

FREQUENTLY ASKED QUESTIONS

COVID-19 AND TENANCIES

1. Is there a moratorium on evictions in SA during the COVID 19 pandemic?

No, but the COVID-19 Emergency Response Act, 2020 (the COVID Act) states that SACAT cannot terminate a tenancy or make an order for eviction because a tenant is in rent arrears or fails to pay outstanding water invoices, *if the tenant is suffering financial hardship as a result of the COVID 19 pandemic* (Section 8(1)(h)).

2. If a tenant is behind in rent/water invoices, is the landlord still entitled to serve a Form 2 notice of breach during the COVID 19 pandemic, and should the landlord do so?

The COVID Act does not prevent a landlord from serving a Form 2 notice of breach for rent/water invoices. It is appropriate for a landlord to serve a Form 2 notice of breach in the circumstances allowed for by Section 80 of the Residential Tenancies Act, 1995 (the RTA) (eg where the tenant is at least 2 weeks behind with rent). If the dispute is not resolved, then an application should be made to SACAT in the usual manner. What the COVID Act has changed, is how SACAT may deal with these applications, i.e. the types of orders SACAT can make.

3. If a landlord makes an application to SACAT about rent arrears/outstanding water invoices, should the parties do anything differently to prepare for a hearing?

Yes – the parties should be prepared to discuss any aspect of the dispute which is COVID-19 related and they should be prepared to produce evidence in support of any submissions about their circumstances.

For example – has the tenant lost their job due to COVID-19 or are they finding it difficult to get work due to COVID-19? If a tenant has lost their job, the tenant should produce evidence about their job loss.

If the tenant's ability to pay the debt is likely to improve in the near future, then the tenant should produce evidence about that – for example, advice from the ATO about a successful request for early release of superannuation funds; advice of a successful application for *Job Keeper* payment or *Job Seeker* payment.

A landlord may agree that a tenant is in financial hardship, but say that is not attributable (or largely attributable) to COVID-19. If so, the landlord (or the landlord's agent) must be able to demonstrate to SACAT why that is the case.

4. How is SACAT dealing with these applications (ie for rent and water debts) during COVID and what sorts of orders can SACAT make?

SACAT continues to conduct its hearings in much the same way notwithstanding COVID-19 except that most hearings are by phone. SACAT has the power to make the following orders:

- Possession but
 - Not if SACAT considers the tenant is in financial hardship due to COVID-19.
 - And even if SACAT does not consider the tenant is in financial hardship due to COVID-19, SACAT must have regard to the circumstances created by COVID and in particular the need to avoid homelessness during the pandemic.
- Possession suspended (subject to the same provisos as attach to an order for possession) - prior to COVID-19, SACAT could only suspend for up to 90 days and an order suspending for that period was unusual. The COVID Act allows SACAT to make an order suspending possession for any period SACAT thinks fit *if SACAT is satisfied that the tenant is suffering financial hardship due to COVID*.
- A payment plan (reinstatement of the tenancy) – before COVID, an order would usually be made in its final form at the first hearing (eg requiring the tenant to pay an extra \$20, \$50 or \$100 per week towards the debt). However, in COVID-19 affected cases, if the tenant's circumstances are uncertain, it may be appropriate for SACAT to make a short term order (perhaps with minimal additional payments), and for SACAT to adjourn the application to a date 4 weeks or so after the hearing so that the application can be reconsidered and a final order made at that point.

Comments:

(1) *Before the COVID Act, if SACAT made an order for possession (for rent or water debts), that order had to be made within 7 days unless SACAT decided to suspend the order on grounds of hardship. If an order was made to suspend possession, the suspension period would generally be relatively short – 2 or 3 weeks. During the pandemic, it is more common for an order to be made to suspend possession and more common for the suspension period to be longer (because of the requirement to consider the implications of any order for possession – Section 8(1)(l) and 8(6) COVID Act).*

(2) *It is generally accepted that for a tenancy to be affordable, rent should be no more than about 30% of household income. While SACAT may allow a tenancy to continue for a short time if that ratio is significantly exceeded, Tribunal members may be reluctant to allow a tenancy to continue on a long term basis if that ratio is significantly exceeded.*

(3) *Although SACAT has broad powers under the COVID Act, it would be rare for SACAT to make an order to reduce rent other than on a short term basis or with the landlord's consent.*

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5. What happens if a tenancy ends while the COVID Act is in place?

If either party does not want the tenancy to continue, then that party should serve the appropriate notice on the other party as they usually would, under the RTA.

If that notice has been served by a landlord and the tenant does not vacate, then the landlord can apply to SACAT for an order for possession. Before the COVID Act, SACAT would generally make an order for possession to occur relatively quickly. SACAT can still make an order for possession (even if the tenant is in financial hardship due to COVID-19), but –

- If SACAT considers that the tenant is suffering financial hardship due to COVID-19, SACAT may suspend possession for any period SACAT considers fit (Section 8(1)(l) COVID Act); and
- Even if SACAT does **not** consider that the tenant is suffering financial hardship due to COVID-19, SACAT must consider the implications of any order for possession – Section 8(1)(l) and 8(6) COVID Act.

6. What can a tenant do if they are in financial hardship due to the COVID 19 pandemic?

A tenant can make an application to SACAT on the grounds of hardship. Before the COVID Act, the only order SACAT could make in relation to any such application, was an application terminating the tenancy (and orders for compensation). However, the COVID Act specifically empowers SACAT to make such orders as it sees fit in relation to any such application.

Comments:

A tenant in financial difficulty should explore all avenues open to them (preferably before a hearing) – for example, their eligibility for:

- *Job Seeker or Job Keeper payments;*
- *the water concession, cost of living concession and energy concession (SA Government);*
- *a South Australian Housing Trust bond guarantee/financial assistance;*
- *rent assistance (this is a Centrelink payment);*
- *if they consider it is appropriate – their entitlement to an early release of some of their superannuation.*