

Tenancy: Rent Increases

When can rent be increased?

Rent cannot be increased during a fixed-term residential tenancy agreement unless the agreement specifically sets out the amount of the increase or a method for working out the increase. In a periodic tenancy the agreement cannot include a specific amount by which the rent is to be increased. During a periodic tenancy, the landlord may increase rent upon giving the tenant written notice that provides:

1. 8 weeks' notice of the proposed rent increase;
2. The amount of the increase; and
3. The date on which the increase takes effect.

A proviso on the above is that for fixed term agreements a rent increase cannot take effect at intervals of less than 12 months from either the beginning of the tenancy agreement for the first increase, or after that, from the date of the last increase. This prohibition includes multiple short-term tenancy agreements during a 12-months period when one tenancy agreement ends and at least 1 tenant from that agreement enters into a new tenancy agreement for the same premises. In addition, the amount of the increase must be within the amount prescribed by law.

How do I work out if the proposed rent increase is above the amount prescribed?

The prescribed amount is set under the *Residential Tenancies Regulations 1998*. This amount varies from time to time and is linked to rental Consumer Price Index (CPI) for Canberra published by the Australian Bureau of Statistics.

To work out the prescribed amount:

- obtain the latest quarterly CPI Report for rent in the ACT
- calculate the percentage increase (PI) in the 'index number' over the period since the last

rent increase or since the start of the tenancy agreement (whichever is later).

- add PI to PI divided by 10 ($PI + (PI/10)$) to give the prescribed amount.

The proposed rent increase is above the prescribed amount. What can I do?

The first thing to do is to determine whether the landlord provided a valid notice of the proposed rent increase.

For the notice to be valid, it must state all of the following:

1. Give the tenant 8 weeks' notice before the rent increase takes effect;
2. Specify the amount of the rent increase;
3. Specify that it is more than the 'prescribed amount';
4. Advise that if the tenant does not agree to the increase, it will not take effect unless the landlord seeks prior approval of the ACT Civil and Administrative Tribunal (ACAT).

If the notice is not valid, then the proposed rent increase will not take effect and the landlord cannot seek approval from ACAT.

If the notice is valid and the tenant does not agree with the increase, the tenant can remain silent as the rent increase cannot take effect unless the tenant agrees in writing.

If the tenant does not agree in writing, the landlord must apply to ACAT for approval to allow the rent increase above the 'prescribed amount'. It is not the tenant's responsibility to lodge the application.

The landlord bears the responsibility of proving to ACAT the rent increase is not excessive.

The proposed rent increase is equal to or below the prescribed amount. What can I do?

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If the tenant objects to the rent increase, the tenant (not the landlord) must lodge an application with ACAT at least 2 weeks before the proposed rent increase is to take effect.

Failure to lodge in time will mean the tenant must make a late application. In this case the tenant must show special circumstances as to why the application is late and ACAT must be satisfied the landlord is not in a significantly worse position compared to if the application was made in time.

ACAT does not have the power to consider an application after the rent increase takes effect.

The tenant bears the responsibility of proving to ACAT the rent increase is excessive.

If you remain in the property without disputing the rent increase in ACAT, you must pay the rent increase.

The matter has now gone to ACAT. What's happens next?

Whether the rent increase is above or below the 'prescribed amount' is only one consideration, albeit an important one.

Ultimately, ACAT will consider whether the rent increase is 'excessive' by looking at the following factors:

- The rental rate before the proposed increase;
- If the landlord previously increased the rental rate –
 - o The amount of the last increase before the proposed increase; and
 - o The period since that increase;
- Outgoings or costs of the landlord in relation to the premises;
- The services provided by the landlord to the tenant;
- The value of fixtures and goods supplied by the landlord as part of the tenancy;
- The state of repair of the premises;

- The rental rates for comparable premises;
- The value of any work performed or improvements carried out by the tenant with the landlord's consent; and
- Any other matter ACAT considers relevant.

Even if a rent increase is above the prescribed amount, ACAT can still consider it not excessive having regard to all the circumstances of the case.

Similarly, even if a rent increase is below the prescribed amount, ACAT can still consider it to be excessive having regard to all the circumstances.

ACAT can disallow the landlord's proposed increase, but substitute a lesser increase instead, rather than disallowing it altogether.

Can I vacate the leased property because of the rent increase?

Yes, you must give three weeks' notice.

If you have any questions arising out of the information provided in this fact sheet, contact the **Tenancy Advice Service** at:

1300 402 512 or TAS@legalaidact.org.au

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