

## TERMINATION OF RESIDENTIAL TENANCIES IN NSW AFTER THE COVID-19 MORATORIUM

The temporary tenancy moratorium introduced by the NSW Government to restrict when landlords could evict residential tenants due to rental arrears as a result of COVID-19 ended on 26 March 2021.

From 27 March 2021, a six-month transitional period has begun.

NSW Fair Trading has introduced a flowchart to assist landlords and tenants to understand how the transitional measures may affect a tenancy agreement.

### **Step 1 – Establish if the tenant was COVID-Impacted during the moratorium period?**

During the moratorium period, between *April 2020-26 March 2021*,

1. Did one or more rent-paying members of the household:
  - (i) lose their employment, income or work hours due to COVID-19, OR
  - (ii) have to stop working or substantially reduce work hours due to illness with COVID-19, another member of the household's illness with COVID-19 or to care for a household or family member with COVID-19? AND
  - (iii) did this result in a reduction in the weekly household income (including government assistance) of at least 25%?

If so, the tenant was an *'impacted tenant'*.

2. Did the *'impacted tenant'* fail to pay rent or charges under their lease during the moratorium period that:
  - (i) were payable, and
  - (ii) were not paid (either with or without the agreement of the landlord), and
  - (iii) are still owing?

If so, these are *'arrears'*.

If the above applies, the transitional measures apply.

### **Step 2 – Have the parties negotiated a repayment plan between themselves?**

#### **Step 2B – Use NSW Fair Trading Dispute Resolution (formal arrears repayment negotiation process)**

1. A landlord or a tenant can apply to NSW Fair Trading for assistance.
2. NSW Fair Trading will request evidence to help parties negotiate the repayment plan.

**Step 2C – Have the parties been able to agree to a repayment plan?**

3. **If yes**, the repayment plan documented should include:
- total amount payable;
  - payment frequency and amount.
4. **If no**, the landlord may issue a termination notice or apply to Tribunal for a termination order to end the tenancy.

A landlord cannot issue a termination notice unless:

5. if no repayment plan is in place, they have participated in the formal arrears repayment negotiation process in good faith; OR
6. if a repayment plan is in place, the tenant has missed more than two consecutive repayments; AND
7. it is fair and reasonable to do so.

In deciding whether it would be fair and reasonable, the Tribunal will consider:

- the steps taken by the landlord and tenant to negotiate a repayment plan;
- any payments made by the tenant towards the arrears;
- the general financial position of, and any financial hardship experienced by, the landlord or tenant;
- the availability and affordability of reasonable alternative accommodation for the tenant; and
- any special vulnerability of the impacted tenant.

Decision and orders are then made by NCAT and, if appropriate, the tenancy will end.

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