

COMMERCIAL LEASES AFFECTED BY COVID-19

On 24 April 2020, the Northern Territory Parliament passed the Tenancies Legislation Amendment Act 2020. This provides the framework for the Territory's response to tenancy issues arising as a result of the COVID-19 emergency.

The Bill gives the Minister special powers to change tenancy laws

Like equivalent interstate legislation, the laws passed by the Territory Parliament do not set out the full detail of the new scheme. This detail is included in the **modification notices** which were published in the Gazette.

You will need to meet negotiation requirements

Commercial landlords and tenants are advised to negotiate in good faith, with the National Cabinet Code of Conduct as a starting point (see <https://www.pm.gov.au/sites/default/files/files/national-cabinet-mandatory-code-ofconduct-sme-commercial-leasing-principles.pdf>). This should be attempted for a minimum of 30 business days before options like a notice to quit are considered. These requirements will be additional to requirements specified in your lease, but can happen concurrently where that is possible.

Help for businesses

Many businesses are eligible for business relief packages such as waivers of utility bills. However, it will be a condition of all such packages that those affected have attempted to negotiate in good faith and in accordance with the Code of Conduct.

Further information about support available to businesses can be obtained from Small Business Champions at <https://nt.gov.au/industry/start-run-and-grow-a-business/grow-your-business/business-grants-and-funding/small-business-champions>).

If you cannot negotiate a resolution

The amendments create a new process if a commercial landlord wants to obtain a warrant of re-possession in the Local Court. Unless there are exceptional circumstances, the Local Court must refer the matter for compulsory mediation. The Northern Territory Civil and Administrative Tribunal (NTCAT) will conduct this mediation unless the parties agree to another mediator at the expense of the parties.

Be aware that if you are a landlord applying for a warrant of repossession for breach of a lease due to COVID-19 related issues, you may not be able to obtain legal costs from the tenant, even if you are successful.

DO NOT LIE OR MISLEAD THE OTHER PARTY ABOUT YOUR SITUATION

Under the new laws, deliberately misleading the other party as to your financial situation during a COVID-19 tenancy negotiation is an offence punishable by up to 2 years imprisonment or a \$31,400 fine. You are not obliged to disclose all the details of your situation, but the information you provide should not be misleading.