

Moratorium on Evictions in NSW

This factsheet is not legal advice. The legal information contained in this document is current as at 16 April 2020.

Frequently Asked Questions

The NSW Government has introduced new laws that prevent some tenants being evicted during the coronavirus pandemic. Marrickville Legal Centre's Tenants' Services have broken down the laws to explain what the protections are and who they apply to. You can also find some practical tips about how to talk to your agent or landlord.

1. What are the protections?

There is an **interim 60 day stop** on landlords evicting tenants for rental arrears if their household has been financially impacted by coronavirus.

There is also a prohibition on listing a tenant on a tenancy database ('blacklisting') if the listing would be from rent arrears that are the result of being financially impacted by coronavirus.

2. Do the protections apply to me?

The 60 day stop on rent arrears evictions will apply to tenants who live in a household where:

- One or more people who pay rent have lost or have reduced income due to coronavirus; **and**
- The weekly income for the household has been reduced by 25% or more.

3. What happens to my rent?

Landlords are not required to agree to a reduced rent, but they must enter into a **good faith** negotiation with you about the rent.

It will be up to the NSW Civil and Administrative Tribunal decide what 'good faith' means, however that a good faith negotiation should mean that the landlord:

- Considers information provided by the tenant about their loss of income and the rent that they can afford.
- Considers reasonable offers made by the tenant about an affordable rent
- Provides reasons and financial information if they will not agree to an offer
- Does not simply insist on a deferral of rent payments (a temporary reduction that the tenant has to pay back)

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Your rent will stay the same while you are negotiating with landlord or agent but you can suggest to the landlord or agent that any agreement to vary the rent should apply from the time that you lost income.

4. The landlord wants me to pay back the rent later on, do I have to agree to that?

The new laws do not prevent a landlord from asking you to repay rent at a later date.

However, the negotiation with the landlord has to be about a fair and reasonable rent. Our position as Tenants' Advocates is that is not fair and reasonable for a landlord insisting that a tenant repay all of the rent later. Having to repay a large debt in 3 or 6 months time would place many tenants in severe financial hardship and may mean that they still lose their tenancy.

The code of conduct for commercial tenancies suggests that the variation of the rent can be a mix of rent waiver and deferral, but the rent waiver has to be at least 50% of the variation. The commercial code of conduct won't apply to your tenancy, but it gives some guidance about what might be a reasonable offer from the landlord.

5. What happens if my landlord won't agree to vary the rent?

If the landlord and tenant can't agree a change to the rent, there will need to be a **formal rent negotiation** through the NSW Fair Trading dispute resolution service. Either the tenant or the landlord can contact Fair Trading and start that formal process.

NSW Fair Trading can't make binding decisions about a fair rent, but they will assist the parties to negotiate and give advice.

6. What happens after the 60 day stop on evictions?

After the end of the 60 day stop on evictions, the landlord can issue a 14 day notice of termination on the grounds of rent arrears if the tenant is more than 14 days behind in their rent. However, for the next 6 months the landlord will only be able to give that notice if:

- If it is after the 60 day stop on evictions has expired; and
- The landlord entered in good faith into a formal rent negotiation through NSW Fair Trading;
- It is fair and reasonable in the circumstances to terminate the tenancy.

7. Do I have to leave if I get a notice of termination for rent arrears?

If you are in an impacted household and you get a rent arrears notice of termination notice in the next 60 days, that notice is **invalid and unenforceable**.

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If you are in an impacted household and you are given a rent arrears notice after the end of the 60 days, **you don't have to leave** and you aren't doing anything wrong if you stay in the property.

The landlord will need to apply to the NSW Civil & Administrative Tribunal for an order terminating the agreement.

8. What will happen at the Tribunal?

If you are in an impacted household and your landlord applies to the Tribunal to terminate your agreement, the Tribunal will decide whether or not to evict you from the property.

The Tribunal has a choice whether or not to terminate your tenancy and can consider all the circumstances, including:

- Any advice provided by NSW Fair Trading about the landlord and tenant's participation in the formal rent negotiation process, including whether they refused reasonable offers.
- Whether the tenant was able to make any payment towards the rent
- Any financial hardship experienced by the landlord or tenant, including their general financial position.
- Any special vulnerability that the tenant has.
- The general public health objectives of keeping people in their homes.

The Tribunal can decide not to evict you from the property, but it cannot reduce your rent because of financial hardship and any rent arrears owed will be payable to the landlord.

9. What about other types of termination, can my landlord evict me for no reason?

The 60 day stop on evictions only applies to terminating a tenant in an impacted household on the grounds of rent arrears (or a failure to pay water or utility charges).

There is no prohibition on a landlord issuing a notice on 'no grounds' or for other reasons. However, for the next 6 months the notice period for some terminations has been extended to 90 days. That extension applies to:

- Termination at the end of the fixed term of an agreement
- Termination of a periodic tenancy (that was already a 90 day notice period)
- Termination for a breach of the tenancy agreement
- Termination of a tenancy of longer than 20 years.

Those extended notice periods apply to **all** tenancies in NSW, you **do not** need to be a tenant in a household that has been financially impacted by coronavirus.

10. This is a lot of legal information, but what should I be doing now?

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If you are a tenant in a household that is financially impacted by coronavirus, we think the practical first steps are to:

- Contact your agent or landlord and let them know that you have lost income and cannot afford the full rent.
- Provide them with information about your previous income and what your income is now.
- Have a look at your household budget and work out what you can afford to pay in rent. Paying more than 30% of your gross weekly income towards housing costs (rent, utilities etc) is rent stress. You can reasonably say to your agent or landlord that you can't pay more than 30% of what you are getting as income each week.
- Continue to pay an amount of rent that you can afford while you are negotiating.
- If the agent or landlord says that they cannot afford to vary the rent, ask them to provide specific information about the landlord's financial position. That could include information about:
 - Whether the landlord has a mortgage for the property
 - What the payments on the mortgage are and whether they have been deferred
 - What are the landlord's fixed costs for the property in the next 3 – 6 months (rates, maintenance etc)
 - Whether the landlord is eligible for the land tax relief announced by the NSW Government
- Be careful of agreeing a deferral of the rent, rather than a reduction. A deferral means that you have to pay back the rent at a later date and this may put you into severe financial distress.
- If the agent or landlord is insisting on a rent deferral, give them information about your likely income once the pandemic has passed and whether you could afford to make repayments on top of your weekly rent.
- If you can't reach an agreement on a new rent or if the agent or landlord is insisting that you pay back all the rent at a later date, contact the NSW Fair Trading dispute resolution service and ask them to help you negotiate a fair and reasonable rent.

11. My agent or landlord has asked me for a lot of details about my finances, can they do that?

The Australian Securities & Investment Commission has been very clear that agents and landlords cannot suggest that you should access your superannuation to meet rent payments. They can make you aware of the Government's scheme allowing early access, but anything beyond that may be unlicensed financial advice and they could face serious penalties including imprisonment.

There is no prohibition on agents or landlords asking for other types of financial information, such as your income or the amount of your savings in the bank.

However, our view is that the negotiation should be about the tenant's loss of **income** and the landlord's ongoing **expenses**. This is in line with the code of conduct introduced for commercial tenancies and the sort of information that tenants need to provide when they apply for a

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property. We do not believe it is fair and reasonable to require a tenant to spend all their savings to pay rent during the coronavirus pandemic.

12. Do you have any examples of how this all works?

NSW Fair Trading have published examples of how the laws will apply in different situations. You can see those examples at the end of the page [here](#).

We will provide more examples as we talk to tenants and get an idea of the most common or confusing situations.

13. How do I get more information and advice?

NSW Fair Trading has put an explanation of the new laws on its website and you can find that [here](#).

The Tenants' Union of New South Wales has excellent resources and explanations about renting under COVID-19. You find that information [here](#).

The Tenants' Union has also put up an analysis of the new laws and their concerns about what's missing from the protections. You can see that [here](#).

If you have read through this FAQ and looked at the information from the Tenants' Union and Fair Trading and you need advice about your situation, you can contact our service on 02 9559 2899 or [submit a web enquiry](#).

Marrickville Legal Centre is running a Facebook Live Q&A session on the new laws at 11am on Friday 18 April 2020.



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