

## Rent arrears

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

### If you are in arrears

If you can, pay the arrears immediately. 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 Credit and Debt Hotline (free call 1800 808 488). Ask the service to write a letter confirming your financial situation and your ability to pay rent and arrears.

### No eviction without a tribunal or court order

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.

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

The landlord/agent must follow the process outlined below before you can be evicted. Locking you out without a tribunal or court order is illegal – the landlord/agent can be fined up to \$22,000 and ordered to compensate you.

### Termination for non-payment of rent

#### *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 the premises – they must give you at least 14 days notice

- the ground for the notice: non-payment of rent.

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

- pay all the rent 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 specified by the person for the service of 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.

#### **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 NCAT 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 the arrears or fully comply with an agreed repayment plan, the tribunal cannot make a termination order and your tenancy will continue.

#### **Frequent failure to pay the rent**

The landlord/agent may apply for a termination order on the basis that you have also 'frequently failed' to pay the rent. The tribunal may terminate your tenancy even if you have paid all the rent owing.

### NSW Civil and Administrative 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.

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

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### **Conciliation (assisted negotiation)**

The tribunal member will encourage you and the landlord/agent to resolve the rent arrears problem together in conciliation.

If you think the landlord/agent has made a mistake about the rent arrears or with the termination notice, tell the conciliator or the tribunal member straightaway.

If you agree that you owe rent, you can make an agreement with the landlord/agent 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 cannot come to an agreement, the case will be heard by a tribunal member.

### **At the hearing**

- Ask the tribunal member for time to bring your rent 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.
- Tell the tribunal member about any hardship that you or your family may undergo if you have to leave.

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 are ahead in the rent and that you have not 'frequently failed' to pay rent on time.

### **If the tribunal makes a termination order**

Your tenancy is terminated and you must return the premises to the landlord. The tribunal will consider the

relative hardship to you and 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 has included this in their application.

If you do not vacate by the specified day, 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 are evicted and your belongings are still at the premises, 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, and
- the Sheriff has not yet enforced the warrant for possession.

Pay all the rent 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 all the rent owing, apply to the NSW Civil and Administrative Tribunal for a 'stay' on the termination order. Contact your local Tenants Advice and Advocacy Service for help.

### **Contact**

Regional Sheriff's offices: See [courts.justice.nsw.gov.au/Pages/cats/catscorporate\\_contactus/contact\\_sheriff\\_nsw.aspx](http://courts.justice.nsw.gov.au/Pages/cats/catscorporate_contactus/contact_sheriff_nsw.aspx) or phone 8688 4080 for your local office.

*Factsheet updated April 2019*

**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](http://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

