

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 the COVID-19 restrictions impact your tenancy. Read this factsheet if you are a private tenant and you would like to know more about your options if your income has reduced because of the COVID-19 restrictions.

Keeping your tenancy

Does my landlord have to negotiate a rent reduction if my income has reduced because of the current COVID lock down orders?

No. Your landlord doesn't have to negotiate with you if you are in financial hardship because of the recent lockdown orders. However, you can still ask your landlord to reduce your rent and either defer it or waive part of your rent for a period.

If you and your landlord cannot agree about a rent reduction, and you are more than 14 days behind in your rent, your landlord can send you a Notice of Termination and ask for the NSW Civil and Administrative Tribunal (the Tribunal) to make orders to terminate your tenancy and evict you.

Can I get financial help?

There may be some Government assistance available to help you. The Department of Communities and Justice – Housing can help in a range of ways: to help you keep your current rental (for example help with rent arrears payments) or to help you start a new tenancy if you have been evicted (for example, help with bond and loans to cover moving expenses).

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

Will the Tribunal terminate my tenancy for rent arrears if I'm COVID impacted?

Maybe. Some of the changes to NSW tenancy laws made because of COVID-19 still apply.

The **moratorium on evictions ended on 26 March 2021**. We are now in a six-month transitional period, which means that if you were:

- “COVID-19 impacted” between **15 April 2020 and 26 March 2021** (the moratorium period), and you
- got behind in your rent during that time

the Tribunal will only be able to evict you because of those rent arrears in certain circumstances.

If this applies to you, you can find more information [here](#).

This transitional period ends on 26 September 2021.

If you got behind in your rent **after** 26 March 2021, or if you cannot show that you have been “Covid-19 impacted”, the Tribunal may still terminate your tenancy. But you still have options.

You can ask the Tribunal to:

- make a specific performance order so that you have time to repay the arrears and still keep your tenancy or
- give you more time to move out.

The Tribunal will consider how much rent you owe but can also consider things like the reason you are behind in your rent and if you are able to repay the arrears. It must also consider the impact on the household if you're evicted.

In particular, the Tribunal can consider:

- How COVID-19 and the lock down order 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
- The difficulties in finding alternative accommodation

You will need to give the Tribunal evidence to support your case. You can write your story in a statement and you can also give the Tribunal documents. For example, you can use letters from your employer and bank statements to show that your income has decreased because of COVID-19 and the lock down. You can use medical certificates and letters from support workers to show your family's personal circumstances.

Make sure the Tribunal and landlord have a copy of all the evidence that supports your case. You can send 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 rent arrears.

Ending your tenancy

If your financial position is not going to improve and you can no longer afford your rent, you can end your lease and move out. You might have to pay the landlord money, or 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: Break your lease

If you don't want to negotiate a rent reduction and you want to end the lease, you may need to pay a 'break fee'. The break fee is 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 to limit the amount of compensation that you pay.

Option 2: Apply to NCAT for termination because of hardship

If you want to break your lease because of hardship you can 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.

You will need to show that there are 'special circumstances' and that you would suffer 'undue hardship' if your tenancy wasn't terminated. You will need to pay rent until the Tribunal makes a decision and in some cases, the Tribunal may still order that you pay compensation for ending the lease early.

If the Tribunal is taking too long to hear your application, ask the Tribunal for an urgent hearing.

NSW Civil and Administrative 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.
- Make sure the Tribunal has your phone number so that they can call you 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

- You can send them in the post or drop them into the Tribunal.

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

- You will generally need to get a medical certificate. If you have COVID symptoms and can't get a medical certificate you may be able to provide evidence that you have had a COVID test.

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 may 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](#).

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 <http://www.relayservice.gov.au/>.

What if I'm homeless and need temporary accommodation?

The Department of Communities and Justice has changed the temporary accommodation it is offering during the lockdown period. This includes temporary accommodation **until 9 July 2021** for any rough sleepers in areas with stay-at-home orders and waiving the 28 day cap during the lockdown period. More information can be found [here](#).

Legal Aid NSW Homelessness Program

Legal Aid NSW has specialist homeless outreach lawyers across NSW. These lawyers help people to:

- get back into housing
- avoid homelessness
- fix legal problems that might lead to homelessness. They can help with debts, fines, social security and tenancy disputes.

You can find your local specialist service here:

- Northern Rivers: (02) 6621 2082
- Mid-North Coast: (02) 6651 7899
- Hunter: (02): 4929 5482
- Central Coast: (02) 4324 5611
- Western Sydney: (02) 9891 1600
- South Coast: (02) 4422 4351

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

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.