

## Tenancy Changes April 2023

The *Residential Tenancies Legislation Amendment Bill 2022* was passed on 21 March 2023, bringing many changes to tenancy laws in the ACT from **1 April 2023**. The following factsheet summarises the main changes.

If you live in public housing and have questions about how the changes will affect your tenancy, please contact Canberra Community Law.

### Rent ranges and rent biddings

A number of offences were introduced regarding rent ranges and rent biddings

A landlord or their agent cannot:

- publish an advertisement for the lease of residential premises and not state the rental rate payable for the premises. A rental rate cannot include a range of amounts or a minimum or maximum amount; or
- solicit or invite a tenant to offer a rental rate that is higher than the advertised rental rate for the premises.

However, a landlord can accept an offer from a tenant to pay more than the advertised rent as long as the offer was made without solicitation or invitation from the landlord or another person.

### Minimum Housing Standards

Landlords are now required to ensure that a rental property comply with the Minimum Housing Standards.

At this stage, the minimum housing standards only include the minimum energy efficiency standards.

From time to time, the regulations can be amended to include the minimum standards for:

- Physical accessibility;
- Safety and security;
- Sanitation; and
- Amenity.

### Minimum energy efficiency standards

From 1 April 2023, rental properties in the ACT must meet the minimum energy efficient standards for ceiling insulation (the Standards). All rental properties that have no ceiling insulation or ceiling insulation with an R-value of less than R2 must install or upgrade the insulation to meet a minimum R-value of R5

Note: the R value measures the thermal performance of the insulation.

### Required compliance date

Landlords are required to comply with the Standards:

- by 30 November 2026, if they enter into a residential tenancy agreement prior to 1 April 2023; or
- within 9 months from the date a residential tenancy agreement is entered into, if the agreement was entered into between 1 April 2023 and 30 November 2026; or
- within 3 months from the date a residential tenancy agreement is entered into, if the agreement was entered into on or after 1 December 2026.

A landlord or the agent of the landlord is required to:

- Not publish an advertisement for the lease of premises unless the advertisement states whether the landlord complies with the Standards (compliance statement) or whether an exemption applies (exemption statement);
- Include in a residential tenancy lease a compliance statement; or if an exemption applies, an exemption statement and the reasons for the exemption;
- Keep relevant records and evidence; and
- Provide the tenant with relevant documents upon request.

### Exemptions from compliance with the Standards

A landlord may be exempted from complying with the Standards if one or more of the following exemptions apply:

- The installation cost is likely to be more than \$10,000;

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- The premises are unsuitable for ceiling insulation (e.g. roof cavity is too small)
- The tenant advises the landlord in writing that the tenant does not want ceiling insulation installed;
- Before entering into the lease, the landlord tells the tenant in writing that the landlord intends to demolish all or a substantial part of the premises, within 2 years after the day the landlord enters into the lease;
- The lease is for a fixed term of 12 months or less, and the tenant is the former owner of the premises; or
- The owners corporation for the building intends to arrange for ceiling insulation to be installed or refuses permission for the landlord to install the required ceiling insulation.

### Advertisement

A number of offences were introduced regarding the advertisement of a rental property and minimum housing standards.

A person must not publish an advertisement for the lease of residential premises and not include:

- a statement about whether the premises comply with the minimum housing standards; or
- whether the premises are exempt from complying with a minimum housing standard.

A person also cannot publish a false or misleading statement without a reasonable excuse.

### Pre-contractual obligations

Prior to entering into a tenancy agreement, a landlord must provide the tenant with a written statement that contains the following information:

- a statement about whether the premises comply with the minimum housing standards; or
- the reasons why the premises do not comply and the proposed compliance date; or
- the reasons why the premises are exempt from complying.

### Access

Landlords can request access to the premises for making or inspecting repairs to comply with the minimum housing standards on giving the tenant 1 week's notice.

### What can tenants do if the premises do not comply with the Minimum Housing Standards?

If a tenant believes that the premises they are living in do not comply with the minimum housing standards (e.g. minimum energy efficiency standards) the tenant can apply to ACAT to seek orders to terminate the residential tenancy or seek a rent reduction or compensation.

### Ending no cause eviction

From 1 April 2023, a landlord can no longer issue a notice to vacate to a tenant without relying on a valid termination ground as provided in the *Residential Tenancies Act 1997* (RTA) or the *Standard Residential Tenancy Terms* (SRTTs).

Any notices to vacate without cause issued to a tenant prior to 1 April 2023 are valid.

However, tenants can make an application to ACAT to seek orders disallowing a notice to vacate without cause prior to the date the tenant is requested to move out if the tenant believes that the notice to vacate is retaliatory.

### Termination grounds

The following are new grounds upon which a tenancy can be terminated:

- **Threats, harassment, intimidation or abuse** – both tenants and landlords can apply to ACAT to seek an order terminating the tenancy if either the landlord or the tenant engage in conduct that is threatening, intimidating, harassing or abusive towards one another; and
- **Other use for the premises** – For periodic tenancies only, landlords can give tenants 26 weeks' notice to vacate if they genuinely intend to use the premises for other lawful use other than as residential premises.
- **Failing to comply with the Minimum Housing Standards** – a tenant can apply to ACAT to seek

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orders to terminate a tenancy if the landlord failed to ensure that the premises comply with the Minimum Housing Standards by the required compliance date (see above).

For periodic tenancies, in the absence of any breach of the tenancy agreement by the tenant, the landlord is required to provide written evidence to support the landlord's reasons for issuing a notice to vacate. This replaces the previous provision which only required landlords to complete a statutory declaration.

Tenants can also challenge a notice to vacate prior to the date the tenant is requested to move out if the tenant considers that the notice to vacate is retaliatory.

New terminations grounds were also added for public and social housing. These termination grounds are not included in this factsheet. Please contact Canberra Community Law if you have any questions.

Please refer to our factsheet – *Landlord Ending a Tenancy* for further information.

### Right to grow food

Amendments to the laws make it easier for tenants to grow food on the premises. Planting vegetables, fruits, flowers, herbs or shrubs is considered a minor modification to the property if:

- Existing vegetation or plants do not need to be removed; and
- For shrubs – the shrubs will not grow to more than 2m in height.

Installing or placing a composting tumbler or composting bin is also considered a minor modification if existing vegetation or plants do not need to be removed.

Tenants are still required to apply for the landlord's consent in writing before growing food at the property. A landlord cannot refuse consent unless with ACAT's prior approval.

In Strata buildings and under certain circumstances, growing food may not be considered a minor

modification (e.g. growing food in any common property is not considered a minor modification).

Please refer to our factsheet – *Modifications to the property* for further information.

If you have any questions arising out of the information provided in this fact sheet, contact the **Tenancy Advice Service** at:

1300 402 512 or [TAS@legalaidact.org.au](mailto:TAS@legalaidact.org.au)

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