

Tenancy: Evictions

COVID-19 MEASURES CEASED

The *Residential Tenancies (COVID-19 Emergency Response) Declaration 2021 (No 3)* commenced on 2 September 2021 and significantly changed the responsibilities of tenants and landlords.

The post-moratorium transitional period was in effect between 26 November 2021 and 11 May 2022.

This transitional period and its measures expired on 11 May 2022. Changes under the COVID-19 Emergency Response have now ended, and the *Residential Tenancies Act 1997* is operating as normal.

There are several grounds on which a landlord may seek to evict a tenant but they must follow certain processes.

Forced evictions can only take place in the ACT if the ACT Civil and Administrative Tribunal ('ACAT') makes a Termination and Possession Order and then issues a warrant to police to carry out a tenant's eviction.

The ACAT will only take such steps after a landlord files an application for a Termination and Possession Order with the ACAT and the ACAT holds a hearing—with the tenant able to be present—to determine whether or not to grant the order.

Notice to Vacate – failure to pay rent

If you fail to pay your full rent within 7 days of it being due, the landlord may serve a Notice to Remedy on you. The Notice to Remedy must tell you that if your outstanding rental arrears are not paid within 7 days, the landlord may serve a Notice to Vacate on you. The Notice to Remedy must also state that if you pay your rental arrears within the 7 days, the tenancy will continue.

If you are unable to pay the entirety of the rental arrears within the 7 day notice period, you should

immediately contact your landlord or their agent and try to negotiate a way to avoid being issued with a Notice to Vacate.

Other breaches of the tenancy agreement

For a breach of the tenancy agreement other than a failure to pay rent (e.g. a failure to maintain the property in a reasonable state of repair, illegal sub-letting or causing a disturbance), the landlord must give you a Notice to Remedy detailing the alleged breach, specifying what you must do to remedy it and giving you 14 days to do so. The notice must state that if the breach is remedied the tenancy will continue, but if not, the landlord is entitled to serve a Notice to Vacate.

The Notice to Remedy must give you sufficient information to allow you to understand on what basis the Notice to Remedy is issued and be able to defend it if necessary, as well as enough specificity around what you must do to remedy the issue.

Notice to Vacate – breach of the agreement

A Notice to Vacate can be issued following the expiry of a Notice to Remedy. A Notice to Vacate can also be issued if the landlord has already served 2 Notices to Remedy on you in regards to the same issue.

A Notice to Vacate must give you at minimum 2 weeks to vacate the premises. The 2 weeks begins on the date you are served with the Notice to Vacate.

The Notice to Vacate must give you sufficient information to understand why the notice is being issued so that you can dispute it in ACAT if necessary.

Notice to Vacate – no breach of the agreement

If you are in a fixed-term tenancy agreement, your landlord can serve a Notice to Vacate without any grounds provided the notice gives you 26 weeks to vacate and the date you are required to vacate is after the expiry of your fixed-term tenancy agreement.

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If you are in a periodic tenancy, the landlord can also serve you with a Notice to Vacate without any breach of the tenancy agreement on the following grounds:

- (i) if the landlord, or an immediate relative of the landlord, or another person who the landlord has obligations to house, genuinely intends to live in the premises, upon giving 8 weeks' notice;
- (ii) if the landlord genuinely intends to sell the premises, upon giving 8 weeks' notice;
- (iii) if the landlord genuinely intends to reconstruct, renovate or make major repairs to the premises, upon giving 12 weeks' notice.

If you are served with an 8-week notice in accordance with (i) above, the landlord must also provide you with a statutory declaration attesting to their intention.

Defending a Termination and Possession Order

If you fail to vacate the premises when the Notice to Vacate' expires, the landlord can make an application to ACAT for a Termination and Possession Order.

Applications to terminate a tenancy are listed for hearing, normally on Thursdays. They are not listed for a conference before the hearing, so it is important to be prepared to defend the termination application at the first hearing.

If you receive a termination application you should read it carefully and prepare a response to the allegations contained in it. If there is evidence to support your version of events (e.g. medical certificates, reports, etc.), you should make copies of these and attach them to your response.

In preparing your response, keep the following questions in mind:

- Did you receive a proper Notice to Remedy and Notice to Vacate?

- Are the allegations in the Notice to Remedy true?
- Did you take any steps to remedy the issues identified in the Notice to Remedy?
- Is your breach of the tenancy agreement so serious as to warrant you being evicted?
- If you are being evicted for failure to pay rent, have arrangements been put in place to pay off the rental arrears? Can you offer a payment plan to the landlord that could avoid eviction?
- Will you suffer hardship if evicted?

If your landlord is applying for a Termination and Possession Order due to your failure to pay rent, ACAT has an option to make what is known as a Payment Order instead of evicting you. The effect of a Payment Order is that you are required to make specified payments against the rental arrear, and if you default in those payments, the landlord may apply to ACAT for a Termination and Possession Order.

If your landlord is applying for a Termination and Possession Order on the basis that you have used the premises for an illegal purpose, or permitted the premises to be used by another for an illegal purpose, ACAT can make the order if they are satisfied that the premises was used for illegal purposes. ACAT must also be satisfied that the illegal use of the premises would justify the termination order being made. In deciding whether or not a termination and possession order would be justified, ACAT will consider the nature of the illegal use, any previous illegal use of the premises by the tenant, and the tenant's history.

It is important to remember, just because your landlord files an application for a Termination and Possession Order, that does not mean you do not have the chance to dispute the allegations.

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ACAT has discretion to refuse a landlord's eviction application even if the landlord can prove you were in breach of the tenancy agreement.

If you have any questions arising out of the information provided in this fact sheet, or you are served with a Notice to Vacate' or an application for a 'Termination and Possession Order', contact the **Tenancy Advice Service** at:
1300 402 512 or TAS@legalaidact.org.au

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