

This article is Part 2 of the 'COVID-19 Rent Relief Package' article published in May 2020. Further regulations and mechanisms to protect tenants who have suffered a downturn of business (or income), such as the capping of break-lease fees (helping tenants), as well as land tax relief (helping landlords) are addressed below. These regulations are targeted at mitigating the impact of COVID-19. The government (both federal and state) likes for the tenant and the landlord to deal with each other in good faith. The end date of the package was 26 March 2021. Tenants and landlords may find the guidelines set out below helpful in finalising the 'rent relief' package.



The original six-month support package commencing from April 2020 and ending on 15 October 2020 was extended for a further six months until 26 March 2021. This comes as a result of the continuing detrimental impact of COVID-19 upon businesses and individuals.

The primary measures being extended include:

- A. Landlords cannot evict tenants impacted by COVID-19 for having rent in arrears, unless they have attempted to negotiate rental reductions in good faith;¹
- B. Tenants can apply to the NSW Civil and Administrative Tribunal (NCAT) to end their rental agreement with capped fees in some situations; and
- C. The notice period for landlords to give tenants for certain types of evictions has been extended.

These are discussed in further detail as follows.

A. GOOD FAITH NEGOTIATIONS

Since it is likely that *both* parties are adversely affected by COVID-19 where a tenant is unable to pay rent, the tenant and the landlord are encouraged to conduct good faith negotiations between themselves as a first step. This means that parties would communicate honestly and reasonably with each other, acknowledging that concessions may need to be made to reach an agreement.

In Residential Tenancy Agreements, in order to be eligible for the moratorium (ban) on eviction orders, a tenant's household must have experienced a reduction in income of at least 25% (eg one rent-paying member of the household has lost their job or has reduced hours due to COVID-19).² This would need to be demonstrated with documents such as bank statements or written evidence of job termination / loss of work hours.³

This also applies to Retail and Commercial Leases. If a tenant is eligible for the JobKeeper scheme, the landlord cannot take any action against them due to a failure to pay rent, failure to pay outgoings or for the

¹ *Residential Tenancies Amendment (COVID-19) Regulation 2020 (NSW)*, Schedule 1, s 41C.

² *Ibid* s 41B.

³ Service NSW, 'Residential Tenancy support package', <https://www.service.nsw.gov.au/transaction/residential-tenancy-support-package>.

business not being open during the trading hours specified in the lease.⁴

If the landlord and tenant are unable to reach an agreement between themselves, the NSW Fair Trading can assist in the rent negotiation process. In order to do so, the parties would need to complete and submit an [‘Application for rent negotiation’](#).

B. BREAK-LEASE FEES CAPPED

If all attempts at negotiation fail and a tenant is unable to pay rent and continue with their lease, either the tenant or the landlord may terminate the lease through NSW Civil and Administrative Tribunal (NCAT).⁵ Compensation to the landlord has been limited to two weeks’ rent – this provides support for tenants who are already in difficult financial circumstances, and encourages landlords to negotiate rent reductions. NCAT also has the discretion not to impose any break-lease fee at all.⁶

Normally, the mandatory break fee can be up to six weeks’ rent or more, depending on the term of the lease and how long is left until the termination date.

C. EXTENDED NOTICE PERIOD

The notice period for lease termination has been extended to 90 days in some circumstances.⁷ This means that a landlord must provide 90 days’ notice to a tenant if one of the following reasons for termination applies:

- The end of a fixed-term or periodic agreement;
- The breach of an agreement (but not because of a failure to pay rent or charges); or
- The tenant did not comply with a rectification order.

D. LAND TAX RELIEF

Land tax relief may be provided to landlords who have reduced their tenants’ rent as a result of COVID-19.

In order to be eligible for the land tax relief, a landlord must demonstrate the following:

1. That their tenants experienced financial distress due to COVID-19 (being a loss of at least 30% turnover for commercial tenants, or a loss of at least 25% household income for residential tenants); and
2. They reduced (ie waived, not deferred) their tenants’ rent for the period between 1 April 2020 – 30 September 2020, and/or 1 October 2020 – 31 December 2020.

If eligible, a landlord may be provided land tax relief by way of:

1. Reduction of 50% of their 2020 land tax liability;
2. Refund on the amount of rent reduction given to a tenant; or
3. Reduction of the 2020 land tax payable if payment has not already been paid.

Applications to receive the land tax relief must have been made by 31 December 2020: <https://www.service.nsw.gov.au/transaction/apply-covid-19-land-tax-relief>.

For more information on related matters, you may wish to read the following articles:

1. [Retail and Commercial Leases – COVID-19 Rent Relief Package](#): This article outlines the newly established ‘rent relief package’, aimed at reducing the impact of COVID-19 on retail and commercial tenants.
2. [Leases \(when a tenant does not pay rent\)](#): Discusses options of a commercial landlord.
3. [Negotiating Retail Leases](#): Discusses commercial leasing of shops.

⁴ Retail and Other Commercial Leases (COVID-19) Regulation 2020 r 6.

⁵ Domain, ‘Small win for NSW tenants: Break-lease fees capped for renters hit by COVID-19’, Kate Burke, 13 May 2020, https://www.domain.com.au/news/break-lease-fees-capped-for-renters-impacted-by-covid-19-955702/?utm_campaign=strap-masthead&utm_source=smh&utm_medium=link&utm_content=pos5&ref=pos1.

⁶ Tenants’ Union of New South Wales, ‘NSW Parliament passes extra emergency measures: What this means for renters’, 14 May 2020, <https://www.tenants.org.au/tu/news/nsw-parliament-passes-extra-emergency-measures-what-means-renters>.

⁷ Residential Tenancies Amendment (COVID-19) Regulation 2020 (NSW), Schedule 1, s 41D.

4. **Residential Tenancy Agreements:** For landlords and tenants, a residential tenancy agreement is an effective way of setting out the standard terms that are to govern each party's rights and obligations. This agreement ensures transparency and clarity of terms between landlord and tenant and is enforceable in law.
5. **NSW Civil and Administrative Tribunal:** This article explains what is NCAT, who are tribunal members, and the role of NCAT's various divisions. Additionally, it addresses the effect of NCAT decisions and orders made as well as the options available if orders are not complied with by the other party.

Comasters can advise you on whether the rent relief package affects you, and can represent or assist you in negotiating with your landlord / tenant.

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