



## Position Statement on Residential Tenancies Act (1995)

# #MakeRentingFair

- All provisions for landlords to terminate tenancy without specifying a ground of termination should be removed from the current legislation
- Specific provisions that proscribe the termination of a tenancy on fraudulent grounds need stricter penalties and compensation to tenants
- Specific provisions that proscribe discrimination against tenants with pets are required
- The imbalance of power between landlords and tenants needs to be redressed without undermining the potential for a positive relationship to exist between the two parties

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## **Reforming the Residential Tenancies Act (1995)**

The demand for private rental properties far exceeds supply and the majority of private rental properties have become increasingly unaffordable in recent years, especially for people living on low incomes. The state of the private rental market means that landlords (and their agents) hold the balance of power over tenants where the rights of landlords appear to take precedence over the rights of tenants.

Any reforms to the Residential Tenancies Act (RTA) must address some of the key issues facing people who live in private rental housing and redress the imbalance of power and rights between landlords/agents and tenants.

There are two key issues that are essential to redressing the imbalance of power and rights between landlords and tenants. One of those issues is "no-cause" evictions (also referred to as "no-grounds" or "no-fault" eviction), where landlords/agents may terminate a tenancy without specifying any grounds for termination. The other issue is tenants being able to have pets on the rental premises, for which there are currently no such provisions specified in the RTA.

Shelter SA's position statement highlights these two key issues and their significance in redressing the imbalance of power and rights between landlords and tenants.

### **No-cause Evictions**

Not only do no-cause evictions provide recourse for landlords/agents to discriminate against tenants, they undermine the principle of a legal agreement and are essentially a breach of that agreement. Landlords/agents already have sufficient recourse to end a tenancy without breaching the agreement and so should not have recourse to discriminate against tenants.

Section 83 of the RTA describes the conditions under which a landlord may terminate a tenancy without specifying a ground of termination. Even though one of the conditions specifies that a tenancy cannot be terminated under this section if it is for a fixed term (Subsection 2a), the ensuing section, Section 83A, gives landlords the legal right to terminate a fixed term tenancy at the end of the fixed term without specifying a ground of termination.

- It is Shelter SA's position that any provisions for landlords/agents to terminate either fixed term or periodic tenancies without specifying a ground of termination should be removed from the RTA. Sections 83 and 83A should be removed from the RTA.
- Periodic tenancies should be abolished and so there should be provisions in the RTA that proscribe the non-renewal of fixed term tenancy agreements without specifying a ground of non-renewal.

While there are penalties for falsely stating the ground of termination under Section 81 of the RTA (Subsection 3 and 4), there are relatively minor consequences for landlords (maximum fine of \$2,500), it is very difficult for tenants to prove that the grounds of termination of their tenancy were fraudulent, let alone lodge a case against their landlord/agent at the Tribunal.

- There should be specific provisions in the RTA that proscribe the termination of tenancy agreements on fraudulent grounds, apply stricter penalties for offences, and offer compensation to tenants who are evicted on fraudulent grounds.

We have discussed these issues with tenant union representatives from other States. We note that the Tenants' Union of NSW have drafted amendments to their Residential Tenancies Act that remove any provisions for landlords/agents to terminate a tenancy without specifying a ground of termination and also contain provisions for strict penalties and compensation for terminating a tenancy on fraudulent grounds. Those amendments have the full support of NSW Greens and NSW Labor, and some support from specific members of NSW Liberal.<sup>1 2 3</sup>

Shelter SA would like to see the same kind of amendments in South Australia which exemplify a more substantive attempt to remove the provisions for no-cause evictions.

### **Pet-Friendly Rentals**

People with pets are often discriminated against in the private rental market and many private renters are forced to give up their pets (which often end up being euthanised) or conceal their pets. Pets are a very important part of so many people's lives and in order to redress the imbalance of power between landlords and tenants it is vital that people can keep pets on their premises as an accepted part of their tenancy.

Other than under Section 49 (Subsection 1b) of the RTA, which states that a written residential tenancy agreement entered into by a landlord and tenant must set out whether there are terms of the agreement that relate to pets, there are currently no legal provisions specifying whether tenants may keep pets on the rental premises.

- It is Shelter SA's position that pets should not need to be disclosed as part of the terms of a tenancy agreement and the specific reference to "pets" in Section 49 (Subsection 1b) of the RTA should be removed.
- There should be a specific provision in the RTA that proscribes the discrimination against tenants with pets, just as there is for discrimination against tenants with children in Section 52.

If damages are caused by pets they will be revealed to landlords/agents through regular inspections and landlords/agents have recourse to deal with these matters under relevant sections of the RTA (for example Section 69).

We believe that legislation should facilitate and encourage an increase in the proportion of "pet-friendly" rentals, which can also be achieved through working with the Real Estate Institute of South Australia (REISA) and educating landlords/agents.

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<sup>1</sup> <https://www.tenants.org.au/tu/news/tenants-demand-action-no-grounds-evictions-new-report-released>

<sup>2</sup> <https://greens.org.au/sites/default/files/2019-02/NSW%20policy%20initiative%20%E2%80%93%20renter%20rights.pdf>

<sup>3</sup> <https://www.smh.com.au/politics/nsw/shifting-the-power-labor-vows-to-abolish-no-grounds-eviction-20190227-p510ka.html>