

NORTHERN TERRITORY

CONSUMER

AFFAIRS

A Guide to Renting in the Northern Territory

**Your Rights and Responsibilities
as a Landlord or Tenant
under the Northern Territory's
*"Residential Tenancies Act"***



A GUIDE TO RENTING IN THE NORTHERN TERRITORY

**Your Rights and Responsibilities as a Landlord or Tenant
under the Northern Territory's *Residential Tenancies Act***

This guide is to give landlords and tenants an overview of their rights and responsibilities under the Northern Territory *Residential Tenancies Act* (the Act). It is important to note that this information is not the Act itself.

Copies of the *Residential Tenancies Act* can be viewed and downloaded from:
<https://legislation.nt.gov.au/en/Legislation/RESIDENTIAL-TENANCIES-ACT>

Additional information on selected topics is contained in Fact Sheets available from the NT Consumer Affairs website www.consumeraffairs.nt.gov.au

A range of pro-forma notices are available to assist landlords and tenants, these include:

- Notices of termination
- Notice to remedy unpaid rent
- Notice of landlord's intention to retain security deposit
- Notice of entry
- Notice of rent and/or security deposit increase
- Notice to remedy breaches
- Notice of storage of goods.

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Disclaimer

This guide summarises the law relating to residential tenancies in the Northern Territory, however, it is not the *Residential Tenancies Act*.

The Act and any tenancy agreement are the legal documents relating to any residential tenancy. The information in this guide is provided for information and clarification purposes and is not intended as legal advice. If there are inconsistencies between the information set out in this guide and the Act, the Act prevails.

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The Commissioner of Consumer Affairs
NT Consumer Affairs
GPO Box 40946
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INTRODUCTION

The *Residential Tenancies Act* (the Act) is the legislation that covers most residential tenancy agreements (tenancy agreements) in the Northern Territory. The Act commenced on 1 March 2000 and applies to most tenancy agreements entered into after that date.

The Act provides a framework that allows the parties to a tenancy agreement to interact within clear and consistent guidelines, and aims to reduce disputes between the parties. The Act also contains appropriate penalties for breaches of the key provisions (which may be enforced by the Commissioner of Tenancies (the Commissioner) by either instigating legal action or issuing an infringement notice).

The Act applies to most types of tenancies including:

- private tenants who rent directly from a landlord
- private tenants who rent through a real estate agent
- boarders and lodgers in certain circumstances
- tenants in accommodation provided by their employer
- caravans or mobile homes rented on private property, and
- Public housing tenants who rent from the Department of Housing (although some sections of the Act do not apply to such tenancy agreements - see section 7 of the Act).

The Act does not apply to tenancies such as:

- holiday accommodation
- boarders or lodgers in certain circumstances
- caravans or mobile homes that are in caravan parks, and
- emergency or charitable accommodation.

Other tenancy agreements to which the Act does not apply are set out in section 6 of the Act. This guide attempts to address the main issues affecting the majority of tenants and landlords.

The guide is cross referenced to the corresponding sections of the Act. In some cases additional sections of the Act will also be applicable.

If you have a tenancy problem or question that isn't explained in this guide, please contact NT Consumer Affairs, your real estate agent (if you have one) your legal advisor, or if you are a tenant; the Darwin Community Legal Service (DCLS) Tenants Advice Service (TAS) for more information.

EXPLANATION OF THE TERMS USED

Agent

An agent is anyone who looks after a property on behalf of a landlord. An agent may be a friend, family member or real estate agent. For the purposes of this guide the term landlord includes agent. Landlords are responsible for the actions of their appointed agent and must choose their agent carefully.

Ancillary property

Includes such things as fixtures, furniture, household effects, the garden and garden watering systems.

Commissioner

The Commissioner of Tenancies.

Condition report

A written record (which may also include photographs or videos) of the premises' condition at the beginning or end of a tenancy.

DCLS/TAS

Darwin Community Legal Service/Tenants' Advice Service; community-based advice and advocacy service for residential tenants.

Landlord

A landlord is the person who grants the right to occupy premises.

NTCAT

Northern Territory Civil and Administrative Tribunal (NTCAT)

Premises

Residential premises or part of a residential premises to which a tenancy agreement relates.

Security deposit

A payment made by the tenant to the landlord at the start of a tenancy that is held in trust for the tenant for the duration of the tenancy, this is often referred to as a bond.

Tenancy agreement

A written agreement between the landlord and tenant in relation to residential premises which establishes the terms of the tenancy, (commonly known as a lease).

- **Fixed Term agreement** - A tenancy agreement where the tenant agrees to rent premises for a fixed amount of time (such as 6 or 12 months).
- **Periodic agreement** - A tenancy agreement where the tenant lives in the premises for an indefinite period and pays rent.
- **Prescribed agreement** - The agreement prescribed in the Residential Tenancies Regulations that will apply if there is no signed written agreement between landlord and tenant.

Tenant

A person who pays rent to a landlord in exchange for a right to occupy a premises.

STARTING A TENANCY

The landlord/tenant relationship begins when a landlord agrees to rent premises to a tenant.

THE TENANCY AGREEMENT SECTIONS 19-24

THE PRESCRIBED AGREEMENT

The prescribed agreement specifies the terms and conditions of the tenancy which will apply whenever there is no written tenancy agreement or where the written agreement is not signed by both parties.

The prescribed agreement can be found in the Residential Tenancies Regulations, Schedule 2, Regulation 10 (the legislation and regulations can be found at <https://legislation.nt.gov.au/Legislation/RESIDENTIAL-TENANCIES-REGULATIONS>).

Where a landlord has entered into a verbal agreement with a tenant and no written tenancy agreement exists, both parties will be bound by the prescribed agreement. This may not suit either the landlord or the tenant's particular requirements but it is legally binding.

For example, in a situation where a security deposit has been paid, the landlord must comply with the provisions in the Act and hold the security deposit in trust for the tenant.

WRITTEN TENANCY AGREEMENTS

The landlord and tenant should ensure that there is a written tenancy agreement that contains all of the conditions required under the Act as well as terms that have been agreed upon.

There is no single required format for a written tenancy agreement. To help assist landlords, the Real Estate Institute of the Northern Territory (REINT) has produced a standard tenancy agreement that is available for purchase. NT Consumer Affairs does not provide copies of tenancy agreements.

Landlords and real estate agents may use any form of written tenancy agreement as long as the agreement used complies fully with the Act.

The written tenancy agreement must include:

- the standard terms and conditions set out in the Act
- the name and address of the landlord and/or agent and the tenant
- details of the premises
- start and end dates of the tenancy (or just the start date for a periodic tenancy)
- details about the amount of rent payable and how rent should be paid
- any other terms agreed to by the landlord and tenant (these terms must not conflict with the Act) and,
- If the landlord agrees to replace or repair something before the tenant moves in, this should be noted in the tenancy agreement.

A tenancy agreement prepared by a landlord must comply with the provisions of the Act.

A landlord may potentially face penalties for attempting to exclude, modify or restrict the operation of the Act. Also, a tenancy agreement which is inconsistent with the Act is not valid in regard to those inconsistencies.

Thinking about renting that premises?

Before entering into a tenancy agreement, there are a few things a potential tenant should ask themselves, for example;

- Is the premises suited to my needs?
- Can I comfortably afford the rent?
- Do I have the required four weeks bond and two weeks rent in advance?
- What other charges may I be liable for? (i.e. water and electricity charges)
- Does the property have phone and internet (NBN) access and if not, who will pay for the installation?
- Can I have pets on the premises?
- Will I be allowed to sub-let?

Entering into an agreement

Once an agreement has been reached, there are few things that need to occur.

The tenant needs to:

- Ensure that any information provided to the landlord is accurate and truthful
- Read the proposed agreement carefully, and understand it fully (seek advice if required)
- Negotiate any special terms required
- Ensure any additional terms agreed upon by the parties are included
- Sign the agreement if all the terms are agreed upon
- Return the agreement to the landlord, and
- Ensure they receive a signed copy of the tenancy agreement and condition report.

The landlord needs to:

- Prepare the written tenancy agreement
- Provide a copy of the agreement to the tenant
- Invite the tenant to the preparation of the condition report
- Provide a copy of the signed condition report to the tenant
- Sign the tenancy agreement once it has been signed and returned by the tenant, and
- Provide the tenant with a copy of the signed agreement.

Note: There are specific time frames around when documentation should be provided and when it needs to be returned, please refer to the *Residential Tenancies Act* for further information.

THE INGOING CONDITION REPORT Sections 25–28

Important: If the landlord does not complete a condition report at the commencement of the tenancy there can be no claim against the tenant at the end of the tenancy, either from the security deposit or by way of a claim for compensation for cleaning, damage or lost ancillary property.

Within **three business** days of the tenant taking possession of the premises, the landlord should provide the tenant with a copy of a completed and signed condition report. The condition report must be completed in the presence of the tenant (unless it is not practical to do so, or the tenant does not appear at the agreed time). It is also a good idea to take photographs or a video of the condition of the premises. This will assist in interpretation of the condition report if there is a dispute at the end of the tenancy.

Within five business days of receiving the copy of the condition report the tenant must either:

- Accept the report by signing and returning it to the landlord, or
- Mark any changes thought to be appropriate and return it to the landlord.

Note: If the tenant takes no action then they are deemed to have accepted the report

If a tenant modifies a condition report and gives it back to the landlord, the landlord may within **five** business days:

- Accept the report by initialling the modifications and returning a copy to the tenant
- Reach agreement with the tenant as to the contents of the report and accept the report by having both parties initial all modifications that are accepted by them, or
- If agreement cannot be reached apply to the NTCAT who may request that the Commissioner prepare a condition report.

If the landlord takes no action within five business days then the landlord is taken to have accepted the condition report as modified by the tenant. Both the tenant and the landlord should keep a copy of the condition report in a safe place, as it will be used as conclusive evidence of the condition of the premises at the commencement of the tenancy.

Shared tenancies and condition reports

If the tenancy is shared by a number of parties, some of whom were not an original tenant (meaning they were added as a tenant to the lease at a later date after the original condition report was prepared) and the original tenants move out, a new condition report is to be prepared. The remaining tenant/s are not required to vacate for this new condition report to be prepared.

Within three business days of the tenant taking possession of the premises, the landlord supplies a completed and signed copy of the condition report to the tenant

Within five business days after receipt, the tenant may

Accept

Sign the report and return it to the landlord

Take no action

If the tenant takes no action within five business days then the report is taken to be accepted

Make alterations

Mark and initial alterations, and return the report to the landlord

Within five business days after receipt of the modified condition report, the landlord may

Accept

Initial all the tenant's alterations (or lack of alterations) and return a copy to the tenant

Take no action

If the landlord takes no action within five business days then the modified report is taken to be accepted

Make alterations

Reach agreement with the tenant regarding the content of the report and accept it by having both parties initial all modifications accepted by both parties

If a dispute arises between the landlord and the tenant over the acceptance of the condition report, either party can apply to the NTCAT to request the Commissioner of Tenancies prepare a condition report.

THE SECURITY DEPOSIT Sections 29, 31–32

The tenant may have to pay a security deposit at the commencement of a tenancy. The maximum security deposit that a landlord can ask for is the equivalent of four weeks rent. When a security deposit is paid by cash, cheque or credit card, the landlord must immediately give the tenant a receipt.

The landlord holds the security deposit in trust for the tenant and must pay it back to the tenant at the end of the tenancy (provided there are no claims against the security deposit).

A tenant can request details of the account where the security deposit is held; these requests must be made in writing to the landlord.

At the end of the tenancy agreement the landlord may claim the following from the security deposit:

- Unpaid rent
- Damage to the premises or ancillary property
- Cleaning of premises left unreasonably dirty
- Replacing lost ancillary property
- Other amounts owed to the landlord under the agreement such as electricity, gas and water use
- Losses incurred by the landlord relating to a lease break by the tenant.

These are the main items that can be claimed. Please refer to page 23 of this guide for a complete list.

SECURITY DEPOSIT BETWEEN CO-TENANTS Section 33

Where there are two or more tenants listed on a tenancy agreement, the agreement should specify the amount of security deposit paid by each one, otherwise it is taken that each tenant paid equal amounts. The landlord is then required to refund the bond at the end of the tenancy in equal shares to each tenant listed on the tenancy agreement.

INTEREST ON SECURITY DEPOSIT Section 114

If the tenancy agreement does not specify who is to receive interest on the security deposit, then interest must be paid to the party who is entitled to receive the greater part of the security deposit at the end of the tenancy. If it is noted in the tenancy agreement that the landlord retains the interest on the bond monies, then there can be no claim made by the tenant on the interest accrued.

The exception is where the security deposit is held by a Real Estate Agent - under these circumstances the interest accrued is paid into the Agents Licensing Fidelity Guarantee Fund.

PAYING RENT

KEEPING RECORDS Sections 35–37 & 39

A tenant should keep all records/receipts for rent in a safe place as they are proof that rent was paid.

The details of how, where and how often the rent will be paid must be in the tenancy agreement. If rent is paid in cash, the landlord must immediately provide a receipt.

If rent is paid by cheque, the landlord must give the tenant a receipt within three business days of the tenant requesting one. If rent is paid by direct credit into the landlord's bank account, the landlord is not required to provide a receipt.

The landlord must keep a written record (which may be in an electronic form) of each instalment of rent received. The landlord must at the request of a tenant, permit the tenant to examine the record of rent received. This record should consist of the amount paid, the date received, the period it relates to and the address of the premises.

The landlord, or any other person, must not make a false entry of a record of rent received or falsify the record in any other way.

A landlord cannot require a tenant to pay rent in advance of more than one rental period. If a landlord does not comply with these requirements penalties may apply.

RENT INCREASES Section 41

Rent can be increased during a tenancy if the right to do so is specified in the tenancy agreement. The tenancy agreement must also state the amount of the increase or the method of calculation of the increase.

The landlord must give at least 30 days' notice in writing before increasing the rent. The date from which the increase is to take effect must be at least six months after the date the tenancy commenced or six months from the last increase.

If the rent is increased, the landlord may ask the tenant to increase the security deposit. The tenant must receive notice in writing from the landlord, and the total security deposit held by the landlord must not be greater than four weeks rent. Notice to increase the security deposit can only be issued two years after a security deposit was paid or last increased.

In circumstances where the original agreement does not provide for an increase in rent and does not specify the amount of the increase in rent or method of calculation, rent can be increased during the term of a tenancy agreement or during any extension of the original term by mutual agreement between tenant and landlord.

If the parties agree to a new contract when the original tenancy expires, the parties can negotiate the rental amount to be paid. When this contract is signed by both parties the new contract is binding.

RENT REDUCTIONS Section 46

Rent may decrease, either by a specific inclusion of a term in the tenancy agreement or by agreement between the landlord and tenant. An agreement to reduce the rent should be in writing and signed and dated by both parties. If the rent is reduced, the tenant is entitled to the return of the difference in the security deposit.

EXCESSIVE RENT Section 42

The tenant may apply to the NTCAT for a declaration that rent payable is excessive. Such a declaration can be made only under limited circumstances. For further information on this matter contact NT Consumer Affairs.

OTHER EXPENSES Sections 23–24, 117, 118, 121

The landlord must not require or receive from the tenant a payment for the preparation, renewal or extension of a tenancy agreement.

The tenant generally has to pay for any costs associated with connecting services to the property for which the tenant will be billed, such as gas, electricity and telephone.

Tenants moving into new properties should check if a telephone or NBN line has been installed. If it hasn't, then they should ask the landlord for permission and negotiate who is responsible for payment. The outcome should be written into the lease agreement so both parties have a clear understanding of their rights and responsibilities.

RENT NOT PAID ON TIME Section 96A

If rent or any part of the rent has been in arrears for not less than 14 days the landlord may give the tenant a *Notice to Remedy Breach of Agreement - Unpaid Rent (RT03)*. This notice will stipulate the amount of rent outstanding and will give the tenant at least eight days in which to pay it.

Failure by the tenant to pay the arrears within the specified time frame could result in the landlord applying to the NTCAT for an order of termination of the tenancy and possession of the property.

For further information regarding the requirements of this notice please refer to "Termination if Breach Not Remedied" on page 21 of this guide.

RIGHTS AND RESPONSIBILITIES

LANDLORD'S RESPONSIBILITIES Sections 47–50, 64–66

The landlord must ensure that the premises and ancillary property are habitable and meet all relevant health and safety requirements.

The landlord must also:

- Ensure the premises are reasonably clean and in a reasonable state of repair when the tenancy commences
- Maintain the premises and ancillary property in a reasonable state of repair
- Ensure there are sufficient locks or security devices
- Take reasonable steps to provide and maintain locks and other security devices that are necessary to ensure the premises and ancillary property are reasonably secure.

The landlord must not cause interference with the reasonable peace and privacy of a tenant in the tenant's use of the premises (except in accordance with the Act) or force or attempt to force the tenant to vacate the premises except in accordance with the Act.

The landlord must not, without reasonable excuse, alter, remove or add a lock or security device without the consent of the tenant.

TENANT'S RESPONSIBILITIES Sections 51–56, 58

The tenant must not, without reasonable excuse, alter, remove or add a lock or security device without the consent of the landlord. If the tenant does change a lock, the tenant must provide keys to the landlord within two business days.

The tenant must also:

- Notify the landlord in writing if repairs or maintenance are required
- Notify the landlord in writing of any damage or potential damage to the premises
- Notify the landlord in writing if premises are to be vacant for more than 30 days.

The tenant must not:

- Maintain the premises in an unreasonably dirty condition
- Cause or permit damage to the premises
- Use the premises for any illegal purpose
- Cause or permit a nuisance
- Cause interference with the reasonable peace or privacy of another person within the vicinity
- Alter the premises without written consent of the landlord.

WHEN THE LANDLORD MAY ENTER THE PREMISES Sections 68 –77

The landlord (or agent) can only enter the premises during a tenancy in accordance with the Act. The landlord is only allowed to enter the premises between 7am and 9pm and must give the tenant the amount of notice prescribed under the Act.

The landlord can enter premises for the following reasons with the stated amount of notice:

At least seven days' notice (time and date must always be arranged with the tenant in advance):

- To collect rent
- For three monthly inspections (there must be a minimum of three months between inspections but may be conducted at longer intervals if specified in the agreement and can be attended by other parties such as the owners or tradesmen).

24 hours' notice (again the time and date must be prearranged with the tenants):

- To carry out or inspect repairs or maintenance (refer to section 71)
- To prepare a property condition report
- To show the property to prospective tenants; can only be given 28 days before the end of the tenancy agreement. The landlord must be reasonable about the number of inspections sought.
- To show the property to a buyer if the property is for sale. The landlord must be reasonable about the number of showings sought.

Notice is not required in the following circumstances:

In an emergency or if there is significant damage to the premises (refer to section 72).
If the landlord is convinced the property has been abandoned and rent is owing.

If a landlord suspects the premises have been abandoned by the tenant but no rent is owing, a declaration from the NTCAT is required to enable the landlord to enter the premises.

Any inspection must be carried out in the presence of the tenant, unless:

- The tenant has refused to be present other than on reasonable grounds
- The tenant has, in writing, waived the right to appear or be represented at the inspection
- The tenant is not at the premises at the time previously arranged for the inspection
- It is an emergency.

Both parties may mutually agree to the landlord entering the premises outside of the prescribed frequency and times specified in the Act. In these situations, entry can then take place in accordance with the arrangements that have been mutually agreed.

If (under the terms of the Act) the landlord has the right to enter the premises and a tenant tries to prevent the landlord from entering, the landlord may make an application to the NTCAT for an order permitting entry.

REPAIRS

LANDLORD'S AND TENANT'S RESPONSIBILITIES Sections 57–58

It is the landlord's obligation to ensure that the premises and ancillary property are in a reasonable state of repair and maintained throughout the tenancy (having regard to their age, character and lifespan).

This does not apply to repairs that the tenant knew were required at the start of the tenancy and agreed, in writing, to waive the right to have those particular repairs made.

The tenant must notify the landlord orally or in writing that repairs are required. Notification should be given as soon as practicable after the tenant becomes aware that repairs are needed.

If the landlord requests the tenant to put the notification of repairs required in writing, the tenant will not be taken to have given notice unless it is given to the landlord in writing.

EMERGENCY REPAIRS Section 63

There are a number of repairs that are considered emergency repairs, these include work needed to repair:

- A water service that provides water to the premises that has burst
- A blocked or broken lavatory system on the premises
- A serious roof leak
- A gas leak
- A dangerous electrical fault
- Flooding or serious flood damage
- Serious storm, fire or impact damage
- A failure or breakdown of the gas, electricity or water supply to the premises
- A failure or breakdown of an essential service or appliance on the premises for water or cooking
- A fault or damage that makes the premises unsafe or insecure
- A fault or damage that is likely to injure a person, damage property or unduly inconvenience a resident of a premises
- A serious fault in a staircase or lift or other area of a premises that unduly inconveniences a resident in gaining access to or using the premises.

A tenant must notify the landlord in writing that emergency repairs are required.

If within five business days of giving written notice to the landlord that emergency repairs are required, the landlord has either not made the repairs or notified the tenant of arrangements to carry out the repairs, then the tenant may apply to the NTCAT for an order for repairs to be carried out.

If the landlord does notify the tenant of arrangements made to carry out the repairs, but the repairs have not been carried out within 14 days of the tenant giving notice to the landlord that the repairs are required, the tenant may apply to the NTCAT for an order that the repairs be carried out.

MOVING OUT

ENDING A TENANCY AGREEMENT Section 82

A tenancy is considered terminated when:

- The landlord or tenant terminates the tenancy under the Act
- The NTCAT terminates the tenancy
- The premises are abandoned before the end of the tenancy agreement
- The tenant gives up possession of the premises with the landlord's consent
- A sole tenant dies without leaving a spouse, de-facto, partner or dependents whose details are known to the landlord prior to the death, occupying the premises or in the case of a public housing tenant, when the sole tenant dies regardless of other occupants.

THE END OF FIXED TERM TENANCY Sections 83, 90 & 95

If the tenant or the landlord wishes to end the tenancy at the end of the fixed term, either party must give the other notice of the termination in writing, at least 14 days prior to the end of the fixed term. The notice must be in accordance with section 101 of the Act.

If a fixed term agreement is not terminated by either the landlord or the tenant at the end of the agreed term, the tenancy continues as a periodic agreement.

NOTE - these provisions do not give the landlord or the tenant the right to terminate a fixed term tenancy during the period of the tenancy i.e. 14 day notice can only be given to terminate the tenancy on the last day specified in the agreement. Should a tenant wish to terminate a fixed term agreement prior to the end they should contact their legal advisor, NT Consumer Affairs or the Tenants' Advice Service before taking any action.

TERMINATION BY LANDLORD Sections 86, 88A, 89 & 91

PREMISES UNINHABITABLE

The landlord can terminate the tenancy agreement by giving the tenant two days written notice in accordance with section 101 of the Act in the following circumstances:

- Access to the premises has not been available for more than three days because of flooding
- Continued occupation of the premises is a threat to the health or safety of the tenant or members of the public or a threat to the safety of the landlord's property
- The premises have become uninhabitable.

DRUG HOUSE ORDER MADE

A landlord of a drug premises within the meaning of the *Misuse of Drugs Act* may terminate a tenancy in respect of the premises by giving 14 days notice in accordance with section 101.

PERIODIC TENANCY - NO GROUNDS REQUIRED FOR TERMINATION

The landlord may terminate a periodic tenancy by giving 42 days notice in accordance with section 101.

EMPLOYEE RELATED HOUSING

If an employee is provided with premises as a condition or benefit associated with employment, and the employer (landlord) has terminated the employment, the landlord can terminate the tenancy agreement by giving the tenant notice (in accordance with section 101).

Two days notice is required for termination due to a breach of the employment agreement, 14 days notice is required in any other case.

TERMINATION BY TENANT Sections 92, 94, 96

PREMISES UNINHABITABLE

The tenant can terminate the tenancy agreement by giving the landlord two days written notice in accordance with section 101 of the Act in the following circumstances:

- Access to the premises has not been available for more than three days because of flooding
- Continued occupation of the premises is a threat to the health or safety of the tenant or members of the public or a threat to the safety of the landlord's property
- The premises have become uninhabitable.

PERIODIC TENANCY - NO GROUNDS REQUIRED FOR TERMINATION

The tenant may terminate a periodic tenancy by giving 14 days notice in accordance with section 101.

IF PUBLIC HOUSING FOUND

If a tenant is offered accommodation by the Department of Housing under the *Housing Act*, the tenancy may be terminated by giving 14 days notice in writing to the landlord (in accordance with section 101), provided the tenant applied for housing under the *Housing Act* before entering into the tenancy agreement and advised the landlord of the application before signing the tenancy agreement.

REPOSSESSION OF PREMISES Sections 103–107

The landlord cannot use force to make a tenant leave the premises in the first instance, neither can they enter the premises to take possession of the property without an order from the NTCAT.

If a tenant does not move out by the termination date (the date in the notice of termination), the landlord can apply to the NTCAT for an order for possession. If the tenant can demonstrate to the NTCAT that leaving the premises will cause severe hardship, the order may be suspended for up to 90 days.

If the landlord is granted an order for possession, the tenant will be given up to a maximum of five business days to move out. In the event the tenant does not vacate the premises by the date specified in the order, the landlord may then apply to the Local Court to engage the services of a bailiff to forcibly remove the tenant.

TERMINATION BY THE TRIBUNAL Sections 97–100

SERIOUS BREACH OF THE TENANCY AGREEMENT

If either the landlord or tenant has seriously breached the tenancy agreement, the other party may apply to the NTCAT for an order to terminate the tenancy.

CONDUCT OF TENANT UNACCEPTABLE

The landlord or an interested person may apply to the NTCAT for an order to terminate the tenancy, if the tenant has used the premises for an illegal purpose, repeatedly caused a nuisance, or repeatedly caused or permitted interference with the reasonable peace or privacy of the nearby residents.

The NTCAT may also terminate a tenancy if a public housing tenant breaches an acceptable behaviour agreement.

HARDSHIP

Either the landlord or the tenant may apply to the NTCAT for an order to terminate the tenancy on the grounds that continuation of the tenancy agreement would result in undue hardship to the landlord or tenant. The situation must have been unforeseeable at the time of entering into the tenancy agreement.

TERMINATION IF BREACH NOT REMEDIED Sections 96A, 96B, 96C

TENANT'S FAILURE TO PAY RENT

If a tenant breaches a tenancy agreement by failing to pay rent or any part of the rent in accordance with the agreement and the rent has been in arrears for at least 14 days, the landlord may give the tenant a **"Notice to Remedy Breach of Agreement" (RT03)**. The notice must:

- Be in accordance with section 96A and give the tenant at least eight days in which to remedy the breach
- State that if the breach is not remedied then the landlord intends to apply to the NTCAT for an order for termination of the tenancy and possession of the premises.

The notice must also contain other information set out in the Act and Regulations. It is important that landlords familiarise themselves with these requirements before issuing a notice.

OTHER BREACH BY TENANT AND BREACH BY LANDLORD

If a tenant or landlord breaches a term of a tenancy agreement (other than a term relating to the tenants obligation to pay rent) that is a term of the agreement by virtue of the Act or is specified to be a term or breach of the agreement, the other party may give a **"Notice to Remedy Breach of Agreement" (RT04a or RT04b)**.

This "Notice to Remedy Breach of Agreement" notice must:

- Be in accordance with section 96B or 96C and give at least eight days in which to remedy the breach
- State that if the breach is not remedied then an application will be made to the NTCAT for an order for termination of the tenancy and possession of the premises.

FAILURE TO REMEDY BREACH AFTER NOTICE GIVEN

If a tenant or landlord does not remedy the breach as required by a notice issued under sections 96A, 96B, or 96C, an application can be made to the NTCAT seeking termination of the tenancy and an order for the landlord to take possession of the premises or permission for the tenant to give up possession of the premises (depending on which party makes the application).

An application of this nature must be made no later than 14 days after the date specified in the notice to remedy the breach.

THE OUTGOING CONDITION REPORT Sections 110–111

Important: if the landlord does not complete an ingoing condition report and comply with Part 5 of the Act, and complete an outgoing condition report and comply with Part 12 of the Act, then no claim can be made against the security deposit at the end of the tenancy for cleaning, damages or lost ancillary property.

Within three days of vacant possession, the landlord may complete and sign the outgoing condition report and give a copy to the tenant, who may:

Accept

Sign and return it to the landlord

Refuse

If the parties are unable to agree on the contents of the condition report then refuse to accept

If not accepted within seven business days of being given to the tenant, either party may apply to the NTCAT for the preparation of a condition report.

RETURNING THE SECURITY DEPOSIT

The tenant is entitled to have the security deposit returned to them at the end of the tenancy.

Failure to comply with the provisions of the Act relating to the return of the security deposit can jeopardise the landlord's rights to retain any amount from the security deposit.

The landlord must return the security deposit (less any amount they are entitled to retain) to the tenant within seven business days of the tenant vacating the premises.

If there are no claims against the security deposit then the full amount is to be returned to the tenant.

WHEN THE LANDLORD CAN RETAIN THE SECURITY DEPOSIT Section 112

The landlord is entitled to retain as much of the security deposit as is necessary to:

- Make good any damage to the premises or ancillary property that was caused by the tenant, other than reasonable wear and tear
- Replace ancillary property lost or destroyed by the tenant
- Clean the premises and ancillary property left unreasonably dirty
- Replace locks which were altered, removed or added by the tenant without the landlord's consent
- Pay for unpaid rent or for any unpaid electricity, gas or water charges payable by the tenant to the landlord
- Pay compensation to the landlord if the tenant remained in the property after they were required to vacate
- Pay money ordered by the NTCAT to be paid by a tenant but not paid.

If a tenant breaches a fixed term agreement by abandoning the premises prior to the end of the term, the landlord can continue to hold in trust as much of the security deposit as is necessary to ensure that the deposit will be available for payment to the landlord as compensation for:

- Loss of the rent that the tenant would have been liable to pay if the premises had not been abandoned
- Loss caused to the landlord in securing new tenants for the premises.

As soon as practical after the landlord can calculate the loss caused by the tenant breaching the agreement, they must make an application to the NTCAT for compensation under section 122, or in any case within **three months** of the tenant abandoning the premises.

The tenant is not responsible for maintaining the premises from the date of giving vacant possession to the landlord.

NOTICE REQUIRED TO RETAIN THE SECURITY DEPOSIT Sections 112–113

For the landlord to retain any or all of the security deposit they must give a **“Notice of Landlord’s Intention to Retain Security Deposit” (RT08)** to the tenant within seven business days of them leaving the premises.

The notice must set out how much the landlord wishes to retain, what it is for and attach invoices or quotes and other supporting documentation. This supporting documentation includes a statutory declaration attesting to the truth of the claims being made and that the receipts, invoices and other documents attached to the declaration relate to the matters in respect of which part or all of the security deposit is being withheld. The landlord must also return the portion of the security deposit not being claimed.

If the tenant disputes the landlord’s claim, they should first attempt to resolve the issue directly with the landlord. If the dispute is not able to be resolved, either party can refer the matter to the NTCAT for the dispute to be determined.

If the landlord has not returned the security deposit to the tenant or made a claim against the security deposit within seven business days of the end of the tenancy, the landlord is required to return the security deposit to the tenant in full.

PREMISES TO BE LEFT IN REASONABLE CONDITION

When a tenant moves out they should leave the property reasonably clean and in a reasonable state of repair, allowing for fair wear and tear.

Section 20 of the Act stipulates that the tenancy agreement cannot contain any clauses that void the Act. For example; a clause in the tenancy agreement stating that the tenant must steam clean the carpets at the end of a tenancy is in breach of the Act as the landlord or tenant cannot know at the beginning of the tenancy whether the carpets will require steam cleaning at the end of the tenancy.

Whether or not the tenant is required to steam clean the carpets at the end of a tenancy will be determined by comparing the ingoing property condition report to the outgoing property condition report, taking in to account fair wear and tear and what is considered reasonably clean.

Reasonably Clean

What the landlord might think is reasonable may differ to what the tenant thinks is reasonable. In general, reasonably clean may be defined by what another unrelated reasonable person may deem to be reasonable. In legal matters, the “reasonable person test” is applied.

Fair Wear and Tear

Fair wear and tear means the deterioration that occurs over time with the use of the premises even though the premises receive reasonable care and maintenance. Such deterioration could be caused by exposure, time or just by ordinary use. You are only liable for negligent, irresponsible or intentional actions that cause damage to the premises.

If a dispute arises over the condition of the premises, either party can apply to the NTCAT for a determination.

ABANDONED PREMISES AND GOODS

ABANDONED PREMISES Section 108

If the landlord has reasonable grounds to believe that the premises have been abandoned and there is rent outstanding the landlord may take immediate possession. If there is any doubt, the landlord should seek a declaration that the premises are abandoned and request an order for possession by making an application to the NTCAT.

ABANDONED GOODS Section 109

This section does not apply to goods that are perishable or that are of a value less than the fair estimate of their removal and sale. In such cases the landlord may remove, destroy or dispose of such goods.

If goods are left at premises at the end of a tenancy the landlord must store the goods in a safe place and manner for a period of 30 days or until they are reclaimed by the owner, whichever comes first.

Within 14 days of storing the goods, the landlord must send a notice to the tenant in the prescribed form (or to another person who may have an interest in the goods).

The landlord must also publish, in a newspaper that circulates throughout the Northern Territory, a notice in the prescribed form regarding the storage of the goods. A fact sheet with examples of the prescribed form can be obtained from NT Consumer Affairs.

Any person entitled to possession of the goods may reclaim the goods by paying to the landlord:

- The reasonable cost of their removal and storage
- The cost of publishing the newspaper notice

If the goods are not reclaimed within 30 days the landlord must sell the goods at public auction.

From the sale proceeds, the landlord can retain any costs set out above as well as the cost of selling the goods and any amounts owed to the landlord under the tenancy agreement.

Any amounts left over must be returned to the owner of the goods or if their identity and address are not known the amount left over must be paid to the Commissioner.

Note: In the event of an abandoned vehicle, it is recommended that the landlord seeks legal advice in respect to its retention or disposal.

Residential Tenancy Databases

What is a tenancy database?

A tenancy database (or blacklist as it is more commonly known) is a list used by landlords to record personal information about the rental history of their tenants should they default on their tenancy agreement. There are several national tenancy databases used by landlords when screening potential new tenants for their property.

The most commonly used databases are;

Tenancy Information Centre Australasia (TICA)
National Tenancy Database (NTD)
Trading Reference Australia (TRA)

<https://www.tica.com.au>

<https://www.tenancydatabase.com.au>

<https://tradingreference.com>

What is personal information?

Personal information is information or an opinion, whether true or not, about an individual whose identity is apparent, or can be reasonably ascertained (including their name).

Searching a database

If a landlord intends on using a database to search for a potential tenant, they must notify the potential tenant in writing of the database they intend using and how the tenant can contact that database operator. This may be as simple as providing the information on a rental application form.

Finding a match

If a landlord finds a matching record for their potential tenant, they must notify the potential tenant in writing as soon as possible (but **within seven days**) of the following;

- The personal information that is listed on the database
- The name of the database that produced a match
- The name of the listing Landlord / Agent
- Information as to how and in what circumstances the personal information can be amended or removed

Listing a tenant

A listing can only be made by a landlord in relation to a tenant if the tenant is named on the tenancy agreement, and there has been a breach of the tenancy agreement that resulted in an amount owing that exceeds the security deposit; or the Northern Territory Civil and Administrative Tribunal (NTCAT) has made an order terminating the tenancy.

Only accurate, complete and unambiguous information relating to the nature of the breach may be recorded in a tenancy database.

Notice of listing

If a landlord intends on listing a tenant's information on a tenancy database, they must first notify them in writing a **minimum of 28 days** prior and provide them with a free copy of the personal information for listing in order to allow the tenant to review the information and make submissions objecting to the entry.

The landlord is not required to notify a tenant of a listing if at the time the information is publicly available from court or tribunal records or the landlord has been unable to locate the tenant after making reasonable enquiries.

Listing period

Information regarding each particular listing on a tenancy database can only be kept for a maximum of three years. A lesser period may apply if determined by the Australian Privacy Principals as per the *Privacy Act 1988*.

Incorrect listings

Within **seven days** of becoming aware of a discrepancy, a landlord must notify the database operator in writing to ensure the incorrect information is amended, or if out of date; the information is removed. A record of this notification must be kept by the landlord for a minimum of **1 year** after it is given. The database operator must amend or remove this inaccurate information within **14 days** after notice is given.

Requesting a copy of a listing

A tenant may request in writing that a copy of their personal information be provided by either the landlord or the database operator, however a fee may be charged in relation to releasing that information. The fee must not be excessive and must not apply to lodging the request.

If no fee is payable, the personal information must be provided within **14 days** of the written request. If a fee is payable, the personal information must be provided within **14 days** from the date the fee is paid.

Objecting to a listing on a tenancy database

If a tenant disagrees with a potential or actual listing, after advising the landlord of their objection they may apply to the Northern Territory Civil and Administrative Tribunal under Section 134 of the *Residential Tenancies Act*, to request an order be made to prohibit, amend or remove the listing.

NOTICES

SERVICE OF NOTICES Section 154

If a landlord or tenant wishes to give the other party to a tenancy agreement any notice required by or under the Act, then it must be served in accordance with the Act.

The Act requires the notice to be delivered personally to the tenant or landlord or sent by post addressed to the tenant or landlord's last known place of business, residence or postal address. If the recipient of the notice is a body corporate then the notice must be served in accordance with relevant provisions of the *Corporations Act*.

NOTICE TO MORE THAN ONE PARTY Section 155

If two or more persons are the landlords or tenants under a tenancy agreement, a notice or document is deemed to be served if given to any one of them.

CHANGE OF LANDLORD'S NAME OR ADDRESS Section 156

If the name or address of a landlord or agent specified in a tenancy agreement changes, the tenant must be notified in writing accordingly within 14 days after the change.

If ownership of the premises in which the tenant resides transfers to another party, the new landlord (owner) must ensure that the tenant is notified in writing within 14 days of the full name and address for service of the new landlord or, if an agent has been engaged, the full name and address of the agent.

The tenants bond remains with the former landlord or agent until such time as written permission is given by the tenant to transfer the bond to the new landlord or agent.

Note: Written permission is not required by the tenant for the bond to be transferred where an agent has acquired the management of the property they reside in through a merger or sale of a real estate agency.

RESOLVING DISPUTES

The landlord or the tenant may apply to the NTCAT if a breach of the tenancy agreement or the Act is alleged, or if a tenancy dispute has arisen between the parties.

If the landlord and tenant have a dispute about something, they should discuss the problem and try to come to an agreeable solution. If the parties agree on a solution to the problem, then the tenancy agreement will continue and there is no need to go through the formal dispute resolution process through the Tribunal.

NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE TRIBUNAL

Location: Level 1, The MET Building (Cascom 5),
13 Scaturchio Street,
CASUARINA NT 0810

Postal Address: PO Box 41860
CASUARINA NT 0811

Telephone: (08) 8944 8720

Freecall: 1800 604 622

Fax: (08) 8922 7201

Email: agd.ntcat@nt.gov.au

Website: www.ntcat.nt.gov.au

DARWIN COMMUNITY LEGAL SERVICE - TENANTS' ADVICE SERVICE (TAS)

Location: Level 2, Winlow House,
75 Woods Street,
DARWIN NT 0800

Postal Address: GPO Box 3180
DARWIN NT 0801

Telephone: (08) 8982 1111

Free call: 1800 812 953

Fax: (08) 8982 1112

Email: info@dcls.org.au

Website: www.dcls.org.au

CONTACT US

For further information regarding tenants and landlords rights and obligations contact NT Consumer Affairs.

NT CONSUMER AFFAIRS—DARWIN

Location:	Level 1, The MET Building (Cascom 5), 13 Scaturchio Street, CASUARINA NT 0810
Postal Address:	PO Box 41860 CASUARINA NT 0811
Telephone:	(08) 8999 1999
Free call:	1800 019 319
Fax:	(08) 8935 7738
SMS:	0401 116 801
Email:	consumer@nt.gov.au
Website:	www.consumeraffairs.nt.gov.au
Facebook:	https://www.facebook.com/NorthernTerritoryConsumerAffairs

NT CONSUMER AFFAIRS—ALICE SPRINGS

Location:	Westpoint Complex, Cnr Railway and Stott Terraces
Postal Address:	PO Box 1745 ALICE SPRINGS NT 0871
Telephone:	(08) 8999 1999
Free call:	1800 019 319
Fax:	(08) 8935 7738
SMS:	0401 116 801
Email:	consumer@nt.gov.au
Website:	www.consumeraffairs.nt.gov.au
Facebook:	https://www.facebook.com/NorthernTerritoryConsumerAffairs

