

Temporary Changes to the *Residential Tenancies Act 1995* in response to the 2020 COVID-19 Pandemic



In response to COVID-19, new laws affecting residential tenancies have been introduced in South Australia in the *COVID-19 Emergency Response Act 2020 (the amending Act)*.

The laws will stop operating when all relevant declarations relating to the outbreak of the COVID-19 within South Australia have ceased OR on 8 October 2020 – whichever occurs first.

From 30 March 2020, the *Residential Tenancies Act 1995* (the RTA) is taken to be amended as indicated below.

Inspections

Except in exceptional circumstances, property inspections must be conducted by audio-visual or other electronic means. Neither the landlord nor the agent should physically enter the premises. Tenants must take reasonable steps to enable these video inspections to occur.

Repairs

Standard arrangements for repairs and maintenance of a property can be followed as normal.

However, tenants may have repairs carried out on the premises (in accordance with any agreement with the landlord relating to such repairs) without seeking prior approval. Tenants may recover the cost of such repairs from the landlord, but only if the repairs are carried out by a person who is licensed to carry out the necessary work and the person provides the landlord with a report on the work carried out and the apparent cause of the state of disrepair. Tenants may apply to SACAT for compensation from the landlord as entitled under this section.

Rent increases

Landlords must not increase the rent payable for a property during the COVID-19 pandemic - even if it is specifically permitted in the tenancy agreement.

Tenancy Agreements – to be read as modified

All tenancy agreements will be taken to be modified to reflect the new laws.

A breach of a tenancy agreement due to an act or omission required by the tenant under the laws of the State in response to the COVID-19 pandemic will not be taken to be a breach or otherwise amount to grounds for termination of the agreement.

Applications on the basis of hardship (Section 89 RTA)

Either a landlord or tenant may make an application to terminate a tenancy agreement on the grounds of hardship. In any such application, SACAT will also consider whether or not to make an order for compensation in favour of the other party.

SACAT's powers under this provision have been extended to allow SACAT to make any other orders it considers appropriate if the basis of the application is financial hardship due to COVID 19.

Can a tenancy be terminated if a tenant does not pay rent or water invoices?

For the duration of the amending Act -

A landlord is unable to terminate a tenancy (by issuing a notice of termination – Form 2) on the basis of a tenant's breach of their obligation to pay rent or water invoices if the tenant is suffering financial hardship due to COVID 19.

SACAT is unable to make an order terminating a tenancy on the basis of a tenant's breach of their obligation to pay rent or water invoices if the tenant is suffering financial hardship due to COVID 19.

SACAT is unable to make an order for possession on the basis of a tenant's breach of their obligation to pay rent or water invoices if the tenant is suffering financial hardship due to COVID 19.

What is financial hardship and how can it be proved that the hardship is linked to COVID 19?

The following forms of evidence may indicate that a tenant is suffering financial hardship as a result of the COVID-19 pandemic:

- Evidence that a tenant has lost their job due to the pandemic (for example a letter from their employer, a separation certificate or information about their business)
- Bank account statements to indicate little or no savings
- Evidence of applying for a Jobseeker payment from Centrelink
- Evidence that a tenant has applied for a release of money from their superannuation fund on the grounds of hardship
- A letter from an accountant or financial adviser
- Evidence of an application to the South Australian Housing Authority or other organisation for financial assistance with their tenancy.

What orders will SACAT make in these matters?

The COVID 19 amendments do not mean that a tenant is excused from their responsibilities to pay for rent and water under the tenancy agreement (unless the parties agree or SACAT so orders).

SACAT will continue to make orders with payment plans and in doing so, it should be noted that SACAT has broad powers to make any order it considers appropriate in the COVID 19 pandemic (in relation to any kind of application) but must have regard to the purpose of the amending Act.

If a landlord agrees to reduce rent (or payments for water) for a short time does this mean that the landlord can never get that money back?

Not unless the parties have reached an agreement to that effect, or SACAT has made an order to that effect. It is more likely that the parties will agree or SACAT may make an order which reduces a tenant's rent payments for a short time (eg until Job Keeper payments commence), but on the understanding that the tenants remain responsible to make up the balance of the rent which would otherwise have been payable, at some date in the future.

Can SACAT still make orders for Possession (eviction)?

The answer is Yes (subject to the comments made above about situations where the application concerns a breach for rent/water payments only and the tenant is in financial hardship due to COVID 19) but SACAT must take into account the consequences of making an order for eviction during the pandemic. The following are examples of situations in which SACAT may still make orders for possession.

End of lease: A landlord may still seek an order for possession if the term of the tenancy has expired and the landlord has served a valid notice. However, in any such application

SACAT must take into account the circumstances of the COVID 19 pandemic and the need to ameliorate homelessness. *Note SACAT's powers to make an order to suspend possession for any period SACAT thinks fit.*

Other: Subject to the specific issues identified above, SACAT may still make an order terminating a tenancy and requiring the tenant to vacate in any other circumstances permitted by the RTA (for example, due to a serious breach).

Broad powers but subject to the scheme of the amending Act

Under the new laws, despite any other Act or law, SACAT may make any order it considers appropriate in the circumstances of the COVID-19 pandemic. However, that power is subject to the obligation to have regard to the purpose of the amending Act.

Residential Tenancies Database

An entry must not be made on a tenancy data base concerning a tenant's failure to pay rent/outstanding water invoices due to financial hardship as a result of COVID-19 or any other matter ordered by the Tribunal to not be recorded on a tenancy database.

Rooming Houses and Residential Parks

These measures will also apply to a rooming house agreement and residential parks.

For advice in relation to any of these issues, you should contact:-

Consumer and Business Services

Phone: 131 882

www.cbs.sa.gov.au/renting-letting-advice

RentRightSA

Phone: 1800 060 462

<https://www.syc.net.au/home/rentrightsa/>

Legal Services Commission of South Australia

Phone: 1300 366 424 (workdays between 9am and 4.30pm)

www.lsc.sa.gov.au

Real Estate Institute of SA

Phone: 1800 804 365

Email: reisa@reisa.com.au

www.reisa.com.au

This fact sheet is general in nature. It does not constitute legal advice and does not relate to the circumstances of any individual matter. Legal advice should be sought independently.