

Tenancy: Rent Increases

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.

When can rent be increased?

Normally, rent cannot be increased during a fixed-term tenancy agreement unless the agreement specifically sets out the amount of the increase or a method for working out the increase. However, upon a fixed term of at least 12 months expiring, the lessor is allowed to increase rent upon giving you 8 weeks' notice of the proposed rent increase.

If you are in a periodic tenancy, the rent can generally be increased once in every 12 months. The lessor is likewise required to give you 8 weeks' notice of a proposed rent increase.

How do I work out if the proposed rent increase is allowed?

A rent increase is presumed to be excessive if it is more than the amount set under the *Residential Tenancies Regulations 1998*. This is commonly referred to as the 'prescribed amount'.

The starting point is working out whether the proposed rent increase is above or below the 'prescribed amount'.

The formula used to find the prescribed amount is complicated. It is linked to the rents component of the house group of the Consumer Price Index ('CPI') for Canberra published by the Australian Bureau of Statistics. The prescribed amount is 110% of the percentage increase for Canberra.

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

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

For the notice to be valid, it must:

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

If the notice is not valid, then the proposed rent increase arising from that notice will also be invalid.

It is the landlord's responsibility to apply to ACAT to allow the rent increase in situations where the increase is above the 'prescribed amount'. It is *not* your responsibility to lodge the application.

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

The proposed rent is below the prescribed amount. What do I do?

You (as opposed to the landlord) must lodge an application with ACAT at least 2 weeks before the proposed rent increase is to take effect. Failure to do so may bar you from challenging it.

You also bear the responsibility of proving to the ACAT that the rent increase is excessive.

Tenancy: Rent Increases

If you remain on the property the proposed rent increase is to begin without disputing it in ACAT, you are obliged to 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 (even though it's an important one). Ultimately, the ACAT will consider whether the rent increase is 'excessive'. The factors the ACAT will consider are:

- The rental rate before the proposed increase;
- If the landlord previously increased the rental rent –
 - o The amount of the last increase before the proposed increase; and
 - o The period since that increase;
- The 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 the ACAT considers relevant.

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

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

It is possible for the ACAT to disallow the landlord's proposed increase, but substitute a lesser increase

instead, rather than disallowing any increase altogether.

Can I leave my lease because of the rent increase?

Yes, upon giving 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

Factsheet updated: 12 May 2022