

# COVID-19 Residential Tenancy changes

As a tenant you have rights and responsibilities under the *Residential Tenancies Act 1987*. There are new provisions that apply to tenants and landlords under the *Residential Tenancies (COVID-19 Response) Act 2020* (the **COVID-19 Act**). The COVID-19 Act includes new protections for tenants during the COVID-19 emergency period and applies from 30 March 2020. This fact sheet explains some of the key provisions of the COVID-19 Act. We strongly encourage you to get appropriate legal/tenancy advice from your local tenancy service concerning the application of the new laws.

The COVID-19 Act was introduced to assist Western Australian tenants who are experiencing financial hardship due to the COVID-19 response. The COVID-19 Act provides for a number of protections for tenants, including a moratorium on evictions, a ban on rent increases and extension of fixed-term leases, and also facilitates the creation of rent repayment agreements.

The COVID-19 Act only applies during the emergency period, which is 30 March 2020 to 29 September 2020.<sup>1</sup>

## WHO IS COVERED BY THE COVID-19 ACT

The COVID-19 Act applies to 'residential tenancy agreements' under the *Residential Tenancies Act 1987* (WA). The COVID-19 Act applies to all residential tenancies, including renters, those in public, social, community and government housing, long-stay residents in park homes, and boarders and lodgers.

## HOLD ON EVICTIONS FOR FAILURE TO PAY RENT

Under the new laws, renters cannot be evicted for not paying rent if they cannot afford to pay that rent due to COVID-19. Renters not affected by the financial impacts of COVID-19 can be evicted for choosing to stop paying rent and refusing to talk to the landlord about how rent arrears are going to be paid.

The moratorium period, or 'emergency period' is defined as starting from 30 March 2020 and is set to end on 29 September 2020, although this end date can be reduced or extended by regulations to deal with changing circumstances.

Renters can be evicted during the emergency period if:

- a termination notice was issued prior to 30 March 2020 (even if the vacant possession date is within the emergency period)
- a court or tribunal ordered termination of a rental agreement before 24 April 2020
- the renter or another person allowed to live in the premises:
  - is causing damage, including to any shared areas or facilities, or
  - has caused injury to the landlord/agent or any other person, including neighbours, and the landlord/agent has obtained a court order terminating the agreement,
- the landlord is suffering hardship and has obtained a court order terminating the agreement. An example of the landlord suffering hardship could be if the landlord has lost their job and needs to move back into the premises. In this circumstance, a renter may be able to

<sup>1</sup> The COVID-19 Act states that Regulations can be introduced that could change the end date of the emergency period. Accordingly, the end date of the emergency period may be earlier or later than 29 September 2020.

seek compensation orders from the court for any additional expenses caused by the termination of the agreement. Expenses can include relocation costs.

Renters also cannot be evicted during the emergency period if a lender repossesses the property or if a fixed-term lease or accommodation agreement comes to an end.

**IMPORTANT:** A landlord/agent cannot evict a renter without consent or a court order. If your landlord is trying to proceed with an eviction or termination at this time, please book in to speak with one of our tenant advocates (contact details can be found on the last page of this factsheet). Additionally, we recommend you contact Consumer Protection if you believe you are being unlawfully evicted from your property (<https://www.commerce.wa.gov.au/consumer-protection>).

## PAYMENT OF RENT

Renters – including tenants, long-stay residents in residential parks, and boarders and lodgers – experiencing difficulty paying rent due to financial hardship caused by COVID-19 should contact their landlord as soon as possible.

Renters and landlords are encouraged to be open about their situation and explore possibilities to get through this crisis together. Options for discussion include whether the tenancy or accommodation agreement can be varied to provide:

- deferring rent payments to a specified later date when the renter's income improves;
- a decrease in rent for a specified period; or
- terminating the lease without penalty.

The COVID-19 Act allows for the creation of a 'rent repayment agreement'. This is the only mechanism that can change the rent payable under a tenancy agreement. Any agreement to change rent arrangements should be put in writing.

A rent repayment agreement is a written agreement between a landlord and tenant, which varies the rent payable under the tenancy agreement for the duration of the emergency period. The agreement must set out how part or all of the rent will be paid to the landlord during the emergency period.

Some options include:

**Deferment of rent:** Landlords may be willing to agree to suspend rent payments to a particular date or for a particular period. While a rent-free period removes the immediate pressure to pay rent, it means a renter will have to repay the amount owing once the suspension period ends. Make sure you set out in your rent repayment agreement details of how the renter will repay the rent owed to the landlord. Importantly, the landlord cannot ask the renter to pay interest on the rent owed.

**Decrease in rent:** Landlords may agree to decrease rent for a specific period of time. Again, record this in writing and if the rent increases during the COVID-19 emergency period, it cannot be more than the original rate and only if the landlord and renter agree.

## EVIDENCE OF LOSS OF INCOME

The moratorium on evictions is for renters who are unable to pay their rent because of financial distress due to COVID-19.

As part of communication and negotiation around rent or termination of a lease, a landlord may ask for evidence of a significant decrease in wages or job loss. This might include emails, letters or other

communication between an employee and employer during the COVID-19 crisis. While renters have no obligation to provide this information, not doing so may affect the ability to negotiate an outcome regarding rent with their landlord.

It is not reasonable for a landlord to ask a renter for evidence of savings or spending habits by demanding bank or superannuation statements.

A landlord should not provide a renter with any financial advice regarding superannuation. The [Australian Securities and Investment Commission](#) has advice on this and how to report misconduct by a landlord.

## TERMINATION OF LEASE

If no other options are available, a renter may consider terminating their lease. To terminate a periodic (open-ended) or a fixed-term lease, a renter is required to give the landlord not less than 21 days' notice in writing before the date they intend to move out.

**Important:** a renter may only terminate a fixed-term tenancy if they are experiencing financial hardship due to COVID-19. It is recommended that renters consider giving the landlord proof of financial hardship such as a letter from the renter's employer or former employer (see above).

**Important:** the notice period to terminate accommodation agreements (for boarders and lodgers) is 7 days.

If a renter terminates a fixed-term tenancy or accommodation agreement prior to its end date for reasons of financial hardship due to COVID-19, the landlord is not entitled to compensation because the agreement was terminated early.

See our fact sheets under 'Ending a Tenancy' on the [Fact Sheets](#) page of our website.

## FREEZE ON RENT INCREASES

Under the COVID-19 Act, rent cannot be increased during the emergency period. Any increase of rent payable under a tenancy agreement will not come into effect until the day after the end of the emergency period. In addition, a tenant cannot be charged interest on the unpaid rent during the emergency period.

## EXPIRATION

A fixed term tenancy agreement that expires during the emergency period will continue as a periodic tenancy, unless the tenant terminates the tenancy or the landlord and tenant enter into a new agreement. A periodic tenancy means that the tenancy agreement will continue to be renewed on a periodic basis (e.g. every week/fortnight/month depending on the agreement) for an indefinite period of time, under the same conditions as the fixed term tenancy agreement. The tenant will have to pay the same amount of rent and will be subject to the same conditions of the lease agreement (unless the terms have been altered by a rent repayment agreement).

## REPAIRS AND MAINTENANCE

During the emergency period, if the landlord is:

- suffering financial hardship due to COVID-19, or
- unable to access the premises for reasons resulting from COVID-19

then the landlord does not have to undertake maintenance or repairs.

However, the landlord must still undertake urgent repairs. Urgent repairs are repairs that are necessary:

- for the supply of a service prescribed as an essential service (this includes water, gas, electricity, sewage and refrigerator repairs (if a refrigerator was provided with the premises)), or
- to avoid exposing a person to the risk of injury, exposing the property to damage or causing the tenant undue hardship.

## MANDATORY CONCILIATION SERVICE

As part of the COVID-19 Act a mandatory conciliation service has been established by Consumer Protection to manage disputes arising between tenants and landlords.

This service is available if you have a dispute listed below that occurred during emergency period:

- rent repayment – within three months of the end of the emergency period
- termination – within six months of the event date
- repairs – within six months of the event date
- attempted rent increase – within six months of the event date, and
- modification of terms of agreement (from fixed-term to periodic) – within six months of the event date

**Note:** while this informal process is in place to help landlords and tenants reach agreement without putting strain on the Magistrates Court and State Administrative Tribunal system, certain matters can go straight to court/tribunal including matters involving:

- undue hardship
- serious injury/damage to premises, and
- termination of perpetrator's interest in lease due to family and domestic violence.

For more information on the mandatory conciliation process visit the Consumer Protection information page: <https://www.commerce.wa.gov.au/consumer-protection/covid-19-residential-tenancies-mandatory-conciliation-service>.

Applications to the conciliation service can be made here:

<https://covidconciliation.dmirns.wa.gov.au/forms/index.php/592152?lang=en>

## RESIDENTIAL RENT RELIEF GRANT SCHEME

The Western Australian government has introduced a grant for tenants who suffering financial hardship due to the COVID-19 response. To be eligible for the grant, the tenant must have either:

- completed Consumer Protection's conciliation service to negotiate a new agreement with their landlord, or
- negotiated with the landlord a rent reduction or deferral of payments, and lodged this agreement with Consumer Protection.

The grant will be paid to the landlord, on behalf of the tenant, and is the equivalent of 4 weeks rent up to a maximum of \$2000, whichever is the lesser. Additional information about the grant can be accessed here: <https://www.commerce.wa.gov.au/consumer-protection/residential-rent-relief-grant-scheme#How%20to%20negotiate>.

## FURTHER HELP – TENANTS’ ADVICE AND ADVOCACY

**Tenancy WA** provides free, state wide telephone advice services and referrals.

Metro: (08) 9221 0088 • Country: 1800 621 888 (free call) • [www.tenancywa.org.au](http://www.tenancywa.org.au)

**Department of Mines, Industry Regulation and Safety** 1300 304 054

METROPOLITAN COMMUNITY LEGAL CENTRES	REGIONAL COMMUNITY LEGAL CENTRES
<p><b>Fremantle CLC (Western Suburbs)</b> 9432 9790 <a href="http://www.fremantle.wa.gov.au">www.fremantle.wa.gov.au</a></p> <p><b>Gosnells CLC (South Eastern Suburbs)</b> 9398 1455 <a href="http://www.gosclc.com.au">www.gosclc.com.au</a></p> <p><b>MIDLAS (Eastern Suburbs)</b> 9250 2123 <a href="http://www.midlas.org.au">www.midlas.org.au</a></p> <p><b>Northern Suburbs CLC (Northern Suburbs)</b> <a href="http://www.nslc.org.au">www.nslc.org.au</a> Mirrabooka – 9440 1663 Joondalup - 9301 4413</p> <p><b>SCALES (South Western Suburbs)</b> 9550 0400 <a href="http://www.law.murdoch.edu.au/scales">www.law.murdoch.edu.au/scales</a></p> <p><b>Sussex Street CLS (South Central Suburbs)</b> 6253 9500 <a href="http://www.sscls.asn.au">www.sscls.asn.au</a></p> <p><b>Welfare Rights &amp; Advocacy Service (North Central Suburbs)</b> 9328 1751 <a href="http://www.wraswa.org.au">www.wraswa.org.au</a></p>	<p><b>Albany CLC (Great Southern)</b> 9842 8566 <a href="http://www.albanyclc.com.au">www.albanyclc.com.au</a></p> <p><b>AccordWest (South West)</b> 9729 9000 <a href="http://www.accordwest.com.au">www.accordwest.com.au</a></p> <p><b>Regional Alliance West (formerly GRC) (Mid-West/Gascoyne)</b> <a href="https://raw.org.au/">https://raw.org.au/</a> Geraldton – 9938 0600 Carnarvon – 9941 1062</p> <p><b>Goldfields CLC (Goldfields)</b> 9021 1888 <a href="http://www.gclc.com.au">www.gclc.com.au</a></p> <p><b>Kimberley CLS (Kimberley)</b> 9169 3100</p> <p><b>Peel CLS (Peel)</b> 9581 4511 <a href="http://www.peelcls.com.au">www.peelcls.com.au</a></p> <p><b>Pilbara CLC (Pilbara)</b> Karratha - 9185 5899 Newman - 9175 0148 Roebourne - 9182 1169 South Hedland - 9140 1613 <a href="http://www.pcls.net.au">www.pcls.net.au</a></p> <p><b>Wheatbelt CLC (Wheatbelt)</b> 9622 5200 <a href="http://www.wheatbeltclc.com.au">www.wheatbeltclc.com.au</a></p>

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