

Rent arrears and other arrears

As a tenant you have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2019*. This factsheet summarises the law in NSW about arrears – being behind in rent or other payments.

You must pay rent in advance

If you have not paid rent by when it is due, you are in rent arrears. This is a breach of your tenancy agreement.

You do not have to pay more than 2 weeks rent in advance.

If the landlord/agent tells you that you are behind in your rent, do not ignore it. Check your rent receipts or other records to see if a mistake has been made.

Rent Arrears

If you are in breach of agreement solely for rent arrears and the landlord/agent wants to end your tenancy, they can give you a *non-payment termination notice* (see below). The rent must remain unpaid for 14 days or more before they can give you this notice.

Arrears of water or other utility charges

The landlord/agent can also give you a non-payment termination notice if you have not paid your water usage charges or other utility charges. The water or utility charges must remain unpaid for 14 days or more before they can give you this notice.

You should check if you have been charged correctly for these other charges. There are strict rules as to when the landlord is allowed to charge you water or other utilities.

See Factsheet 23: *Utilities* for more information.

Are you in arrears?

You should firstly check if your landlord/agent is actually correct in saying that you are in rental arrears. Remember, you are entitled to a “rent record” from your landlord/agent and you can make a written request for the record, which has to be provided to you within 7 days. Compare your own records to check if you are actually that far behind in rent.

Similarly, your landlord/agent can only ask you to pay for water and/or other utilities if the rules are satisfied. See Factsheet 23: *Utilities* for more information.

If you agree that you are in arrears, then you should (where possible) pay the arrears off or otherwise, try to come to an agreement with the landlord/agent about paying off the arrears over time. Send them a letter confirming the agreement.

Make notes of any conversations you have and keep copies of all letters. This may be helpful if you have to go to the NSW Civil and Administrative Tribunal (NCAT) at a later date.

If needed, seek help from a financial counselling service such as the National Debt Helpline (free call 1800 007 007). Ask the service to write a letter confirming your financial situation and your ability to pay rent and arrears.

The non-payment termination notice

A non-payment termination notice must be in writing, signed by the landlord/agent and set out:

- the address of the premises
- the day by which the landlord/agent wants you to vacate – they must give you at least 14 days’ notice
- the ground for the notice: non-payment of rent, water usage charges or utility charges

The notice must also say that you are not required to vacate the premises if you:

- pay all the rent, water usage charges or utility charges owing (this includes rent paid 2 weeks in advance), or
- enter into, and fully comply with, a repayment plan agreed with the landlord

The landlord/agent must properly send or deliver the notice to you: in person, by post, by email (to an email address you have specified for documents of that kind), or by hand in an addressed envelope to a mailbox at your home or business address.

If the notice is posted, the landlord/agent must allow an extra 7 working days for delivery.

The landlord/agent can give you a termination notice without first asking you to pay the arrears.

Application for a termination order

A non-payment termination notice alone does not end your tenancy. It ends once you give *vacant possession* – vacate the premises and return the keys. If you do not give vacant possession, the landlord/agent can apply to the Tribunal for a *termination order*.

A termination order ends the tenancy and specifies the day by which you must give vacant possession.

The landlord/agent may apply for a termination order at the same time they give you a non-payment termination notice. However, the Tribunal cannot consider the application until after the date for vacant possession in the notice.

If you pay all arrears owing or fully comply with an agreed repayment plan, the Tribunal cannot make a termination order and your tenancy will continue. However, if the Tribunal finds that you have “frequently failed to pay”, it could still make the termination order.

Frequent failure to pay

The landlord/agent may apply for a termination order on the basis that you have also ‘frequently failed’ to pay the rent and other water usage charges. The Tribunal may terminate

your tenancy even if you have paid all the rent owing.

The legislation does not give a standard for what 'frequently failed to pay' means. However, the Tribunal will consider: the duration of the tenancy, the number of times you have fallen behind in payment, that amount that is owing, to work out if this has happened 'frequently'.

Steps in the Tribunal

If the landlord/agent has applied to the tribunal, you will receive a 'Notice of Conciliation and Hearing' with the date, time and place of the hearing.

1) Attend the hearing

Attend the hearing even if you have already paid all the rent, water charges or utility charges owing or the landlord/agent tells you not to attend. Take all letters, receipts and other evidence to support your case.

2) Conciliation

The Tribunal Member will encourage you and the landlord/agent to resolve the arrears problem together in conciliation. If you think the landlord/agent has made a mistake about the arrears or with the termination notice, tell the conciliator or the Tribunal Member straight away.

If you agree that you owe arrears you can make an agreement with the landlord to pay it back over a period of time. Explain your situation and show that you can pay off the arrears (e.g. show a letter from a financial counsellor). Do not offer to pay more than you can afford. (If you cannot meet the agreement, the landlord/agent may apply to terminate your tenancy.)

If you can't agree, the case will be heard by a Tribunal Member.

3) At the hearing

- Ask the Tribunal Member for time to bring your arrears up to date and to allow you to continue your tenancy.
- Show the Tribunal Member all the letters or rent receipts that you have brought with you.
- Explain how much extra you can afford to pay per week.
- Explain why you have fallen into arrears (e.g. loss of employment, health reasons – bring documents).
- Tell the Tribunal Member about any hardship that you or your family may undergo if you have to leave.
- Explain how you are able to sustain the tenancy in future.

The Tribunal Member will look at your evidence and that of the landlord/agent. When deciding whether to make the termination order, the Tribunal Member may consider:

- any previous times you were in arrears
- any steps you have taken to pay off the arrears
- the history of the tenancy

The Tribunal may refuse to make a termination order if it finds that you not in arrears or that you have not 'frequently

failed' to pay rent and/or other charges on time.

If the Tribunal makes a termination order

Your tenancy is terminated – you must return the premises to the landlord. The Tribunal will consider the relative hardship to you & the landlord and specify the day for vacant possession.

The Tribunal may also order that you have 'frequently failed to pay' the rent, if the landlord included this in their application.

If you do not vacate by the day specified on the order, the landlord/agent can get a warrant for possession from the Tribunal and go to the Sheriff. A sheriff's officer will enforce the warrant by evicting you from the premises. They can use police help if they need to physically remove you.

Contact the local Sheriff's office to find out when the warrant may be enforced. Move your belongings to storage if you can. If you're evicted and your belongings are still at the place, see Factsheet 25: *Goods left behind* for how to recover them.

You may still save your tenancy

After the Tribunal has made a termination order, you may still save your tenancy if:

- the Tribunal has not found that you have 'frequently failed to pay' the rent or water usage charges, and
- the Sheriff hasn't enforced the warrant for possession yet

Pay all the rent, water usage charges or utility charges owing, including rent in advance, and tell the landlord/agent that you have done so. The landlord/agent must then tell the Sheriff, who then will not enforce of the warrant for possession.

If the landlord/agent fails to notify the Sheriff, they face a fine of \$2,200. If the landlord/agent threatens you with eviction by the Sheriff after you have paid the full amount that you owe, apply to the Tribunal for a 'stay' on the termination order. Contact your local Tenants' Advice Service.

See also

Information Sheet: *Warrants for possession in tenancy*

Factsheet 10: *Landlord ends agreement*

Factsheet 11: *NSW Civil and Administrative Tribunal*

Factsheet 23: *Utilities*

Tips: Negotiating with the landlord

tenants.org.au/resource/negotiation-tips

Rent Increase Negotiation Kit: tenants.org.au/resource/rink

Podcast episodes: Negotiation for renters, Hit the road Jack at tenants.org.au/resource/renting-matters

Contact Regional Sheriff's offices: <https://courts.nsw.gov.au/office-of-the-sheriff-of-nsw/contact-the-office-of-the-sheriff-of-nsw.html> or phone 8688 4080 for your local office.

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For free tenancy advice, call your local Tenants' Advice and Advocacy Service:

SYDNEY:

• Eastern	9386 9147
• Inner	9698 5975
• Inner West	9559 2899
• Northern	9559 2899
• Southern	9787 4679
• South West	4628 1678
• Western	8833 0933

REGIONAL:

• Blue Mountains	4704 0201
• Central Coast	4353 5515
• Hunter	4969 7666
• Illawarra Sth Coast	4274 3475
• Mid Coast	6583 9866
• Northern Rivers	6621 1022
• Northwest NSW	1800 836 268
• Southwest NSW	1300 483 786

ABORIGINAL:

• Sydney	9833 3314
• West NSW	6881 5700
• South NSW	1800 672 185
• North NSW	1800 248 913

WEBSITE: tenants.org.au

NSW FAIR TRADING: 13 32 20

This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia. ©Tenants' Union of NSW