

Termination by the lessor

1. For what reasons can I be evicted during the emergency period?

'Lessor' is a term for your landlord.

During the emergency period, your tenancy can only be terminated for the following reasons:

- You need to leave due to family and domestic violence, or you seek to have the perpetrator's name removed from the lease.
- You were issued with a termination notice prior to 30 March 2020.
- The Court terminated your tenancy before 24 April 2020.
- You or another person living in the property is causing serious damage to the property or injury to the lessor, property manager or neighbours, and the lessor has obtained a court order to evict you.
- The lessor is suffering hardship and has obtained a court order to evict you.
- You are on a periodic tenancy agreement and the lessor has sold the property.
- You abandon the property or come to a mutual agreement in writing to terminate the agreement.
- Every tenant dies.

2. The lessor does not have a court order to evict me. Do I have to leave?

This question is answered on our [Eviction](#) fact sheet. If your matter is listed for a court hearing, seek further advice.

3. I have received a notice to terminate my periodic tenancy agreement. When do I need to move out?

You have a periodic agreement if either:

- You signed a lease with no fixed end date; or
- You signed a lease with a fixed end date, and the end date has passed, and neither you nor the lessor took any action to terminate the agreement or enter a new agreement.

A lessor can seek to terminate your periodic tenancy agreement without grounds by giving you at least 60 days' notice on a Form 1C. However, you cannot be required to move out until after the emergency period ends on 28 March 2021. The notice must also specify the address of the property, exact date you need to leave, and be signed by the lessor or property manager.

If the notice expires **before** the emergency period ends, it is automatically varied to expire on 29 March 2021. If the notice expires **after** the emergency period ends it will take effect on the day specified in the notice.

Louisa is on a periodic lease and receives a Form 1C Notice of Termination on 2nd January 2021. The notice says she must move out of the property by 5th March 2021. Because this notice expires before the end of the emergency period, this notice is automatically changed to end on 29th March 2021. So, Louisa does not have to move out of the property until 29th March 2021.

Greg is on a periodic lease and receives a Form 1C Notice of Termination on 1st March 2021. The notice says he must move out of the property by 3rd May 2021. Because this notice expires after the end of the emergency period, it will take effect on the date in the notice. So, Greg should move out of the property by 5th May 2021.

4. I have received a notice to terminate my fixed term agreement. When do I need to move out?

You have a fixed term agreement if you signed a lease with a fixed end date, and the end date has not passed yet. Often these agreements will be for six or twelve months.

A fixed term agreement which expires during the emergency period automatically lapses to a periodic tenancy agreement on the same terms.

A termination notice may be valid, depending on when your fixed-term agreement is due to expire.

If the fixed term expires during the emergency period, the notice of termination is void and of no effect.

If the fixed term expires after the emergency period but the termination notice was given during the emergency period, the notice is valid, provided it meets the formal requirements. The notice must give you at least 30 days' to vacate, specify the address of the property, the exact date the lessor wants you to leave, and be on a Form 1C that is signed by the lessor or property manager.

Deborah is on a fixed term agreement until 20th April 2021 and receives a Form 1C Notice of Termination on 20th March 2021. The notice says she must move out of the property by 20th April 2021. The notice is valid because it expires after the emergency period, even though it was issued during the emergency period.

Amin is on a fixed term agreement until 18th March 2021 and receives a Form 1C Notice of Termination on 16th February 2021. The notice says he must move out of the property by 18th March 2021. The notice is invalid because the fixed term expires during the emergency period.

Uri is on a fixed term agreement until 30th April 2021 and receives a Form 1C Notice of Termination on 30th March 2021. The notice says they must move out of the property on 30th April 2021. The notice is valid because the notice is given after the emergency period and the fixed term expires after the emergency period.

5. I owe rent. Can I be evicted?

The lessor may seek to terminate your tenancy if you owe rent. The process the lessor must follow is outlined below, and changes depending on why you failed to pay rent and whether you failed to pay rent due during the emergency period or after it ends.

If you fail to pay rent during the emergency period because you have suffered financial hardship caused by COVID-19 pandemic (for example, you lost your job or had reduced hours at work)

Your tenancy cannot be terminated during the emergency period.

The lessor must offer you a rent repayment agreement. If you cannot reach an agreement, you or the lessor can make an application to Consumer Protection for mandatory conciliation. For more information on the mandatory conciliation process you can see the Consumer Protection [website](#).

The following table illustrates the circumstances you can/cannot be issued a termination notice:

Action	Outcome
If you fail to keep up with the rent repayment agreement (whether agreed directly with the lessor or through mandatory conciliation)	Lessor can give you a termination notice (Form 1A or Form 1B) immediately. However, the termination date must be after the emergency period ends
If you fail to cooperate with mandatory conciliation	Lessor can issue a termination notice immediately, but the termination date must be after the emergency period ends
If you cooperate with the conciliation proceedings but do not reach a rent repayment agreement	Lessor can issue you with a termination notice 3 months after the emergency period ends
If the application for mandatory conciliation is dismissed	Lessor can issue you with a termination notice 3 months after the emergency periods ends
If the lessor fails to cooperate with mandatory conciliation	Lessor cannot issue a termination notice for rent not paid during the emergency period

For further information on the effect of breach notices and Form 1A/Form 1B termination notices, see our fact sheet on [rent arrears](#).

If your failure to pay rent during the emergency period is NOT due to COVID-19

Your tenancy may be terminated during the emergency period if the lessor follows the correct process, as follows:

Step 1	The lessor must issue you with a remedial notice stating that you have failed to pay rent, that the lessor offers to enter into a rent repayment agreement and that your tenancy may be terminated if you fail to pay rent and refuse to enter into a rent repayment agreement within the next 60 days.
Step 2	The lessor can then apply to Consumer Protection for mandatory conciliation within the 60-day period they have given you to pay rent and/or enter into a rent repayment agreement.
Step 3	If you do not reach agreement at mandatory conciliation and you fail to cooperate, the lessor can apply to Court to terminate your tenancy after the 60 days has passed. The lessor must not apply to Court until mandatory conciliation has occurred. Note that the Court must be satisfied that termination is justified in all the circumstances. If you have court proceedings, seek further advice.

If you fail to pay rent due once the emergency period ends.

If you fail to pay rent that falls due after the emergency period ends on 28 March 2021, the lessor only needs to follow the usual [process for termination](#) due to rent arrears.

6. I have received a breach notice for a breach other than rent arrears. What happens next?

The only breach other than rent arrears that you can be evicted for during the emergency period is where you cause or permit serious damage to the property or injury (or risk of injury) to the lessor, property manager or neighbours. This means that any termination notice or court application for another breach (other than rent arrears) given during the emergency period has no effect.

However, once the emergency period ends, the lessor may seek to terminate your tenancy for a wider range of breaches, such as if you are using the property for an illegal purpose or causing a nuisance. You can find further information on the process the lessor must follow [here](#).

7. The lessor says I have caused serious damage to the property or injury/risk of injury to others. Can I be evicted?

Both during and after the emergency period, the lessor can take steps to evict you if you or another person allowed to live at the property intentionally or recklessly cause or permit (or are likely to cause or permit) serious damage to the property or injury to the lessor, property manager or neighbours.

You should seek legal advice if you believe you will be evicted for this reason.

8. The lessor wants to sell the property. Do I need to move out?

The law regarding sale of the property has not changed during the emergency period.

If the property sells while you are on a fixed term agreement, the lessor cannot require you to move out until the fixed term expires. The lessor is required to sell the property tenanted, and your tenancy will continue on the same terms even once the lessor changes hands.

If you are on a periodic tenancy, the lessor can give not less than 30 days' notice in writing (must be on a Form 1C) to terminate your tenancy on the grounds that the lessor has entered into a contract of sale, and under that contract the lessor is required to give vacant possession of the premises. A lessor or property manager can be fined up to \$10 000 by Consumer Protection for giving a false or significantly misleading notice to terminate the periodic tenancy on the grounds the property has sold. An example could be where the lessor is aware the property has not actually sold but issues a termination notice anyway.

You can find more information about your rights when the property is for sale [here](#).

9. The lessor wants to move back into the property. Do I need to move out?

The lessor cannot require you to move out without a court order, or unless you agree in writing. A lessor can apply to court to terminate for undue hardship, and this is permitted both during and outside of the emergency period. The lessor can apply straight to court without issuing you a termination notice or applying for mandatory conciliation. It will be up to the lessor to prove undue hardship, and up to the court to decide whether the lessor is in fact suffering undue hardship. There is no definition of 'undue hardship' in the *Residential Tenancies Act 1987 (WA)*, but examples could be where the lessor has lost their job and needs to move back into the property, or cannot meet their mortgage repayments because the tenant is unable to pay rent.

Seek advice if the lessor has applied to court to terminate for undue hardship.

10. I live in public housing, and my housing provider says I am causing objectionable behaviour. Can I be evicted?

Seek advice if you are in this situation.

11. I owe rent due to COVID-19-related financial hardship. Can I be listed on a residential tenancy database?

No. You cannot be listed on a residential tenancy database if your failure to pay rent during the emergency period is due to financial hardship caused by the economic effects of the COVID-19 pandemic.

You can find further information on residential tenancy databases [here](#).

12. Service and form of termination notices

Form of notices

A termination notice issued by the lessor must:

1. be in writing and in the prescribed form (Form 1A, Form 1B or Form 1C, depending on the reason the termination notice is issued);
2. be signed by the lessor or property manager;
3. state the address of the rental property;
4. specify the exact date on which the tenant is required to hand back the property; and
5. specify the reason the notice is given.

Service of notices

A termination notice may be served in the following ways:

1. By giving it to the person personally;
2. By post; or
3. With the consent of the recipient by electronic means (eg email).

Check your tenancy agreement if you are not sure whether you and the lessor have consented to serving documents electronically.

If a notice is sent by post, it is deemed to have been given to you at the time it would have been delivered in the ordinary course of post (5 business days). Therefore, the lessor must factor in an additional 5 days when serving a notice on you – for example, if the lessor gives you a 30-day termination notice, the lessor should make the termination date 35 days after the notice is posted.

If the notice is served personally, it will be deemed to be given to you if it is given to any person apparently over the age of 16 who appears to live in the property or to the person who ordinarily pays rent.

There are no deeming provisions for notices served electronically. This means that if you did not receive the notice by email (or other electronic means), the lessor or property manager will need to prove that you did in fact receive the notice.

If there is more than one tenant living in the property, the notice only has to be delivered to one of you.

Disclaimer:

This factsheet only contains general information. This factsheet is not legal advice and should not be relied on as a substitute for legal advice. You may wish to seek advice from a lawyer regarding your own particular circumstances. We are not responsible for any consequences arising from your use of, or reliance on, the information contained in this factsheet.

Further information about our disclaimer and your use of this factsheet can be found here: <https://circlegreen.org.au/disclaimer/>

© Circle Green Community Legal.