



Government of South Australia

Office of Consumer and
Business Affairs

INFORMATION BROCHURE

RESIDENTIAL TENANCIES ACT 1995

THIS BROCHURE SETS OUT THE GENERAL RIGHTS AND OBLIGATIONS OF LANDLORDS AND TENANTS IN RESPECT OF WRITTEN, VERBAL OR IMPLIED RESIDENTIAL TENANCY AGREEMENTS

UNDER THE REGULATIONS OF THE RESIDENTIAL TENANCIES ACT 1995, AT THE TIME THAT A RESIDENTIAL TENANCY AGREEMENT IS ENTERED INTO, THE LANDLORD (OR HIS OR HER AGENT) MUST FURNISH THE TENANT WITH THIS INFORMATION BROCHURE

THE LANDLORD/TENANT RELATIONSHIP...

Landlords and tenants both have rights and obligations when a tenancy agreement is entered into. These rights and obligations are set out in the *Residential Tenancies Act 1995*. **Some of these rights and obligations cannot be changed, even if there is mutual agreement between the parties.** This brochure outlines the main requirements of both parties under the Act. For further information, contact the **Tenancies Branch**, Office of Consumer and Business Affairs (OCBA) on 8204 9544, or call into the Branch at Level 1, 91-97 Grenfell Street, Adelaide.

The landlord/tenant relationship begins when a landlord agrees to rent residential premises to a tenant. "Premises" includes the land and buildings contained on it, and all things provided for use by the tenant. However, a landlord and tenant may agree at the beginning of the tenancy to exclude certain parts of the premises as being for use by the landlord.

A tenancy agreement can be written, verbal or even implied. It does not need to be in writing to be binding. If parties wish to enter into a written agreement, a copy of a standard lease agreement is available free from the Tenancies Branch, Office of Consumer and Business Affairs (at the address above), which you may use if you choose. It can also be downloaded from the OCBA website at www.ocba.sa.gov.au.

The landlord must pay any cost associated with the preparation of a written lease. There is to be no cost to the tenant. A residential tenancy agreement is formed when a person grants another person a right to occupy the premises for valuable consideration (e.g. by paying rent).

THE LANDLORD IS OBLIGED TO...

- provide the premises in a clean and reasonable state;
- maintain and repair the premises (having regard to their age, character and prospective life);
- allow the tenant peace, comfort and privacy;
- pay council rates and land tax charges;
- pay rates and charges for water supply as agreed between the landlord and the tenant. In the absence of an agreement the landlord will bear rates and charges for water supply up to 136 kilolitres per year - any amount above this is the responsibility of the tenant. If there are multiple properties on one meter, a special clause must be included in the lease agreement outlining how water charges are determined.
- give proper receipts for any money received from the tenant. If the tenant pays rent into an account that is kept by the landlord or agent at a financial institution and the landlord or agent keeps a written record containing the information normally required on a receipt, a receipt does not have to be given to the tenant;
- keep proper records of rent received during the tenancy;
- provide and maintain locks to ensure the premises are reasonably secure;
- complete and provide 2 signed inspection sheets and a copy of this information brochure to the tenant at the commencement of the tenancy;
- provide the tenant with a copy of the lease agreement if the landlord has required the tenant to sign a written agreement.

THE TENANT IS OBLIGED TO...

- pay the rent on time. *If you are receiving a Centrelink payment you and your landlord may agree for you to pay your rent using Centrepay. (For details on Centrepay contact your nearest Centrelink Office);*
- keep the premises in a reasonable state of cleanliness;
- pay rates and charges for water supply as agreed between the landlord and the tenant. In the absence of an agreement the landlord will bear rates and charges for water supply up to 136 kilolitres per year - any amount above this is the responsibility of the tenant. If there are multiple properties on one meter, a special clause must be included in the lease agreement outlining how water charges are determined.
- not intentionally or negligently cause or allow damage to be caused to the premises;
- notify the landlord of damage to the premises;
- notify the landlord when repairs are needed;
- not use the premises, or allow them to be used, for any illegal purpose;
- not cause or allow a nuisance or interference with the reasonable peace, comfort and privacy of anyone else living in the immediate vicinity of the premises;
- not fit any fixtures or make any alterations to the premises (including picture hooks, shelves and fences) without the landlord's permission.

LANDLORD'S RIGHT OF ENTRY TO RENTED PREMISES...

- in the case of an emergency; (no notice is required)
- by giving written notice, with a date and time specified, to the tenant for a specific purpose (including routine inspections of the premises) seven to fourteen days before entering the premises; (not more frequently than once every four weeks for routine inspections);
- at a time previously arranged with the tenant, but not more frequently than once every week for the purpose of collecting rent;
- to carry out necessary repairs or maintenance at a reasonable time, giving at least 48 hours' written notice;
- after giving reasonable notice to the tenant to show the premises to prospective tenants during the last 28 days of a tenancy;
- after giving reasonable notice to the tenant to show the premises to prospective purchasers. It is generally accepted that inspections by appointment for the purpose of showing the premises to prospective purchasers should be no more than twice weekly, with 24 hours' notice being given and that open inspections should be no more than once per fortnight with reasonable notice being given.
- at any time with the consent of the tenant given immediately before the time of entry.

A LANDLORD DOES NOT HAVE ANY OTHER RIGHT OF ENTRY TO RENTED PREMISES.

AT THE BEGINNING OF A TENANCY...

A landlord has the right to choose a tenant. However, it is illegal to discriminate in refusing a particular tenant because laws against discrimination apply to residential tenancies.

Under the *Residential Tenancies Act 1995*, it is also illegal to discriminate against tenants with children. **This does not apply if the landlord or agent resides in the premises or in adjacent premises.** Any questions about rights and responsibilities under the Equal Opportunity Act can be directed to:

Equal Opportunity Commission
Telephone 8207 1977 or FREECALL 1800 188163
Internet address: www.eoc.sa.gov.au

SECURITY BOND...

For rental properties \$250 per week and under, the landlord cannot ask for more than the equivalent of four weeks' rent as bond. For rent over \$250 per week, a landlord can ask for the equivalent of six weeks' rent as bond. Money received as a security bond must be receipted within 48 hours. The receipt must show the date, the person's name and the amount and address of the premises for which the bond has been paid. All security bonds must be paid into the Residential Tenancies Fund using a bond lodgement form within seven days (or in the case of registered land agents, within 30 days) of receipt.

A bond may be increased if at least two years have elapsed since the security bond was given or last increased. Where a bond is increased, the increase must be lodged within the required time frame.

Housing SA issues bond guarantees to approved tenants, rather than making a direct payment to the Residential Tenancies Fund. This guarantee is used in the same way as a cash bond and provides the same security for landlords. Bond guarantees do not become valid until they have been lodged with the Tenancies Branch and have received a lodgement number. Housing SA will cancel a bond guarantee if it is not lodged with the Tenancies Branch by the 'lodge by' date shown on the front of the form.

WHETHER OR NOT A BOND IS PAID, THE ACT APPLIES TO ALL RESIDENTIAL TENANCY AGREEMENTS IN SOUTH AUSTRALIA.

INSPECTION SHEETS...

At the beginning of the tenancy the landlord is required to provide the tenant with two signed inspection sheets, which must include comprehensive details of fixtures, furniture and other contents in the premises and their condition at the commencement of the tenancy. After both inspection sheets have been completed and signed by the tenant, the tenant must keep one and return the other copy to the landlord. The inspection sheets may be adapted to suit particular premises. Care should be taken when filling out these forms, as they may be called upon in the event of a dispute or for repayment of the security bond at the end of the tenancy.

INSPECTION SHEETS SHOULD BE RETAINED THROUGHOUT THE TENANCY AND CARE SHOULD BE TAKEN SO THAT THEY ARE NOT LOST OR DESTROYED.

RENT IN ADVANCE...

Besides paying a bond at the beginning of the tenancy, a tenant can be required to pay the first two weeks' rent. If two weeks' rent is paid at the start of the tenancy, no rent is due until those two weeks have passed. Besides a security bond and two weeks' rent in advance, the landlord cannot ask for any other money at the start of the tenancy.

RENT INCREASES...

The landlord may increase the rent under the following circumstances:

- where the terms of the tenancy agreement allow it (i.e., for fixed term agreements, provision for rent increases must be written into the lease);
- where allowed, rent can only be increased after six months into the tenancy or six months from the last rent increase;
- the tenant must be given 60 days' written notice of the landlord's intention to increase the rent.

REPAIRS AND MAINTENANCE...

It is the tenant's responsibility not to cause damage to the premises. If damage does occur, the landlord should be notified as soon as possible. If a tenant intentionally or carelessly causes (or allows damage to be caused) to the premises, it is the tenant's responsibility to repair the damage.

If damage or repairs are needed due to normal wear and tear, or in any way that is not the tenant's fault, the landlord should be notified immediately. It is the landlord's responsibility to repair and maintain the premises under these circumstances. You may have **emergency** repairs carried out by a licensed tradesperson, if you have been unable to contact the landlord first, or if nothing has been done after notifying the landlord. You must get a written report from the tradesperson if this happens.

TYPES OF LEASE AGREEMENTS...

There are two types of residential tenancy agreements.

- [1] A **periodic tenancy** - an agreement (written, verbal or implied) for an indefinite period until it is lawfully terminated by either party or by the Tribunal;
- [2] A **fixed term tenancy** - a specific time agreed upon at the beginning of the tenancy (e.g., six or twelve months).

The landlord's and tenant's rights and obligations under both types of tenancy are exactly the same. There are differences, however, in the conditions of **termination**.

TERMINATION...

The prescribed forms, which must be used when issuing a notice of termination, are available from the offices and web site listed on page 10 of this brochure.

Periodic Tenancy -

- The **tenant** may give 21 days' notice or a period equivalent to a single period of the tenancy, (whichever is the longer), in writing to the landlord at any time. For example, if you pay rent weekly or fortnightly, you are still required to give 21 days' notice. If you pay rent calendar monthly, you would need to give a calendar month's notice.
- The **landlord** may give notice of termination on the prescribed form at any time, as follows:
 - The landlord requires possession of the premises for the landlord's own occupation, or occupation by the landlord's spouse, child or parent, or occupation by the spouse of the landlord's child or parent - 60 days
 - Premises required for demolition - 60 days
 - Where the premises have been sold, to be given any date from the signing of the contract of sale - 60 days
 - Possession of the premises is required for repairs or renovations that cannot be carried out conveniently while the tenant remains in possession of the premises - 60 days
 - Rent arrears of at least 14 days or breach of contract - 7 days*
 - Notice where no reason is given - 90 days

*Where a termination notice is given for breach of contract or rent arrears, if the breach or rent arrears is not rectified within seven days, the tenancy may terminate when the notice expires. If vacant possession is not given by the requested date, the landlord may apply to the Tribunal for an order of possession.

Fixed Term Tenancy -

- Neither the landlord or the tenant can terminate a fixed term agreement until the final day of the tenancy, unless by mutual agreement. At the end of a fixed term tenancy, if the tenant has not vacated the premises, the landlord may lodge an application with the Tribunal for an order for possession of the premises.
- If you want to leave the premises and terminate the tenancy before the end of the fixed term, discuss it with the landlord and try to come to an arrangement. It may be, however, that you will be liable to the landlord for the costs associated with finding a new tenant, reletting the premises and for any loss of rent. If in doubt, contact the Tenancies Branch for advice.

TERMINATION FOR BREACH OF AGREEMENT...

Both the landlord and the tenant can give a termination notice on the prescribed form to the other for a breach of the conditions of the lease. A breach of an agreement must be remedied within at least seven clear days from the date the notice is given.

If the landlord has served a valid termination notice and vacant possession is not given at the appropriate time, the landlord may apply to the Residential Tenancies Tribunal for an order for vacant possession. Only a Tribunal bailiff can enforce an order for vacant possession.

If a party (*the respondent*) disputes the termination notice, an application may be made to the Tenancies Branch for dispute resolution through mediation or conciliation. The respondent can also apply to the Residential Tenancies Tribunal for an order stating that they are not in breach or that the breach has been fixed.

TERMINATION FOR UNDUE HARDSHIP...

Under the Residential Tenancies Act 1995, if continuing the tenancy would cause undue hardship to either the landlord or the tenant, an application can be lodged with the Tribunal for termination of the tenancy. Generally 'undue hardship' does not include financial difficulties.

REFUND OF SECURITY BOND...

Where parties agree

At the end of the tenancy when the tenant and landlord agree how the bond should be repaid, a refund of security bond form should be filled out and signed by both parties. (The signatures should be the same as those on the bond lodgement form). The refund form should be either posted, or brought in, to the Bonds Section of the Tenancies Branch. If brought in personally, a cheque will be drawn within 15-20 minutes. Alternatively, a cheque can be posted out, usually within 7 working days, or the money can be paid into your account by electronic funds transfer.

10 day dispute

A bond refund form seeking disbursement to the applicant without the other party's signature can still be lodged with the Tenancies Branch. The other party will be notified of the applicant's claim and given 10 working days to dispute the claim. If the claim is not disputed the bond will be paid to the applicant.

Disputed bonds

If no agreement can be reached about the refund it is possible for either party to apply to either:

- the Commissioner, for advice or assistance in the mediation or conciliation of the dispute or;
- the Tribunal, for an order seeking refund of the bond.

If a dispute arises over how the bond should be refunded, one or both parties should contact the Tenancy Advice Section of the Tenancies Branch, on 8204 9544.

SUBLETTING AND ASSIGNMENT...

A tenant has the right, with the landlord's written approval, to sublet the rental premises, or assign their interest to another party. The landlord cannot unreasonably withhold consent or charge for subletting or assignment, except for reasonable incidental expenses in doing so.

To 'sublet' means that a tenant rents out all or part of the premises to someone else, and in effect becomes the landlord to the subtenant. To 'assign' means to transfer a tenancy to someone else. That does not mean, however, that the original tenant no longer has responsibility for the tenancy. Before subletting or assigning a tenancy, it is advisable to first contact the Tenancies Branch and speak with a Tenancy Officer.

The Commissioner for Consumer Affairs DISPUTE RESOLUTION...

The Commissioner for Consumer Affairs' role is to give advice to landlords and tenants and to resolve disputes. A party to a residential tenancy dispute may apply to the Commissioner for mediation of the dispute. Alternatively, the Tribunal may, either before or during the hearing of proceedings, appoint a mediator to achieve a negotiated settlement. A mediator may exercise any powers of the Tribunal that the Tribunal may delegate. The Tribunal may also refer the matter to a conference or list for a hearing.

If you are a party to a tenancy dispute, you should talk with a Tenancy Officer at the Tenancies Branch, Level 1, 91-97 Grenfell Street, Adelaide or phone 8204 9544.

TRIBUNAL HEARINGS...

The Residential Tenancies Tribunal is an independent specialist Tribunal that provides a prompt and informal way of determining disputes between landlords and tenants. Both landlords and tenants may apply to the Tribunal to have disputes determined. Members of the Tribunal conduct hearings with a minimum of formality. Both parties can attend and usually present their own cases. Tribunal Registry Staff cannot advise parties about their dispute. You should contact a Tenancy Officer if you need advice, on the number listed above.

The *Residential Tenancies Act 1995* provides several ways of having a dispute settled:

- negotiation and conciliation of a dispute
- mediation
- decision by the Tribunal and an order being made

HOUSING CO-OPERATIVES AND HOUSING ASSOCIATIONS

Housing co-operatives and housing associations are community managed organisations that provide rental housing for individuals and families on low incomes or with special housing needs. Housing co-operatives are incorporated under the *SA Co-operative and Community Housing Act 1991* and housing associations are incorporated under the *Associations Incorporation Act 1985*.

The tenants of associations and co-operatives do not own the houses they live in, but rent them from the group. In some cases association and co-operative tenants may also be members of the group from which they are renting. It is important to know whether you are a member since different rules apply for member-tenants and non-member-tenants. As well, co-op members are expected to attend meetings of the co-operative and to take on various administrative responsibilities involved in running the group.

Some specific requirements apply to member-tenants of housing associations and co-operatives:

- you may need to comply with certain tenancy by-laws (e.g.: visitors, absences, rent changes) referred to in the tenancy agreement;
- your tenancy agreement must be in writing.

Member-tenants and non member-tenants of housing co-operatives and housing associations are covered by the *Residential Tenancies Act 1995*, but there are some sections of the Residential Tenancies Act where variations exist or which co-operatives and associations are not required to comply with, such as:

- period of notice for rent increase for income determined rents;
- the basis for calculating rent payable can be changed;
- associations and co-operative's are not responsible for maintenance & repair of certain items (e.g. air-conditioners, light fittings, room heaters, floor coverings);
- consent for assignment or subletting of property can be withheld;
- requirements for termination of tenancy in a co-operative differ.

It is possible to obtain further exemptions from provisions of the Residential Tenancies Act by making an application to the Tribunal. If you wish to make such an application, contact a Tenancy Officer on 8204 9544.

If you would like more information about joining a housing co-operative or housing association, the following organisations can provide further assistance:

Office for Community Housing

Level 1 Riverside Centre, North Terrace, Adelaide
Telephone (08) 8207 0233
Internet address: www.communityhousing.sa.gov.au

Community Housing Council of SA Inc

283 - 285 Payneham Road, Royston Park
Telephone (08) 8362 1022
Internet address: www.chcsa.org.au

If you have difficulty in understanding this pamphlet ring the Translating and Interpreting Service on 131-450. Don't hang up, your call will be answered (Local call cost only).

Amharic / አማርኛ

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Arabic / عربي

إذا كنت تجد صعوبة في فهم هذه النشرة ، إتصل هاتفياً بخدمة الترجمة الكتابية والشفهية (Translating and Interpreting Service) على الرقم 131-450 . لا تُثقل الخط ، لأنه سوف يتم الرد على مكالمتك (تكلفة مكالمة محلية فقط) .

Chinese / 中文

如果您不能理解本手冊，請打電話到翻譯及傳譯服務處 (Translation and Interpreting Service)，電話號碼 131-450。請耐心等待，會有人接您的電話（按當地電話收費）。

Croatian/Hrvatski

Ako Vam je teško razumijeti ovu brošuru, nazovite Službu tumačenja i prevodenja na 131-450. Nemojte spustiti slušalicu, na vaš poziv će biti odgovoreno (za cijenu mjesnog poziva).

Greek/Ελληνικά

Αν δυσκολεύεστε να καταλάβετε αυτό το φυλλάδιο τηλεφωνείτε στην Υπηρεσία Μετάφρασης και Διερμηνείας Τηλέφωνο 131 450. Μην κλείσετε το τηλέφωνο, το τηλεφώνημά σας θα απαντηθεί (Χρέωση για τοπικό τήεφώνημα μόνο).

Hungarian/Magyar

Ha nem érti ezt a nyomtatványt, mert nem beszél angolul, hívja a Fordító és Tolmács Szolgálatot a 131-450 telefonszámon (helyi hívásnak számít). Kérjük, várjon, amíg hívására valaki válaszol.

Italian/Italiano

Se avete difficoltà a capire questo opuscolo telefonate al Servizio Traduzione e Interpretariato (Translating and Interpreting Service) Tel. 131-450. Non mettete giù il telefono, qualcuno risponderà alla vostra chiamata (il costo é uguale ad una telefonata locale).

Khmer / ខ្មែរ

ប្រសិនបើអ្នក មានការពិបាក ទីងយល់សន្លឹកព័ត៌មាននេះ ចូរហៅទូរស័ព្ទ ទៅកន្លែងផ្គត់ផ្គង់បេកប្រកាសា តាម លេខ 131-450 ។ ចូរកុំដាក់ប្រដាប់ទូរស័ព្ទចុះ គេនឹងឆ្លើយតបទៅការហៅរបស់អ្នក (ការហៅទូរស័ព្ទរបស់អ្នក គិតតាមតែតំលៃហៅក្នុងតំបន់)។

فارسی / Persian

چنانچه مشکلی در فهم این جزوه دارید لطفاً به اداره خدمات مترجمی به شماره 131 450 تلفن فرمائید. گوشی را زمین نگذارید ، جواب تلفن شما داده خواهد شد . (هزینه تلفن محلی)

Office of Consumer and Business Affairs

FOR MORE DETAILED INFORMATION AND ADVICE ABOUT TENANCY MATTERS, CONTACT -

TENANCIES BRANCH

Level 1 Chesser House
91-97 Grenfell Street
ADELAIDE SA 5000
(GPO Box 965, ADELAIDE SA 5001)

TELEPHONE: (08) 8204 9544

FACSIMILE: (08) 8204 9570

www.ocba.sa.gov.au

REGIONAL OFFICE

Call the 131 882 number from anywhere outside the Adelaide area
and you'll be connected to your nearest OCBA Regional Office.

30 Kay Avenue, BERRI

11 Helen Street, MT GAMBIER

9 Mackay Street, PORT AUGUSTA

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BOND LODGEMENT FACILITIES AVAILABLE AT SERVICE SA OFFICES LOCATED AT:

- Gawler
- Kadina
- Mount Gambier
- Murray Bridge
- Naracoorte
- Port Augusta
- Port Lincoln
- Port Pirie
- Whyalla

Please note, only cash, cheque or money orders can be taken at these offices.

The **Tribunal Registry** of the Residential Tenancies Tribunal is located at:

Level 4, 100 Pirie Street, Adelaide

Telephone: (08) 8226 8989

Facsimile: (08) 8226 8985

The Registry receives and deals with all applications made to the Tribunal. Hearings are also conducted in rooms located at the above address.