

# INFORMATION SHEET

## RESIDENTIAL TENANCIES COVID-19 MODIFICATION NOTICE 2020 – OVERVIEW

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 allowed the COVID-19 Modification Notice and amendments to impact the processes involved in the *Residential Tenancies Act 1999*. These Notices provide the framework for the Territory's response to tenancy issues arising as a result of the COVID-19 emergency and were gazetted to commence as of 28 April 2020.

These measures generally ceased at 11.59pm on 15 June 2022 as the Declaration of Public Health Emergency ended at that time.

Tenancy agreements signed on or after 16 June 2022 are 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 generally continue to apply to tenancy agreements that were signed before 16 June 2022, until the tenancy ends.

### New definitions

#### COVID-19 hardship:

- as a direct or indirect result of a Government COVID-19 direction, a person suffers any of the following hardships:
- the rent payable by the person under a tenancy agreement exceeds 30% of household income;
- the person's physical, mental or psychological health or safety is at risk;
- an existing hardship mentioned above is made worse.

#### Government COVID-19 direction:

- a direction arising from the COVID-19 public health emergency made by the Chief Health Officer under section 52 of the *Public and Environmental Health Act 2011*.

#### Household income:

- the combined income before payment of income tax of the tenant and all persons aged 18 years or

over who are residing in the same premises rented by the tenant.

## **Extending notice timeframes for certain pre termination actions under the *Residential Tenancies Act 1999***

### **Termination other than for breach of agreement – ‘no cause’ terminations:**

- notice timeframes for a landlord to terminate a tenancy agreement where the tenant had not breached the agreement (i.e. ‘no cause’ termination) had been extended to a minimum of 60 days’ notice for both fixed term and periodic tenancy agreements.
- the extended notice period was reduced to 42 days by way of Residential Tenancies COVID-19 Modification Notice Amendment (No.5) 2022 for notices of intention to terminate issued between 14 June and 15 June 2022.
- currently, for tenancies still in existence on 15 June 2022, where no notice was previously given, the following notice periods apply in relation to termination by a landlord:
  - for a periodic tenancy: 42 days’ notice
  - for fixed term tenancies: 14 days’ notice

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

If a tenant has notified the landlord of the need for repairs or maintenance and;

- those repairs are not emergency repairs;
- the repairs or maintenance have been outstanding for 60 days or more

the tenant can serve a ‘breach’ notice giving the landlord 60 days to remedy the breach from the date the notice is received. If the landlord has not remedied the breach by the given date, the tenant can apply to the Tribunal to terminate the tenancy and/or possibly seek compensation.

### **Termination for non payment of rent where COVID 19 hardship is present – all tenancies:**

- 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, and landlord may request proof of COVID 19 hardship;
- rent must be in arrears for 60 days before a notice of intention to terminate (‘breach’ notice) can be issued – currently 14 days of rent arrears;
- tenant has 60 days to remedy breach before landlord can apply to the Tribunal to terminate the tenancy and obtain an order of possession – currently more than 7 days to remedy;
- landlord has up to 60 days to apply to the Tribunal if the breach has not been remedied – currently the landlord has up to 14 days;
- if a landlord has issued a ‘breach’ notice before the tenant notifies them of COVID 19 hardship:
  - notification cancels the ‘breach’ notice and the notification periods are reset;
  - if the matter is before the Tribunal, the modified processes for termination apply.

### **Evidence of COVID 19 hardship for non payment of rent:**

The following establishes proof of COVID 19 hardship for the purpose of a landlord's request:

- a statutory declaration, under the *Oaths, Affidavits and Declarations Act 2010*, from the tenants employer of:
  - The reduction in income or the termination or suspension of the tenant's employment as the case requires; and
  - The reason for the reduction, termination or suspension;
- evidence of an approval of the tenant for, or receipt by the tenant of, Commonwealth COVID-19 related financial assistance payment.
- a certificate from the Commissioner of Tenancies stating financial hardship due to COVID-19.

### **New processes for termination of a tenancy:**

Establishes 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:

#### **Agreements in existence pre 28 April 2020:**

Where the Tribunal orders termination, the Tribunal may suspend that order 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 at the end of the suspension;

but only where the Tribunal 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
- has agreed, and will be able, to pay at the end of the period of suspension the amount of unpaid rent as determined by the Tribunal.

If the Tribunal makes an order for suspension and the tenant does not pay the rent:

- 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 28 April 2020 but before 16 June 2022:**

On an application of a landlord or tenant, the Tribunal may make any of the following orders it considers are required to alleviate the COVID-19 hardship of the applicant:

- to terminate the tenancy and make an order for possession of the premises;
- to 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;
- to create a new fixed term tenancy for a period of up to six months on the same conditions as the tenancy that is terminated
- to 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; or
- to refuse to terminate the tenancy and confirm the tenancy on the same terms.

In considering an application, the Tribunal is required to:

- consider the relief of COVID-19 hardship as the principal purpose of the order; and
- consider the need to assist the parties to comply with any Government COVID-19 direction; and
- if a new tenancy is created, require the tenant to make reasonable payments of rent within the tenant's capacity to pay.

#### **Modification to section 99 termination for hardship:**

A reference to undue hardship includes:

- financial hardship; and
- risk to physical, psychological or mental health and safety.

#### **Existing tenancies rolling over into new tenancies:**

Fixed term tenancies:

If a fixed term tenancy ends during the emergency period and:

- it is not terminated and continues as a periodic tenancy;
- that periodic tenancy is taken to be a new tenancy on the same terms, but subject to the modifications made by the modification notice.

Periodic tenancies:

If the period of a periodic tenancy ends during the emergency period and:

- if the tenancy is not terminated and continues as a periodic tenancy;
- the periodic tenancy is taken to be a new periodic tenancy on the same terms, but subject to the modifications made by the modification notice.

## **Death of sole tenant:**

If a sole tenant dies and:

- that tenant's spouse, partner or dependant (over 16 years of age) are residing in the premises at the time of death;
- the tenancy may continue in the name of the spouse, partner or dependant;

if:

- the landlord was notified that the spouse, partner or dependant was occupying the premises with the tenant before the tenant died; or
- the spouse, partner or dependant notifies the landlord within 28 days that the tenant has died; and
- the person wishes to continue the tenancy, provided the tenancy is not a tenancy that comes under the *Housing Act 1982*.

## **Modified entry and inspection processes:**

Ingoing and outgoing inspection reports:

Unless a Government COVID-19 direction prevents the tenant from being present, the normal processes for conducting ingoing and outgoing inspection reports still apply, however:

If one of the parties requests that the other party not be present for the inspection and the other party agrees in writing, the process for the inspection report is:

- the party who prepares the report must provide it to the other party;
- the other party can modify the report and return it to the party who prepared it;
- when returned to the party who prepared it, the modified report is taken to be accepted by both parties, and is not open to further modification.

Periodic inspections:

- physical inspections by the landlord have now been reinstated.

Modified timeframes for entry:

- repairs and maintenance;
  - at a time agreed with at least 48 hours' notice unless the repairs are emergency repairs where the timeframes remain unchanged (between 7.00 am and 9.00 pm and 24 hours' notice);
- preparation of a condition report (other than periodic inspection);
  - at a time agreed with at least 48 hours' notice; or
- inspection by prospective tenant or purchaser:
  - for inspection by prospective tenant: during the 28 days before the termination of the tenancy agreement at a time agreed with at least 48 hours' notice; or
  - for inspection by a prospective purchaser: at a time agreed with at least 48 hours' notice; and

- the number of inspections is limited to 2 per week.

**Modifications of tenancy agreements excluded by the Regulations:**

The modified termination processes, timeframes and procedures apply to tenancy agreements excluded by regulation 4A of the regulations, all other exclusions remain in effect.

- tenancy agreements to occupy North Flinders International House are the only tenancy agreement excluded under regulation 4A;

**Infringement notice penalties:**

The following infringement notice offences have had their penalties increased:

Offence	Modified Penalty (penalty units)
23	10
24(1)	20
29(1)	20
44(1)	20
112(2)	20
117	20

The following offences have had infringement notices assigned to their enforcement:

Offence	Modified Penalty (penalty units)
20 (4)	20
24(3)	20
36(4)	20
50(2)	50
66(1) & (2)	20
106	20