

COVID-19 – new emergency legislation in Tasmania protecting residential tenants

Date: 3 April 2020

Following in the footsteps of New South Wales (see our [legal update](#) on 1 April 2020), Tasmania is the second jurisdiction in Australia to quickly enact emergency legislation to protect residential tenancies in response to the COVID-19 pandemic.

The [COVID-19 Disease Emergency \(Miscellaneous Provisions\) Act 2020 \(TAS\)](#), which commenced on 27 March 2020, makes the following temporary amendments to the [Residential Tenancy Act 1997 \(TAS\)](#) for a period of 120 days (which may be extended for a further 90 days) (“**the emergency period**”):

- **Notices to vacate to have no effect**

A notice to vacate issued by a landlord to a tenant for non-payment of rent will have no effect. This amendment temporarily suspends all evictions for non-payment of rent, including those notices which were issued before the start of the emergency period or which have been appealed and are presently before the [Magistrates Court of Tasmania](#) where the tenant has not yet vacated the property.

- **Variation of residential tenancy agreement**

A residential tenancy agreement may be varied by mutual agreement between a landlord and a tenant. This means that a landlord and a tenant can agree to reduce the rent, e.g. if a tenant is struggling to pay the rent and requests a reduction. Any variation to the residential tenancy agreement should be in writing and should be signed by both parties. It will then form part of the residential tenancy agreement.

- **Terminating a residential tenancy agreement due to severe COVID-19 related hardship**

A landlord or a tenant can apply to the Residential Tenancy Commissioner for an [Order](#) to break or terminate a fixed term tenancy on the grounds that the continuation of the tenancy agreement would result in severe hardship related to the effect of the presence in the State of COVID-19 and the risk of its spread amongst persons in the State. Such an Order may specify that compensation is payable. A party has 7 days to appeal the Order to the [Magistrates Court of Tasmania](#).

- **General repairs and maintenance**

A landlord is not required to carry out general repairs and maintenance during the emergency period. The provisions regarding urgent and emergency repairs have not changed.

- **Property inspections**

A landlord cannot enter the property during the emergency period except for the purpose of urgent or emergency repairs or other limited circumstances, e.g. the landlord reasonably believes there is a risk to the tenant or that damage has occurred to the property. The Tasmanian government (as is the case for the other state and territory governments in Australia) has also issued a [direction](#) prohibiting open inspections for the purpose of selling or leasing a property (excluding by private appointment).

Takeaway

The Tasmanian government has quickly stepped in to protect residential tenants who are struggling in the face of the COVID-19 pandemic; however, the [Tasmanian Government](#) is advising residential tenants that:

- they should not treat the emergency period as a “rent holiday”; the legislation just prevents them from being evicted during this period;
- they should still continue to pay their rent during this period but, if they are unable to do so, they should talk to their landlords and try to come to a mutual agreement about a rent reduction (see above); and
- once the emergency period is over, a landlord will still be able to issue a notice to vacate and pursue the recovery of any rent arrears as the landlord would have done before the emergency period, i.e. from the rental bond or through civil proceedings in the [Magistrates Court of Tasmania](#).

Interestingly, the emergency legislation does not:

- suspend evictions for other breaches of residential tenancy agreements (it only applies to non-payment of rent); or
- deal with commercial leases. Notwithstanding, the Act does allow the relevant Minister to declare that, despite any provision of a lease, a certain class of lease (e.g. a commercial or retail lease) cannot be terminated or be subject to a rent increase for a specified period of time. To date, no such declaration has been made.

Following the federal government’s announcement last week that there will be a moratorium on commercial and residential evictions for 6 months in response to the COVID-19 pandemic (if tenants are unable to meet their commitments as a result of financial stress), it appears that the New South Wales and Tasmanian governments are the only governments to date who have enacted legislation. It is likely that the others will follow but, based on a comparative review of the legislation enacted by the New South Wales and Tasmanian governments, it is probably unlikely that all of the states and territories will adopt the same approach in dealing with commercial and residential tenancies. This inconsistency will make it difficult for landlords and tenants who have properties in more than one state or territory.