



Six month moratorium on residential tenancy evictions during COVID-19

The NSW Government has introduced an interim stop on landlords seeking to evict tenants due to rental arrears as a result of COVID-19.

On this page:

New measures

The new measures include an interim 60 day stop on landlords issuing termination notices or applying for NSW Civil and Administrative Tribunal (the Tribunal) eviction orders due to rental arrears, where tenants are financially disadvantaged by COVID-19.

This will allow time for Government financial support to reach those who need it and limit social movement in order to minimise public health risks during the COVID-19 pandemic.

A landlord is required to negotiate a rent reduction with the tenant in good faith in the first instance, and can only give a termination notice or apply for an eviction order after the interim 60-day stop if it is fair and reasonable in the circumstances of the specific case.

If a tenant believes they are impacted by COVID-19 and requires a reduction in rent, they should contact their landlord immediately. A tenant should not wait until they are in arrears to begin negotiations with their landlord.

Fair Trading will be able to assist landlords and tenants try to reach an agreement if needed.

To understand how the ban on evictions due to COVID-19 may affect your tenancy agreement, see the Flowchart: Can a tenancy be terminated during COVID-19.

Along with these restrictions on evictions for rental arrears, the Government has also extended the notice periods for certain other lease termination reasons to 90 days.

A 90 day notice period applies when ending:

- a fixed-term agreement
- a periodic agreement
- a tenancy because of breach of agreement other than for non-payment of rent or charges.

At any time during the 60 day stop and the longer six month restrictions, landlords can still apply to the Tribunal at any time to take possession of a property if they are suffering undue hardship.

When considering a termination application the Tribunal considers:

- advice from NSW Fair Trading relating to the landlord and tenant's participation in the formal rent negotiation process overseen by NSW Fair Trading
- whether the tenant has continued to make payments towards the rent
- any financial hardship and the financial position of the landlord and tenant
- any vulnerability of the impacted tenant
- the circumstances of the case in light of the public health objectives of ensuring citizens stay at home and that avoidable movement of people is prevented.

Full details of what the Tribunal may consider is outlined in the Residential Tenancy Regulation.

If you are a landlord and you want to understand how the new measures affect all types of residential tenancy terminations, see the Flowchart for landlords - termination of tenancy options.

Termination of a tenancy agreement by a tenant

A tenant who meets the eligibility criteria can also apply to the Tribunal to end a tenancy where:

- the landlord refuses or fails to participate in a process provided by Fair Trading to negotiate rent reductions, or
- the landlord and tenant are unable to agree on a rent reduction and repayment arrangement that would avoid financial hardship for the tenant.

If the Tribunal ends the tenancy, the Tribunal may decide that the tenant should pay compensation of up to two weeks rent to the landlord.

Eligibility

To meet the requirements for 60 day stop on evictions and the longer six month restrictions, a household needs to demonstrate they are impacted by COVID-19.

A household is COVID-19 impacted if:

1. one or more rent-paying members of a household have lost employment or income (or had a reduction in work hours or income) due to the impact of the COVID-19 pandemic, or
2. one or more rent-paying members of a household have had to stop working or reduce work hours due to illness with COVID-19, another member of the household's illness with COVID-19, or COVID-19 carer responsibilities for household or family members, and
3. the above factors result in a household income (inclusive of any government assistance) reduced by 25% or more.

A tenant can provide simple documents to show that they are impacted by COVID-19, for example:

- proof of job termination/stand-down, or loss of work hours
- proof of Government income support

- proof of prior income.

A household's circumstances may change over time.

For example, a rent-paying member of a household who lost their job may find a new job.

This may result in the household no longer meeting the eligibility criteria for being COVID-19 impacted.

Tenants should keep their landlord informed of any changes in their circumstances.

Where a tenant no longer meets the eligibility criteria, the tenant and landlord may wish to renegotiate their rent agreement.

For example, agree for the tenant to resume paying the usual rent amount.

The new measures will not apply to tenants who no longer meet the eligibility criteria.

Situations where the new measures do not apply

Landlords can still use the usual termination processes to end a tenancy in certain circumstances, including:

- for non-payment of rent or charges by a tenant who is not impacted by COVID-19
- where the landlord is suffering hardship
- where the tenant has caused serious damage to the property or injury to the landlord or their agent or neighbour
- where the tenant is using the premises for illegal purposes
- where the tenant has threatened, abused, intimidated or harassed the landlord, the landlord's agent or another person
- where the landlord is intending to sell the premises
- where the tenant has not complied with a rectification order issued by NSW Fair Trading.

Flowcharts

To understand how the ban on evictions due to COVID-19 may affect your tenancy, see the first flowchart.

If you are a landlord and you want to understand how the new measures affect all types of residential tenancy terminations, use the second flowchart.

Guidance for negotiating rent payments

Landlords and tenants should be aware of what they are agreeing to with respect to rent negotiations. It's important to distinguish between a deferral of part or all of your rent payments and a waiver of part of or all of rent payments.

A waiver means the tenant won't be required to pay back an agreed amount of rent.

A deferral means the tenant must pay back an agreed rent in the future.

The amount of rent which is waived or deferred may be some or all of the regular weekly rental cost.

Any agreement reached should specify what amount of rent will be waived or deferred.

If rent is deferred, the agreement should specify when the rent is to be paid back, and how payments will be made to cover the amount (repayment plan).

Before you start

This guidance is intended to provide some clarity to all parties as they seek to engage in this new process established by the regulation. The guidance is in general terms only as it is not possible to cover every possible circumstance.

What is 'good faith' negotiation?

The intent of the regulation is to promote negotiation between landlords and tenants in 'good faith'.

What does this mean? In general, it means parties dealing **honestly** and **fairly** with one another to **genuinely work together** towards a mutually beneficial agreement in a timely manner. 'Good faith' will depend on the circumstances of each case and parties must act reasonably and be prepared to change their position or make concessions to achieve an agreement.

If a negotiated agreement cannot be reached, both the landlord and tenant will need to demonstrate they have approached those negotiations in good faith.

Role of agents

It is recognised that agents are engaged by landlords to act in their interests, and the Rules of Conduct under the Property and Stock Agents Regulation 2014 require them to generally act in the client's best interests.

However, the COVID-19 pandemic presents a highly unusual set of circumstances and means agents may have to change the way they relate to both parties. Agents will be required to play more of an intermediary role between the tenant and landlord to comply with both the letter and spirit of the tenancy laws and the government's broader relief package.

It is important to understand that the whole economy has changed under COVID-19 and the tenancy market has been significantly affected. What was in the landlord's best interests before COVID-19 may well not apply now, so due consideration should be given to whether maintaining an existing tenancy with changed terms may be more viable option than seeking termination and attempting to re-let the property.

Fair Trading encourages agents to:

- Ensure the process for tenants is accessible and easy to understand
- Ensure both parties are aware of the option to engage Fair Trading for dispute resolution if the parties cannot reach an agreement
- Ensure that correspondence is passed on/communicated in a timely manner
- Ensure any evidence required from tenants is reasonable and sufficient to demonstrate the person is COVID-19 impacted and has suffered a loss of household income (more information is below)
- Be aware that agreements for COVID-19 impacted tenants are not limited to deferring rent payments and can include other variations of a tenant's usual obligations such as reducing rent for an agreed period, reducing rent for the remainder of the lease term or agreeing to break a lease agreement early due to financial hardship with reduction or waiver of the break fee
- Ensure the landlord is aware of relief options available to them, including negotiating deferred mortgage repayments with their lender, the availability of land tax rebates for any rent reductions made available to the tenant, and claiming losses on their tax
- Keep good documentary records of their interactions and discussions with landlords and tenants during negotiations, which will be especially important if the matter eventually progresses to NCAT and good faith negotiations must be demonstrated.

Step 1: Seek assistance

Tenants who need assistance because they are COVID-19 impacted are to approach the landlord or agent to negotiate a rent arrangement. Fair Trading has prepared the attached letter to help tenants to do this.

On making a request, a tenant will need to provide reasonable evidence to show they meet each of the eligibility requirements:

1. Rent paying members of the household have lost employment, work hours or income due to COVID-19 that has reduced their household's take home income by 25%.

Reasonable evidence might include, but is not limited to:

- reasonable evidence includes
- payslips or bank statements showing the reduced income
- documentation from an employer indicating loss of employment or reduced hours
- evidence of a business closure or business records showing loss of business takings
- confirmation from Centrelink of eligibility for financial assistance

2. Rent paying members of the household have had to stop work (or have reduced work hours) due to illness with COVID-19, another household member's illness with COVID-19 or for carer responsibilities for family or household members due to COVID-19.

Reasonable evidence might include, but is not limited to:

- the same evidence outlined above to demonstrate a loss of income
- medical certificate

Tenants who meet the COVID-19 eligibility requirements should still have regard to any significant cash savings that are easily accessible and available to pay rent before approaching landlords and agents for a rent reduction (this should not include access to savings in superannuation accounts).

Step 2: Negotiate

Where an agent is involved, the agent must contact the landlord as soon as practical to inform them of the tenant's circumstances and explore opportunities for a payment arrangement. The landlord's circumstances and opportunity for mortgage relief through their financial provider by way of a freeze or reduced payments, or land tax and income tax relief (if applicable) must also be considered.

Fair Trading requires landlords and tenants to approach negotiations with an open mind and an empathetic ear. Understanding of both the tenant's and landlord's financial position will help to ensure a workable outcome.

Parties should be prepared to look at a range of options where these are affordable, such as but not limited to:

- providing a full or partial rent waiver;
- reducing rent in a manner that reflects the tenant's reduction in income;
- agreeing to a longer repayment period for tenants to repay arrears;
- waiving arrears;
- allowing the tenant to end a fixed-term agreement early, possibly without or with a reduced penalty or by applying the break fee formula that applies in agreements entered into after 23 March 2020 to earlier agreements.

Step 3: Outcome

Parties should put any agreement in writing.

Agreements can include the deferral of rent to a later date or waiver of rent. The exact terms of each agreement will be dependent on the circumstances of each tenant and landlord. Details to consider including are as follows:

- date
- details of the tenancy agreement to which the agreed arrangement applies
- the amount of rent due under the agreement **and** the new amount agreed
- when the agreed rent starts and the payment frequency (for example, fortnightly/monthly)
- how long the agreed rent will be in place
- when will the agreed rent be reviewed
- what happens when the period for the agreed rent expires (for example, reverts to the amount payable under the tenancy agreement)

Template letters

For tenants

We have created a template letter for tenants to help them when approaching landlords to request rent reduction. We have also created an example below.

The letter should include:

1. your original household income
2. your change in circumstances due to COVID-19 and how this has impacted on your household income
3. the rent payment you would be able to meet under your new household income
4. any income support you receive

Tenant template letter

Tenant example letter

For landlords when responding to a tenant

All landlords must be prepared to negotiate rent payments with tenants experiencing financial hardship due to the COVID-19.

To help with this, we've created a template you can use when responding to rent reduction requests. We have also created an example.

The response letter should also include:

1. your financial situation - be open and honest about your financial situation, including whether you rely on the rental income to cover mortgage repayments or other expenses.
2. your conversations with your lender - outline the result of conversations you've had with your lender about waiving or reducing your own mortgage repayments.
3. the rent payment that you would be able to accept
4. clarify how much of the rent payment loss (arrears) will be waived and how much will need to be repaid

Landlord template letter to tenant

Landlord example letter to tenant

For landlords when talking to their financial institution

Landlords are encouraged to approach their financial institutions to seek a mortgage freeze or reduced repayments as part of the negotiation discussions with their tenant/s.

We have created a template you can use when approaching your lender. We've also created an example (below).

The letter should include:

1. your financial situation
 - be open and honest about your financial status and include information about any applications you have made for financial assistance from those listed on the Financial support page of nsw.gov
 - if you rely on the income from your rental property to help pay for the mortgage, and are negotiating with your tenant about rent payment, this should be outlined in your request together with evidence of what you've done so far.
2. mortgage waiver or reduced payment you are seeking
 - you should detail the mortgage amount you are able to pay until you or your tenant resume normal employment arrangements.
3. clarify whether your rental payment losses (arrears) will be waived or repaid under a repayment plan with your tenant once the COVID-19 emergency is over.

Landlords who aren't satisfied with the response from their financial institution have the option of accessing their institution's internal dispute resolution service.

Check the financial institutions website for contact details.

If a landlord is not satisfied with the outcome of the internal dispute resolution process, they have the option of lodging a complaint with the Australian Financial Complaints Authority.

Template letter from landlord to financial institution

Example letter from landlord to financial institution

Important questions you may have

Does the tenant need to pay back the rental arrears or will the amount be waived?

The amount of rent arrears accrued by a tenant who has negotiated reduced rent will not automatically be waived. Whether rental arrears will be waived or reduced is subject to negotiation between the tenant and the landlord (with assistance from Fair Trading's dispute resolution process as required).

I am a landlord. Do I need to provide any proof as a part of the rent negotiation process?

Evidence would be required by both parties to support the rent negotiation process.

Landlords' evidence could include:

- negotiation with their banks on mortgages,
- all applications for financial assistance listed on the Financial Support page of nsw.gov
- evidence of how they have been financially impacted by COVID-19

What happens once the interim 60 day stop ends?

Once the interim 60 day stop has ended, a tenant(s) who is still unable to meet their rental obligations due to COVID-19 can only have their tenancy terminated on the basis of rental arrears if the landlord has attempted to negotiate reduced rent in good faith but the tenant has failed to do so.

Can a tenant and landlord still end a tenancy if they agree?

Yes. A tenant and landlord can agree to end a tenancy and decide when and how this is to happen.

Are sub-tenants covered by the stop on evictions?

The stop on evictions applies to sub-tenants who are unable to meet their rental obligations and who are covered by the *Residential Tenancies Act 2010*. This means tenants of a property which is subject to a written residential tenancy agreement and where the tenant is either:

- a sub-tenant under a written residential tenancy agreement with the tenant named in the main tenancy agreement (the 'head tenant'), or
- a tenant named on the main written tenancy agreement that applies to the property.

Can I still end my tenancy using the required notice periods and not negotiate with my landlord?

Yes. Tenants who do not wish to stay in their premises can terminate using the existing notice period required for their specific agreement.

Tenants seeking to end a fixed term agreement early may be required to pay break fees under their agreement. Details about ending a fixed term agreement early are outlined on the Fair Trading website.

Why are we not protected from the six month eviction moratorium?

The package announced is designed to support tenancies to continue wherever possible.

The new laws will provide a six month moratorium on landlords giving termination notices, or making applications for forced evictions, due to rental arrears for tenants who are impacted by COVID-19, provided both parties seek to find a mutually workable solution.

The new laws allow landlords, after the 60-day stop, to seek to terminate a COVID-19 impacted tenancies for rental arrears **but** this can only occur if they have tried to negotiate a rent reduction with the tenant in good faith and seeking a termination is fair and reasonable in the circumstances of the specific case.

What if the landlord refuses to negotiate and we can't reach an

agreement?

The landlord and tenant should both attempt in good faith to negotiate a reduction in rent.

NSW Fair Trading provides a dispute resolution process that landlords and tenants can use if they can't reach an agreement themselves.

Fair Trading will request evidence from the tenant about their previous income and current income from all sources, including any Government income support. Information will also be sought about any application the tenant has made for income support.

Tenants need to have an idea of how much rent they can pay when considering negotiations. Fair Trading will then contact the landlord to seek a mutual agreement on a temporary arrangement for the payment of rent.

Is income calculated before or after tax?

When determining whether a tenant meets the COVID-19 impact test, the income received is the money coming into the tenant's bank account **after** tax.

How does the test apply to group houses where not all rent paying tenants have been affected by COVID-19?

The COVID-19 impact test applies to the total income of all members of the household who pay rent, inclusive of any government assistance, such as the new job keeper payments.

Will my landlord insurance cover my rental losses?

Landlords should check their insurance policy to see whether they are covered for rental default. Different policies will have different limits and requirements.

Many insurers are adopting new procedures to deal with the impacts of COVID-19, and may require evidence that the landlord has attempted to negotiate with the tenant.

Can landlords and agents list a tenant on a tenancy database where the tenancy was terminated due to rental arrears and the tenant was impacted by COVID-19?

No. The new rules do not allow landlords or agents to list a tenant on a tenancy database because the tenant failed to pay rent or charges where that failure was due to the tenant being impacted by COVID-19.

Assistance for landlords on meeting rent reductions

Landlords in financial hardship are encouraged to work with their tenants to negotiate a mutually beneficial outcome.

If this is possible, landlords should have a greater capacity to agree to a reduced rent or charges for a period of time.

The immediate 60-day stop on evictions will also allow time for the tenants to access Government income support and may allow tenants to resume paying existing rent.

Other important questions to consider

I am a tenant in social housing. Does the stop on evictions apply to me?

Social housing providers have their own processes for dealing with rental arrears and are not covered by the new provisions.

What support is available for commercial leases?

For information about commercial leases and COVID-19, see [commercial leases FAQs](#)

Let me know if you would like some perhaps less relevant questions removed and replaced with these.

Will landlord insurance cover rental losses?

Landlords should check their insurance policy to see whether they are covered for rental default. Different policies will have different limits and requirements.

Many insurers are adopting new procedures to deal with the impacts of COVID-19, and may require evidence that the landlord has attempted to negotiate with the tenant.

Can tenants be encouraged to look at accessing their super to pay rental arrears?

Agents and landlords must not encourage tenants to access their super early to cover any rental arrears.

This could constitute unlicensed financial advice and may not be in the best interests of the tenant.

Financial advice must only be provided by qualified and licensed financial advisers or counsellors, not by agents or landlords.

I am a landlord and I want to sell my tenanted property

Landlords can still use the usual termination process where they wish to sell their premises.

Example scenarios

Reduced income together with income support resulting in less than 25% loss of income

- A tenant pays \$300 per week in rent under their tenancy agreement
- The tenant earned \$800 per week but lost their income as a sole trader due to the impacts of COVID-19 business closures on their business, following public health orders
- The tenant now receives income support of around \$1,500 per fortnight, or \$750 per week, paid through their employer*
- The tenant's lost income per week is \$50 per week, which is less than 25% of the tenant's original income.
- The stop on termination notices and applications for eviction orders due to rental arrears does **not** apply to this tenant.

Increase in income due to government support payments

- A tenant pays \$300 per week in rent under their tenancy agreement
- The tenant earned \$650 per week but lost their job due to business closures following public health orders
- The tenant now receives income support of around \$1,400 per fortnight, or \$700 per week, paid through their employer
- The tenant's income has now increased as a result of the Commonwealth payment: instead of \$1,300 per fortnight, they now earn \$1,400 per fortnight*
- The stop on termination notices and applications for eviction due to rental arrears does **not** apply to this tenant, because there has been no reduction in their total income.

Tenant and co-tenant in a family household. The tenant loses income and gets income support

- A family pays \$750 per week in rent in total and the adults are co-tenants under their tenancy agreement
- Tenant A earns \$1,000 per week, while their partner tenant B earns \$500 per week
- Tenant A loses their job due to business closures, but is receiving a government payment of around \$1,100 per fortnight or \$550 per week*
- There is no impact on tenants B's income
- The lost household income is equal to \$450, which is equal to 30% of the original household income
- The stop on termination notices and applications for eviction orders due to rental arrears applies to this household.

Tenant is sole breadwinner, tenant loses income and gets income support

- A tenant pays \$600 per week in rent under their tenancy agreement and is the sole breadwinner for the family
- The tenant loses their job due to the business closures following the public health order announcements. The tenant's income was previously \$1,000 per week
- The tenant receives income support payments from the government of around \$1,500 per fortnight, which equals \$750 per week*
- The loss in household income is equal to \$250 per week which is 25% of the original household income
- The stop on termination notices and applications for eviction orders due to rental arrears applies to this household.

Share household where all tenants are on the main lease

- Two friends share a house and are named on the lease.
- The rent is \$1000 per week
- Tenant A earns \$1200 per week and tenant B earns \$800 per week, making a combined household income of \$2000 per week
- Tenant A loses their job and now receives \$1115 per fortnight which is around \$557 per week.
- The combined income of the household is now \$1357 per week
- The loss in income is \$643 per week, which is 32% of the original household income.
- The stop on termination notices and applications for eviction orders due to rental arrears applies to this household

Share household with head tenant and sub-tenant on a written lease with head tenant

- Two friends share a house and the rent payable on the main lease is \$1000 per week
- Tenant A is the head tenant and has a written sub-tenancy agreement with Tenant B
- Tenant A earns \$1200 per week and tenant B earns \$800 per week, making a combined household income of \$2000 per week
- Tenant A loses their job and now receives \$1115 per fortnight which is around \$557 per week.
- The combined income of the household is now \$1357 per week
- The loss in income is \$643 per week, which is 32% of the original household income
- The stop on eviction orders being issued due to rental arrears applies to Tenant A's agreement with the landlord
- As Tenant B's income has not changed, the stop on notices for termination and eviction does not apply to Tenant B's sub tenancy agreement with tenant A.

I need more support and information

Trained dispute resolution officers in Fair Trading are available to help landlords, managing agents and tenants to negotiate temporary changes in rental arrangements, if agreement cannot be reached between parties.

When you seek assistance with negotiations, we may need to obtain some initial information before it can schedule a time to discuss the matter with both parties.

How to seek help

If you have attempted to negotiate a rental plan without success you can apply for assistance by completing the Tenancy Complaint Form.

Apply for assistance

<https://www.fairtrading.nsw.gov.au/resource-library/publications/coronavirus-covid-19/property/moratorium>

Except where otherwise noted, content on this site is licensed under a Creative Commons Attribution 4.0 International License. To view a copy of this licence, visit:

<https://creativecommons.org/licenses/by/4.0>

11-05-20