

## **Tenants' rights in the COVID-19 context**

***This note has been written by Prakriti Bhatt, Wellington Community Justice Project. It covers general information about the temporary law changes affecting tenancies during the COVID-19 circumstances; information on moving tenancies at this time; the temporary freeze on rent increases; as well as information on terminating tenancies while COVID-19 lockdown measures are in place.***

### **Temporary changes to the law**

#### **How is my tenancy affected in the COVID-19 lockdown?**

This Guidance Note provides information on the changes to your rights and obligations as a tenant in the COVID-19 lockdown, particularly in the current Alert Level 4.

#### **What are the current changes to tenancy law?**

On 23rd March 2020, in response to COVID-19, the Government announced a freeze of rent increases and an extension of no-cause terminations. This has been applied as law through the [COVID-19 Response \(Urgent Management Measures\) Legislation Act](#). These new measures change the rules in the [Residential Tenancies Act 1986](#) (RTA) which affects landlords and tenants.

#### ***What kind of tenancies do the changes apply to?***

The termination measures and rent increase freeze apply to all residential tenancies, fixed term, periodic, and boarding houses. Since the RTA applies to public housing tenancies as well as the private rental market, these new changes also apply to Kāinga Ora and Community Housing Providers.

For more information, see the [Ministry of Housing and Urban Development's FAQs](#).

#### ***What do the changes mean for me?***

These new changes support you to stay in your rental property with a freeze on residential rent increases and give you greater protection against having your tenancy terminated. Your landlord could face exemplary damages of up to \$6,500 if they take steps to terminate your tenancy without grounds or if they attempt to increase your rent.

#### ***What are the key changes I need to be aware of?***

- There is now a freeze on rent increases.
- A rent increase notice from your landlord will not have the effect of increasing your rent, unless the rent increase has already taken effect.
- Tenancies will not be terminated during the lock-down period, unless both you and your landlord agree, or in limited circumstances, regardless of when notice was provided.
- You will still be able to terminate your tenancy as normal, if you wish.
- You will have the ability to revoke termination notices that you have already given, in case you need to stay in the tenancy during the lockdown period.

#### **When do these changes come into effect?**

These changes came into effect on 26th March 2020.

### ***How long will the changes remain in effect?***

The rent freeze applies for an initial period of six months from 26th March 2020.. The protections against terminations apply for an initial period of three months from 26th March 2020. At the end of both initial periods, the Government will evaluate whether they need to be extended.

### **Why have these changes been introduced?**

The purpose of these changes is to sustain your current residential tenancy to the greatest extent possible and to protect you from becoming homeless at this time. The Government is hoping that these changes will help ensure that:

- for public health reasons families and individuals are able to self-isolate, and to stay home and maintain physical distancing, and
- in the short term, families and individuals who are tenants do not lose their home due to a drop in income related to job losses through COVID-19.

The rent freeze will protect you from additional financial hardship at a time when you are more likely to already be facing financial stress.

For more information on the Alert Levels and about staying at home and self-isolating, see:

- <https://covid19.govt.nz/alert-system/covid-19-alert-system/>
- <https://covid19.govt.nz/individuals-and-households/health-and-wellbeing/staying-at-home-and-self-isolation/>

### **If I am a tenant currently self-isolating, do I have to inform anyone?**

You are under no obligation to tell your landlord if you are self-isolating or sick with COVID-19. During Alert Level 4, your landlord should not visit or enter the rental at all. If it is necessary to do urgent repairs at the property for essential services while you are self-isolating, and a tradesperson needs to attend the property, you should advise the landlord or tradesperson that you are currently self-isolating. You could also suggest to your landlord that they carry out virtual inspections if need be.

You should also make sure any co-tenants or flatmates are aware of the situation and how it will work.

For more information on virtual inspections, see:

<https://www.tenancy.govt.nz/maintenance-and-inspections/inspections/>

For self-isolation guidelines from the Government. see:

<https://covid19.govt.nz/individuals-and-households/health-and-wellbeing/self-isolation-advice-if-youre-unwell/>

### **If I am in a boarding house or share-house living arrangement, what does self-isolation mean for me?**

You still need to follow the self-isolation guidelines from the Government. For more information, see:

<https://covid19.govt.nz/individuals-and-households/health-and-wellbeing/self-isolation-advice-if-youre-unwell/>

Since you live in a boarding house, you should pay extra attention to the information on using shared facilities on the Ministry of Health website at the link below:

<https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-novel-coronavirus-health-advice-general-public/covid-19-self-isolation-close-contacts>

If your landlord has changed the house rules to include the self-isolation guidance, you must comply with the house rules and this may help reinforce the self-isolation requirement.

### **If self-isolation in my tenancy is not possible, what are my options?**

If you are in a tenancy where a number of people are living with you at one address, and if self-isolation is not possible, then you might have access to the temporary accommodation service for self-isolation set up by the Ministry of Business, Innovation & Employment (MBIE). To access this service, you need to register your details by calling MBIE on 0508 754 163. After registering, you will be contacted by a temporary accommodation staff member who will assess your needs and work with you to help you find suitable temporary self-isolation accommodation.

For more information on the temporary accommodation service by MBIE, see:

<https://temporaryaccommodation.mbie.govt.nz/covid-19/>

### **What happens to me if my fixed term lease comes up for renewal during this period?**

Under the new law, fixed term tenancies become periodic tenancies upon expiry of the fixed term. This means that if your fixed term expires during lockdown, you can continue to stay in your current tenancy.

### **What happens to me if the rental property I am living in is purchased by another buyer through conventional means or through a mortgage sale?**

During the period that these changes to tenancy law apply, your tenancy continues and the new buyer becomes your landlord.

For more information, see the [Ministry of Housing and Urban Development's FAQs](#).

## *Moving tenancies*

### **What happens if I am due to move out from my current rental property?**

Under the temporary changes to the law, if you had already given notice to leave your current rental property before the Alert Level 4 lockdown came into place, you can withdraw that notice. If your landlord had already given a rent-increase or termination notice that came into effect after 26th March 2020, it is of no effect (provided that you were living at the property on that date). You should consider staying in your current rental property if possible.

For more information, see the [Tenancy Services website](#).

### **Can I move into a new rental property at this time?**

Under the temporary changes to the law, you still retain your existing rights under the RTA and you may still be able to move into a new rental property. However, this may be more difficult in the current circumstances. Moves can occur in very exceptional situations and when you would otherwise have nowhere else to live. You should only move if it is absolutely essential. Examples where moves may be essential include:

- a New Zealander returning to the country may need to begin a new tenancy;
- family violence may create an essential need to move;
- a tenant's current rental property may become uninhabitable, e.g., a catastrophic plumbing leak.

While moving, you must take extreme care not to violate any Alert Level rules or Ministry of Health guidelines. For example:

- If you need to sign a tenancy agreement, this should be done digitally.
- Take extreme care when transferring keys. Property managers are not classified as an essential service so they cannot go into offices to pick up keys during Alert Level 4. Transfer can only happen if there are keys available at their homes. Physical distancing must be maintained and keys should be sanitised.
- You can only move in a private vehicle with only members of your own household. You cannot hire a moving service during this time. You must move without contact or assistance from other people.

For more information on the Alert Level rules, see:

<https://covid19.govt.nz/alert-system/>

### **Can I still move rental properties if I am in self-isolation with a suspected or confirmed case of COVID-19?**

You should follow the Ministry of Health guidelines and stay self-isolated in your current property until you are recovered if possible. For more information on self-isolating if you are unwell, see:

<https://covid19.govt.nz/individuals-and-households/health-and-wellbeing/self-isolation-advice-if-youre-unwell/>

If self-isolation in your current tenancy is not possible, then you might have access to the temporary accommodation service for self-isolation set up by the Ministry of Business, Innovation & Employment (MBIE). For more information on the temporary accommodation service, see::

<https://temporaryaccommodation.mbie.govt.nz/covid-19/>

**What if I have already signed the lease on a new place but can no longer move into it due to movement restrictions? Will I have to pay two sets of rent?**

If you gave notice on your current tenancy and you now need to stay, you can withdraw your notice. If your landlord gave notice on your current place, that notice is no longer valid unless you both agree otherwise. This means that your current tenancy agreement is able to continue. You should stay in your current rental property if possible.

***What if my new tenancy was to be a periodic tenancy and I do not want to move into it after the lockdown has lifted?***

You can give 21 days' notice on it. You may have to pay double rent during this time, but you should see if you can come to an arrangement with the landlord.

***What if my new tenancy was to be a fixed term tenancy and I want to end it?***

You should try to come to an arrangement with the landlord to cancel it. If you cannot come to an agreement, you should apply to the Tenancy Tribunal under the grounds of unforeseen hardship to reduce the term of the tenancy. See the link below for more information on ending a fixed term tenancy on grounds of unforeseen hardship:

<https://www.tenancy.govt.nz/ending-a-tenancy/ending-a-fixed-term-early/#tenancy-tribunal>

## *Temporary rent freeze*

### **What if I had already negotiated a rent increase with my landlord prior to the Level 4 lockdown?**

If you had negotiated a rent increase with your landlord, or if your landlord had served a rent increase on you, but this did not come into effect until after 26th March 2020, then that increase is of no effect. Your current rent remains frozen for an initial period of six months from 26th March 2020, i.e., up till 25th September 2020. At the end of this initial period, the Government will evaluate whether it needs to be extended. Your landlord could face a fine of up to \$6,500 if they attempt to increase your rent in this period.

### **Does a rent freeze mean that I am not required to pay rent for six months?**

No, you are still required to meet all rental requirements outlined under your rental agreement to the best of your abilities. Under the temporary changes to the law, your landlord will not be able to increase rent for a period of six months from 26th March 2020. The move to freeze rent increases is recognition of the unprecedented and uncertain economic conditions that New Zealand now faces and is aimed at providing tenants with more certainty in the coming months.

### **What should I do if I am currently having trouble paying rent?**

If you cannot pay your rent you should inform your landlord straight away. Be honest about the situation and see if you can agree on a payment plan. Once you reach an agreement with your landlord, you could have this formalised using [Tenancy Services' FastTrack Resolution process](#).

### **If I am going to continue having trouble paying rent, what are my options?**

If you are likely to continue having trouble paying rent, you could:

- get financial support from the Government's Wage Subsidy and Leave Payment scheme that is available to eligible employers and workers; or
- get in touch with budgeting services, Work and Income, or other agencies to see what support is available.

For more information on Government support, see:

- <https://www.employment.govt.nz/leave-and-holidays/other-types-of-leave/coronavirus-workplace/wage-subsidy/>
- <https://workandincome.govt.nz/products/a-z-benefits/covid-19-support.html>
- <https://workandincome.govt.nz/products/a-z-benefits/covid19-wage-subsidy.html>
- <https://workandincome.govt.nz/eligibility/emergencies/2020/coronavirus.html>

### **Can my tenancy be terminated for rent arrears?**

For three months from 26th March 2020, landlords cannot apply to the Tenancy Tribunal to end the tenancy for rent arrears unless the tenant is at least 60 days behind in rent. The Tribunal must consider whether it would be fair in the circumstances to terminate the tenancy, taking into account whether the tenant made reasonable efforts to pay rent.

For more information on terminating a tenancy, see:

<https://www.tenancy.govt.nz/ending-a-tenancy/giving-notice-to-end-tenancy/>

## **Do I continue to remain liable for rent arrears?**

Under the temporary changes to the law, you must still meet all your other obligations under the [RTA](#). You are still liable to pay your rent and your landlord is entitled to ask you to pay what is due. If there are any disputes about the amount owed, you and your landlord should first discuss this and attempt to reach a resolution. If you cannot reach an agreement, your landlord can seek a monetary order from the Tribunal for rent arrears and overdue rent even though they cannot currently ask the Tribunal to terminate the tenancy if the rent is less than 60 days in arrears. For more information on rent arrears and overdue rent, see:

<https://www.tenancy.govt.nz/rent-bond-and-bills/rent/overdue-rent/>

## Terminating tenancies

### Have my rights and obligations in relation to terminating a tenancy been changed in any way?

No, your rights and obligations in relation to terminating a tenancy remain unchanged. You will still be able to terminate tenancies as usual. For more information on terminating a tenancy, see:

<https://www.tenancy.govt.nz/ending-a-tenancy/giving-notice-to-end-tenancy/>

### Under what circumstances can my landlord end my tenancy?

Under the temporary law changes, landlords will not be able to end existing tenancies regardless of when the notice was provided, except for some very limited circumstances. If your landlord wants to end a tenancy during this period, both you and your landlord must agree or other limited circumstances need to apply. The Tenancy Tribunal will act as a check to ensure that the limited and specific termination grounds are being used lawfully.

#### *During this time, your landlord can only end your tenancy if you:*

- substantially damage the premises; or
- assault or threaten to assault your landlord, their family, or the neighbours; or
- abandon the property; or
- engage in significant antisocial behaviour (defined as harassment; or any intentional act, if the act reasonably causes significant alarm, distress, or nuisance); or
- are 60 days behind in rent, which is increased from 21 days (and the Tribunal will need to take into account fairness and whether you are making reasonable efforts to pay the rent).

Tenancies will also be able to be terminated upon your death if you are a sole tenant, or where the premises are uninhabitable.

### Is this the same for terminations in boarding houses?

While there is a temporary freeze on terminations in boarding houses as for other tenancies, it is with exemptions that are slightly different, to cover situations where other occupants may be put in danger (for example, if a tenant has threatened other tenants or caused significant damage, or breached self isolation requirements.) In these situations there will be a mandatory 28 day notice period, which is the maximum current notice period under the RTA. In most cases, your landlord will be able to issue a boarding house termination by notice in order to manage the safety and security of all tenants in a shared boarding house tenancy. A boarding house landlord will still need to go to the Tenancy Tribunal to terminate a tenancy because of rent arrears or antisocial behaviour.

### If I am a student, do I have to leave my rental property and return home?

No, there are no specific provisions relating to students. Tenancies can only be terminated according to the grounds outlined above or by mutual agreement.

For more information, see the [Ministry of Housing and Urban Development's FAQs](#).

### What if my landlord had already served me with a termination notice and the eviction process has already been started?

If your landlord had already given a termination notice that came into effect after 26th March 2020, this notice is of no effect. You can continue living at your current rental property. You are protected

against no-cause termination for an initial period of three months starting from 26th March 2020. At the end of this initial period, the Government will evaluate whether it needs to be extended. Your landlord could face a fine of up to \$6,500 if they take steps to terminate your tenancy without grounds in this period.

### **What if I am a fixed term tenant who was served a termination notice or a notice about not extending my tenancy and now have nowhere to go?**

Under the temporary changes to the law, fixed term tenancies become periodic tenancies upon expiry. If your landlord had already given a rent-increase or termination notice that came into effect after 26th March 2020, this notice is now of no effect. This means you can continue to stay in your current rental property.

If, however, you are served a termination notice under one of the termination grounds that apply under the temporary changes to the law, you could approach Work and Income to find accommodation at the link below:

<https://www.workandincome.govt.nz/providers/housing-providers/emergency-housing/index.html>

### **What if there is an order from the Tribunal terminating my tenancy?**

Under the temporary changes to the law, existing Tenancy Tribunal termination orders are temporarily suspended if all of the following apply:

- The Tenancy Tribunal order was made before 26th March 2020;
- It took effect on or after 26th March 2020;
- It was **not** made for one of the following reasons:
  - the death of a sole tenant, or
  - non-payment of rent, or
  - damage or assault, or
  - because of a breach, the property is uninhabitable, or
  - the property has been abandoned; and
- The tenant was still residing at the premises on 26th March 2020.

In these situations, that order is suspended until the 15th day after the three-month initial period during which the protections against termination apply. This means that the termination order is suspended until 15 days after 25th June 2020.

For more information see the [Tenancy Services website](#).

### **What if I am living in a boarding house tenancy?**

For more information on how Tenancy Tribunal rules apply to boarding house tenancies, see:

<https://www.tenancy.govt.nz/ending-a-tenancy/giving-notice-to-end-tenancy/ending-a-boarding-house-tenancy/>

### **Can I get evicted because I am a suspected or confirmed case of COVID-19?**

Your landlord is not allowed to terminate your tenancy on the basis that you have contracted or are symptomatic of COVID-19. Under the temporary law changes, it is unlawful to terminate a tenancy without grounds and your landlord could face a fine of up to \$6,500 if they take steps to do so in this period.

Discrimination against prospective tenants or tenants is unlawful under the RTA when it breaches the [Human Rights Act](#). For example, it is unlawful to:

- not grant a tenancy to a person for any of the prohibited grounds of discrimination, for example because of their race, nationality, or disability. Disability includes physical illness, or the presence in the body of organisms capable of causing illness. This includes COVID-19.
- discriminate when deciding to continue, extend, renew, vary, or to end a tenancy.

For more information on discrimination, see:

<https://www.tenancy.govt.nz/starting-a-tenancy/tenancy-agreements/discrimination/>

If you believe you are being unlawfully discriminated against due to your illness, irrespective of whether your tenancy is covered by the RTA or not, you can make a complaint with the Human Rights Commissioner. For more information on the process to make a complaint, see:

<https://www.hrc.co.nz/enquiries-and-complaints>

### **Can my boarding house tenancy be terminated if I am a suspected or confirmed case of COVID-19?**

If you or your co-tenant has symptoms of or tests positive for COVID-19, this is not in itself grounds for terminating a tenancy. However, other residents are likely to be required to self-isolate under the Ministry of Health guidelines. Health officials may temporarily move you to another accommodation to self-isolate, if available.

You may also have access to the temporary accommodation service for self-isolation set up by the Ministry of Business, Innovation & Employment (MBIE). To access this service, you need to register your details by calling MBIE on 0508 754 163. After registering, you will be contacted by a temporary accommodation staff member who will assess your needs and work with you to help you find suitable temporary self-isolation accommodation. For more information on the temporary accommodation service by MBIE, see:

<https://temporaryaccommodation.mbie.govt.nz/covid-19/>

### **Can my landlord evict me so that they can move into the home?**

To ensure that people have certainty in their living situation as we go through these unprecedented times, you cannot be evicted because your landlord or their family wish to move in. The focus of the new law at this stage is to ensure as little disruption as possible and keep everyone in stable housing regardless of tenure.

For more information, see [the Beehive's Q&A sheet](#).

### **What if I am having difficulty with my landlord?**

You should talk to your landlord, work together and take care of each other wherever possible. Try to come to an arrangement that suits everyone.

If you cannot reach an agreement you can apply for mediation through the Tenancy Tribunal. However, there may be some delays with applications to the Tenancy Tribunal and mediation services during this time. For more information on how the Tenancy Tribunal is operating during the COVID-19 lockdown, see:

<https://www.tenancy.govt.nz/disputes/tribunal/how-the-tenancy-tribunal-will-operate-during-covid-19/>

If the situation is an emergency, contact the Police.