

ManagementONE

The quarterly newsletter from The Management Rights Lawyers

Residential tenancy amendments start 1 October by Amy O'Donnell

In our December edition of ManagementOne we brought to your attention the new residential tenancy laws that were coming in 2022. Most of the changes will commence on 1 October 2022. The key changes include:

Pets

From 1 October there are only limited grounds for refusing pets. If a tenant wishes to keep a pet, the first step will be a formal request from the tenant (this should be a detailed request) and will be on a RTA form.

It is really important to remember that a landlord is deemed to have approved a pet if they have not responded to a request within 14 days OR their response is not in the correct form. If you receive a pet request on behalf of an owner, you will need to ensure that you action the request promptly and keep yourself updated with the new RTA forms (which will be available on the RTA website from 1 October).

You will recall that the reasonable grounds to refuse a pet are:

- Keeping the pet would exceed a reasonable number of animals being kept.
- The premises are unsuitable for keeping the pet.
- Keeping the pet is likely to cause damage to the premises.
- Keeping the pet would pose an unacceptable risk to the health and safety of a person.
- Keeping the pet would contravene a law.
- Keeping the pet would contravene a body corporate by-law.

- The tenant has not agreed to the reasonable conditions proposed by the lessor for approval to keep the pet.

The tenant will be responsible for all damage caused by their pet, but there is no ability for a landlord to increase bonds or charge additional amounts to cover this possible damage.

It is also an opportune time to update yourself with the by-laws of your scheme and the pet approval process that is currently in place with your body corporate manager. Most body corporate management companies have their own forms and processes for pet approvals.

The fact that keeping a pet would be in contravention of a body corporate by-law IS a valid ground to refuse a pet.

Where the by-laws allow pets with consent, it may be necessary in the first instance to refuse the pet until such time as the consent of the committee is obtained. This is because the body corporate is not bound by the same time frames to respond. The committee has 6 weeks after the day a motion was submitted (i.e. the 'decision period') to decide on an application.

Ending tenancies

From 1 October you must rely on the specific grounds set out in the legislation to end a tenancy agreement. The controversial change has been the removal of the property owner's right to terminate a periodic tenancy agreement without grounds. The new reasons that an owner can end a tenancy include:

- the sale or preparation for sale of the rental property which requires vacant possession;
- a planned property redevelopment, demolition, significant repair or renovation;
- change of use (e.g. move to short-stay accommodation);
- the owner or a relative needs to occupy the property; or
- serious or significant breach.

From 1 October it is now an offence if the notice to leave provisions are misused. For example, if a notice to leave is given because an owner intends to occupy the property themselves, they must do that. It is an offence (50 penalty units) if they offer to let the property as a residential tenancy within 6 months.

By now, we expect that you would have reviewed your tenancy agreements to identify any properties which are currently subject to a periodic agreement and ensured that your owners are aware of any periodic tenancies. A Notice to Leave without grounds can be issued up to and including 30 September 2022 and the notice remains effective after 1 October 2022 (providing the correct timeframe has been applied and it is valid under the existing legislation).

More changes

There will be further provisions in relation to minimum housing standards for new tenancies from 1 September 2023 and for all tenancies from 1 September 2024 – details will be released in due course. It was always planned for there to be further amendments discussed by the

Residential tenancy amendments – to start 1 October 2022 cont'd

government later this year. In addition, on 31 August 2022, the Member for South Brisbane, Dr Amy MacMahon MP, introduced another bill proposing a two-year residential rent freeze and a cap for future increases. This will go through the usual process of public

consultation, with written submissions due by 31 October 2022, followed by a public hearing and a report by the Community Support and Services Committee due early next year.

As each factual situation is different, please take our comments as general

guidance and contact Mahoneys to obtain timely and practical legal advice in relation to any residential tenancy questions that you may have.

Separating to sell by Matthew Manz

With the changing economic conditions over the past few years it has become increasingly difficult for owners of certain types of management rights businesses to sell their unit and business together. Problems arise where the caretaking and letting agreements require the manager to own and/or reside in a unit in the complex and:

- the business is netting a relatively low nett profit (say under \$70,000 - \$80,000 a year); and/or
- the value of the unit is disproportionately high in comparison to the value of the management rights business.

This has been a problem in small to medium size complexes where the value of the manager's unit has increased dramatically but the income of the business has barely changed. This has, in many cases, made a combined purchase of the unit and business unviable.

So what can a manager do in such a circumstance? Realistically there are

2 options. The first is to drastically reduce the sale price of the unit so that a combined purchase of the unit and business is viable. The second is to separate the business from the unit and sell them both separately.

The first option is, in most cases and for obvious reasons, unpalatable for a seller. The second, in some cases, is unpalatable for a body corporate, particularly if it is a body corporate that expects and is used to having its manager living on site.

So what can a manager do? More often than not the best course of action is to discuss the possibility of option 2 with the committee. As with most things in management rights the manager's relationship with the committee and owners is key. The reason these relationships are so important in this instance is that in order to separate the unit and the management rights business it will in most cases be necessary to amend the caretaking and letting agreements and the by-laws. As

most managers will know, this can only be done with the owners' support at a general meeting.

If a manager is successful in separating the unit and business, a sale becomes much easier as a buyer:

- is not required to outlay a significant amount of money to acquire the manager's unit (in comparison to the business); and
- can add the business to an already existing business or businesses, particularly if the building is within close proximity to the others owned by the buyer.

In the past we have had some success in achieving the above for clients and we are generally able to arm our clients with a strategy for achieving the outcome sought. We expect that given the continuation of the current economic conditions there will be many more managers of small to medium size management rights businesses looking closely at this option.



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For latest CPI figures go to

[Click here for Brisbane All Groups CPI figures](#)

You will need to click on "All groups CPI, index numbers(a)" to see the detail. For example, if your remuneration started at \$100,000 on 1 September 2016, the correct calculation for the 1 September 2022 increase based on Brisbane All Groups CPI would be $\$100,000 \times 127.9$ (i.e. the last index figure before the review date – the June 2022 quarter) / 109 (i.e. the last index figure before the commencement date – the June 2016 quarter) = \$117,339.45. Mahoneys has assisted many managers in having their remuneration increased to market level.



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