

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 need general information during the COVID-19 crisis and you are a private tenant who would like to end your tenancy.

If you're a private tenant and your landlord is evicting you for rent arrears, you can find more information on our eviction fact sheet [here](#).

Ending your tenancy

You can end your lease and move out. You might have to pay the landlord money, which is called a 'break fee'. Your options to end your tenancy will depend on the type of lease that you have.

What type of lease do I have?

You are on a 'fixed term' lease if the lease is for a set period and you are still within that period. At the start of your lease you usually agree to a 6 or 12 month fixed-term period.

You are on a 'periodic agreement' if the fixed term has ended or your lease does not have an end date.

I am on a periodic agreement and want to move out

If you are on a periodic agreement you must give your landlord at least 21 days' written notice to end the tenancy. You do not have to give a reason and you will not have to pay a break fee.

I am on a fixed term lease and want to move out

It is more complicated if you are still within the fixed term of your lease. Below are some examples to help you work out your options. Please get legal advice if you would like to understand your choices and find out the steps you need to take.

Option 1: apply to the NSW Civil and Administrative Tribunal (NCAT) for termination because rent reduction negotiations have failed

This may be a good option for you if:

- your household income has reduced by 25% because of COVID; and
- you have tried, but have been unable to, negotiate a rent reduction with your landlord.

You can apply directly to the Tribunal under section 228C of the *Residential Tenancies Act*, to terminate your tenancy early because rent reduction negotiations have failed. You don't have to give your landlord a written notice that you want to terminate your tenancy. You will need to show the Tribunal:

- You have tried to engage in negotiations with your landlord about a rent reduction but:
 - Your landlord did not respond to your request for formal rent reduction negotiations with NSW Fair Trading; or
 - Your landlord did not respond to NSW Fair Trading when the formal rent reduction process started; or
 - You have been through the formal rent reduction process with NSW Fair Trading, but you still have been unable to come to a rent reduction agreement which doesn't put you in financial hardship.

When deciding if you can terminate your tenancy, the Tribunal will consider any special vulnerability you have, such as a disability.

If the Tribunal does decide to terminate your tenancy, it may also order that you compensate your landlord equal to a **maximum** of two weeks rent.

You must still pay rent throughout the rent negotiation and Tribunal process. If you can't afford your rent, you may have a debt to pay back to the landlord when your tenancy is terminated.

Option 2: break your lease

You may decide that you don't want to negotiate a rent reduction and you want to break the lease. If you do this, you may need to pay a 'break fee'. The break fee is calculated by the number of weeks' rent that you need to pay the landlord because you want to end the lease early.

If your lease started before 23 March 2020, the break fee is:

- 6 weeks rent, if less than half of the fixed term has expired; or
- 4 weeks rent.

If your lease started after 23 March 2020, the break fee is:

- if less than 25% of the fixed term has expired – 4 weeks rent
- if between 25-50% of the fixed term has expired – 3 weeks rent
- if between 50-75% of the fixed term has expired – 2 weeks rent
- if more than 75% of the fixed term has expired – 1 week rent

In some cases, the break fee clause is crossed out of your agreement or the agreement doesn't mention a break fee at all. If this is the case, and you decide to break your lease, you may still need to pay your landlord some compensation for ending the agreement early.

In most cases the compensation will include rent for the time it takes the landlord to find a new tenant, re-letting fees and advertising costs. If the landlord cannot find a new tenant for the same amount of rent that you paid, your landlord may seek compensation for the difference in rent until the date that would have been the end of your fixed term lease. The landlord must take reasonable steps to find a new tenant in order to limit the amount of compensation that you pay.

Option 3: apply to NCAT for termination because of hardship

If you want to break your lease because of hardship but your circumstances do not fall exactly within the requirements for the COVID termination outlined above, you can still apply directly to the Tribunal under section 104 of the *Residential Tenancies Act* for orders:

- to terminate your tenancy, and
- no compensation is payable to the landlord for breaking the lease agreement early.

There may be delays with Tribunal hearings at this time. Ask the Tribunal for an urgent hearing. You will need to show that there are special circumstances for you that mean you would suffer undue hardship if the tenancy wasn't terminated. You will need to pay rent until a decision has been made by the Tribunal and in some cases the Tribunal may still order that you pay a break fee.

You should get legal advice if you are unsure which of these options is better for you.

Can I get financial help?

You may be able to get financial help to keep your current tenancy.

The Department of Communities and Justice – Housing is offering assistance to low-income households at risk of homelessness. You may be able to get financial help to start a new tenancy. There are products available that can help in a range of ways to cover the costs of renting privately (for example help with bond, rental subsidies and loans to cover moving expenses). In some circumstances you may be able to get help paying the rent arrears, so that you can stay in your current tenancy.

You can find more information at the Department of Communities and Justice's [renting in a private market website](#).

Can I move to a new house?

You can move to a new house. The Public Health Order says that moving to a new house is a reasonable excuse for leaving your home.

NSW Civil and Administrative Tribunal (the Tribunal)

1. Do I have to go to the Tribunal in person?

- You do not need go to the Tribunal in person.
- All hearings will happen by phone during COVID-19.
- Make sure the Tribunal has your contact details, so you can be called at the time of your hearing.

NSW Civil and Administrative Tribunal has up-to-date information on its [website](#).

2. I need to give the Tribunal my evidence and documents for my hearing

- Do not go to the Tribunal in person to give them your documents.
- You can file your documents electronically or send them in the post. Read this [factsheet](#) to find out more about the Tribunal's temporary arrangements.

3. I can't make the hearing because I'm unwell

- If you are unwell due to COVID-19, you can use this [email template](#) to ask for your case to be delayed.
- You do not have to get a medical certificate.

4. I missed my hearing and orders were made without me

- You should urgently get legal advice to see if you can get the orders set aside.
- You have 7 days from the date the decision was made to apply for a set aside of the orders.
- Call the Legal Aid NSW NCAT Appeals Hotline on (02) 9219 5800.

5. The Tribunal has already made orders for termination and possession

- You have 14 days to appeal the Tribunal decision.
- Contact the Legal Aid NSW NCAT Appeals Hotline on (02) 9219 5800 for advice.

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 tenancy 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's [renting in a private market page](#).

Legal advice - housing

- If the NSW Civil and Administrative Tribunal (NCAT) has made final orders for termination of your tenancy, you can call the Legal Aid NSW NCAT Appeals Hotline on (02) 9219 5800.
- If you need advice about the new laws and your rights and obligations, you can get free legal help on 1300 888 529 or [call your local Legal Aid NSW office](#).
- 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

- NSW Civil and Administrative Tribunal has up-to-date information that you can access on their [website](#).

How 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.