

RESIDENTIAL TENANCIES COVID-19 MODIFICATION NOTICE – Extending notice timeframes for certain pre-termination actions under the Act

On 28 April 2020, the Northern Territory Parliament passed a COVID-19 Modification Notice that impact the processes involved in the Residential Tenancies Act 1999. This Notice provides the framework for the Territory's response to tenancy issues arising as a result of the COVID-19 emergency.

Extending notice timeframes for certain pre-termination actions under the Act:

Termination other than for breach of agreement – 'no cause' terminations:

- During the COVID-19 emergency period, the notification timeframes for a landlord to terminate a tenancy agreement where the tenant has not breached the agreement (i.e. 'no grounds' termination) have been extended to a minimum of 60 days' notice for both fixed term and periodic tenancy agreements (currently the minimum notice periods are 14 days for fixed term agreements and 42 days for periodic tenancies).

Termination for non-payment of rent where COVID-19 hardship is present:

- For this modification to apply, the tenant must have notified the landlord of COVID-19 hardship as soon as they became aware of the hardship. Where a tenant notifies the landlord of COVID-19 hardship, the landlord may request proof of that hardship but the type of proof is limited to that listed below. If the landlord does request proof, the tenant must provide one of the types of proof listed below. A tenant who does not, without a reasonable excuse, provide the required proof may be in breach of the tenancy agreement and the unmodified processes for termination for non-payment of rent will apply.
- Where a tenant has notified the landlord of COVID-19 hardship, the rent must be in arrears for at least 60 days before the landlord can give the tenant a notice of intention to terminate for non-payment of rent and require the tenant to rectify the breach (i.e. a 'breach' notice). Currently, the rent must have been in arrears for at least 14 days before a 'breach' notice may be given.

Termination for non-payment of rent where COVID 19 hardship is present continued:

- The 'breach' notice must give the tenant at least 60 days to remedy breach before the landlord can apply to the Tribunal to terminate the tenancy and obtain an order of possession. Currently the 'breach' notice must give the tenant more than 7 days to remedy the breach before the landlord can apply to the Tribunal.
- The landlord has up to 60 days to apply to the Tribunal if the breach has not been remedied within the time given in the 'breach' notice. Currently the timeframe to apply to the Tribunal is 14 days.
- If a tenant notifies the landlord of COVID-19 hardship after the landlord has given the tenant a 'breach' notice and:
 - the matter is not before the Tribunal: the 'breach' notice ceases to have effect and the above COVID-19 hardship timeframes apply to any new 'breach' notice issued by the landlord;
 - the matter is before the Tribunal: the modified termination processes apply to how the Tribunal can consider the matter.

Evidence of COVID-19 hardship for rent:

- the following forms of evidence will establish proof of COVID-19 hardship for the purpose of a landlord's request:
 - written confirmation from the tenant's employer of the reduction in income or the termination or suspension of the tenant's employment, as the case requires; or
 - evidence of an approval of the tenant for, or receipt by the tenant of, a Commonwealth Jobseeker payment; or
 - were the tenant is unable to provide written proof from their employer or evidence of approval or receipt of Jobseeker, a certificate of COVID-19 hardship issued to the tenant by the Commissioner of Tenancies.

Termination for landlord not undertaking repairs or maintenance other than emergency repairs:

- The timeframe for a landlord undertaking repairs and maintenance that are not emergency repairs are extended by the modifications, acknowledging that it may be increasingly difficult for a landlord to arrange the repairs in a timely manner and be able to pay for them if their rental income is affected.
- Under the modifications, if a tenant has notified the landlord of the need for repairs or maintenance, the landlord will have 60 days in which to complete them before a tenant can issue a notice of intention to terminate (RT04b 'breach' notice) – currently 14 days.

Termination for landlord not undertaking repairs or maintenance other than emergency repairs continued:

- Where a tenant issues a 'breach' notice, the landlord has 60 days to remedy the breach before tenant can apply to the Tribunal to terminate the tenancy – currently more than 7 days.;
- The tenant then has 60 days in which to apply to the Tribunal if the breach had not been remedied in accordance with the 'breach' notice – currently 14 days.
- If the tenant has notified the landlord of the need for or maintenance after 18 March and before the modifications came in to effect, that notification, and any 'breach' notice issued by the tenant to the landlord has no effect, unless proceedings for termination in the NTCAT because of the breach had been commenced by the tenant before the modifications came into effect.