

Six-month moratorium on residential tenancy evictions during COVID-19

New measures

The NSW Government is introducing an interim 60-day stop on landlords seeking to evict tenants due to rental arrears as a result of COVID-19, together with longer six month restrictions on rental arrears evictions for those financially disadvantaged by COVID-19.

Coronavirus (COVID-19) has already had a significant impact on the economy, meaning some tenants are having difficulty keeping up with rent payments. The NSW government is introducing measures to help landlords and tenants work together.

The new measures include an interim 60-day stop on landlords issuing termination notices or applying for 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 seek to give a termination notice or apply for an eviction after the interim 60-day stop if it is fair and reasonable in the circumstances of the specific case.

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

Along with these restrictions on evictions for rental arrears, the Government will be extending the notice periods for certain other lease termination reasons to 90-days.

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.

Eligibility

To meet the requirements for 60-day stop on evictions and the longer 6 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 employment or income) due to COVID-19 business closures or stand-downs, 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 or due to COVID-19 carer responsibilities for household or family members, and
3. The above factors result in a household income, inclusive of any government assistance, that is reduced by 25% or more.

Important

All tenants who are not impacted by COVID-19 are expected to honour their existing tenancy agreements including paying all rent and charges in full.

FAQs

Why is there a moratorium (stop/ban) on rental evictions?

The NSW government is introducing measures to help landlords and tenants work together where they are unable to meet their rental obligations due to COVID-19.

COVID-19 has already had a significant impact on the economy, resulting in some tenants experiencing difficulty in keeping up with rent payments.

It is important that tenants and landlords are supported to continue tenancies wherever possible, while Government financial support gets to those who need it.

It is also important that any disruption and movement caused by an eviction is limited to minimise public health risks while public health orders are in place.

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.

Does the moratorium on evictions due to rental arrears apply to my tenancy agreement?

The moratorium on termination notices and eviction orders being issued due to rental arrears only applies if the tenant is impacted by COVID-19.

This is defined as:

- a. One or more rent-paying members of a household have lost work or income or had a reduction in work or income due to COVID-19 business closures or stand-downs; or
- b. One or more rent-paying members of a household have had to stop working or reduce work hours due to illness with COVID-19 or due to COVID-19 carer responsibilities for family members; and
- c. The matters above result in a reduction in the household income inclusive of any government assistance of 25% or more.

Normal eviction processes apply if the tenant is in rental arrears but does not meet this definition of being impacted by COVID-19.

What proof does a tenant need to show they are impacted by COVID-19?

The 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.

What do the changes mean for tenants who are impacted by COVID-19?

The new rules put an immediate interim 60-day stop on termination notices and Tribunal applications for terminations based on rental arrears where a tenant is unable to meet their rental obligations due to being impacted by COVID-19.

This will allow time for tenants to receive Government income support and for landlords to negotiate a reduction or waiver of mortgage repayments with their lender.

It will also allow time for tenants and landlords to negotiate possible reductions in rent if needed. A dispute resolution process is available through NSW Fair Trading if no agreement can be reached or where the landlord or tenant would prefer to use this option.

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*. These are tenants where the property is subject to a written residential tenancy agreement and:

- are a sub-tenant under a written residential tenancy agreement with the tenant named in the main tenancy agreement, or
- a tenant under the main written tenancy agreement has transferred the tenancy to them.

However, share housing tenants will need to negotiate with each other to maintain rental payments in accordance with any agreement with the main landlord and avoid termination.

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 eviction for six months as was announced following the National Cabinet meeting recently?

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 household income, inclusive of any government assistance, such as the new job keeper payments.

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 is subject to negotiation between the tenant and the landlord (with assistance from Fair Trading's dispute resolution process as required).

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.

I am a landlord, but I can't afford to provide a reduction in rent

Landlords should seek to negotiate with their lender to try to obtain an agreement to waive or reduce mortgage repayments. Many lenders are offering to reduce or waive payments at this time.

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.

I am a landlord and am facing significant hardship

Landlords should seek to negotiate with their lender to try to obtain an agreement to waive or reduce mortgage repayments. Many lenders are offering to enter flexible arrangements with mortgage holders due to the COVID-19 crisis.

Landlords are still able to apply to the Tribunal to end the tenancy where there is undue hardship.

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.

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.

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 new resources will be available to me to assist in this process?

New information on tenancy and COVID-19, including frequently asked questions, is available for both landlords and tenants on the NSW Fair Trading website.

Trained dispute resolution officers in Fair Trading are also 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, Fair Trading may need to obtain some initial information before it can schedule a time to discuss the matter with both parties.

How do I access support and information?

The NSW Fair Trading website has a dedicated page with information on tenancy and COVID -19.

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

If you have attempted to negotiate a rental plan with your landlord without success you can apply for assistance.

When can I access this scheme?

NSW Fair Trading is immediately available to assist with advice and rent negotiations. When you seek assistance with negotiations, Fair Trading may need to obtain some initial information before it can schedule a time to discuss the matter with both parties.

How long is the process to apply and complete negotiation with FT?

Applicants can complete the online Tenancy Complaint form to apply for assistance from FT.

The Department will be treating negotiation requests as a matter of priority and will respond as quickly as possible. The timing for each negotiation process will be largely influenced by the demand for the service as well as whether parties can provide the requested information in a timely manner.

Example scenarios

Example 1: 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.

Example 3: 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.

Example 4: 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.

Example 5: 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.

Example 6A: 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

Example 6B: 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.

*** Government payments are example amounts only**

Different Government payments will apply for different individual or household situations. Visit the [Australian Government Treasury website](#) for more information on payments.