



MINISTRY OF HOUSING
AND URBAN DEVELOPMENT

COVID-19: Residential Tenancies

Questions and Answers for moving to
Alert Level 3 restrictions

Guidance up-to-date as at 23 April 2020



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COVID-19: Residential Tenancies - Questions and Answers for moving to Alert Level 3 restrictions

Note this information was accurate at the time of publishing on 24 April. Decisions are still being made and the Director-General of Health will issue a notice under Section 70 of the Health Act, which provides further guidance on how to safely operate during Alert Level 3. Please read this notice for additional information.

Moving from Alert Level 4 to Alert Level 3

What has changed?

New Zealand is currently at Alert Level 4. Alert Level 4 restrictions for landlords and tenants will remain in place until New Zealand moves to Alert Level 3 on 28 April 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 (RTA), which affects landlords and tenants. This applies to all residential tenancies, including fixed term, periodic and boarding house tenancies. The RTA 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 3, 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 rules and should keep records for contact tracing purposes.

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. MBIE can provide temporary accommodation for people who need to self-isolate. To register your details with the Temporary Accommodation Service, please call 0508 754 163. More information is available at temporaryaccommodation.mbie.govt.nz.

What should I do if I have already signed the lease on a new place but I can no longer move into it due to movement restrictions? Will I have to pay two sets of rent?

At Alert Level 3, tenants will be able to move to a new house.

If you gave notice on your current tenancy and you now 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.

If your new tenancy was to be a periodic tenancy, you can give 21 days' notice on it. You may have to pay double rent during this time, but you should see if you can come to an arrangement with the landlord.

If your new tenancy was to be a fixed-term, you should try to come to an arrangement with the landlord to cancel it. We encourage landlords to be flexible during these difficult times. If you can't come to an agreement, you should 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 become periodic tenancies upon expiry under the new law. This means you can stay in your rental property.

If a landlord had already given a rent-increase or termination notice that will come into effect after 26 March 2020, this notice is of no effect. You can stay in your current rental property.

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?

Under Alert Level 3, we recommend landlords arrange for professional cleaners to clean a vacant rental property to get it ready for the new tenants. This is especially so if several rental properties need to be cleaned. Using professional cleaners will help to ensure the relevant hygiene controls are being followed.

Can rental properties be inspected?

Routine inspections of rental properties cannot take place under Alert Level 3 as they normally would.

Virtual inspections can only happen if the tenants agree. A virtual inspection is a good opportunity for tenants to inform the landlord about any maintenance that is needed.

In person inspections of occupied rental properties can only happen in emergency situations. For example, if a landlord needs to confirm that emergency maintenance is required.

At the end of the tenancy, the landlord and tenant should not do the final property inspection together as would be usual practice. Rather, we recommend tenants take photos of the property's condition before leaving.

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

Open homes are not permitted under Alert Level 3 but in person viewings can happen for vacant and occupied properties as long as physical distancing and public health measures are taken.

The expectation is that viewings should be carried out remotely in most cases. But in person viewings will be possible at alert level 3.

If the property is tenanted, you will need approval from the tenants and viewings should only occur when the tenants are not present in the home. In person viewings of rental properties should be limited to two per day to manage the time that tenants would need to be away from the property. The Real Estate Authority is developing guidance for in-person inspections for properties for sale and these guidelines should be applied to rental viewings. 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 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. If a landlord cannot terminate a tenancy, a tenant is nonetheless liable for rent arrears.

Tenancy terminations

Does this mean I can't terminate a tenancy?

The changes mean that landlords cannot serve termination notices to tenants for three months from 26 March 2020. Landlords can apply to the Tenancy Tribunal to terminate a tenancy only under one of the grounds specified in the new law.

Under what grounds can landlords terminate tenancies?

Landlords are unable to terminate existing tenancies unless limited and specific, justified, reasons apply. The Tenancy Tribunal can act as a check to ensure the limited and specific termination grounds are being used lawfully. These reasons are 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 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 has already been started / or eviction date is this week?

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 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 RTA 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 Commissioner](#).

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 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 amended Act, 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 will be 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 (ST) and Temporary Additional Support (TAS) 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.

More information on this process is available here: tenancy.govt.nz/disputes/breaches-of-the-residential-tenancies-act

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 RTA 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 RTA). 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. However, other residents are likely to be required to self-isolate under Ministry of Health guidelines. 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.

Temporary accommodation for self-isolation

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

The Ministry of Business, Innovation and Employment (MBIE) 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 may also have hearings by telephone or videoconference. 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 lease comes up for renewal during the Alert Level 3 period?

A fixed term lease 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 new law provides that the Tenancy Tribunal has the power to have hearings on the papers, without attendance from parties, if necessary. The Tribunal may also have hearings by telephone or videoconference. 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 and Community Housing Providers?

The RTA 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 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 3 maintenance can only occur in emergencies or with tenant approval. This includes professional services such as plumbers, electricians and tradespeople can work on. This includes professional services such as plumbers, electricians and tradespeople can work on, and inside rental properties. Physical distancing rules must be followed when inside homes and records should be kept for contact tracing purposes.

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 3. 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 rules must be followed when inside homes and records should be kept for contact tracing purposes.

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

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