

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?

In April 2020, the ACT Government passed legislation and made the *Residential Tenancies (Covid-19 Emergency Response) Declaration 2020 (No 2)* to support you and your landlord during the COVID-19 pandemic. The Declaration put in certain rules in place, including a moratorium on evictions, termination and possession applications and rent increases, along with other protection. The Declaration was set to expire on 22 July, but was extended by the ACT Government to 22 October 2020.

The ACT Government has now passed the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (No 3)* to cover the transitional period and is effective from 23 October 2020 to 31 January 2021. The following provides legal information on some of the changes, but does not constitute legal advice. These changes do not apply to occupancy agreements.

What is an 'Impacted Household'?

An Impacted Household is a household under a residential tenancy agreement that:

- has at least one rent-paying member who has had a reduction or stoppage in income related to the COVID-19 pandemic, and as a result the household's gross weekly income has reduced by at least 25%; and/or
- has at least one member who became eligible for a JobSeeker or JobKeeper payment from the Commonwealth on or after 20 March 2020.

Temporary Prohibition on Evictions and Terminations in Transitional Period

Under the previous Declaration, a tenant of an Impacted Household could not be evicted between 22 April 2020 and 22 October 2020 for a failure to pay rent. This grace period is now over and tenants must pay rent as it becomes due from 23 October 2020 onwards to avoid the possibility of eviction for failure to pay rent (amongst other potential orders).

Under the new Declaration, if the Impacted Household has outstanding rent arising from between 22 April 2020 and 22 October 2020, the tenants cannot be evicted for a failure to pay the outstanding rent for that period if the tenants continue to pay rent between 23 October 2020 and 30 January 2021 as it becomes due.

If a tenant fails to pay rent from 23 October 2020 onwards, they may then become liable to pay all outstanding rent, even the outstanding rent from before 23 October 2020.

Before the ACT Civil and Administrative Tribunal (ACAT) can evict a tenant for a failure to pay rent, it must consider ordering the tenant to pay compensation instead. Additionally, tenants may

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apply to ACAT for them to reconsider any eviction orders made by ACAT that are currently suspended because of the COVID-19 Declarations.

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.

Changes to Restrictions and Obligations

Between 22 April 2020 and 22 October 2020, certain restrictions or obligations were imposed upon landlords. **From 23 October** the following restrictions will change:

- **Restrictions on rent increases:** Landlords are now allowed to increase rent in accordance with the *Residential Tenancies Act 1997* (ACT). For more information on rent increases, please see our '**Tenancy: Rights and Obligations**' Factsheet.
- **Repairs:** the previous Declaration relaxed the period within which the landlord had to address non-urgent repairs. This is no longer the case and the landlord must address repairs that are non-urgent repairs within 4 weeks of being notified by a tenant. For more information on repairs, please see our '**Maintenance & Repairs**' Factsheet.
- **House Inspections:** the previous Declaration placed greater restrictions on a landlord's right to access to the premises. This has now been reversed and the landlord must comply with the *Residential Tenancies Act 1997* (ACT) and the Standard Tenancy Terms for access. Landlords and property managers should practice proper physical distancing and good hygiene during the inspection. They still must give one week's written notice prior to

inspection, and you are entitled to negotiate the proposed inspection time.

- For more information on a landlord's ability to access the premises, please see our '**Tenancy: Access and Privacy**' Factsheet. Blacklisting: the previous Declaration prohibited the blacklisting tenants of Impacted Households who failed to pay rent between 22 April 2020 and 22 October 2020 when it became due. This protection remains but any failure to pay rent from 23 October 2020 onwards can result in the tenant becoming blacklisted.

Difficulties Paying Rent

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 to receive the JobKeeper or JobSeeker 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.

Be sure to let your landlord or property manager know that, if they agree to reduce your rent by a minimum of 25% for up to six months, and they

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provide evidence of the reduction to the ACT Government, they are entitled to rebates from the ACT Government on their rates and land tax.

If your landlord claims the land tax rebate, they are not entitled to claim the difference from you at a later point in time.

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.

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

Breaking Lease If You are a Member of an Impacted Household

Between 22 April 2020 and 31 January 2021, Impacted Households can terminate the 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 at least one tenant's eligibility for the JobKeeper or JobSeeker 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.

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.

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