

- it is perishable
- the market value is less than \$150
- storage of the goods would be unhealthy or unsafe.

Otherwise, the provider must try to contact the resident about the goods and store them safely for at least 28 days (s 393 RTRA Act).

If the goods are not reclaimed within the 28 days, the provider can:

- sell the goods after advertising them in a newspaper circulating generally in the area where the premises was situated
- donate the goods to charity, if the market value of the goods is less than \$600.

If the resident reclaims the goods before they are disposed of, the provider must release the goods to the resident upon the payment of reasonable costs.

Abandoned personal documents or money must be given to the Public Trustee after 28 days if the resident cannot be contacted (s 392 RTRA Act).

Database listings

Chapter 9 of the RTRA Act deals with tenancy databases, which list information about tenants and are not used for internal purposes.

A listing on a tenancy database can only be made if a person was named as tenant in a residential tenancy agreement (i.e. a resident on a rooming accommodation agreement cannot be listed), the agreement has ended and one of the following three circumstances exists:

- An amount of money greater than the rental bond held by the Residential Tenancies Authority (RTA) is owed by the tenant and:
 - the tenant received a notice to remedy breach about rent owing and failed to remedy within the remedy period
 - the tenant failed to pay money owing under a conciliation agreement or a QCAT order
 - the tenant abandoned the premises.
- The tenancy was terminated by QCAT for objectionable behaviour.
- The tenancy was terminated by QCAT for repeated breaches.

If a listing does not meet these criteria, the tenant has six months from finding out about the listing to make an urgent application to QCAT for an order against the listing party and the tenancy database company to take all reasonable steps to remove the listing (s 460 RTRA Act). Listings that are unjust (e.g. a result of being the victim of domestic violence) or incorrect have no time limits for applications regarding their removal (s 461 RTRA Act).

A person proposing to list a tenant must give written notice of a proposed listing or have taken reasonable steps to disclose the information to be listed. Not getting a copy of a proposal to list may be grounds for application to QCAT for its removal. If the listing party does not have a forwarding address, they usually send this notification to the last known address.

An application can also be brought in respect of a proposed listing if the person thinks it will be in breach of the RTRA Act.

Tenants of Mobile Homes and Caravans

The RTRA Act covers tenants who live in a moveable dwelling (i.e. a manufactured home or caravan). It applies to those who rent a moveable dwelling on site or own a moveable dwelling but rent a site (s 9(2) RTRA Act). Persons who own a manufactured home and are living in a moveable dwelling park may also be covered by the *Manufactured Homes (Residential Parks) Act 2003* (Qld).

The RTRA Act covers short-term moveable dwelling tenancies of up to 42 days (and an extension of another 42 days) and long-term tenancies.

By entering into a tenancy agreement, tenants and caravan park lessors undertake to abide by the terms of the agreement and the RTRA Act. There are separate prescribed standard terms of tenancy agreements for moveable dwelling tenancies available from the RTA.

In regard to rental bond, if the tenancy is a long tenancy (see definitions below) and electricity supplied to the premises is supplied in the lessor's name and individually metered, the maximum bond is equal to three weeks rent otherwise it is equal to two weeks rent (s 112 RTRA Act). A maximum of two weeks rent in advance can be charged.

The RTRA Act defines a short-term tenancy for a moveable dwelling as being for a maximum of 42 days (or another 42 days if extended). An agreement for a short tenancy for a moveable dwelling may also be put in writing, although it does not have to contain all the standard terms (short-tenancy statement). The statement must be made before or when the tenancy starts and must state the intention for the tenancy to be 42 days or less. The information statement (Form 17b) must be provided when the tenancy commences. Any park rules must also be provided. An extension of the short-tenancy statement for an additional 42 days can be made only once and within the base period.

If put in writing, the tenant and lessor should sign this statement at the start of the tenancy. Short tenancies for a moveable dwelling can be terminated on grounds of incompatibility by urgent application to QCAT. Short tenancies have special provisions dealing with breaches. Termination can be made with a two-day notice by the lessor and with a one-day notice by the tenant.

A long-term tenancy is defined in s 51 of the RTRA Act to be a moveable dwelling tenancy that is not a short tenancy. The full provisions of the RTRA Act apply to these tenancies. Long-term tenancies can be either for a fixed term or periodic. The information statement must be provided, as well as a condition report and a copy of the park rules.

If a tenant in a long-term tenancy has been served a notice to remedy breach (Form 11) for rent payments overdue by seven days, the tenant then has five days to remedy the breach or the tenancy may be terminated.

Lessors cannot charge commissions on the sale of tenant-owned vans, except where the lessor is providing a service, and there is a written agreement with the tenant to do so.

Tenants may be required to pay a service charge for sharing a facility such as electricity, gas or water only if the supply of the service is separately metered. If a service charge is absorbed in rent and that service can no longer be used due to the lessor's actions, then reduced rent may be payable. A tenant can ask how much of the rent is attributable to particular services and the lessor must give the tenant a written statement outlining each service/facility and the amount of rent attributed to each.

Lessors can make rules about the use, enjoyment, management and control of the park. A breach of the park rules may be considered to be a breach of the tenancy agreement, for which a notice to remedy breach may be served. Tenants must be notified in writing of any proposed changes to the park's rules. They must be advised of how they may object and should have at least one month to lodge their objections. An elected park liaison committee must be formed to consider the objections, and the parties may apply to QCAT if agreement cannot be reached.

Tenants may be given notice to leave because the park is to be closed or the area will be used for another purpose. A notice to leave for voluntary park closure should state that the handover day is at least three months after the notice is given.

If the moveable dwelling park has become unfit to live in, within one month the lessor may issue the tenant a notice to leave for non-liveability, effective immediately. Tenants who wish to terminate the agreement have one month after the premises become unliveable in which to give notice to the lessor of their intention to leave, effective immediately.

A tenancy may be terminated if the tenant caused or will cause serious damage to the premises or injury to other people. Tenants can apply to QCAT for an order against a lessor who caused or is likely to cause:

- serious damage to the tenant's possessions
- injury to the tenant or another person
- harassment, intimidation or verbal abuse to the tenant or another person.

Police can act on complaints about tenants or anyone causing serious damage or a nuisance in a caravan park. They can verbally direct the offenders to leave the premises for up to 24 hours. Police may arrest without warrant and detain any person who disobeys a direction, returns within the 24-hour period and does not provide identification when requested. Lessors may make an urgent application to QCAT for an order that a person be excluded from the park if a person causes a serious disturbance or nuisance within the park.

Entry conditions by the lessor to the site are basically the same as for other tenancies, with the exception that the agreement can state conditions of entry and frequency of entry required for carrying out maintenance of the site.

Disputes Between Tenants and Landlords

The RTA provides a conciliation service to try to settle disputes between lessors/providers and tenants/residents (ch 6 RTRA Act). The usual process to trigger a conciliation process is to issue a request for dispute resolution (Form 16). There is no requirement for conciliation in an urgent situation such as an order to restrain a person from causing damage or injury, emergency repairs or failure to leave.

Queensland Civil and Administrative Tribunal

The tribunal has jurisdiction for tenancy applications under s 11 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) and will not be able to hear claims for negligence or personal injury.

To initiate an application for a tenancy matter, a QCAT Form 2 Application for Minor Civil Dispute should be completed. The tenancy application to QCAT must be filed either in the registry closest to the rental premises (which is your local Magistrates Court) or in the Brisbane QCAT registry. Applications to QCAT are categorised as either urgent or non-urgent. A non-urgent application will need to go through to the RTA Dispute Resolution process whilst an urgent application can proceed directly to QCAT. The tribunal is compelled to act fairly and in accordance to the substantial merits of each case, and it is not bound by the strict rules of evidence. Some QCAT decisions may be appealed if there is an error in law, an error in fact or an error in both. Monetary orders by QCAT can be registered as a judgment in the Magistrates Court. Non-monetary orders may be registered as a judgment in the Supreme Court.

Legal Notices

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