



ANNO TRICESIMO SEXTO

ELIZABETHAE II REGINAE

A.D. 1987

No. 104 of 1987

An Act to amend the Landlord and Tenant Act, 1936.

[Assented to 17 December 1987]

The Parliament of South Australia enacts as follows:

Short title.

1. (1) This Act may be cited as the "Landlord and Tenant Act Amendment Act, 1987".

(2) The Landlord and Tenant Act, 1936, is in this Act referred to as "the principal Act".

Commencement.

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of
s. 54—
Interpretation.

3. Section 54 of the principal Act is amended—

(a) by inserting before the definition of "business" the following definition:

"administrative and management costs" in relation to premises means—

(a) costs associated with—

- (i) managing the premises;
- (ii) providing amenities for the use or enjoyment of tenants or those who may resort to the premises;
- (iii) promoting the use of the premises by the public or promoting any business carried on at the premises;
- (iv) providing for the security of the premises;
- (v) providing caretaking services for the premises;

or

(vi) any other prescribed matter;

and

(b) if the premises form part of a shopping complex—
any such costs associated with the complex as
a whole;

(b) by inserting after the definition of “the Commercial Tribunal”
the following definition:

“government charges” means—

(a) any rates or taxes on land or premises;

(b) any fees, charges or levies chargeable by the Crown,
a council or a statutory authority for services
provided to land or premises;

(c) by striking out the definition of “licensed agent” and substituting
the following definitions:

“licensed agent” means a person licensed as an agent under
the Land Agents, Brokers and Valuers Act, 1973:

“licensed land broker” means a person licensed as a land
broker under the Land Agents, Brokers and Valuers Act,
1973:

“maintenance costs” in relation to premises includes—

(a) the costs of—

(i) operating, maintaining, repairing or reno-
vating the premises;

and

(ii) providing, operating, maintaining, repairing
or replacing plant or equipment associ-
ated with the premises;

and

(b) if the premises form part of a shopping complex—
any such costs associated with the complex as
a whole:

“operating expenses” means expenses that may be recovered
by or on behalf of the landlord from the tenant under
a commercial tenancy agreement on account of—

(a) administrative and management costs;

(b) government charges;

(c) insurance costs;

(d) maintenance costs;

or

(e) any prescribed expenses,

but for the purposes of section 62a does not include any
such expenses determined according to the level of the
tenant’s consumption or the degree of the tenant’s use;

(d) by striking out the definition of “rent” and substituting the fol-
lowing definition:

“rent” means an amount payable by a tenant to a landlord under a commercial tenancy agreement in consideration of the right to occupy the premises to which the agreement relates (but does not include any amount payable by the tenant under the agreement in respect of operating expenses);;

and

(e) by inserting after the definition of “shop premises” the following definition:

“shopping complex” means a set of two or more shop premises in the same building or in adjacent buildings subject to the same administration or control and includes any adjacent land subject to the same administration or control that is used in conjunction with those premises.

Amendment of
s. 55—
Application of
Part.

4. Section 55 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

(a) the premises to which the agreement applies—

(i) are shop premises or premises of a prescribed kind;

or

(ii) consist of shop premises and an adjacent dwelling;;

(b) by inserting after paragraph (b) of subsection (2) the word “or”;

(c) by striking out paragraphs (d) and (e) of subsection (2);
and

(d) by inserting after subsection (2) the following subsection:

(3) The regulations may exclude from the application of this Part or specified provisions of this Part—

(a) agreements or classes of agreements;

or

(b) premises or classes of premises.

Amendment of
s. 56—
Jurisdiction of
Commercial
Tribunal under
this Part.

5. Section 56 of the principal Act is amended—

(a) by striking out from subsection (2) “Where” and substituting “Subject to subsection (2a), where”;

and

(b) by inserting after subsection (2) the following subsection:

(2a) An application for the removal of proceedings to a court under subsection (2) may be made—

(a) before the commencement of the hearing of those proceedings;

or

(b) at such later time as the Tribunal may, in its discretion, allow.

6. Section 57 of the principal Act is amended—

(a) by striking out from subsection (1) “Subject to subsection (2)” and substituting “Subject to this Act”;

and

(b) by inserting in subsection (1) “, any amount payable on account of operating expenses” after “rent”.

Amendment of s. 57—
Limitation on amounts payable with respect to entering into, extending or renewing a commercial tenancy agreement.

7. Section 59 of the principal Act is amended by striking out from subsection (2) “rates, taxes and”.

Amendment of s. 59—
Regulation of security bonds.

8. Section 60 of the principal Act is amended by striking out from subparagraph (i) of paragraph (b) “if he is a licensed agent” and substituting “if the person receiving the money is a legal practitioner, a licensed agent or a licensed land broker acting on behalf of a landlord”.

Amendment of s. 60—
All amounts paid under security bonds to be received and paid to Tribunal.

9. Section 62 of the principal Act is amended by striking out subparagraph (iii) of paragraph (a) of subsection (1).

Amendment of s. 62—
Provisions relating to written agreements.

10. The following section is inserted after section 62 of the principal Act:

Insertion of new s. 62a.

62a. (1) Where a tenant is or is to be required to pay any amount in respect of operating expenses, the landlord must give to the tenant a written statement setting out—

Landlord to provide a statement of operating expenses.

(a) the nature of those expenses;

and

(b) estimates of the amount of the tenant’s liability in respect of each separate category of those expenses over each accounting period.

Penalty: \$400.

(2) The estimates referred to in subsection (1) must be given—

(a) in relation to a commercial tenancy agreement entered into before the commencement of this section—within one month of the commencement of the first accounting period and thereafter at least one month before the commencement of each successive accounting period;

or

(b) in relation to a commercial tenancy agreement entered into on or after the commencement of this section—before it is entered into and thereafter at least one month before the commencement of each successive accounting period.

(3) A landlord must, within three months of the expiration of an accounting period, give the tenant a written statement, certified by the landlord or his or her agent to be correct, setting out, under each separate category of operating expenses, the amount actually incurred by the landlord, and the amount payable by the tenant, for that period.

Penalty: \$400.

(4) Notwithstanding the provisions of a commercial tenancy agreement, a landlord is not at any particular time entitled to payment from the tenant on account of operating expenses in a particular accounting period of an amount in excess of—

(a) an amount calculated in accordance with the following formula:

$$a = \frac{(x + 2)e}{y} \quad \text{or} \quad e \quad (\text{whichever is the lesser})$$

where—

a is the amount

e is the landlord's estimate of aggregate operating expenses for the accounting period

x is the number of complete months to have elapsed since the commencement of the accounting period

y is the number of complete months in the accounting period;

or

(b) the amount of the reimbursement or contribution to which the landlord is entitled in respect of operating expenses that have fallen due for payment or for which an account has been rendered to the landlord.

(5) Where a landlord receives from a tenant in respect of operating expenses for an accounting period an amount in excess of the expenses actually incurred for that period, the landlord must, within three months of the expiration of the period—

(a) refund the excess to the tenant;

or

(b) with the consent of the tenant—credit the excess against future liabilities of the tenant in relation to operating expenses.

Penalty: \$400.

(6) A statement may be given to a tenant under this section—

(a) personally;

(b) by leaving the statement at the business premises of the tenant with a person apparently employed by the tenant;

or

(c) by posting the statement to the tenant at his or her business addresses or last known residential address.

(7) This section does not prevent a landlord from recovering any amount payable by the tenant in respect of operating expenses once the tenancy has come to an end.

(8) In this section—

“accounting period” means—

(a) in relation to a commercial tenancy agreement entered into before the commencement of this section—

(i) a period commencing on 1 January, 1988, and not exceeding 18 months, determined by the landlord as the first accounting period or, in the absence of such a determination, the period commencing on 1 January, 1988, and ending on 30 June, 1988;

and

(ii) each successive period of 12 months;

and

(b) in relation to a commercial tenancy agreement entered into on or after the commencement of this section—

(i) a period running from the commencement of the tenancy and not exceeding 18 months, determined by the landlord as the first accounting period or, in the absence of such a determination, the period from the commencement of the tenancy to the following 30 June;

and

(ii) each successive period of 12 months.

11. The following section is inserted after section 73 of the principal Act:

Insertion of new s. 73a.

73a. (1) The Registrar of the Tribunal must, on or before 30 September in each year, deliver to the Minister an annual report—

Annual Report.

(a) containing a report on—

(i) the work of the Tribunal and the Registrar under this Part during the financial year ending on 30 June in that year;

(ii) the administration and enforcement of this Part during the financial year ending on 30 June in that year;

(iii) the application during the financial year ending on 30 June in that year of any income derived from the investment of the Commercial Tenancies Fund;

and

(iv) any matters of general significance to landlords and tenants that, in the opinion of the Registrar, should be reported;

and

(b) containing a copy of the accounts of the Commercial Tenancies Fund last audited by the Auditor-General.

(2) The Minister must, within 12 sitting days after the receipt of a report under subsection (1), cause a copy of the report to be laid before each House of Parliament.

Savings provision.

12. A provision of a commercial tenancy agreement entered into before the commencement of this Act is not invalidated or affected in any other way by any inconsistency with, or failure to comply with, section 62 (1) (a) (iii) of the principal Act as in force before the commencement of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor