

Tenancies compliance programme

Consumer and Business Services (CBS) have a set process for dealing with alleged breaches of the *Residential Tenancies Act 1995* ("the Act"). It is important for all parties to a tenancy agreement in South Australia to be aware of their rights and obligations to ensure they comply with the requirements of the Act.

What types of breaches are investigated?

The most common breach is where a landlord or agent does not lodge the bond within the prescribed time frame. By law, a landlord must lodge a bond within 2 weeks and a registered agent within 4 weeks of receiving the payment. Other breaches may include:

- Not providing the tenant with a receipt when a bond is paid;
- Requesting more bond than the prescribed limit;
- Including a condition in the tenancy agreement that is contrary to the Act.

Agent licensing and trust account anomalies are also investigated by CBS.

How does CBS become aware of alleged breaches?

Investigations may originate from:

- a formal written complaint made by a party to a tenancy agreement. Complaints received from another source can also be investigated;
- a referral from the South Australian Civil and Administrative Tribunal (SACAT). If a breach is evident at a SACAT hearing the order will include a referral to the Commissioner for Consumer Affairs for further action;
- regular monitoring conducted by CBS. Information is automatically captured when a bond is lodged and further investigation is conducted where a possible late lodgement is identified;
- a referral by an Advice and Conciliation Officer.

How are breaches investigated?

Investigations are generally conducted by correspondence and telephone. A person is always given an opportunity to respond and provide information about any complaint made against them.

What action is taken when a breach is alleged?

Any action taken is designed to encourage ongoing compliance with the Act and educate parties about their obligations and entitlements. Factors that are considered include:

- whether there is evidence that a breach has been committed;
- the seriousness of the breach and whether the same type of breach has occurred previously;
- the responsiveness of the person alleged to have committed the breach. For example, their willingness to address anomalies in their business to prevent recurrences.

A breach can be dealt with by one or more of the following actions:

- educating parties about their obligations and entitlements under the Act;
- issuing a letter reminding parties of their obligations under the Act and requesting the respondent to voluntarily and effectively remedy the breach;
- issuing a formal written warning regarding the possible consequences of future non-compliance;
- issuing an expiation notice.

When will an offence be referred for prosecution?

Prosecution may be necessary to ensure compliance with the Act. If satisfied a breach is sufficiently serious the breach will be investigated and if a prosecution is commenced, a person will be summonsed to appear before the Magistrates Court.

Prosecution is generally a last resort and will only be commenced where other strategies to promote and encourage voluntary compliance have failed or are inadequate to address the seriousness of the breach.

For further information contact Consumer and Business services on 131 882, or visit www.sa.gov.au/tenancy/renters