



# Have you heard the emergency period for COVID renting laws has been extended?

**Here are the answers to some of the commonly asked questions about what the State Government's extension of the *Residential Tenancies (COVID-19 Response) Act 2020 (WA) (RTCR Act)* emergency period means for landlords.**

Remember that every landlord's situation is different and it's best to get advice on your individual circumstances by calling the **Landlord Hotline on 1300 304 054**.

## **I recently issued a notice of termination to the tenants – can I continue with the termination?**

If you have a fixed-term agreement with the tenant, then, as has always been the case, you cannot proceed with the termination, and the purchaser becomes the new landlord.

If the property is no longer inhabitable, the termination can proceed. If you issued a section 19 remedial notice ([Section 19 Remedial Notice flowchart](#)), this can also proceed.

If the property has been sold, you have a periodic agreement with the tenant and it is a condition of sale that the property is vacant, when you enter a contract of sale it is at this point that you can issue the tenant with a notice of termination.

All other notices are not enforceable until after 28 March 2021.

You don't have to withdraw any notice that has been given, as it will automatically apply from 29 March 2021. However, to avoid confusion or disputes, it is best to let the tenant know that this is the new date for termination.

This table covers how termination notices are affected by the emergency period extension.

NOTICE GIVEN	IMPACT OF THE EXTENSION
Form 1A for non-payment of rent (section 14 of RTCR Act Rent Default Notice)	New termination date is 29 March 2021
Form 1B for non-payment of rent (section 14 of RTCR Act Rent Default Notice)	New termination date is 29 March 2021
Remedial Notice (section 19 of RTCR Act)	Notice and termination proceed
Form 1C – for breach of the agreement	New termination date is 29 March 2021
Form 1C – for sale of the premises	No change if sale of contract condition is vacant possession and tenancy is periodic  Cannot terminate if sale of contract condition requires vacant possession and tenancy is fixed-term
Form 1C – no grounds termination	New termination date is 29 March 2021
Form 1C – on the grounds contract is frustrated	Notice and termination proceed
Form 1C – on grounds of not renewing fixed-term tenancy	The earliest date for termination is 29 March 2021

### **There is a binding order through mandatory conciliation in which the tenant has agreed to move out after 29 September 2020. Now that the emergency period has been extended, does that mean I have to let the tenant stay?**

This depends on the wording, but if the tenant has agreed to move out by a particular date and this is a binding order of the Commissioner, the tenant is required to abide by the agreement. If the tenant does not comply with the terms of the binding order, the landlord can lodge an application with the Magistrates Court (or State Administrative Tribunal if a residential park dispute).

An application to the Magistrates Court is made on a Form 12 – the landlord is seeking an order under Section 15 of the Residential Tenancies Act (RTA) for the tenant's failure to comply with the binding order (see section 47 of the RTCR Act).

### **The tenant is damaging the premises – can I evict them?**

It depends on the kind of damage.

If it is ordinary damage, for example letting weeds grow in the garden, failing to mow the lawn or not keeping the bathroom clean, you cannot issue a notice of termination.

If it is serious damage, for example large holes in the walls, you can apply to the court for an order terminating the agreement (section 73 of the RTA). This application can be made direct to the court – you do not need to come through the mandatory conciliation service first.

### **I want to move back into my home – can I evict the tenant?**

If you are in hardship and need to move into your rental property, you can apply to the court to terminate the tenancy on the grounds of hardship (see section 74 of the RTA).

### **I issued the tenant with a notice that their rent is going to increase after 29 September 2020 – can I proceed with the increase?**

No, the rent cannot increase until after 28 March 2021.

### **I want the rent to increase from 29 March 2021, do I have to issue another rent increase notice?**

If you have recently issued a notice for the rent to increase after 29 September 2020, this will remain valid for the rent to increase on 29 March 2021, and no further notice is needed. However, to avoid confusion or disputes, it is best to let the tenant know the new date for the increase.

### **I have already participated in mandatory conciliation with this tenant and we have an agreement or binding order. Now that the emergency period has been extended, can we return to mandatory conciliation?**

Landlords, property managers and tenants can reapply for mandatory conciliation if:

- the current agreement does not cover the extended emergency period (for example you agreed on deferring/reducing rent until the end of the emergency period and you want to negotiate new terms for the extended emergency period); or
- either the landlord's or the tenant's circumstances have changed during the extended emergency period (for example, the agreement may have provided for a reduction in rent, but the tenant is now fully employed).

It is unlikely an application for mandatory conciliation will be accepted if it is simply a case of one of the parties not liking the agreement and wanting to reopen the matter.

### **What agreements can be made through mandatory conciliation?**

Provided the application relates to a relevant dispute (for example rent repayment or termination of the tenancy during the emergency period), the nature of agreements achieved through mandatory conciliation is really only limited by the willingness of the parties to propose and agree upon solutions.

Some examples of agreements achieved through mandatory conciliation include:

- parties agreeing to a long fixed-term arrangement if the tenant complies with the rent repayment agreement for an initial period;
- parties agreeing to end the lease by a set date, some including compensation to the tenant for vacating the premises earlier. Examples of compensation – a rent-free period, paying removalists, return of bond, help to get another property, good references; and
- parties agreeing for the tenant to undertake property repairs.

### **For more details**

For personalised, expert advice call the Landlord Hotline on **1300 304 054** or for more information visit [www.dmirs.wa.gov.au/covidrenting](http://www.dmirs.wa.gov.au/covidrenting).

**Disclaimer** – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

**Consumer Protection** | Department of Mines, Industry Regulation and Safety

**1300 304 054**

8.30 am – 5.00 pm Mon, Tue, Wed and Fri  
 9.00 am – 5.00 pm Thurs  
 Gordon Stephenson House  
 Level 2, 140 William Street  
 Western Australia 6000  
 M: Locked Bag 100, East Perth WA 6892  
 W: [www.dmirs.wa.gov.au](http://www.dmirs.wa.gov.au)  
 E: [consumer@dmirs.wa.gov.au](mailto:consumer@dmirs.wa.gov.au)

#### **Regional Offices**

Goldfields/Esperance	(08) 9021 9494
Great Southern	(08) 9842 8366
Kimberley	(08) 9191 8400
Mid-West	(08) 9920 9800
North-West	(08) 9185 0900
South-West	(08) 9722 2888



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