

Tenants' rights in the COVID-19 context

This note has been written by Prakriti Bhatt, of the 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 measures are in place. This information pertains to the current Alert Level 2 and is up to date as of 4 June 2020.

Last reviewed 4 June 2020

Temporary changes to the law

What are the current changes to tenancy law?

On 23 March 2020, in response to COVID-19, the Government announced a temporary freeze on rent increases and temporary limits on tenancy terminations. This has been applied as law through the [COVID-19 Response \(Urgent Management Measures\) Legislation Act 2020](#). These temporary new measures change the rules in the [Residential Tenancies Act 1986](#) (RTA) which affects landlords and tenants.

What kind of tenancies do the temporary changes apply to?

The changes to tenancy terminations and the freeze on rent increases apply to all residential tenancies including fixed term and periodic leases as well as boarding houses. Since the [RTA](#) applies to public housing tenancies as well as the private rental market, these new temporary changes also apply to Kāinga Ora and Community Housing providers.

For more information on changes to the temporary tenancy law under Alert Level 2 restrictions, see the [Ministry of Housing and Urban Development's Residential Tenancies Questions and Answers](#).

What do the temporary changes mean for me as a tenant?

These new changes support you to stay in your rental property by temporarily freezing your landlord's ability to increase your rent and give you greater protection from having your tenancy terminated. Your landlord could face a fine 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 temporary changes I need to be aware of?

- There is now a freeze on rent increases. The rent freeze applies for an initial period of six months from 26 March 2020, i.e., until 25 September 2020.
- A rent increase notice from your landlord will not have the effect of increasing your rent during this period.
- Tenancies cannot be terminated for an initial period of three months from 26 March 2020 (i.e., until 25 June 2020), unless both you and your landlord agree to the termination and in some limited circumstances, regardless of when notice was provided.
- You can terminate your tenancy as normal, if you wish.

When did these changes come into effect?

These changes came into effect on 26 March 2020.

How long will the changes remain in effect?

The rent freeze applies for an initial period of six months from 26 March 2020. i.e., until 25 September 2020. The protections against terminations apply for an initial period of three months from 26 March 2020, i.e., until 25 June 2020. At the end of both initial periods, the Government will evaluate whether they need to be extended.

Why were these changes introduced?

The purpose of these changes is to sustain current residential tenancies to the greatest extent possible and to protect tenants from becoming homeless at this time. These changes will help ensure that:

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

The rent freeze will protect tenants from additional financial hardship at a time when they may 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 because I am a suspected or probable case of COVID-19, do I have to inform anyone?

You are under no obligation to tell your landlord if you are sick with COVID-19.

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 you are required to self-isolate but it is not possible at your property, then you may be eligible for 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 if appropriate.

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

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

Will I have to pay rent for the temporary accommodation for self-isolating?

Yes, there is a cost for this service and the Government will work with each individual or household who uses the service on how to meet this cost. If you are a New Zealand citizen or resident on a low income or benefit, you can contact [Work and Income](#) to see if you are eligible for support. If you do not ordinarily reside in New Zealand, please contact your embassy or consulate for further assistance. A list of foreign representatives to New Zealand can be found on the Ministry of Foreign Affairs website at the link below:

www.mfat.govt.nz

If you cannot meet the costs for temporary accommodation yourself or through the support of other agencies, you will still be supported through the service with suitable temporary accommodation. This helps ensure the safety and wellbeing of everyone in the response to COVID-19. You can register your details by calling 0508 754 163.

For more information, the [Ministry of Housing and Urban Development's Residential Tenancies Questions and Answers](#).

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 while the temporary changes in the law subsist, you can continue to stay in your current tenancy.

Can routine inspection and maintenance repairs of the rental property be undertaken in Alert Level 2?

Yes. Routine inspections of rental properties can take place in Alert Level 2. You and your landlord should adhere to physical distancing, personal hygiene and surface cleaning rules and should keep records for contact tracing purposes. You cannot unreasonably refuse an inspection unless you are considered vulnerable. The list of health conditions that are considered vulnerable and at most risk of severe illness from COVID-19 can be found 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-health-advice-general-public/about-covid-19>

Similarly, maintenance can also be undertaken in Alert Level 2. This includes professional services such as plumbers, electricians and tradespeople who can work on, and inside rental properties. Appropriate health and safety workplace practices around physical distancing, personal hygiene and surface cleaning must be followed when inside homes. Records should be kept for contact tracing purposes.

Are viewings of the rental property allowed in Alert Level 2?

Yes, open homes are permitted under Alert Level 2 with your consent so long as the guidance on physical distancing, personal hygiene and surface cleaning for Alert Level 2 are observed. Records should be kept for contact tracing purposes. The Real Estate Authority has developed guidance for open homes at the link below:

<https://www.rea.govt.nz/news/covid-19/conducting-real-estate-business-during-covid-19-alert-level-2/>

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

During the period that these changes to tenancy law apply, your tenancy will continue, and the new buyer will become your landlord.

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

Is the Tenancy Tribunal still operating at this time?

Yes, the Tenancy Tribunal is operating and is working to try and accommodate as many hearings as possible. The new temporary law provides that the Tenancy Tribunal has the power to have hearings on the papers, without attendance from parties, if necessary. The Tribunal is currently holding face-to-face hearings and conducting additional hearings by teleconference. It will be up to the Tribunal to manage how this works in practice.

You can find more information about how the Tribunal is operating at the link below:

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

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 26 March 2020 it is of no effect (provided that you were living at the property on that date).

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

Can I move into a new rental property in Alert Level 2?

Under the temporary changes to the law, you still retain your existing rights under the [RTA](#) and you are able to move into a new rental property in the current Alert Level 2. Removal companies can assist you with moving, with some conditions: movers will have to comply with physical distancing, personal hygiene, and surface cleaning rules; and should keep records for contact tracing purposes.

Friends and family can also assist whānau to move. If they are well known to you, physical distancing procedures are not required. However, it is recommended that personal hygiene and surface cleaning are still adhered to and that you record the names and contact details of those who helped you move.

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 have recovered if possible. For more information on self-isolating if you are unwell, see the link below:

<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 may be eligible for MBIE's temporary accommodation service for self-isolation. For more information on this service, see the link below:

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

What if I had already signed the lease on a new place but could not move into it due to COVID-19 movement restrictions? Will I have to pay rent for both properties?

At Alert Level 2, you can move to a new house.

If you gave notice on your current tenancy and you now wish or 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, and that the landlord has to give a further termination notice either on one of the limited grounds permitted during the period of the emergency legislation, or once the temporary limits on termination end. At the moment, the temporary limits on termination will expire on 25 June 2020. However, under the temporary legislation, that can be extended by the Government for three months until 25 September 2020.

If you have two leases subsisting in tandem and you have not already terminated one of those, you may wish to negotiate with one or both landlords around notice periods and rent payments. Landlords are encouraged to be flexible during these difficult times. If you cannot come to an agreement, you could apply to the Tenancy Tribunal under the grounds of unforeseen hardship to reduce the term of the tenancy.

What if my new tenancy is a periodic tenancy and I do not want to move into it after the COVID-19 restrictions lifted?

You can give notice in accordance with your tenancy agreement (the default being 21 days') to terminate the tenancy. 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 is a fixed term tenancy and I want to terminate it?

Fixed term tenancies that expire while the temporary limits on tenancy terminations subsist become periodic tenancies. This means you can stay in your rental property until you or the landlord or the Tenancy Tribunal give notice to terminate the tenancy either on the limited grounds in the temporary legislation (during subsistence of the temporary limits on termination) or under the usual provisions of the [RTA](#) (after temporary limits on termination are lifted).

If, however, you are served a termination notice under one of the termination grounds that still 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>

The [Tenancy Tribunal](#) can act as a check to ensure these reasons are used lawfully.

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 26 March 2020, then that increase is of no effect and your current rent prior to 26 March 2020 will continue to apply for an initial period of six months from 26 March 2020, i.e., up until 25 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 during 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 and pay rent in the same manner as you have been prior to 26 March 2020. Under the temporary changes to the law, your landlord will not be able to increase rent for a period of six months from 26 March 2020. The Government's decision to freeze rent increases recognises the unprecedented and uncertain economic conditions that New Zealand now faces and is aimed at providing tenants with more financial certainty in the coming months.

If you cannot pay your rent, or can only pay part of 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?

Landlords are unable to terminate your tenancy due to rent arrears of less than 60 days while the temporary limits on tenancy terminations are in force. However, if you are going to continue having trouble paying rent, you should get in contact with [Work and Income](#) to assess your eligibility for the Sustaining Tenancies and Temporary Additional Support programmes.

Landlords are still able to issue you a notice notifying you that you are behind in rent and requesting that you remedy this. This notice cannot be used to apply to the Tenancy Tribunal to terminate a tenancy on the basis that you did not comply within 14 days. A landlord commits an unlawful act (punishable by up to \$6,500 in fines) if they apply, or purport to apply, to the Tribunal for termination knowing that they are not entitled to do so.

If you miss a payment, landlord should work with you to come up with an agreed plan. More information on this process is available on the Tenancy Services website at the link below:

<https://www.tenancy.govt.nz/disputes/breaches-of-the-residential-tenancies-act/>

Following a reduction in the alert level, and if liability for rent arrears has been established at the Tribunal, your landlord might explore the following options for collecting rent arrears. Depending on the circumstances, the following options may be available to facilitate collection:

- the Tribunal can order that the bond, or part of the bond, be returned to the landlord;
- collections: Ministry of Justice can enforce a Tribunal order; or
- if both parties agree, the [RTA](#) enables the Tribunal to make an attachment order within a Tribunal order. This enables the monetary amount to be obtained (or attached) at source through your salary, wages, or benefit payments.

If I had been paying lower rent prior to these temporary changes in the law, can my landlord reinstate the rent to the original amount during this period?

Landlords are still able to lower rent under the new provisions.

An option that you and your landlord may want to consider is reducing rent temporarily. The [RTA](#) allows parties to a tenancy to agree that the tenant can pay a lower rent temporarily. This could be for a specific period or until a specific event occurs. Once that time is up, the rent is reinstated at its earlier amount. This does not count as a rent increase and is therefore acceptable during the six-month freeze period.

Can my tenancy be terminated for rent arrears?

For three months from 26 March 2020, landlords cannot apply to the Tenancy Tribunal to end tenancies 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, while you get some relief and certainty, you must still meet all your 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. The Landlord cannot apply to 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 even if the notice was provided prior to 26 March 2020 and the intended termination date was after 26 March 2020, 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 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 that reasonably causes significant alarm, distress, or nuisance); or
- are 60 days behind in rent (which has been temporarily increased from the normal 21 days). 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 are also temporary limitations on terminations in boarding houses, the exemptions are slightly different to cover situations where other occupants may be put in danger (for example, if a tenant has threatened other tenants, 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 Residential Tenancies Questions and Answers](#).

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

If your landlord has already served a termination notice that came into effect after 26 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 26 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 26 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 still 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 26 March 2020;
- it took effect on or after 26 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 26 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 25 June 2020. i.e., until 10 July 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 except in the limited circumstances discussed above 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](#) 1993. 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; or
- discriminate when deciding to continue, extend, renew, vary, or 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, if you have been in [close contact](#) with a confirmed or probable case of with COVID-19, you should self-isolate for 14 days from the date of contact. More details on how to self-isolate in a shared living situation may be found 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-health-advice-general-public/covid-19-self-isolation-close-contacts>

Health officials may temporarily move you to other accommodation to self-isolate, if available. The MBIE Temporary Accommodation Service is working with other government agencies to assist those affected in finding suitable temporary accommodation for self-isolation. Your eligibility for temporary accommodation is not affected by your income or assets. 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. To register your details, please call 0508 754 163. You can find more information about temporary accommodation on their website at the link below:

www.temporaryaccommodation.mbie.govt.nz

Can my landlord evict me so that they can move into the property?

No, you cannot be evicted because your landlord or their family wish to move in while the temporary limits on tenancy terminations are in place.

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, 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.