

RESIDENTIAL TENANCIES COVID-19 MODIFICATION NOTICE – New NTCAT processes for termination of a tenancy for non payment of rent

On 24 April 2020, the Northern Territory Parliament passed a COVID-19 Modification Notice that impacts 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 and refers to new processes within the Northern Territory Civil and Administrative Tribunal (NTCAT).

The modifications establish two new processes for terminations due to non-payment of rent because of COVID-19 hardship depending on when the tenancy agreement was entered into. The modifications **do not** displace the current process for termination of a tenancy for non-payment of rent if the non-payment is not due to COVID-19 hardship.

These measures generally cease at 11:59pm on 15 June 2022, as the Declaration of Public Health Emergency ends at that time.

Tenancy agreements signed on or after 16 June 2022 will be governed solely by the Residential Tenancies Act 1999 and as detailed in the Guide to Renting in the Northern Territory.

However, the modifications to the Residential Tenancies Act 1999 that existed during the COVID-19 public health emergency will continue to apply to those tenancy agreements that were signed before 16 June 2022, until the tenancy ends.

Further information about the changes from 16 June 2022 can be found in our [Fact Sheet](#).

Agreements in existence pre 24 April 2020:

This modification provides immediate relief to tenants of existing agreements who are experiencing COVID-19 hardship, while protecting those tenants from rental debts that they may not be able to repay, even over time, within the constraints placed on the Territory under section 50 of the *Northern Territory (Self-Government) Act 1978* (Cth) (S-GA). Section 50 of the S-GA prohibits the Territory from acquiring property other than on just terms. A landlord's right to payment of rent under an existing tenancy agreement and the right to terminate the agreement for non-payment of that rent are property rights which

section 50 of the S-GA applies.

Under the modifications for existing tenancy agreements, where a landlord has applied to the Tribunal for an order of termination of a tenancy and the tenant has notified the landlord of COVID-19 hardship, the Tribunal may make and then suspend that order for up to 6 months and make an order requiring the tenant to pay:

- no more than 30% of household income toward the rent payable under the tenancy agreement; and
- the amount of unpaid rent as assessed by the Tribunal as being due at the end of the suspension in a manner determined by the Tribunal.

The Tribunal can only make those orders if it is satisfied that the tenant will:

- be able to pay at least 30% of household income towards the rent during the period of suspension; and
- is willing and able to pay at the end of the period of suspension the amount of unpaid rent as determined by the Tribunal.

If the Tribunal is not satisfied that the tenant can either pay at least 30% of household income toward the rent payable, or is willing and able to repay the outstanding rent, the Tribunal will be required to terminate the tenancy.

If the Tribunal makes an order for suspension and the tenant does not pay the amount of household income ordered to be paid toward the rent payable:

- the landlord may bring the matter back to the Tribunal where the rent has been outstanding for 21 days; and
- the Tribunal may revoke the suspension of the order for possession and specify the date that the tenant is to give up possession of the premises, or make other orders about the matter.

Agreements created after 24 April 2020 but before 16 June 2022:

This modification also seeks to provide immediate relief to tenants as well as landlords who are experiencing COVID-19 hardship under new tenancy agreements that are brought into existence after the Modification Notice commences.

Unlike agreements that are in existence before 24 March 2020, section 50 of the S-GA will not apply to modifications made to the Act for agreements made after 25 March 2020. This is because there are no property rights associated with an agreement that does not yet exist, and a change in law that sets out the rights and responsibilities of the parties (i.e. what their property rights are) before a tenancy agreement is made will apply to that agreement.

Under this modification, a landlord or tenant may apply to the Tribunal to may make certain orders it considers are required to alleviate the COVID-19 hardship of the applicant. Those orders may be one or more of the following orders to:

- terminate the tenancy and make an order for possession of the premises;
- terminate the tenancy and make an order for possession of the premises and suspend the operation of the order for possession for a specified period of up to 6 months;
- terminate the tenancy and create a new fixed term tenancy for a period of up to 6 months on the same conditions as the tenancy that is terminated;
- terminate the tenancy and create a new fixed term tenancy for a period of up to 6 months on conditions that could legally be agreed to between the parties, including conditions:
 - reducing the rent payable; or
 - deferring the payment of rent for a specified period; or
 - adding or removing tenants from the tenancy;
 - refuse to terminate the tenancy and confirm the tenancy on the same terms.
- When making an order under the modifications, the Tribunal is required to consider the:
 - relief of COVID-19 hardship as the principal purpose of the order; and
 - the need to assist the parties to comply with any Government COVID-19 direction; and
 - the ability for the tenant to make reasonable payments of rent within the tenant's capacity to pay if it orders the making of a new tenancy.