

Covid-19: Residential Tenancies Act amendments - Questions and Answers

Proactive questions and answers

Context

What is happening?

On Monday 23 March, in response to Covid-19, the Prime Minister announced a freeze on residential rent increases, and increased protection for tenants from having tenancies terminated.

When do these measures come into effect and for how long?

These measures will come into effect very shortly.

The rent freeze applies for an initial period of six months. The protections against terminations will apply for an initial period of three months. At the end of both initial periods, the Government evaluate whether they need to be extended.

Who is affected?

These measures will change the rules in the Residential Tenancies Act (RTA) so will affect Landlords and Tenants. This applies to all residential tenancies, fixed term, periodic and boarding houses). The RTA applies to public housing tenancies as well as the private rental market so the termination measures and rent increase freeze will also apply to Kāinga Ora and Community Housing Providers.

Why are these changes being made?

The purpose of these measures is to sustain tenancies to the greatest extent possible and to protect tenants from becoming homeless at this time. This will help ensure that:

- for public health reasons families and individuals are able to self-isolate, and to stay home and maintain physical distancing
- in the short term, families and individuals who are tenants do not lose their home due to a drop in income related to job losses through Covid-19.

The rent freeze will protect tenants from additional financial hardship at a when they are more likely to already be facing financial stress.

Moving House

Can I move into a new rental property if I am a tenant?

These provisions are designed to reduce movement between properties at this time where possible. If you have already given notice to leave your current rental property, you can withdraw that notice. If a landlord had *already given* a rent-increase or termination notice that will come into effect after this bill comes into force this notice, it is of no effect. You should consider staying in your current rental property if possible.

However, tenants retain their existing rights under the Act and may still be able to move into a new rental property, however this may be more difficult under the current circumstances. You should follow Ministry of Health guidelines and follow the Alert System when moving. For example, if you still need to sign a tenancy agreement, you should do so digitally. People must exercise care if they do need to move – they should do so without contact or assistance from other people.

Can I still move tenancies if I am self-isolating with a suspected / confirmed case of Covid-19?

You should follow Ministry of Health guidelines and stay self-isolated in your current property until you are recovered if possible.

MBIE is working on providing temporary accommodation for people who need to self-isolate.

What should I do if I have already signed the lease on a new place but I can no longer move into it due to movement restrictions? Will I have to pay two sets of rent?

If you gave notice on your current tenancy and you now need to stay, you can withdraw your notice.

If your landlord gave notice on your current place, that notice is no longer valid unless you both agree otherwise. This means that your current tenancy agreement is able to continue.

You should stay in your current rental property if possible.

If your new tenancy was to be a periodic tenancy, you can give 21 days' notice on it. You may have to pay double rent during this time, but you should see if you can come to an arrangement with the landlord.

If your new tenancy was to be a fixed-term, you should try to come to an arrangement with the landlord to cancel it. We encourage landlords to be flexible during these difficult times.

If you can't come to an agreement, you should apply to the Tribunal under the grounds of unforeseen hardship to reduce the term of the tenancy.

What should I do if I am a tenant who was served a termination notice, notice to end or a notice about not extending a fixed term tenancy and have nowhere to go?

Fixed terms become periodic tenancies upon expiry under the new law. This means you can stay in your rental property.

If a landlord had *already given* a rent-increase or termination notice that will come into effect after this bill comes into force this notice is of no effect.

You can stay in your current rental property.

If you are served a termination notice under one of the termination grounds that apply under the new law, you should talk to Work and Income to find accommodation:

<https://www.workandincome.govt.nz/providers/housing-providers/emergency-housing/index.html>

My tenants are moving out this week – do I still have to house them due to the level 4 Restrictions or if they have tested positive for Covid-19?

This is an unprecedented time and we need to work on a case by case basis to determine what is reasonable and practicable. We encourage landlords to discuss things with their tenants and wherever possible come to an arrangement that suits both parties. We need to work together and help each other to fight Covid-19.

Tenants will be able to withdraw notice that they have given on a property if they do so before their move out date, even if the landlord has signed a contract with new tenants for them to move in after. In this situation, the new tenants would no longer be able to move in.

If a landlord had already given a termination notice that will come into effect after this bill comes into force, this notice is of no effect, even if the landlord has signed a contract with new tenants for them to move in, unless both the current tenants and the landlord agree otherwise.

This means that unless agreed otherwise, landlords will have to continue the tenancy of the existing tenants and the new tenants will no longer be able to move in.

If landlords currently have a vacant property, can they still tenant it out during level 4?

They may be able to. They must adhere to Ministry of Health Guidelines and the Alert System level 4. You can read more about alert levels here: <https://covid19.govt.nz/government-actions/covid-19-alert-system/>. Level 4 requires that people do not have contact with others outside their homes, which means if a landlord were to tenant out a vacant property during level 4, they would have to find a way to do so without in-person contact with the tenant (for example, they could sign a tenancy agreement digitally and conduct a skype meet and greet with potential tenants).

Rent freeze

What if I have already negotiated an increase, taking effect this week?

If the increase was negotiated or a rent increase served, but it will not come into effect until after the Bill comes into force, that increase is of no effect.

Will tenants still be liable for rent arrears?

Yes, tenants are still liable for all rent owed. If there are any disputes about the amount owed, tenants and landlords should first discuss this and attempt to reach a resolution. If they cannot reach agreement, the Tenancy Tribunal is able to determine such matters.

Does a rent freeze mean tenants will not be required to pay rent for six months?

No. Tenants will be required to meet all rental requirements outlined under their rental agreements to the best of their abilities. Under the new law landlords will not be able to increase rent for a period of six months from when the bill comes into force. The move to freeze rent increases is recognition of the unprecedented and uncertain economic conditions that New Zealand now faces, and will provide tenants with more certainty in coming months.

What will prevent tenants from abusing the new rules by refusing to pay rent?

Landlords will still be able to take tenants to the Tenancy Tribunal if tenants have not paid rent owing to the landlord for a period longer than 60 days. The Tribunal will have powers to evaluate whether the tenant is making reasonable endeavours to pay rent, and balance the interests of the tenant and landlord in deciding whether termination is justified. Tenants refusing to pay rent could be liable for eviction if that Tribunal found the tenant was not making reasonable endeavours to pay rent. If a landlord cannot terminate a tenancy, a tenant is nonetheless liable for rent arrears.

Tenants must also still meet all of their other obligations under the Residential Tenancies Act.

Tenancy terminations

Does this mean I can't terminate a tenancy?

The changes mean that landlords cannot serve termination notices to tenants except for reasons specified in the Act.

Are tenants' rights and obligations in relation to terminating a tenancy changed in any way?

No - tenants' rights and obligations in relation to terminating a tenancy remain unchanged.

It's my property. Why shouldn't I be allowed to control what is done with it?

We need to maintain a balance between landlord rights' to do what they want with their properties, and security of tenure for New Zealanders who are at risk of not being able to meet rental obligations during these uncertain times, as well as critical public health concerns. We appreciate calls by some property owner groups to urge landlords to be lenient on tenants during these uncertain times .

Under what circumstances can landlords terminate tenancies?

Landlords will be unable to terminate existing tenancies unless limited and specific, justified, reasons apply. The Tenancy Tribunal will act as a check to ensure that the limited and specific termination grounds are being used lawfully. These reasons are where the tenant:

- substantially damages the premises; or
- assaults or threatens to assault the landlord, their family, or the neighbours; or
- abandons the property; or
- engages in significant antisocial behaviour (defined as harassment; or any intentional act, if the act reasonably causes significant alarm, distress, or nuisance); or
- is 60 days behind in rent, which is increased from 21 days (and the Tribunal will need to take into account fairness and whether the tenant is making reasonable efforts to pay the rent)

Tenancies will also be able to be terminated upon the death of a sole tenant, or where the premises are uninhabitable.

What if the eviction process has already been started / or eviction date is this week?

If a landlord had *already given* a termination notice that will come into effect after this bill comes into force this notice is of no effect.

Why are the provisions for termination by landlords effective for a period of three months with an option for an Order In Council to extend by another three months, while the rent freeze provisions are effective for 6 months?

The rationale for the shorter period is recognition that changes to the termination provisions are a significant change to current landlord property rights, and this will give an opportunity to evaluate its effectiveness sooner.

If a tenant is in rent arrears, will they be evicted?

Where a tenant is in rent arrears of more than 60 days, a landlord may apply to the Tenancy Tribunal for termination of the tenancy. The Tenancy Tribunal will be able to take into account whether the tenant is making reasonable endeavours to pay rent, and balance the interests of the tenant and landlord in deciding whether termination is justified. Where a landlord cannot terminate a tenancy, a tenant would still liable for rent arrears.

What can tenants do if their landlord evicts them when they have tested positive or are symptomatic with COVID-19?

Landlords are not allowed to terminate tenancies on the basis that a tenant has Covid-19. Under the new laws it is an unlawful act to terminate a tenancy without grounds. The Tribunal may impose a

financial penalty on a landlord who terminates a tenancy without grounds, for example if they terminate a tenancy on the basis that a tenant has Covid-19.

Landlords are prohibited under the RTA and also the Human Rights Act from discriminating against tenants on the basis of illness. If tenants believe they are being unlawfully discriminated against due to their illness they can make a complaint with the Human rights Commissioner using the process outlined here <https://www.hrc.co.nz/enquiries-and-complaints/how-make-complaint/>

What if my tenant is causing significant damage or engaging in significant antisocial behaviour?

It is not acceptable for tenants to abuse the current situation by causing significant property damage, or significant anti-social behaviour. Landlords can still terminate tenancies in these situations. The measures balance protection of the interests of tenants, landlords, and the wider community.

What constitutes an act of antisocial behaviour?

The definition of anti-social behaviour is harassment; or any intentional act, if the act reasonably causes significant alarm, distress, or nuisance.

What will prevent tenants from abusing the new rules by refusing to pay rent?

Landlords will still be able to take tenants to the Tenancy Tribunal if tenants have not paid rent owing to the landlord for a period longer than 60 days. The Tribunal will have powers to evaluate whether the tenant is making reasonable endeavours to pay rent, and balance the interests of the tenant and landlord in deciding whether termination is justified. Tenants refusing to pay rent could be liable for eviction if that Tribunal found the tenant was not making reasonable endeavours to pay rent. If a landlord cannot terminate a tenancy, a tenant is nonetheless liable for rent arrears.

Can I still evict tenants if they are committing illegal activities?

Landlords could not evict tenants for generally committing illegal activities under the original Act, unless the illegal activity fell under other specific termination grounds such as assault, or unless landlords used a no cause termination. Landlords cannot evict tenants for committing illegal activities under the new Act, unless the illegal activity falls under one of the above termination grounds, in which case the landlord would use one of those termination grounds to evict the tenant.

We encourage landlords to contact the police if they have reasonable suspicions that significant illegal activity is occurring at their properties.

What should happen if tenants are having trouble paying rent?

Landlords should be understanding of difficulties and open to negotiation during this time. Landlords will be unable to terminate tenancies due to rent arrears of less than 60 days.

Tenants should get in contact with Work and Income to assess eligibility for the Sustaining Tenancies (ST) and Temporary Additional Support (TAS) programmes.

Is there any special dispensations for tenants who are essential workers (Health, Police, Emergency?)

The provisions provide security and stability for all tenants including essential workers.

Can Landlords and property managers still hold rental place viewings at this time?

Rental businesses do not fall under the list of essential services. Where New Zealand is under Alert Level 4, landlords and property managers cannot hold in-person rental place viewings. We encourage digital work arounds where possible and necessary.

Viewings are permitted at other alert levels, if Ministry of Health guidance is followed such as social distancing.

Can landlords still evict tenants on the basis they are moving in their family?

No.

Boarding houses

Do the changes apply to boarding houses?

The rent freeze applies to boarding houses in the same way. There is a temporary freeze on terminations in boarding houses as for other tenancies, but with exemptions that are slightly different to cover situations where other occupants may be put in danger (for example, a tenant has threatened other tenants or caused significant damage, or breached self isolation requirements.) In these situations there will be a mandatory 28 day notice period (the maximum current notice period under the RTA). Landlords can apply to the Tribunal to terminate the tenancy if the rent is 60 days in arrears.

In most cases a landlord will be able to issue a boarding house termination by notice in order to manage the safety and security of tenants in a shared boarding house tenancy. A boarding house landlord will still need to go to the Tribunal to terminate a tenancy because of rent arrears or anti-social behaviour.

Can boarding house tenancies be terminated if a tenant has symptoms of or tests positive for Covid-19?

Where a boarding house tenant has symptoms of or tests positive for Covid-19, this is not in itself grounds for terminating a tenancy. However, other residents are likely to be required to self-isolate under Ministry of Health guidelines. Health officials may temporarily move a boarding house tenant to other accommodation to self-isolate, if available. Officials are working to urgently increase the availability of such accommodation for vulnerable groups.

Temporary accommodation for self-isolation

Will the government provide temporary accommodation for people to self-isolate?

The Ministry of Business, Innovation and Employment (MBIE) is working with other government agencies to assist those affected in finding suitable temporary accommodation for self-isolation. Temporary accommodation is not income or asset tested.

Will people have to pay rent for temporary accommodation for self-isolating?

There will be a cost for temporary accommodation, if you're a New Zealand citizen or resident on a low income or benefit, you can contact Work and Income to see if you're eligible for support.
www.workandincome.govt.nz

If you do not ordinarily reside in New Zealand, please contact your embassy or consulate for further assistance. A list of foreign representatives to New Zealand can be found on the Ministry of Foreign Affairs website. www.mfat.govt.nz

After registering, you will be contacted by a temporary accommodation staff member who will assess your needs and work with you to help you find suitable temporary self-isolation accommodation. To register your details, please call **0508 754 163**.

The Tenancy Tribunal

Is the Tenancy Tribunal still operating at this time?

Yes, the Tenancy Tribunal is operating and is working to try and accommodate as many hearings as possible.

The Bill provides that the Tenancy Tribunal has the power to have hearings on the papers, without attendance from parties, if necessary. The Tribunal may also have hearings by telephone or videoconference. This amendment is to give the Tribunal some flexibility in its proceedings during this period. It will be up to the Tribunal how it manages this flexibility.

Enforcement

How will landlords who do not comply with the new provisions be penalised?

Increasing rent within the relevant timeframe or purporting to terminate a tenancy without grounds are unlawful acts with the Tenancy Tribunal able to order exemplary damages of up to \$6,500 in each case.

The purpose of exemplary damages is to:

- deter landlords from breaching the Act
- allow tenants to seek payment (exemplary damages) from the landlord due to the landlord's breach.

Other FAQs

What does this mean for the Residential Tenancies Act reforms currently in Select Committee?

A motion to suspend all non-essential parliamentary business has/will be passed, including suspending all the business currently before select committees. At that point Parliament has/will adjourn with no fixed date to sit again and will be recalled when it was appropriate to do so. The Parliamentary Business Committee has authority to decide report back dates for each Bill.

What happens to the tenants of a property that is purchased by another buyer through conventional means or through a mortgagee sale?

The tenancy continues and the buyer becomes the landlord.

What happens if a tenant's fixed-term lease comes up for renewal during the level 4 period?

A fixed term lease will automatically convert to a periodic tenancy.

Is the Tenancy Tribunal adequately resourced to cope with a large influx of new and urgent cases?

The Tenancy Tribunal is operating on limited resources and is working to try and accommodate as many urgent and serious hearings as possible at this time.

The Bill provides that the Tenancy Tribunal has the power to have hearings on the papers, without attendance from parties, if necessary. The Tribunal may also have hearings by telephone or

videoconference. This amendment is to give the Tribunal some flexibility in its proceedings during this period. It will be up to the Tribunal how it manages this flexibility.

Do these provisions apply to Kāinga Ora and Community Housing Providers?

The RTA applies to public housing tenancies as well as the private rental market so the termination measures and rent freeze changes will also apply to Kāinga Ora and Community Housing Providers.

Do students have to leave their rental properties and return home?

No, there are no specific provisions relating to students. Tenancies can only be terminated according to the grounds outlined above by or of course by mutual agreement.

During this time can landlords still inspect my property – even if they maintain social distancing?

Landlords and tenants should follow Ministry of Health guidelines and the Alert System. At level four, people are supposed to stay in their own homes and only essential businesses are running. This means that inspections are only permissible up to and including level three, provided that other obligations under the RTA are followed and social distancing is maintained during the inspection. A landlord cannot use force to enter a tenant's home; if a tenant refuses entry, the landlord must go to the Tribunal to get permission for access.

What does this mean for compliance with the healthy homes standards? Are other proposed legislation changes affected?

The Government is considering what other changes may need to be made. Further advice will be provided in due course.

Essential maintenance during Level 4 restrictions – I'm a tenant, can I get my landlord to fix the hot water cylinder that is no longer working?

If the repair falls under the essential services, then the landlord should contact an essential services company to perform the repair.