

Non-payment of rent

Information for landlords

The tenant not paying rent is one of the most serious issues you may face. It is important that you deal with it as early as possible.

Early action

When the tenant is a few days late in paying the rent it is good practice to send them a reminder letter of the overdue payment. They may have just forgotten to pay the rent on that particular day. If you have a phone number for the tenant, giving them a call may also be a good idea.

If the tenant is regularly late paying the rent you may wish to discuss with them changing the method of payment to one which provides more certainty, such as a direct debit arrangement. Centrelink offers a free direct bill-paying service (called Centrepay) to customers receiving payments from Centrelink. This service includes rent paid to social housing providers as well as private landlords and agents.

One of the terms of the tenancy agreement is that the tenant agrees to pay rent on time. If they are not doing this you can apply to the NSW Civil and Administrative Tribunal for an order that the tenant comply with the terms of the agreement. This type of application is best suited where a tenant is frequently or regularly a few days late with the rent. However, it is important to note that such an application cannot result in the termination of the tenancy if the non-payment of rent continues.

Serving a termination notice

If the tenant falls more than 14 days behind with the rent you can serve them with a termination notice, giving them 14 days to vacate the property. The notice must:

- be in writing
- be signed and dated by you or your agent
- be properly addressed to the tenant
- give the day on or by which the tenant is requested to vacate

- state that the grounds or reason for giving the notice is because the tenant is more than 14 days behind with the rent
- include a statement informing the tenant that they do not have to vacate if the tenant pays all the rent owing or enters into, and fully complies with, a repayment plan agreed with the landlord.

You can write your own notice or use the *sample notice to terminate a tenancy agreement form - for landlords* provided by Fair Trading.

Repayment plans

A repayment plan is a plan you may agree on with the tenant for the outstanding rent to be paid over a period of time, on top of the normal rent payments. You and the tenant would both need to agree on the plan, including the frequency and amounts to be repaid.

Both parties need to be practical and reasonable, so that all rent owing is paid as quickly as possible. The arrangement should be put in writing and signed by both parties to avoid any misunderstanding or disputes over what was agreed. If you cannot agree on a repayment plan the Tribunal may help to set one up as part of the conciliation process once the matter gets to the Tribunal.

Applying to the Tribunal

You need to consider when is the best time to apply to the Tribunal for a termination order.

You can apply to the Tribunal at the same time as or after serving the notice to the tenant. If you apply at the same time as giving notice, this will save you time, as the Tribunal will be able to list your hearing sooner (as early as possible after the termination date in the notice). The application fee is not refundable if the tenant leaves or catches up the rent and you do not need a hearing. However, the application fee is a relatively small amount compared to the rent that could potentially be saved. If you have applied and then find you do not need a

hearing, it is important to let the Tribunal know so the hearing can be cancelled.

Alternatively, you can wait until after the termination date in your notice before applying to the Tribunal. This way you will know if you need a hearing, because the tenant has not moved out or has not paid (or is not paying off) the rent owed. However, this could add up to 2 weeks before obtaining a hearing date compared to applying at the same time as giving notice. The application cannot be made more than 30 days after the termination date in the notice, unless you apply for and the Tribunal grants you an extension.

There is a specific form for Tribunal orders relating to termination for non-payment of rent which can be downloaded from the NSW Civil and Administrative Tribunal website.

Guarantee of tenancy continuing

There is a general guarantee that the tenancy will continue if the tenant catches up with the rent or you agree to a repayment plan and they stick to it. If this happens after you have already applied to the Tribunal then a termination order would not generally be able to be made.

If the tenant catches up the rent or enters into and complies with a repayment plan after the Tribunal has given a termination order, the general guarantee of the tenancy continuing still applies. This means you are unable to enforce the order even if you have already obtained a warrant for possession. In a practical sense the tenant has up until the Sheriff enforces the warrant for possession to pay the rent they owe. The exception is where the tenant frequently pays late.

Frequent late payers

If the tenant has a history of paying the rent late, you can apply for an order from the Tribunal that the guarantee of the tenancy continuing does not apply, at the same time that you apply for the termination order. The Tribunal can

make an order that the tenancy will definitely end, even if the tenant pays the rent they owe. Whether the Tribunal makes such an order is a matter for the Tribunal to decide based on the evidence presented at the hearing. Evidence could include your rent records, reminder letters sent to the tenant or previous applications to the Tribunal about rent.

Certain costs recoverable

As well as unpaid rent, you can recover from the tenant the cost of:

- replacing rent deposit books or rent cards lost by the tenant
- the amount of any bank fees for dishonoured rent cheques, insufficient funds for direct debit rent payments and the like.

You cannot recover other costs such as Tribunal application fees, or the cost of enforcing the warrant or impose any form of penalty (eg. interest) for late payments.