

## Excessive hardship due to COVID-19 - Rent arrears, reductions and terminating your tenancy

This fact sheet provides information for tenants and rooming accommodation residents that have unpaid rent owing at the end of the eviction moratorium period on the 29 September or are in the process of seeking a rent reduction or seeking to terminate their tenancy. It also provides information on changes to the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*.

### Rental variation agreements

If you have filed a form 16a dispute resolution request regarding unpaid rent and are in the process of having it actioned by the RTA prior to the 30 September 2020, the dispute process may continue to its conclusion under the regulations that applied at the time the request was made. This matter can be progressed even if the matter was not finalised prior to the 30 September 2020. This means that the tenant can still apply to QCAT for an order about unpaid rent if they cannot negotiate a rent reduction, rent waiver or deferral.

Tenants and residents who already have a rental variation agreement should check the date the agreement ends. If the date the rental variation agreement ends is after the 30 September 2020, it will still be valid. If the variation agreement expires on or before the 30 September 2020, tenants should try and negotiate a new agreement with the other party. Whilst use of the RTA tenancy or residency variation agreement (RTA Form 18d, 18e, 18f) will no longer be available from the 30 September, the parties can still negotiate to vary the rent payments or enter into repayments plans depending on their circumstances.

When your tenancy variation agreement expires, obligations are expected to return to the same terms as outlined under the original tenancy/rooming agreement, which may include paying the rent amount stated in that agreement. Therefore, it is important to keep a record of any payment plans, repayments made and request rent ledgers to help you negotiate with the lessor, agent or provider.

### Unpaid rent from 30 September 2020

For any new disputes raised on or 30 September 2020 regarding unpaid rent, tenants and lessors can apply for RTA for dispute resolution using the [general dispute resolution request \(Form 16\)](#).

Whenever you're struggling to pay rent you should talk to your lessor or agent as soon as you can because if you fail to pay your rent on time, it's considered a breach of your tenancy agreement. The parties may enter into a repayment plan however if any agreement is not met a Notice of Remedy Breach (Form 11) can be issued.

With the end of the evictions moratorium, if your rent is seven days late (in a general tenancy) or four days late (in rooming accommodation where you've lived for longer than 28 days), your lessor can issue you with a Residential Tenancies Authority (RTA) Notice to Remedy Breach with 7 days to remedy the breach. If you do not repay the arrears within the required time, the lessor, agent or provider may issue a Notice to Leave (Form 12). If the tenant or resident does not vacate the premises as per the Notice to Leave an application

### TIPS IF YOU CAN'T PAY YOUR RENT

1. If you're struggling to pay rent, inform your lessor or agent as soon as possible about your situation.
2. Attempt to negotiate a mutually acceptable solution.
3. If you discuss the issues verbally follow up your conversation in writing so you have evidence of notifying your situation and the attempts to negotiate.
4. Request dispute resolution from the RTA as soon as possible if you can't resolve the issues.
5. Keep all agreements in writing
6. Check any written agreements carefully before signing.

can be made to the Queensland Civil and Administrative Tribunal (QCAT) for a termination order and a warrant of possession.

## **Ending your agreement**

### **Excessive hardship termination in QCAT**

The process of terminating a tenancy due to excessive hardship has changed from the 30 September 2020. Tenant or residents who are experiencing excessive hardship may now apply directly to QCAT for an urgent hearing and an order terminating their tenancy. If you do not fit the definition of <sup>1</sup> 'COVID excessive hardship' and can't successfully negotiate a mutual termination of the agreement with your lessor, you can use a QCAT Form 2 to apply directly to QCAT requesting a termination order for excessive hardship.

### **Ending your agreement with a Notice of Intention to Leave**

In addition to the option of an excessive hardship termination in QCAT, if you're a tenant or resident and you can show that:

- you lost 75% of your income; and
- you have less than \$5,000 in saving

You can end your fixed term agreement by giving the lessor a Notice of Intention to Leave, any compensation requested should be capped at the equivalent to one week's rent. However, the income and savings of all the named tenants (or residents in rooming accommodation) on the agreement will be taken into account. If you use this option, you should also keep good evidence of your circumstances in case the lessor disputes your Notice of Intention to Leave (Form 13) or seeks additional compensation.

## **Tenancy databases**

You must not be listed on a tenancy database for rent arrears or for ending a tenancy, if this occurred during the COVID-19 emergency and you were in 'COVID excessive hardship'<sup>1</sup> or you were complying with a public health direction.

Unless the person who made the listing didn't know of your circumstances when you were listed, it is an offence for them to list you. So keep your lessor or provider informed of your circumstances. Be aware that you can only be listed after the tenancy has ended, you must be first advised in writing that they are going to list you, and, given details about the proposed listing. If you are notified about a proposed listing and you do not agree with the listing you can lodge a Dispute Resolution Request with the RTA or apply directly to QCAT for an order not to list.

## **Definitions**

### **<sup>1</sup> 'COVID-19 excessive hardship'**

Section 6 of the new regulations describe when a 'person suffers excessive hardship because of COVID-19 emergency' (we've referred to this in the factsheet as 'COVID excessive hardship').

To meet the definition, during the COVID-19 emergency period:

- You, or another person under your care, suffers from COVID-19, or;
- You are subject to a quarantine direction, or;
- Your place of employment is closed in compliance with a public health direction, or;
- Your place of employment is unable to continue to operate because of a loss of trade or business resulting from a public health direction, or;

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<sup>1</sup> See definition of COVID-19 Excessive Hardship

- You are in self isolation due to self- vulnerability, live with a vulnerable person; or you are the primary carer for a vulnerable person, or;
- There is a restriction on travel preventing you from working or returning home or;
- You cannot leave or enter Australia.

**AND**

- You suffer a loss of income of **25% or more or** rent payable is 30% or more of your income.

Note: If there is **more** than 1 person named as a tenant or resident on the agreement, the combined total net weekly income of all those named is taken into account.

**‘Vulnerable person’**

If you fall into one of the following categories, you are considered a vulnerable person:

- a. An individual over 70 years of age.
- b. An individual over 65 years of age who has an existing health condition or comorbidities.
- c. An Aboriginal or Torres Strait Islander individual over the age of 50 who has an existing health condition or comorbidities
- d. An individual whose immune system is compromised.

**Further advice**

If you need further advice, please contact Tenants Queensland’s free tenancy advice service on 1300 744 263. Tenants Queensland Inc delivers QSTARS, the Queensland Statewide Tenancy, Advice and Referral Service

Disclaimer: This flyer provides information only and is not intended to provide legal advice

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