

Tenancy and COVID-19

Getting Help

It is always a good idea to speak with a lawyer about tenancy issues, particularly during times of unprecedented change. Legal Aid ACT provides free legal advice that anyone can access regardless of income.

Our **Tenancy Advice Service** is able to assist with tenancy issues. To obtain assistance, please contact **1300 402 512** or TAS@legalaidact.org.au.

We also have an online chat service that will connect you to our staff: <https://tawk.to/tasact>.

What's New in the ACT Tenancy Landscape?

On 2 September 2021, the ACT Government made the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2021 (No 3)* to support households that have been impacted by the most recent lockdown period, which commenced on 12 August 2021.

The Declaration introduces a moratorium on evictions, followed by a transitional period.

The changes introduced by the Declaration significantly alter tenant and landlord rights.

The moratorium commences on 2 September 2021 and runs for 12 weeks and will be followed by a 12 week transitional period.

What is an 'impacted household'?

A household is impacted by the COVID-19 pandemic if:

- 1 or more rent-paying members of the household have stopped earning income, or had a reduction in income, because that member or another member is ill with COVID-19, or has carer responsibilities for a family member who is ill with COVID-19; or
- 1 or more rent-paying household members have stopped earning income, or had a reduction in income, because of a law or any measure introduced by a state or territory government or the Commonwealth Government in response to the COVID-19 pandemic;

AND as a result, either:

- The household's weekly gross income is, on or after 12 August 2021, at least 20% less than the household's weekly gross income before the income of any of the rent-paying household members was stopped or reduced; or
- A rent-paying household member's weekly gross income is, on or after 12 August 2021, at least 20% less than the member's weekly gross income before 12 August 2021; or
- A rent-paying household member's weekly hours of work are, on or after 1 August 2021, 8 or more hours fewer than the weekly hours of work before 12 August 2021.

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If a household member's weekly gross income before 12 August 2021 was irregular, that member's weekly gross income is the average of the person's actual weekly gross income in each week that the income was earned in the 12-week period before 12 August 2021.

Temporary Prohibition on Evictions during the Moratorium Period

If you are a tenant in an impacted household, you cannot be evicted for the duration of the moratorium period for your failure to pay rent.

This means that a landlord must not:

- Give a tenant a termination notice because of the tenant's failure to pay rent; or
- Apply to the ACT Civil and Administrative Tribunal ('ACAT') for a termination and possession order for failure to pay rent or failure to comply with an ACAT payment order; or
- Apply for a payment order for rental arrears; or
- Apply for a warrant for eviction because you failed to pay rent.

The moratorium on evictions applies regardless of when the tenant of an impacted household has failed to pay rent and even if a termination notice was given by the landlord to the tenant before the commencement of the Declaration. Any termination notice given in contravention of the above is void.

If an application for termination for a tenant's failure to pay rent was before the ACAT and that application has not been heard or if the tenant has not vacated the premises in accordance with an order from ACAT, the ACAT must not make any order until after the moratorium period has ended where the tenant is a

member of an impacted household who lives in the premises.

Additionally, tenants may apply to ACAT to suspend any orders in relation to rental arrear made by the ACAT for a stated period (but not more than the moratorium period). A tenant may then apply to the ACAT for a reconsideration of the suspended order if the tenant has paid part or all of the arrears for rent or if the tenant is able to show that their financial circumstances have improved and that the tenant is reasonably likely to pay future rent as it becomes payable. A reconsideration can include an order to vary or set aside the previous orders about rental arrears.

Landlords retain the right to evict you for other reasons, such as damaging the property or severely disturbing the quiet enjoyment of neighbours.

Remember

The moratorium on evictions is in place for 12 weeks, from 2 September 2021 to 25 November 2021.

After that, the transitional period will commence and will be in place for another 12 weeks (26 November 2021 to 8 February 2022).

Termination during the Transitional Period

During the transitional period (commencing 26 November 2021), tenants must pay rent as it becomes due to avoid the possibility of eviction for failure to pay rent (amongst other potential orders).

However, if a tenant of an impacted household has outstanding rent arising from the period between 2 September 2021 and 25 November 2021, the tenant cannot be evicted during the transitional period for a

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failure to pay the outstanding rent for that period if the tenants continue to pay rent that becomes due after the moratorium period has ended.

This means that a landlord must not:

- Give a tenant a termination notice because of the tenant's failure to pay rent; or
- Apply to the ACT Civil and Administrative Tribunal ('ACAT') for a termination and possession order for failure to pay rent or failure to comply with an ACAT payment order; or
- Apply for a payment order for rental arrears; or
- Apply for a warrant for eviction because you failed to pay rent

if the arrears are in relation to the moratorium period.

If a tenant fails to pay rent from 26 November 2021 onwards, they may then become liable to pay all outstanding rent, even the outstanding rent from before 25 November 2021.

Landlords retain the right to evict you for other reasons, such as damaging the property or severely disturbing the quiet enjoyment of neighbours.

If you receive a Notice to Vacate, contact our **Tenancy Advice Service** for urgent assistance.

Termination if under Quarantine Directions

A quarantine direction for a person means a direction for the person to self-isolate or quarantine for reasons related to COVID-19 under a Public Health and Safety direction.

This does not include a direction for all members of the public who are in lockdown during the pandemic

but applies to those who have been specifically directed to quarantine or self-isolate.

If a tenant under a tenancy agreement is subject to a quarantine direction for a specified period of time and either the landlord or a tenant issues a Notice to vacate that corresponds with the quarantine period, then:

- The tenant is not required to vacate the premises in the quarantine period; and
- Must nominate a date, being not more than 2 weeks after the day the quarantine period ends and vacate accordingly; or
- If the tenant does not nominate a date, the tenant must vacate 2 weeks after the day the quarantine period ends or any later day notified by the landlord.

If a tenant does not nominate a day as per the above, the tenant may, by written notice to the landlord during the quarantine period, withdraw their notice to vacate. The tenant can then issue another notice to vacate.

A tenant may apply to the ACAT to suspend a termination order if they or any other member of the tenant's household is subject to a quarantine direction for a period of time. The ACAT may then suspend the termination order if satisfied that the order affects the ability of the tenant or a member of their household to comply with the quarantine direction for the quarantine period. The suspension of the termination order will apply for the rest of the quarantine period and may be extended for up to 2 weeks after the end of the quarantine period.

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Restriction on Rent Increases

If you are in an impacted household, the ACT Government has prohibited landlords and property managers from imposing rent increases to residential tenancy agreements during the moratorium period.

This restriction does not apply if the tenant's residential tenancy agreement provides that the amount of rent payable is determined by reference to the income of the person or people responsible for paying the rent under the agreement.

This restriction is in place during the moratorium period only, meaning it does not apply during or after the transitional period.

Repairs

The laws around urgent repairs remain the same during the moratorium period. Your landlord still has an obligation to make urgent repairs as soon as necessary once notified, and your landlord or property manager may still enter the premises to undertake urgent repairs.

However, the time in which a landlord or property manager must attend to non-urgent repairs has changed from 4 weeks to "within a reasonable period" as agreed with you. Factors in determining a reasonable time period include the nature of the repair, the extent of access required to the premises to do the repair and the hardship you would suffer if repairs are not completed.

Should repairs be necessary, landlords or property managers should comply with ACT Government recommendations to practice proper physical distancing and observe good hygiene.

These changes are in place during the moratorium period only, meaning it does not apply during or after the transitional period.

House Inspections and Access to Premises

If you are in a residential tenancy agreement, the new laws provide that during the moratorium period a landlord or property manager may only physically access your premises: (a) to complete urgent repairs; (b) with your written consent; or (c) in accordance with an ACAT order.

All other inspections of the premises must only be done by electronic means, and you are required to provide reasonable assistance to the landlord or agent to allow electronic inspections to take place.

If you have reasonable access to audio-visual or other electronic means to enable virtual inspections but you unreasonably refuse to provide assistance to the landlord in conducting virtual inspections, then the new laws do not apply.

Some inspections allowed for under the Standard Tenancy Terms in the *Residential Tenancies Act 1997* include: one routine inspection in the first month of the tenancy, one inspection in the last month of the tenancy, and no more than two routine inspections per year of tenancy.

This restriction is in place during the moratorium period only, meaning it does not apply during or after the transitional period.

Blacklisting

The ACT Government has prohibited landlords and real estate agents from listing your personal information in a tenancy database if the information is about you failing to pay full rent during the moratorium period and you were a member of an impacted household.

This restriction applies even after the moratorium period has ended if the arrears in question are arrears for rent payable during the moratorium

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period or if the tenancy is terminated because of the breach for failing to pay rent in the moratorium period.

Rent Reductions

Whether or not you are an impacted household, and whether you are a tenant or an occupant, if your ability to pay rent has been impacted by COVID-19, you can ask your landlord or property manager for a temporary rent reduction. To do so, it would be reasonable and helpful to provide your landlord or property manager with some type of evidence that COVID-19 has directly impacted your ability to pay rent and ask to negotiate a temporary rent reduction clause. Examples of reasonable evidence include:

- a letter or email from an employer that you have been stood down, made redundant or had your hours reduced;
- evidence of your eligibility for the COVID-19 Business Support Grant from the ACT government or Commonwealth Disaster payment;
- a signed statutory declaration by yourself detailing your change in circumstances and why you are now unable to pay full rent; and
- evidence of a reduction in household income.
- evidence of reduced hours such as copies of work rosters.

If your landlord or property manager refuses to agree to a rent reduction, you can alternatively ask them for a rent freeze until you have increased access to income. Rent which is unpaid during the period of the freeze will become an interest-free debt owed to the landlord once the freeze finishes.

Difficulties Paying Rent – Rent Reduction

The Declaration allows landlords and tenants to negotiate a COVID-19 temporary rent reduction clause that can be included in the tenancy agreement.

The Declaration provides the clause that can be included in the agreement

However, if the tenant and landlord agree on a COVID-19 temporary rent reduction clause:

- The reduced rent period may be for a period that extends beyond the moratorium and transitional period; and
- The reversion of the rent payable under the agreement at the original rent is not an increase in the rent under the *Residential Tenancies Act 1997* or the agreement; and
- The amount the rent is reduced by under the agreement between the parties is not arrears of rent or a debt due to the landlord.

Importantly, if a rent reduction clause is included in a form other than the form that is set to in the Declaration, that clause is taken to be a COVID-19 temporary rent reduction clause.

Tenants should ensure that an agreement to reduce the rent be in writing and should ensure that their landlord agrees that the rent reduction will be an additional clause in the contract.

If your landlord is hesitant to include a new clause in the agreement as it may change the terms of the contract, you can assure them that

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this is allowed as per the Declaration and that this clause is only temporary.

If you have concerns about negotiating a rent reduction or freeze, please contact the **Tenancy Advice Service** for assistance.

Difficulties Paying Rent – Rent Deferral

Like the rent reduction clause the Declaration also allows landlords and tenants to negotiate a COVID-19 temporary rent deferral clause that can be included in the tenancy agreement.

Similarly, if the tenant and landlord agree on a COVID-19 temporary rent deferral clause:

- The deferred rent period may be for a period that extends beyond the moratorium and transitional period; and
- The reversion of the rent payable under the agreement at the original rent is not an increase in the rent under the *Residential Tenancies Act 1997* or the agreement; and
- Unless otherwise agreed by the landlord in writing, the amount of deferred rent is arrears of rent and is a debt due to the landlord.

Unlike the rent reduction clause, if parties agree to a rent deferral clause, the amount of deferred rent **will be considered** rental arrears and a debt due to the landlord.

Occupancy Agreements

If you are in an Occupancy Agreement and agree to a reduced occupancy fee for a stated period of time due to financial hardship arising from the COVID-19 pandemic, the amount the fee is reduced by under the agreement is not arrears or a debt due to the grantor. However, at the expiration of that stated period of time, the reversion back to the previous amount payable is not an increase in the occupancy fee.

Breaking Lease If You are a Member of an Impacted Household

During both the moratorium and transitional period, impacted households can terminate their fixed term tenancy agreement by giving the landlord at least 3 weeks' notice and evidence of being an impacted household.

Evidence of being an impacted household can be:

- a statutory declaration attesting to this status;
- evidence of your eligibility for the COVID-19 Business Support Grant from the ACT government or Commonwealth Disaster payment;
- a letter from the tenant's employer attesting to a change in his/her employment status; and
- evidence of a reduction in household income.

A landlord who is served with a termination notice in accordance with the above criteria is not entitled to any compensation or break fee in relation to the early termination of the fixed term agreement.

Payment Orders for Impacted Households

When the moratorium period and transitional periods expire, landlords may be entitled to apply to the ACAT for a termination and possession order.

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If this occurs and a landlord does apply to the ACAT to evict a tenant who was a member of an impacted household during a relevant period and failed to pay rent under their agreement, the ACAT must first consider making a payment order.

The relevant period where a tenant failed to pay rent includes the period from 22 April 2020 (the date the ACT government implemented the first COVID-19 Declaration) until the current Declaration expires.

Could the COVID-19 Outbreak Change my Rights and Obligations Again?

Yes. Throughout the COVID-19 outbreak the ACT Government may make changes to the laws and regulations governing the Territory, including your rights and obligations as a tenant.

The Declaration gives the ACT Government the right to extend the moratorium or transitional periods, or both.

If you need any legal advice or information about renting in the ACT, please contact Legal Aid ACT's **Tenancy Advice Service** for assistance.

Factsheet updated: 14 September 2021