



MINISTRY OF HOUSING
AND URBAN DEVELOPMENT

COVID-19: Residential Tenancies

Questions and Answers for moving to
Alert Level 2 restrictions

Guidance up-to-date as at 15 May 2020



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COVID-19: Residential Tenancies - Questions and Answers for moving to Alert Level 2 restrictions

Note this information was accurate at the time of publishing on 15 May 2020. Guidance will be updated as further information becomes available on how to safely operate during Alert Level 2.

Moving from Alert Level 3 to Alert Level 2

What has changed?

New Zealand is currently at Alert Level 3. Alert Level 3 restrictions for landlords and tenants will remain in place until New Zealand moves to Alert Level 2 on 14 May 2020.

Rent increase freeze and tenancy terminations

What has changed?

On Monday 23 March 2020, in response to COVID-19, the Prime Minister announced a freeze on residential rent increases, and limits on tenancy terminations.

When did these measures come into effect and for how long?

These measures came into effect on 26 March 2020. The rent increase freeze applies for an initial period of six months. The limits on terminations will apply for an initial period of three months. At the end of both initial periods, the government will evaluate whether they need to be extended.

Who is affected?

These measures changed the rules in the Residential Tenancies Act 1986, which affects landlords and tenants. This applies to all residential tenancies, including fixed term, periodic and boarding house tenancies. The Residential Tenancies Act applies to public housing tenancies as well as the private rental market so the termination measures and rent increase freeze will also apply to Kāinga Ora – Homes and Communities, and Community Housing Providers.

Why were these changes made?

The purpose of these measures is to sustain tenancies to the greatest extent possible and to protect tenants from becoming homeless at this time. This will help ensure that:

- for public health reasons families and individuals are able to self-isolate, and to stay home and maintain physical distancing
- in the short term, families and individuals who are tenants do not lose their home due to a drop in income related to job losses through COVID-19.

The rent increase freeze will protect tenants from additional financial hardship at a time when they are more likely to already be facing financial stress.

Moving to a new house

Can I move into a new rental property?

Under Level 2, tenants are able to move to a new rental property. Removal companies will be able to assist you with moving, with some conditions: movers will have to comply with physical distancing, personal hygiene and surface cleaning rules and should keep records for contact tracing purposes.

Friends and family can also assist whānau to move. If they are well known to those moving, physical distancing procedures are not required. However, we recommend that personal hygiene and surface cleaning are still adhered to and that those moving record the names and contact details of those who helped them move.

Can I move tenancies if I am self-isolating with a suspected / confirmed case of COVID-19?

You should follow Ministry of Health guidelines and stay self-isolated in your current property until you are recovered, if possible. Those who are required to self-isolate and are unable to do so in their own homes or shared premises can get help through the [Temporary Accommodation Service](#).

There is a cost for this service and the Government will work with each individual or household who uses the service on how to meet this cost. If people cannot meet the costs for temporary accommodation themselves or through the support of other agencies, they will still be supported through the [Temporary Accommodation Service](#) with suitable temporary accommodation.

This helps ensure the safety and wellbeing of everyone in the response to COVID-19. You can register your details by calling 0508 754 163. [You can find out more on the MBIE temporary accommodation webpage.](#)

What should I do if I have already signed the lease on a new place but I couldn't move into it due to movement restrictions at Alert Level 4? Will I have to pay two sets of rent?

As with Level 3, at Alert Level 2, tenants are able to move to a new house.

If you gave notice on your current tenancy and you now wish or need to stay, you can withdraw your notice. If your landlord gave notice on your current place, that notice is no longer valid unless you both agree otherwise. This means that your current tenancy agreement is able to continue, and that the landlord has to give a further termination notice either on one of the limited grounds permitted during the period of the emergency legislation, or once the freeze on termination ends. At the moment, the freeze on termination will expire on 25 June 2020. However, under the temporary legislation, that can be extended by the Government until 25 September 2020.

If you have two leases in tandem and you haven't already, you may wish to negotiate with one or both landlords around notice periods and rent payments. We encourage landlords to be flexible during these difficult times. If you can't come to an agreement, you could apply to the Tenancy Tribunal under the grounds of unforeseen hardship to reduce the term of the tenancy.

What should I do if I am a tenant who was served a termination notice, notice to end or a notice about not extending a fixed term tenancy and have nowhere to go?

Fixed terms that expire during the freeze on termination become periodic tenancies. This means you can stay in your rental property until you or the landlord/Tenancy Tribunal give notice to terminate the tenancy either on the limited grounds in the temporary legislation (during the freeze on termination) or under the usual provisions of the Residential Tenancies Act (after the end of the freeze on termination).

If you are served a termination notice under one of the termination grounds that apply under the new law, you should talk to [Work and Income](#) to find accommodation.

The [Tenancy Tribunal](#) can act as a check to ensure these reasons are used lawfully.

Can a vacant rental property be cleaned for the new tenants?

Yes. Under Alert Level 2, properties can be cleaned by professional or self-employed cleaners. Cleaners should maintain workplace safety protocols around physical distancing and personal hygiene practices when in clients' homes and keep records for contact tracing purposes.

Can rental properties be inspected?

Yes. Routine inspections of rental properties can take place under Alert Level 2. Landlords and tenants should adhere to physical distancing, personal hygiene and surface cleaning rules and should keep records for contact tracing purposes.

Tenants cannot unreasonably refuse an inspection, however for those who are considered vulnerable, that could be reasonable grounds for refusal. [The list of health conditions that are considered vulnerable and at most risk of severe illness from COVID-19 can be found on the Ministry of Health website:](#)

Can landlords and property managers hold rental place viewings at this time?

Yes. Open homes are permitted under Alert Level 2 with the tenant's consent as long as the guidance on physical distancing, personal hygiene and surface cleaning for Alert Level 2 are observed. Records should be kept for contact tracing purposes.

The Real Estate Authority is developing guidance for open homes. This guidance will be available shortly.

Rent increase freeze

What if I have already negotiated an increase, taking effect after 26 March 2020?

If the increase was negotiated or a rent increase notice served, but it will not come into effect until after 26 March 2020, then that increase is of no effect.

Will tenants still be liable for rent arrears?

Yes, tenants are still liable for all rent owed. If there are any disputes about the amount owed, tenants and landlords should first discuss this and attempt to reach a resolution. If they cannot reach agreement, the [Tenancy Tribunal](#) can determine such matters.

Does a rent increase freeze mean tenants will not be required to pay rent for six months?

No. Tenants are required to meet all rental requirements outlined under their rental agreements to the best of their abilities. Under the new law, landlords cannot increase rent for a period of six months from 26 March 2020. The move to freeze rent increases recognises the unprecedented and uncertain economic conditions that New Zealand is facing and provides tenants with more certainty in the coming months.

Can landlords decrease rents? If this occurs, can they then be reinstated to the original amount?

Landlords are still able to lower rent under the new provisions.

An option that tenants and landlords may want to consider is reducing rent temporarily. The Residential Tenancies Act allows parties to a tenancy to agree that the tenant can pay a lower rent temporarily. This could be for a specific time period or until a specific event occurs. Once that time is up, the rent is reinstated at its earlier amount. This does not count as a rent increase and is therefore acceptable during the six-month freeze period.

What will prevent tenants from abusing the new rules by refusing to pay rent?

Tenants must still meet all of their other obligations under the Residential Tenancies Act. Landlords can take tenants to the Tenancy Tribunal if tenants have not paid rent owing to the landlord for a period longer than 60 days. The Tribunal has powers to evaluate whether the tenant is making reasonable endeavours to pay rent and balance the interests of the tenant and landlord in deciding whether termination is justified. Tenants refusing to pay rent could be liable for eviction if the Tribunal finds the tenant was not making reasonable endeavours to pay rent. Even if a landlord cannot terminate a tenancy, the tenant is liable for rent arrears.

Tenancy terminations

Does this mean landlords can't terminate a tenancy?

The changes mean that landlords cannot serve termination notices on tenants for three months from 26 March 2020 other than on very limited grounds. Landlords can also apply to the Tenancy Tribunal to terminate a tenancy on some other grounds specified in the temporary legislation.

Under what grounds can landlords terminate tenancies?

Landlords are unable to terminate existing tenancies unless limited and specific, justified reasons apply. The landlord needs a Tenancy Tribunal order to terminate the tenancy. There are limited and specific termination grounds that include where the tenant:

- substantially damages, or threatens to substantially damage, the premises; or
- assaults or threatens to assault the landlord, their family, or the neighbours; or
- abandons the property; or
- engages in significant antisocial behaviour (defined as harassment; or any intentional act, if the act reasonably causes significant alarm, distress, or nuisance); or
- is 60 days behind in rent, which is increased from 21 days (and the Tribunal will need to take into account fairness and if the tenant is making reasonable efforts to pay the rent)

Tenancies can also be terminated upon the death of a sole tenant, or where the premises are uninhabitable.

Are tenants' rights and obligations in relation to terminating a tenancy changed in any way?

No - tenants' rights and obligations in relation to terminating a tenancy remain unchanged.

It's my property. Why shouldn't I be allowed to control what is done with it?

We need to maintain a balance between landlord rights to do what they want with their properties, and security of tenure for New Zealanders who are at risk of not being able to meet rental obligations during these uncertain times, as well as critical public health concerns. We appreciate calls by some property owner groups to urge landlords to be lenient on tenants during these uncertain times.

What if the eviction process had already been started before 26 March?

If a landlord had already given a termination notice that will come into effect after 26 March 2020, this notice is of no effect.

Why are the provisions for termination by landlords effective for a period of three months with an option for an Order in Council to extend by another three months, while the rent increase freeze provisions are effective for six months?

The rationale for the shorter period is recognition that changes to the termination provisions are a significant change to current landlord property rights, and this will give an opportunity to evaluate its effectiveness sooner.

If a tenant is in rent arrears, will they be evicted?

Where a tenant is in rent arrears of more than 60 days, a landlord may apply to the [Tenancy Tribunal](#) for termination of the tenancy. The Tenancy Tribunal will be able to take into account whether the tenant is making reasonable endeavours to pay rent and balance the interests of the tenant and landlord in deciding whether termination is justified. Where a landlord cannot terminate a tenancy, a tenant would still be liable for the rent arrears.

What can tenants do if their landlord terminates their tenancy when they have tested positive or are symptomatic with COVID-19?

Landlords are not allowed to terminate tenancies on the basis that a tenant has COVID-19. Under the new laws it is an unlawful act to terminate a tenancy without grounds. The [Tenancy Tribunal](#) may impose a financial penalty on a landlord who terminates a tenancy without grounds, for example if they terminate a tenancy on the basis that a tenant has COVID-19.

Landlords are prohibited under the Residential Tenancies Act and also the Human Rights Act 1993 from discriminating against tenants on the basis of illness. If tenants believe they are being unlawfully discriminated against due to their illness they can [make a complaint with the Human Rights Commission](#).

What if my tenant is causing significant damage or showing significant antisocial behaviour?

It is not acceptable for tenants to abuse the current situation by causing significant property damage, or through anti-social behaviour. Landlords can still apply to the Tenancy Tribunal to terminate tenancies in these situations. The measures balance protection of the interests of tenants, landlords, and the wider community.

What constitutes an act of antisocial behaviour?

The definition of anti-social behaviour is harassment; or any intentional act, if the act reasonably causes significant alarm, distress, or nuisance.

What will prevent tenants from abusing the new rules by refusing to pay rent?

Landlords can take tenants to the Tenancy Tribunal if tenants have not paid rent owing to the landlord for a period longer than 60 days. The Tribunal has powers to evaluate whether the tenant is making reasonable endeavours to pay rent and balance the interests of the tenant and landlord in deciding whether termination is justified. Tenants refusing to pay rent could be liable for eviction if the Tribunal found the tenant was not making reasonable efforts to pay rent. If a landlord cannot terminate a tenancy, a tenant is nonetheless liable for rent arrears.

Can I still evict tenants if they are committing illegal activities?

No - Landlords cannot evict tenants for committing illegal activities under the temporary legislation, unless the illegal activity falls under one of the above termination grounds, in which case the landlord would use one of those termination grounds to evict the tenant.

We encourage landlords to contact the Police if they have reasonable suspicions that significant illegal activity is occurring at their properties.

What should happen if tenants are having trouble paying rent?

Landlords should be understanding of difficulties and open to negotiation during this time. Landlords are unable to terminate tenancies due to rent arrears of less than 60 days.

Tenants should get in contact with [Work and Income](#) to assess eligibility for the Sustaining Tenancies and Temporary Additional Support programmes.

Landlords are still able to issue a notice to a tenant notifying them that they are behind in rent and requesting that they remedy this. This notice cannot be used to apply to the Tenancy Tribunal to terminate a tenancy on the basis that the tenant did not comply within 14 days. A landlord commits an unlawful act (punishable by up to \$6,500 exemplary damages) if they apply, or purport to apply, to the Tribunal for termination knowing that they are not entitled to do so.

If tenants miss a payment, landlords should work with tenants to come up with an agreed plan. [More information on this process is available on the Tenancy Services website.](#)

Following a reduction in the alert level, and if liability for rent arrears has been established at the Tribunal, landlords might want to explore the following options for collecting rent arrears. Depending on the circumstances, the following options may be available to facilitate collection:

1. the Tribunal can order that the bond, or part of the bond, be returned to the landlord;
2. Collections - Ministry of Justice can enforce a Tribunal order; or
3. if both parties agree, the Residential Tenancies Act enables the Tribunal to make an attachment order within a Tribunal order. This enables the monetary amount to be obtained (or attached) at source through salary, wages or benefit payments.

Are there any special dispensations for tenants who are essential workers (Health, Police, Emergency)?

The provisions provide security and stability for all tenants including essential workers.

Can landlords still evict tenants on the basis they are moving in their family?

No.

Boarding houses

Do the changes apply to boarding houses?

The rent increase freeze applies to boarding houses in the same way. There is a temporary freeze on terminations in boarding houses as for other tenancies, but with exemptions that are slightly different to cover situations where other occupants may be put in danger.

Dangerous situations could be, for example a tenant has threatened other tenants or caused significant damage or breached self-isolation requirements. In these situations, there will be a mandatory 28-day notice period (the maximum current notice period under the Residential Tenancies Act). Landlords can apply to the Tenancy Tribunal to terminate the tenancy if the rent is 60 days in arrears.

In most cases a landlord can issue a boarding house termination by notice in order to manage the safety and security of tenants in a shared boarding house tenancy. A boarding house landlord still needs to go to the Tribunal to terminate a tenancy because of rent arrears or anti-social behaviour.

Can boarding house tenancies be terminated if a tenant has symptoms of or tests positive for COVID-19?

Where a boarding house tenant has symptoms of or tests positive for COVID-19, this is not in itself grounds for terminating a tenancy.

If you have been in [close contact](#) with a confirmed or probable case of with COVID-19, you should self-isolate for 14 days from the date of contact. [More details on how to self isolate in a shared living situation may be found on the Ministry of Health website.](#)

Health officials may temporarily move a boarding house tenant to other accommodation to self-isolate, if available. Officials are working to urgently increase the availability of such accommodation for vulnerable groups.

You may be able to get assistance to find temporary accommodation as outlined in the next paragraph.

Temporary accommodation for self-isolation

Will the government provide temporary accommodation for people to self-isolate?

The Ministry of Business, Innovation and Employment (MBIE) Temporary Accommodation Service is working with other government agencies to assist those affected in finding suitable temporary accommodation for self-isolation. Your eligibility for temporary accommodation is not affected by your income or assets. After registering, you will be contacted by a temporary accommodation staff member who will assess your needs and work with you to help you find suitable temporary self-isolation accommodation. To register your details, please call **0508 754 163**. You can find more information about temporary accommodation on their website: www.temporaryaccommodation.mbie.govt.nz.

Will people have to pay rent for temporary accommodation for self-isolating?

There will be a cost for temporary accommodation. If you're a New Zealand citizen or resident on a low income or benefit, you can [contact Work and Income](#) to see if you're eligible for support. If you do not ordinarily reside in New Zealand, please contact your embassy or consulate for further assistance. A list of foreign representatives to New Zealand can be found on the Ministry of Foreign Affairs website: www.mfat.govt.nz.

Tenancy Tribunal

Is the Tenancy Tribunal still operating at this time?

Yes, the Tenancy Tribunal is operating and is working to try and accommodate as many hearings as possible.

The new law provides that the Tenancy Tribunal has the power to have hearings on the papers, without attendance from parties, if necessary. The Tribunal is currently holding all hearings by teleconference. This amendment is to give the Tribunal some flexibility in its proceedings during this period. It will be up to the Tribunal how it manages this flexibility.

You can find more information about how the Tribunal is operating here:

www.tenancy.govt.nz/disputes/tribunal/how-the-tenancy-tribunal-will-operate-during-covid-19.

Enforcement

How will landlords who do not comply with the new provisions be penalised?

Increasing rent within the relevant timeframe or purporting to terminate a tenancy without grounds are unlawful acts with the Tenancy Tribunal able to order exemplary damages of up to \$6,500 in each case.

The purpose of exemplary damages is to:

- deter landlords from breaching the Act
- allow tenants to seek payment (exemplary damages) from the landlord due to the landlord's breach.

Other FAQs

What does this mean for the Residential Tenancies Act reforms currently in Select Committee?

The Residential Tenancies Amendment Bill is currently before the Social Services and Community Committee. Oral hearings began on 15 April 2020. While we had previously understood that Select Committee business would be suspended, this was not the decision taken by the Parliamentary Business Committee.

What happens to the tenants of a property that is purchased by another buyer through conventional means or through a mortgagee sale?

The tenancy continues and the buyer becomes the landlord.

What happens if a tenant's fixed-term tenancy comes up for renewal during the Alert Level 2 period?

A fixed term tenancy will automatically convert to a periodic tenancy.

Is the Tenancy Tribunal adequately resourced to cope with a large influx of new and urgent cases?

The Tenancy Tribunal is operating on limited resources and is working to try and accommodate as many urgent and serious hearings as possible at this time.

The temporary legislation provides that the Tenancy Tribunal has the power to have hearings on the papers, without attendance from parties, if necessary. The Tribunal is currently holding all hearings by teleconference. This amendment is to give the Tribunal some flexibility in its proceedings during this period. It will be up to the Tribunal how it manages this flexibility.

Do these provisions apply to Kāinga Ora – Homes and Communities and Community Housing Providers?

The Residential Tenancies Act applies to public housing tenancies as well as the private rental market so the termination measures and rent increase freeze changes will also apply to Kāinga Ora – Homes and Communities and Community Housing Providers.

Do students have to leave their rental properties and return home?

No, there are no specific provisions relating to students. Tenancies can only be terminated according to the grounds outlined above or of course by mutual agreement.

Can repairs and maintenance be done on a rental property?

Under Alert Level 2 maintenance can be undertaken. This includes professional services such as plumbers, electricians and tradespeople who can work on, and inside rental properties. Physical distancing and hygiene rules must be followed when inside homes and records should be kept for contact tracing purposes. Surface cleaning on the area that is being worked on should also be undertaken.

What does this mean for compliance with the healthy homes standards? Are other proposed legislation changes affected?

Building and construction work can be done under Alert Level 2. This means that landlords can arrange for tradespeople to undertake building work required to get their rental property to meet the healthy homes standards, such as installing a heat pump. Physical distancing and hygiene rules must be followed when inside homes and records should be kept for contact tracing purposes. Surface cleaning on the area that is being worked on should also be undertaken.

The Government is considering what other changes may need to be made. Further advice will be provided in due course.

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