

COVID-19: Tenancy: My landlord is trying to evict me, what should I do?

FACTSHEET

This factsheet is part of a series from Legal Aid NSW that aims to help answer your questions about COVID-19 and everyday law.

You may be worried or confused about how COVID-19 will affect you and your everyday life. Sometimes a crisis can make legal problems worse or new problems might develop. Legal Aid NSW understands that there will be a lot of questions about money worries, fines, police, housing, Centrelink, employment, guardianship and mental health. This series of fact sheets will give you helpful information and contacts to assist you to manage all the changes that are happening in our community.

Read this factsheet if you are a private tenant and worried about eviction during the COVID-19 period.

Changes to NSW tenancy laws

On 15 April 2020, the government made some changes to the NSW residential tenancy laws in response to COVID-19. These changes give more flexibility and protection to tenants experiencing financial hardship due to COVID-19. These protections apply to private tenants and people in boarding houses.

The new protections do not apply to social housing tenants.

A landlord cannot evict you without possession orders from the NSW Civil and Administrative Tribunal (Tribunal). Possession orders can only be enforced by the NSW Sheriff.

Moratorium on evictions

There was a 60-day moratorium on evictions for private tenants until 14 June 2020. If you lost your job or your income reduced and can't pay your rent because of COVID-19, you could stay in your home at least until 14 June 2020.

After 14 June 2020:

- Landlords must take additional steps before they issue you with a notice of termination or apply to the Tribunal to end your tenancy due to rent arrears;
- The Tribunal should consider additional factors before terminating a tenancy due to rent arrears for impacted tenants; and
- There will be restrictions on blacklisting COVID-19 impacted tenants on residential tenancy databases.

There are more details below about the steps your landlord is required to take after 14 June 2020.

Extension of notice periods

For six months (until 15 October 2020) some tenants will have more time to move out after the landlord has issued a notice of termination. Landlords will need to give 90 days' notice of termination to all tenants with:

- Fixed term leases
- Periodic agreements
- Breaches of agreement other than non-payment of rent
- Tenancies of 20 years or more

Does the moratorium on evictions apply to everyone?

No. The moratorium only applies if:

- You are a private tenant or live in a boarding house
- Your income (or the income of another person in the house) has reduced as a direct result of the COVID-19 pandemic, and
- Your household income has decreased by at least 25%.

The moratorium does not apply to social housing tenants.

Does the landlord have to reduce my rent if I can't afford to pay?

No. You will still have to pay the landlord all the rent you owe under the lease unless you and the landlord make a separate agreement. These changes only allow you to stay longer in the property.

If you are in financial hardship due to COVID-19 you should speak to your landlord to try and come to a temporary arrangement. This option is available for all tenants. Ask for the agreement to be in writing. If you cannot come to an agreement, [NSW Fair Trading](#) can help with a formal negotiation.

You might also want to speak to a financial counsellor. Call the National Debt Helpline on 1800 007 007.

What happens after 14 June 2020? Can the landlord evict me then?

If you are behind in your rent, water or utility payments after the moratorium ends, your landlord can terminate your tenancy. The landlord must still give you proper notice by issuing you with a 14-day termination notice.

The COVID-19 changes to the law also state that a termination for non-payment of rent, water or utility charges can only happen **if**:

- the date on the termination notice or the landlord's Tribunal application is later than 14 June 2020 after the 60-day moratorium has ended; and
- the landlord and the tenant have participated in Fair Trading's formal rent negotiation process. The landlord must participate in good faith; and
- terminating the tenancy is fair and reasonable.

You do not have to move out of the property because you receive a notice of termination. If you are still in the property when your notice expires, your landlord must apply to the Tribunal for termination and possession orders.

Will the Tribunal terminate my tenancy?

Maybe. The Tribunal must look at the evidence from you and the landlord and decide whether it is fair and reasonable to terminate your tenancy. The Tribunal will consider all your circumstances including why you have not been able to make payments under the lease.

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You should attend the Tribunal hearing by phone and put your case to the person (Member) who makes the decision about termination. The list below will help you work out what points you should cover when you talk at your hearing and what evidence you need to collect and give to the Tribunal **before** your hearing.

The Tribunal Member can consider:

- How the COVID-19 crisis has affected you and your household including the requirement for everyone to stay at home;
- You and your family members' personal circumstances, including medical conditions, special vulnerabilities or needs;
- Whether you have continued to make any payments towards rent;
- Evidence of your financial position and how easy it will be for you to find alternative accommodation;
- Evidence of the landlord's financial position;
- Any offers made by either you or the landlord to try to reach a repayment agreement. NSW Fair Trading may advise the Tribunal about whether or not you or the landlord have refused reasonable offers or about how you participated in the rent negotiation process.

You must give the Tribunal documents to show that your income has decreased because of COVID 19. You should also give the Tribunal other evidence about your circumstances. This includes copies of any documents such as medical certificates, letters from your employer, bank statements. The landlord will also need to give evidence if they want to prove that they are in financial hardship.

You should make sure the Tribunal and landlord have a copy of all evidence that supports your case. You can email your evidence to the Tribunal and the landlord before your hearing.

The Tribunal cannot make an order to reduce your rent. You will still owe the arrears at the end of the moratorium period.

If your tenancy is terminated by the Tribunal, because you were not able to pay your rent in the COVID-19 period, your landlord **cannot** list you as a 'bad tenant' on tenancy databases.

Other reasons for termination

Can my landlord evict me for something other than rent arrears?

Yes. Your landlord can give you a termination notice if you have breached your tenancy in any way, such as if you have damaged the property.

You do not have to move out of the property because you receive a notice of termination. If you are still in the property when your notice expires, your landlord must apply to the Tribunal for termination and possession orders. You should attend the Tribunal hearing and explain your situation.

During the 60-day moratorium on evictions, in special circumstances, landlords suffering undue hardship can still apply to the Tribunal for termination and possession. Landlords will need to provide evidence of the undue hardship they are facing before the Tribunal will make termination orders.

You can ask the Tribunal to delay eviction for a long period if you have no other accommodation during the health crisis. The Tribunal has power to put the eviction on hold for any amount of time.

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Contact your local tenancy service for advice. You can find your local tenancy service on the [Tenant's Union contact page](#).

What notice does my landlord have to give me for other types of termination?

Changes have been made to the notice periods required for **some** types of termination. Landlords will now need to give 90-day notice before they can apply to the tribunal for the following termination orders:

- End of fixed term agreement (usually 30 days);
- End of periodic agreement (no change);
- Section 87 - breach of tenancy agreement (other than rent, water or utility arrears) (usually 14 days) and
- Long term tenancies for 20 years or more (usually no notice is required).

These changes will apply until 15 October 2020.

You do not have to move out of the property because you received a notice of termination. If you are still in the property when your notice expires, your landlord must apply to the Tribunal for termination and possession orders.

Where can I find more information?

If you are having problems with your tenancy you should get legal advice. Information is changing very quickly and there will probably be more changes for tenants throughout the health crisis. You can get help from these services:

Tenancy advice

- Find your local Tenants Advice and Advocacy Service at the [Tenants' Union](#).
- The Tenant's Union NSW has up-to-date information and templates for tenancy matters in response to COVID-19 on their [Renting & Coronavirus page](#).
- Department of Communities and Justice has information on [renting in a private market](#).

Legal advice

- If the NSW Civil and Administrative Tribunal (NCAT) has made final orders for termination of your tenancy you can call the Legal Aid NCAT Appeals Hotline on 9219 5800.
- If you are experiencing or worried about domestic violence call the Women's Domestic Violence Court Advocacy Program on 1800 938 227.

NSW Civil and Administrative Tribunal

- You can access up-to-date information on the [NSW Civil and Administrative Tribunal website](#).

Financial counselling

- If you stay in a tenancy when you cannot pay the rent, you could end up with a large debt. If you need help with budgeting or managing your debts call the National Debt Helpline on 1800 007 007 to speak to a free financial counsellor.

Where can I get help?

For free legal help call 1300 888 529 or [call your local Legal Aid NSW office](#).

There is also a series of [factsheets about COVID-19 and the law](#) available on the Legal Aid NSW website to assist you to manage all the changes that are happening in our community.

If you need an interpreter, call the Translating and Interpreting Service on 131 450 and ask for LawAccess NSW. If you find it hard to hear or speak, call the National Relay Service on 133 677 and ask for LawAccess NSW or visit www.relayservice.gov.au.

This factsheet is intended as a general guide to the law. Do not rely on this information as legal advice. We recommend you talk to a lawyer about your situation. This information is correct at the time of writing, however, it may change.