

Falling behind with your rent

Information for tenants

If you have fallen behind with your rent it is important to take action as soon as possible, as your landlord can give you notice to end the tenancy if your rent is more than 14 days overdue.

If you are behind with your rent

One of the terms of your tenancy is that you agree to pay your rent on time. If the rent is late you are in breach of this term. It is important to pay the outstanding rent as soon as possible.

If you are unable to pay all of the overdue rent immediately, you should contact your landlord or agent to talk about a repayment plan.

Repayment plans

A repayment plan is a plan for the outstanding rent to be paid over a period of time, in addition to your normal rent payments. You and the landlord both need to agree on the plan, including the payment amounts and dates. The repayment plan should be put in writing and signed by both parties to avoid misunderstanding or disputes over what was agreed. If you cannot agree on a repayment plan the NSW Civil and Administrative Tribunal may help set to one up.

Can I be asked to leave?

If the rent is 14 days behind or more, the landlord can serve you with a termination notice, giving you 14 days to vacate the property.

The notice must be in writing, signed by your landlord or agent and explain the reason for the notice and the date by which you must vacate.

What if I do not vacate within 14 days?

The landlord can apply to the Tribunal for an order to end your tenancy. They can do this at the same time as

giving you notice or up to 30 days after the notice ends. If they apply to the Tribunal you will receive a notice from the Tribunal to attend a hearing. You cannot be evicted until the Tribunal makes a termination order and gives you a date to leave.

The law provides a general guarantee that a tenancy can continue if you catch up with the rent or a repayment plan is agreed to by the landlord and you stick to it. This applies before or after the Tribunal hearing, unless the Tribunal orders differently because the rent has frequently been late (see below for more information).

At the Tribunal

It is important that you attend any Tribunal hearings.

The Tribunal member may first conciliate to try to get you to agree with your landlord on a repayment plan for the overdue rent. At this meeting, make sure that you do not offer to pay more than you can afford because if you fail to make the repayments, the landlord can take you back to the Tribunal and the tenancy may be terminated. If you cannot come to an agreement, your case will be decided by a Tribunal member.

At the hearing, you can:

- ask for time to bring your rent up to date and allow you to continue your tenancy
- give evidence of how much extra you can afford to pay and when.

When do I have to move out?

Termination order

If the Tribunal issues a termination and possession order, you are required to vacate the premises on the date specified unless you pay your overdue rent or comply with a repayment plan agreed to by the landlord. Otherwise, the Sheriff may enforce the warrant for possession and evict you. However, refer to the information below about frequent late payments.

Frequent late payers

If you have a history of frequently paying the rent late, your landlord can apply to the Tribunal for you to be evicted even if you pay all the rent you owe.

The law does not state what is considered to be frequently late. Whether the Tribunal makes such an order is up to the Tribunal to decide based on the evidence you and the landlord present at the hearing.

Rent records

If you are told that you are behind in your rent and you disagree, check your rent receipts and other records (such as bank statements) to see if this is correct. Ask the landlord or agent to give you a copy of your rent ledger so you can see if your records match theirs.

Late fees

The landlord can only ask you to pay the cost of replacing any rent deposit books or rent cards you have lost and the amount of any bank fees for dishonoured rent cheques, insufficient funds for direct debit rent payments and the like.

Your landlord cannot charge you for Tribunal application fees, or costs involved in enforcing a warrant or charge a penalty (eg. interest) for late payments.