

COVID-19: NSW residential tenancies: 60 day stop period ends and impacted tenants can now apply to NCAT to terminate tenancies

Source: [NSW legislation](#), [NSW Fair Trading](#) and [NCAT](#)

Date: 1 July 2020

Further to our update on 17 April 2020 [COVID-19: 6-month moratorium on residential tenancy evictions in NSW](#):

Interim stop period now over

The interim 60 day stop period ended on 13 June 2020.

From 15 April 2020 to 13 June 2020, a landlord could not give a termination notice to a COVID-19 impacted tenant (as defined in the above update) or apply to the NSW Civil and Administrative Tribunal (**NCAT**) for an order to terminate a tenancy with a COVID-19 impacted tenant for non-payment of rent or charges.

Impacted tenants can apply to NCAT to terminate tenancies

From 14 May 2020 until 26 September 2020 (or a later date, no later than 26 March 2021, prescribed by regulation), a COVID-19 impacted tenant can apply to NCAT for an order to terminate a tenancy if, during the 6 month moratorium period (i.e. from 15 April 2020 to 15 October 2020):

- the landlord refuses or fails to participate in a formal rent negotiation process facilitated by NSW Fair Trading to negotiate rent relief; or
- the landlord and the tenant cannot reach agreement on a rent relief arrangement that would avoid financial hardship for the tenant.

An impacted tenant does not have to give a termination notice to the landlord before making the application to NCAT.

NCAT may make a termination order if satisfied that, during the 6 month moratorium period:

- the impacted tenant has, by written notice given to the landlord (or the landlord's agent), asked the landlord to participate in a formal rent negotiation process facilitated by NSW Fair Trading and the landlord has not responded to the notice within 7 days, has refused to participate or has agreed to participate but has subsequently failed to respond to or to participate in the process;
- the landlord does not respond to notice given by NSW Fair Trading of the formal negotiation process within 7 days or fails to participate in, or stops participating in, the formal rent negotiation process; or
- the tenant and the landlord have participated in a formal rent negotiation process facilitated by NSW Fair Trading in good faith but fail to reach an agreement that would avoid financial hardship for the tenant because of the amount of rent that would be payable under an arrangement agreed by the landlord or the amount of unpaid rent that has accrued, or will accrue, if the agreement is not terminated.

NCAT may have regard to:

- any advice from NSW Fair Trading about the participation of the landlord and the tenant in the formal rent negotiation process facilitated by NSW Fair Trading (including if the landlord or the tenant refused, or refused to make, a reasonable offer about rent);
- if the tenant has continued to make rent payments;

- the nature of any financial hardship experienced by the landlord or the tenant;
- any special vulnerability of the tenant; and
- any other matter that NCAT considers relevant.

If NCAT makes such a termination order, NCAT may order the tenant to pay compensation of up to 2 weeks rent to the landlord.

See the new Part 13 (Response to COVID-19 pandemic) in the [Residential Tenancies Act 2010 \(NSW\)](#) which was inserted by the [COVID-19 Legislation Amendment \(Emergency Measures – Miscellaneous\) Act 2020 \(NSW\)](#) (assented to on 14 May 2020).

The following can be downloaded from the [NCAT website](#):

- the [application form](#); and
- a template [financial statement](#) to use to demonstrate the financial position of the landlord or the tenant.

A residential tenant under a fixed term tenancy agreement can also still apply to NCAT for a termination order on the basis of **hardship** under s104 of the [Residential Tenancies Act 2010 \(NSW\)](#). NCAT may grant such an order if satisfied that, in the special circumstances of the case, the tenant would suffer undue hardship if the tenancy agreement was not terminated. NCAT may also order the tenant to pay compensation to the landlord for the landlord's loss of tenancy (but the amount cannot exceed the applicable break fee).

Terminations by landlords

From 14 June 2020 until 15 October 2020, a landlord can only issue a termination notice or apply to NCAT for a termination order in relation to a COVID-19 impacted tenant for non-payment of rent or charges if:

- the landlord has first participated, in good faith, in a formal rent negotiation process facilitated by NSW Fair Trading; and
- it is fair and reasonable in the circumstances for the tenancy to be terminated.

In considering such an application from a landlord, NCAT may have regard to the same matters as noted above (when considering a termination order application from a tenant).

A residential landlord can also still apply to NCAT for a termination order on the basis of **hardship** under s93 of the [Residential Tenancies Act 2010 \(NSW\)](#). NCAT may grant such an order if satisfied that, in the special circumstances of the case, the landlord would suffer undue hardship if the tenancy agreement was not terminated. NCAT may also order the landlord to pay compensation to the tenant for the tenant's loss of tenancy.

Impacted tenants (generally)

A COVID-19 impacted tenant who requires rent relief should contact his/her landlord as soon as possible to try and negotiate, in good faith, a mutually beneficial rent relief arrangement. See the [sample template letter](#) prepared by NSW Fair Trading for impacted tenants to use if requesting rent relief from their landlords. Impacted tenants need to provide documents evidencing that they are eligible COVID-19 impacted tenants, such as:

- confirmation from an employer of loss of employment or reduced work hours;
- payslips or bank statements showing reduced income; or
- Centrelink confirmation of eligibility for government financial support, etc.

Tenants should also keep their landlords informed of any changes in their circumstances, e.g. if a tenant no longer meets the COVID-19 impacted tenant eligibility criteria.

See the following flowchart for tenants from NSW Fair Trading: [Can a tenancy be terminated during COVID-19?](#)

Service NSW also provides a helpful [guide for people renting in NSW who have been financially affected by coronavirus \(COVID-19\)](#).

Landlords (generally)

If a landlord has a COVID-19 impacted tenant who requests rent relief, the landlord should immediately:

- try and negotiate, in good faith, a mutually beneficial rent relief arrangement with the tenant. See the [sample template letter](#) prepared by NSW Fair Trading for landlords to use if responding to a tenant's rent relief request;
- try and negotiate a temporary freeze, reduction or deferral of mortgage repayments with his/her mortgagee. See the [sample template letter](#) prepared by NSW Fair Trading for landlords to use if requesting mortgage repayment relief from a mortgagee;
- check his/her insurance policy to see if it covers loss of rent during the COVID-19 pandemic; and
- see if he/she is eligible for any land tax relief (under the temporary measures introduced during the COVID-19 pandemic). See [Service NSW](#) and [Revenue NSW](#) and our legal update on 16 June 2020 [COVID-19 — Land tax relief for most Australian states and territories](#).

Again, any agreement reached between the parties should be writing.

See also the following flowchart for landlords from NSW Fair Trading: [Flowchart for landlords - termination of tenancy options](#).

Landlords' property agents

NSW Fair Trading encourages landlords' property agents to ensure that:

- the process for tenants is accessible and easy to understand;
- both landlords and tenants are aware that NSW Fair Trading can assist with dispute resolution if an agreement cannot be reached;
- correspondence is promptly communicated;
- any evidence required from a tenant is reasonable and sufficient to show that the tenant is an eligible COVID-19 impacted tenant;
- agreements for COVID-19 impacted tenants are not limited to deferring rent payments but can also include other variations to tenants' obligations, e.g. a full or partial rent waiver for an agreed period, an agreement to break a tenancy early with or without a penalty, etc;
- the landlord is aware of possible relief options such as mortgage repayment or land tax relief; and
- they accurately document any interactions or discussions with landlords and tenants during negotiations.

90 days' notice for other termination notices

The minimum notice period of 90 days still applies during the 6 month moratorium period (i.e. until 15 October 2020) if a landlord wants to terminate:

- a fixed term tenancy at the end of the term;
- a periodic tenancy; or
- a tenancy for breach other than for non-payment of rent or charges.

See the following for further information:

- the [Residential Tenancies Act 2010 \(NSW\)](#);
- the [Residential Tenancies Amendment \(COVID-19\) Regulation 2020 \(NSW\)](#); (which commenced on 15 April 2020);
- the [COVID-19 Legislation Amendment \(Emergency Measures – Miscellaneous\) Act 2020 \(NSW\)](#)(which was assented to on 14 May 2020);
- [NSW Fair Trading](#);
- [Service NSW](#); and
- [NCAT](#).

