

# Overdue rent

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 being behind in rent or other payments (also known as being in arrears), and explains when that can lead to eviction.

## Is the rent actually overdue?

You must pay rent **in advance**. If you have not paid rent by the due date, you are in **breach** of your tenancy agreement. This is called **rent arrears**. However in NSW you do not have to pay more than 2 weeks rent in advance. Each time you pay rent you should pay at least 2 weeks in advance (or more if you choose). Your rent in advance will then diminish until you next pay rent. In other words, you do not need to be 2 weeks in front at all times, only on the due date.

If the landlord/agent tells you that your rent is overdue, do not ignore it. Check if they are correct or if rent you have paid has not been recorded. Start by checking your rent receipts, bank statements, or other records.

You are entitled to a **rent record**, commonly called a **rent ledger**, from your landlord/agent. You can make a written request for the record, which they have to provide to you within 7 days. Compare your own records to check if you are actually behind in rent and if so, how much you owe. Contact your [local Tenants Advice and Advocacy Service](#) if you need help understanding the ledger.

A common way tenants can find themselves in rent arrears is when they choose to pay rent monthly. If you calculate the monthly payment at four weeks worth of rent your rent payment may be incorrect. You can use our [Rent Converter](#) tool to **check the way your rent has been calculated**, and compare daily/weekly/monthly amounts etc. If in any doubt, confirm the exact monthly figure with the landlord or real estate agent in writing.

If you are in breach of agreement for unpaid rent the landlord/agent can give you a **non-payment termination notice** (see below). This could lead to eviction. The rent must be at least **14 days overdue** before they can give you this notice.

It may be possible to **negotiate a repayment plan** to get back on track with the rent and keep your tenancy. See 'What can I do if I am having trouble paying?' below.

If there have been problems with the premises, e.g. because the landlord has **failed to do repairs** that you have asked for, or there has been **disaster damage**, then you could also consider seeking a **rent reduction** from the landlord – see [Factsheet 06: Repairs and maintenance](#), [Factsheet 22: Disaster damage](#), and [Sample letter: Rent reduction](#).

If you are a tenant in **public or community housing** and you are facing rent arrears, it is important to check if the amount

of rent you are paying is being calculated correctly according to your income. If you disagree about the rent you are being charged or believe there are issues with your rent subsidy, raise it with your housing provider as soon as possible. You can contact your [local Tenants Advice and Advocacy Service](#) for advice.

## What about overdue water or utility charges?

'Utilities' are services such as water, electricity, and gas. You are required to pay for water and other utilities **within certain rules**. You should check if you have been charged correctly: the landlord is not allowed to charge you if they have not followed the rules. See [Factsheet 23: Utilities](#) for more information.

If you have not paid the correct water or utilities charges, then you are in **arrears**. This is a **breach** of your tenancy agreement and the landlord/agent can give you a **non-payment termination notice** (see below). This could lead to eviction. The charges must be at least **14 days overdue** before they can give you this notice.

## What can I do if I'm having trouble paying?

If you are behind in rent or other payments, you need to **pay off the amount owing** as soon as possible in order to keep your tenancy.

If you are not able to pay immediately, **try to come to an agreement** with the landlord/agent to pay off the amount you owe over time. See [Tips: Negotiating with the landlord](#), and [Sample letter: Offer to pay rent arrears](#). If you reach an agreement, make sure you have something **in writing** – see [Sample repayment plan agreement](#). Keep notes of any conversations you have and copies of all letters / emails / messages. You can send an email to confirm a verbal agreement. Written evidence may be helpful if you have to go to the NSW Civil and Administrative Tribunal (NCAT) later.

It is a good idea to **seek help from a financial counselling service** such as the [National Debt Helpline](#) (phone 1800 007 007). Ask the service to write a letter confirming your financial situation and your ability to pay rent and arrears.

See also [Financial assistance for renters](#) for links to support services which may be able to help.

## What if I get a non-payment termination notice?

If you are in breach of your tenancy agreement due to unpaid rent or other charges, the landlord/agent can give you a non-payment termination notice. This could lead to eviction.

### A non-payment termination notice must:

- be in writing, signed by the landlord/agent
- be properly sent or delivered to you – either by email (to an email address you have specified for the service of documents of that kind); or by post; or by hand (in an addressed envelope to a mailbox at your home or business address); or in person
- include the address of the premises
- include the day by which the landlord/agent wants you to vacate – they must give you at least 14 days' notice
- include the reason 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 you owe (this includes rent paid 2 weeks in advance), or
- you enter into, and fully comply with, a repayment plan agreed with the landlord

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.

A non-payment termination notice alone does not end your tenancy. Your tenancy ends once you give **vacant possession** – move out and return the keys. If you do not give vacant possession, the landlord/agent can apply to the NSW Civil and Administrative Tribunal (NCAT) for a termination order (see below). You can contact your [local Tenants Advice and Advocacy Service](#) for advice.

If you have paid what you owe, send the landlord/agent something in writing to confirm – see [Sample letter: Payment of rent arrears](#).

If you still owe money when the tenancy ends, the landlord/agent may make a claim on your bond – see [Factsheet 03: Bond](#). If you owe more than the bond, they may list you on a tenant database – see [Factsheet 19: Tenant databases](#).

## What if the landlord applies to the Tribunal?

If you are in breach of your tenancy agreement due to unpaid rent or other charges, the landlord/agent can apply to the NSW Civil and Administrative Tribunal (NCAT) for a termination order. This could lead to eviction. The Tribunal will send you a **Notice of Conciliation and Hearing** with the date, time, and place of the hearing. It is important to attend the hearing.

If the Tribunal makes the termination order, it **ends your tenancy** and specifies the day by which you must give vacant possession (move out and return the keys). You can contact [your local Tenants Advice and Advocacy Service](#) for advice.

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

**If you pay all the money you owe 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 charges. The Tribunal may then end your tenancy even if you have paid what you owe.

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, and the amount owing – to work out if this has happened 'frequently'.

### Steps in the Tribunal

#### 1) Attend the hearing

Attend the hearing even if you have already paid all the rent or charges owing, and even if the landlord/agent tells you not to attend. Take copies of all letters, receipts, and other evidence to support your case. Printed copies are preferable, as you may not be permitted to use mobile devices.

#### 2) Conciliation

The Tribunal Member will first encourage you and the landlord/agent to resolve the arrears problem together in a negotiation known as 'conciliation' – which may include a conciliator from the Tribunal.

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 about what you owe, you can make an agreement with the landlord to pay the amount 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 end 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

(a letter from a financial counsellor may be helpful – you can contact the **National Debt Helpline**: 1800 007 007)

- 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 are not in arrears, or that you have not ‘frequently failed’ to pay rent and/or other charges on time.

For more information see **Factsheet 11: NSW Civil and Administrative Tribunal**, or contact your **local Tenants Advice and Advocacy Service** for advice.

## What if the Tribunal makes a termination order?

If the NSW Civil and Administrative Tribunal (NCAT) makes a termination order, it **ends your tenancy** – you are required to move out and return the premises to the landlord/agent. The Tribunal will consider the relative hardship to you and the landlord and specify the day you must give **vacant possession** (move out and return the keys).

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 move out 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. You can contact the **Office of the Sheriff online** or phone 8688 4080 for your local office. Move your belongings to storage if you can. See also **Warrants for possession in tenancy**, or contact your **local Tenants Advice and Advocacy Service** for advice.

If you are evicted and your belongings are still at the place, see **Factsheet 25: Goods left behind** for how to recover them.

If you still owe arrears when the tenancy ends, the landlord/agent may make a claim on your bond – see **Factsheet 03: Bond**. If you owe more than the bond, or the tenancy is ended by a Tribunal termination order, you may be listed on a tenant database – see **Factsheet 19: Tenant databases**.

## You may still be able to save your tenancy

After the Tribunal has made a termination order, you may still be able to 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 has not enforced the warrant for possession yet

To save your tenancy, pay all the rent, water usage charges or utility charges you owe, 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 the warrant for possession.

If you have paid what you owe, send the landlord/agent something in writing to confirm – see **Sample letter: Payment of rent arrears**.

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. See **Warrants for possession in tenancy**, or contact your **local Tenants Advice and Advocacy Service** for advice.

## See also

- **Resource: Warrants for possession in tenancy**
- Factsheets: **10: Landlord ends agreement**, **11: NSW Civil & Administrative Tribunal**, **19: Tenant databases**, **23: Utilities**, **06: Repairs and maintenance**
- **Tips: Negotiating with the landlord**
- **Rent Increase Negotiation Kit**
- Podcasts: **Negotiation for renters**, **Hit the road Jack**.
- Sample letters: **Payment of rent arrears**, **Offer to pay rent arrears**, **Repayment plan agreement**, **Rent reduction**
- Sheriff contact: **Office of the Sheriff online** or phone 8688 4080 for your local office

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### For free advice, call your local Tenants Advice & 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

**WEB:** [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