



Level 9, 123 Pitt Street  
Sydney NSW 2000  
PO Box Q65 QVB NSW 1230  
t +61 (02) 9231 0203  
f +61 (02) 9231 0141  
www.sydlegal.com.au

## **MORATORIUM ON RESIDENTIAL TENANCY EVICTIONS**

**By John Fitzpatrick**

**15 April 2020**

I attach the NSW Residential Tenancies Amendment (COVID-19) Regulation 2020 under the Residential Tenancies Act 2010. The Regulation commenced on 15 April 2020.

A summary of the amendment includes:

- (i) The prohibition will apply for 6 months after commencement of the regulation that is, to 15 October 2020.
- (ii) A landlord is not permitted to give a residential tenant who is a member of a household financially impacted by the COVID-19 pandemic:
  - a. A termination notice .... for non payment of rent or charges.
  - b. Applying to NSW Civil & Administrative Tribunal (NCAT) for a termination order on the same grounds.
  - c. Otherwise applying to NCAT for a termination order in relation to the residential tenancy agreement solely on the ground that an impacted tenant has failed to pay rent or charges.

**John Fitzpatrick**  
**Solicitor Director + Public Notary**  
**Sydney Legal Advisers**  
**15 April 2020**



New South Wales

# Residential Tenancies Amendment (COVID-19) Regulation 2020

under the

Residential Tenancies Act 2010

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Residential Tenancies Act 2010*.

KEVIN ANDERSON, MP  
Minister for Better Regulation and Innovation

## Explanatory note

The object of this Regulation is to—

- (a) generally prohibit, in the 6 months after the commencement of the regulation (the *moratorium period*), a landlord (under a residential tenancy agreement other than a social housing tenancy agreement) from—
  - (i) giving a tenant who is a member of a household financially impacted by the COVID-19 pandemic (an *impacted tenant*) a termination notice under the *Residential Tenancies Act 2010* for non-payment of rent or charges, or
  - (ii) applying to NSW Civil and Administrative Tribunal (NCAT) under the *Residential Tenancies Act 2010* for a termination order relating to a termination notice given to an impacted tenant for non-payment of rent or charges, or
  - (iii) otherwise applying to NCAT for a termination order in relation to the residential tenancy agreement solely on the ground that an impacted tenant has failed to pay rent or charges, and
- (b) provide that, during the moratorium period, a landlord (under a residential tenancy agreement other than a social housing tenancy agreement) may only evict an impacted tenant for non-payment of rent or charges if—
  - (i) the landlord gives a termination notice, or applies for a termination order, at least 60 days after the commencement of the regulation, and
  - (ii) the landlord and impacted tenant have participated, in good faith, in a formal rent negotiation process about the rent or charges payable, and
  - (iii) it is fair and reasonable in the circumstances of the case for the landlord to give the termination notice or apply for the order, and
- (c) require a landlord (under a residential tenancy agreement other than a social housing tenancy agreement) to give at least 90 days notice of the termination of—
  - (i) a fixed term tenancy at the end of the term, or
  - (ii) a periodic tenancy, or
  - (iii) a tenancy because of a breach of the residential tenancy agreement (other than non-payment of rent or charges), or

- (iv) a tenancy of 20 years or more, and
- (d) prohibit a landlord (under a residential tenancy agreement other than a social housing tenancy agreement) from listing an impacted tenant on a residential tenancy database for the non-payment of rent or charges, and
- (e) prescribe, during the moratorium period, the minimum period of written notice the proprietor of a boarding house must give a resident financially impacted by the COVID-19 pandemic (an *impacted resident*) of an eviction based solely on the non-payment of fees (including occupancy fees or rent) or fees for services as follows—
  - (i) if the proprietor and impacted resident have participated in negotiations about the fees but were not able to reach agreement because the impacted resident did not participate in good faith—60 days, or
  - (ii) otherwise—6 months, and
- (f) prescribe, during the moratorium period, that the proprietor of a boarding house must give a resident 90 days written notice of eviction, unless the eviction is based on—
  - (i) the resident causing or permitting serious damage to the premises or other residents' property, or
  - (ii) the resident using the premises for illegal purposes, or
  - (iii) the resident threatening, abusing, intimidating or harassing other residents, or
  - (iv) the non-payment of fees (including occupancy fees or rent) or fees for services, unless the resident is an impacted resident.

This Regulation is made under the *Residential Tenancies Act 2010*, including sections 224 (the general regulation-making power) and 229(1)(a), (b) and (c).

## **Residential Tenancies Amendment (COVID-19) Regulation 2020**

under the

Residential Tenancies Act 2010

**1 Name of Regulation**

This Regulation is the *Residential Tenancies Amendment (COVID-19) Regulation 2020*.

**2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

## Schedule 1 Amendment of Residential Tenancies Regulation 2019

### Part 6A

Insert after Part 6—

### Part 6A Response to COVID-19 pandemic

#### 41A Definitions

In this Part—

*formal rent negotiation process* means a dispute resolution process between a landlord and an impacted tenant, facilitated by NSW Fair Trading, to negotiate the rent payable under a residential tenancy agreement having regard to the specific circumstances of the landlord and the impacted tenant.

*household* means any tenants or other persons living together in the same residential premises.

*impacted tenant* means a tenant who is a member of a household impacted by the COVID-19 pandemic.

*landlord* does not include a landlord who is a social housing provider.

*moratorium period* means the period ending at the end of the day that is 6 months after the day on which this Part commences.

*rent-paying member* of a household means any member of the household who regularly contributes towards the rent payable under a residential tenancy agreement for the residential premises in which the household resides.

*residential tenancy agreement* does not include a social housing tenancy agreement.

*tenant* does not include a tenant under a social housing tenancy agreement.

#### 41B When a household is impacted by the COVID-19 pandemic

- (1) For the purposes of this Part, a household is impacted by the COVID-19 pandemic if—
  - (a) any 1 or more rent-paying members of the household have—
    - (i) lost employment or income as a result of the impact of the COVID-19 pandemic, or
    - (ii) had a reduction in work hours or income as a result of the impact of the COVID-19 pandemic, or
    - (iii) had to stop working, or materially reduce the member's work hours, because of—
      - (A) the member's illness with COVID-19, or
      - (B) another member of the household's illness with COVID-19, or
      - (C) the member's carer responsibilities for a family member ill with COVID-19, and
  - (b) as a result of any of the matters stated in paragraph (a), the weekly household income for the household has been reduced by at least 25% compared to the weekly household income for the household before the occurrence of any of the matters.
- (2) In this clause—

*weekly household income* means the total of the weekly income, including any government payments, received by each rent-paying member of the household.

**41C Prohibition on landlords terminating agreements or recovering possession during moratorium period**

- (1) For the purposes of section 229(1) of the Act, a landlord is prohibited from doing any of the following during the moratorium period—
- (a) giving an impacted tenant a termination notice under section 87 of the Act on the ground specified in section 88 of the Act,
  - (b) applying to the Tribunal for an order under section 83(2) of the Act relating to a termination notice given under section 87 of the Act on the ground specified in section 88 of the Act to an impacted tenant,
  - (c) otherwise applying to the Tribunal for a termination order in relation to a residential tenancy agreement on the ground specified in section 88 of the Act if the tenant under the agreement is an impacted tenant.

*Note*— Section 88 of the Act relates to a termination notice given by a landlord on the ground of a breach of the residential tenancy agreement arising solely from a failure to pay rent, water usage charges or utility charges payable by the tenant.

- (2) However, a landlord may give a termination notice or apply for an order that the landlord is otherwise prohibited from giving or applying for under subclause (1) if—
- (a) the termination notice is given, or the application is made, at least 60 days after the commencement of this Part, and
  - (b) the landlord has participated, in good faith, in a formal rent negotiation process with the impacted tenant, and
  - (c) it is fair and reasonable in the circumstances of the case for the landlord to give the termination notice or apply for the order.
- (3) For the purposes of section 111(2) of the Act, a termination notice that is not given in accordance with this clause is taken not to have been given in accordance with Part 5 of the Act.
- (4) In dealing with an application by a landlord or an impacted tenant relating to a termination notice or a termination order, the Tribunal may, for the purposes of satisfying itself of the matters specified in subclause (2)(b) and (c), have regard to the following—
- (a) any advice provided by NSW Fair Trading relating to the participation of the landlord or impacted tenant in the formal rent negotiation process, including whether the landlord or impacted tenant refused, or refused to make, a reasonable offer about rent,
  - (b) whether the impacted tenant has continued to make any payments towards the rent,
  - (c) the nature of any financial hardship experienced by the landlord or impacted tenant, including the general financial position of each party,
  - (d) the availability and affordability of reasonable alternative accommodation for the impacted tenant,
  - (e) any special vulnerability of the impacted tenant,
  - (f) the public health objectives of—
    - (i) ensuring citizens remain in their homes, and
    - (ii) preventing all avoidable movement of persons.

(5) Subclause (4) does not limit the matters that the Tribunal may have regard to.

**41D Termination dates for particular termination notices given during moratorium period**

(1) This clause provides, for the purposes of section 229(1)(c) of the Act, for the regulation of a landlord's right to specify a termination date in a termination notice given under particular provisions of the Act during the moratorium period.

(2) Despite any other provision of the Act or this regulation, a landlord must not, in a termination notice given under the following provisions during the moratorium period, specify a termination date that is earlier than 90 days after the day on which the notice is given—

(a) section 84,

(b) section 85,

(c) section 87 (other than a termination notice on the ground specified in section 88),

**Note**— Section 88 of the Act relates to a termination notice given by a landlord on the ground of a breach of the residential tenancy agreement arising solely from a failure to pay rent, water usage charges or utility charges payable by the tenant.

(d) section 94.

**41E Restriction on listing impacted tenants in residential tenancy databases**

(1) This clause provides, for the purposes of section 229(1)(c) of the Act, for the regulation of a landlord's right to list personal information about a person in a residential tenancy database.

(2) Despite section 212 of the Act, a landlord or agent of a landlord must not list personal information about a person in a residential tenancy database if—

(a) the breach of the residential tenancy agreement arose solely from a failure to pay rent or charges specified in section 88(1) of the Act, and

(b) at the time of the breach, the person was an impacted tenant.

## Schedule 2 Amendment of Boarding Houses Regulation 2013

### Part 5

Insert after Part 4—

## Part 5 Response to COVID-19 pandemic

### 32 Definitions

In this Part—

*impacted resident* means a resident of a boarding house who is impacted by the COVID-19 pandemic.

*moratorium period* means the period ending at the end of the day that is 6 months after the day on which this Part commences.

*residency fees* means the fees payable in connection with a residency (including any occupancy fee or rent) or fees for services payable under an occupancy agreement.

### 33 When a resident is impacted by the COVID-19 pandemic

(1) For the purposes of this Part, a resident is impacted by the COVID-19 pandemic if—

(a) the resident has—

(i) lost employment or income as a result of the impact of the COVID-19 pandemic, or

(ii) had a reduction in work hours or income as a result of the impact of the COVID-19 pandemic, or

(iii) had to stop working, or materially reduce the resident's work hours, because of—

(A) the resident's illness with COVID-19, or

(B) the resident's carer responsibilities for a family member ill with COVID-19, and

(b) as a result of any of the matters stated in paragraph (a), the resident's weekly income has been reduced by at least 25% compared to the resident's weekly income before the occurrence of any of the matters.

(2) In this clause—

*resident's weekly income* means the total of the income, including any government payments relating to the COVID-19 pandemic, received by the resident in a week.

### 34 Notices of eviction to impacted residents for non-payment of residency fees during moratorium period

(1) This clause regulates, for the purposes of section 229(1)(c) of the *Residential Tenancies Act 2010*, the notice that a proprietor must give an impacted resident if the proprietor intends to evict the impacted resident solely on the ground that the impacted resident has not paid residency fees payable under an occupancy agreement during the moratorium period.

(2) The proprietor must give the impacted resident the following notice of the eviction—

(a) if the proprietor has participated, in good faith, in a formal rent negotiation process with the impacted resident but an agreement about



- the residency fees was not reached because the impacted resident did not participate in the process in good faith—60 days written notice,
- (b) otherwise—6 months written notice.
- (3) If a proprietor has not given notice in accordance with this clause, the proprietor is taken not to have complied with the occupancy principles as the principles apply under Part 3 of the Act.
- (4) In this clause—  
*formal rent negotiation process* means a dispute resolution process between a proprietor and an impacted resident, facilitated by an independent third party, to negotiate the residency fees payable under an occupancy agreement having regard to the specific circumstances of the proprietor and the impacted resident.

**35 Notices of eviction to residents on particular grounds during moratorium period**

- (1) This clause regulates, for the purposes of section 229(1)(c) of the *Residential Tenancies Act 2010*, the notice that a proprietor must give a resident if the proprietor intends to evict the resident on a ground other than an excluded ground during the moratorium period.
- (2) The proprietor must give the resident not less than 90 days written notice of the eviction.
- (3) If a proprietor has not given notice in accordance with this clause, the proprietor is taken not to have complied with the occupancy principles as the principles apply under Part 3 of the Act.
- (4) In this clause—  
*excluded ground* means any of the following grounds—
- (a) the resident has not paid residency fees payable under the occupancy agreement, but only if the resident is not an impacted resident,
- (b) the resident has intentionally or recklessly caused or permitted serious damage to the premises or other residents' property,
- (c) the resident is using the premises for illegal purposes,
- (d) the resident has threatened, abused, intimidated or harassed other residents or the proprietor.