

Tenancy Law Changes April 2023 - Rent Increases & Ending Tenancies

CHANGES COMING INTO EFFECT ON 1 JULY 2023

On 18 April 2023, the Deputy Premier verbally introduced amendments to the *Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022* to amend the *Residential Tenancies and Rooming Accommodation Act 2008 (RTRA Act) and Regulation*. Despite no stakeholder, industry or committee consultation, the Bill passed on the same date. The changes to the law introduced will affect rent increase provisions as well as amending other provisions in the RTRA Act.

1. WHAT IS THE NEW MINIMUM PERIOD FOR A RENT INCREASE

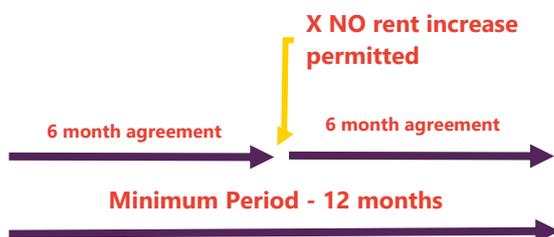
From 1 July 2023, rent cannot be increased within 12 months from:

- the day the rent was last increased; or
- the first day the tenant was required to pay rent under the tenancy agreement.

This will apply **regardless** of when the tenancy agreement started. See Question 4.

These requirements apply during a fixed term agreement or periodic agreement. They will also apply if the same tenant renews or enters into a new tenancy agreement for the same property.

For example, if the tenant was on a 6-month tenancy agreement and renewed this agreement, the rent could not be increased within 12 months from the day the rent was last increased or the first day the tenant was required to pay rent (being the first day of the previous tenancy agreement).



2. WHAT NOTICE MUST BE GIVEN TO INCREASE RENT

If the lessor wishes to increase rent, a written notice must be given to the tenant.

The notice must state the amount of increased rent and the date the increased rent becomes payable.

This date must not be earlier than the later of:

- 2 months after the day the notice is given to the tenant under a residential tenancy agreement;
- 4 weeks after the day the notice is given to the tenant under a rooming accommodation agreement;
- the end of the **minimum period**.

This means that a notice cannot require rent to be increased before the end of the minimum period of 12 months (refer to Q1).

The REIQ's best practice recommendation is to issue the notice at least 2 months' before the expiry of the minimum period so that the rent increase can take effect from the next date.

By way of example:

Scenario 1 – notice is issued less than 2 months from minimum period end date. The rent increase will apply after the 2-month notice period.



Scenario 2 – notice issued with minimum period ending after 2 months from notice date. The rent increase will apply after the minimum period ends.



Scenario 3 – notice issued 2 months from minimum period end date. The rent increase will apply after the minimum period ends.



3. DO I NEED TO HAVE SPECIAL TERMS TO ALLOW FOR THE RENT INCREASE

The requirements under s91(7) have not changed. This means that rent under a fixed term agreement may not be increased before the term ends unless:

- the agreement provides for a rent increase; and
- the agreement states the amount of the increase or how the amount of the increase will be worked out; and
- the increase is made under the agreement.

4. WILL RENT INCREASE TERMS IN EXISTING AGREEMENTS OR RENEWALS BECOME INVALID?

Yes. The transitional provisions that were introduced provide that if a term of a residential tenancy agreement or rooming accommodation agreement in effect on 1 July 2023 is inconsistent with these new provisions, **regardless of when** the agreement was entered into by the parties, the term is **void** to the extent of the inconsistency.

This means that from 1 July 2023, you cannot increase rent under the terms of an existing agreement unless the rent increase will become payable after the end of the minimum period of 12 months (refer to Q1). **This will also apply to tenancy renewals.**

Scenario 1 – even if a notice to increase rent is validly issued before 1 July 2023 under the terms of an existing agreement, if the rent increase is to apply on a date from 1 July 2023, it will be **invalid** unless rent has **not** been increased in the preceding 12 months.



Scenario 2 – if a tenancy is renewed and the start date is after 1 July 2023, any increase in rent from the last agreement will be **invalid** unless the rent was **not** increased in the preceding 12 months.



It is recommended that you advise your clients of these changes as soon as possible to minimise any detrimental impact and avoid potential professional negligence.

5. DO WE NEED TO VARY THE TERMS OF THE EXISTING TENANCY AGREEMENTS?

The transitional provisions state that terms will only be invalid to the extent they are not consistent with the new provisions. This means that there may be parts of the rent increase terms that are not void.

In some cases a formal variation may not be necessary however lessors and their agents should seek legal advice about any variations that might be needed.

For renewals, if you issue a new tenancy agreement to a renewing tenant and it contains an invalid rent increase, lessors should seek legal advice about how to validly vary that tenancy agreement.

6. WHAT IF THERE IS A CHANGE OF PARTIES?

These provisions are not affected by a change of lessor (ie. the property being sold), lessor's agent, or if a co-tenant is removed from the tenancy agreement. These requirements will continue to apply.

For example, under a co-tenancy arrangement, even if only one of the tenants wishes to renew the tenancy of the property and the other co-tenants wish to leave, these requirements will apply.

7. DO THESE CHANGES AFFECT HOW MUCH RENT CAN BE INCREASED?

No. You should continue to follow usual procedure to ensure you comply with your obligations under the *Property Occupations Act 2014* (Qld) by providing a comparative market analysis to your client when discussing market rent attainable for the property. Refer to the [REIQ's Best Practice Guidelines](#) for more information.

ENDING TENANCIES

8. WHAT CHANGES HAVE BEEN MADE TO THESE PROVISIONS?

As part of the changes, s277 of the RTRA Act has been amended. These changes will also apply from 1 July 2023.

If a Form 12 Notice to Leave or Form 13 Notice of Intention to Leave to end a tenancy agreement under a prescribed ground is issued, a residential tenancy agreement **will only end** if the tenant has handed over possession of the premises **on or after** the handover date.

This means that if a tenant **does not vacate** the premises by the handover date, the tenancy agreement **will not end**.

For example, a Form 12 Notice to Leave is issued to a tenant to end a fixed term tenancy agreement. The handover date is 10 August 2023, however the tenant **does not** provide vacant possession by this date. The tenancy agreement **will not end** until such time that the tenant gives possession of the property back to the lessor or lessor's agent.

9. WHAT HAPPENS IF THE TENANT DOESN'T LEAVE ON THE HANDOVER DATE?

The lessor or lessor's agent may only be able to end the tenancy by making an application to QCAT under s293 or s294 of the RTRA Act for a termination order.

This application must be made **within 2 weeks** after the handover day.

The lessor or lessor's agent may only be able to retake possession of the property by obtaining a warrant of possession under s350 of the RTRA Act.

If this is necessary, the tenant may potentially stay in the property for several months until a warrant of possession can be carried out.

10. WHAT IF I HAVE ANOTHER TENANT READY TO MOVE IN OR THE PROPERTY HAS BEEN SOLD AND SETTLEMENT HAS BEEN SCHEDULED?

Unfortunately, if the tenant decides to move out after the handover date, this will impact any new tenancy for the property or if the property has been sold, it may delay settlement.

If a new agreement is already entered and you cannot give vacant possession of the property to the new tenant, this will be a breach of the new tenancy agreement.

If the lessor has sold the property and settlement is impacted because the lessor cannot give vacant possession, this may put the lessor in breach of their contract and at risk of termination. The lessor should seek legal advice about their rights under the contract as well as their rights against the tenant/s.

11. DOES THIS APPLY TO A NOTICE TO LEAVE BEFORE 1 JULY 2023?

It is difficult to determine how the transitional provisions will work due to the limited drafting of the new s576 of the RTRA Act.

The changes to s277 will not affect the ending of a residential tenancy agreement on a day before 1 July 2023, if the notice is given **and** the tenant has handed over vacant possession.

It is not clear how the provisions will apply to notices issued before 1 July 2023 where the end date is after 1 July 2023.

It is not clear if these provisions will apply to notices issued before 1 July 2023 with an end date before 1 July 2023 however the tenant has not handed over vacant possession.

These matters will not become apparent until they are tested in QCAT and a determination is given. The REIQ will ensure members are updated once this information comes to hand.

This FAQ is general advice only and should not be taken as legal advice. Please note the REIQ will update the contents of this FAQ once more information becomes available.

If you have any questions or need best practice advice and you are an REIQ member, you can contact the Property Management Support Service on 1300 697 347 or pmsupport@reiq.com.au.

Let us know your views on these changes. Email us at advocacy@reiq.com.au