

FACT SHEET FOR LANDLORDS

RESIDENTIAL TENANCY MEDIATIONS

This Fact Sheet will assist you as the landlord, to understand the process, how you can prepare and what you can expect from a Residential Tenancy Mediation with Conflict Resolution Service (CRS).

What is a Residential Tenancy Mediation?

Conflict Resolution Service on behalf of the ACT Government are available to support residential landlords and tenants to resolve tenancy disputes arising due to COVID-19. This process is referred to as 'Residential Tenancy Mediation' (RTM).

The purpose of RTM is to negotiate options and work collaboratively to agree on a path forward. RTM can assist both parties to put everything in perspective, look at a situation from different angles and work out a solution that all parties can live with. However, RTM should not be viewed as an opportunity to air any grievances you may have with the other party.

Some of the legislative amendments implemented in response to COVID-19 include a moratorium on evictions for non-payment of rent for COVID-19 impacted households, the ability for landlords and tenants to negotiate reduced rent and a rental increase freeze.

What are the next steps?

Register your interest to participate in RTM on the CRS website. Follow the Checklist: What Do I Need to Do to Prepare? to ensure you have taken all reasonable steps to facilitate a successful mediation.

CRS will then invite you to attend an individual interview. Be sure to have at least substantially completed the checklist prior to your interview. The purpose of the interview is to ensure that you have taken appropriate steps to prepare, to help us understand your perspective and to help you consider workable options prior to the joint session.

Once we have met with both parties and determined that the matter is suitable, we will then organise a date for you to attend the joint mediation session.

Checklist: What do I need to do to prepare?

- o Research and consider any Government incentives and subsidies you may be eligible for. For example, the ACT Government is offering rebates to your land tax and rates bills if you reduce rent for tenants suffering financial hardship which is directly related to COVID 19.
- o Some landlords hold landlord insurance policies in relation to rental property which may include protection for loss of income due to a tenant being unable to pay rent. If your tenant qualifies

for the moratorium on evictions and is unable to pay rent, you should contact your insurer about your policy coverage and any potential claim.

- Consider how you may be able to reduce your financial burden so that you may be more flexible to negotiate. For example, this may include speaking to your bank and other liability providers to see what concessions they may be able to offer you for things such as home and personal loan repayments and credit card repayments.
- Inform yourself of your current and anticipated financial position so you can be prepared with your 'bottom line' for negotiations. Consider speaking to an Accountant or Financial Planner if necessary.
- Review and understand your rights and obligations as a landlord under the *Residential Tenancies Act 1997* and *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020*.
- Consider your 'Need vs Want'. What is it that you need from the other party to be able to move forward, compared to what you want?

Mediations have a greater chance of success when all participants feel prepared and supported during the process. Having a complete picture of your financial circumstances will be crucial to enable you to meaningfully negotiate a way forward.

Links to information and support services are included at the bottom of this factsheet to assist you to complete some of the items in the checklist.

What options do we have moving forward?

In these unprecedented times, now more than ever we need to be kind to one another and think about collaborative and creative solutions. It is important to remember that the parties have agreed to participate in RTM as one or both of the parties is experiencing financial hardship as a result of COVID-19.

As a guide, a tenant paying more than 30 per cent of their gross income in these circumstances would be considered as rental hardship.

Some alternative payment arrangements you may consider include, but are not limited to:

- A rental collection freeze until the tenant has access to income. Any rent that is not collected during this period would become a debt owed to you.
- Reduced rent. Your tenant will not be required to repay the difference between the original rent amount and the reduced rent if you did agree to a rent reduction.
- Mutually agree to terminate a fixed term residential tenancy agreement.
- Payment Plan.

There is no one-size-fits-all solution for landlords and tenants. RTM is an opportunity for you to work collaboratively with your tenants to find a creative solution that will be appropriate for your specific circumstances.

When assessing what option may be a suitable solution, you should consider the financial feasibility of all parties to maintain the agreement and the longevity of the agreement. It is best that all parties refrain from making assumptions about the other party's position. If your tenant is still in financial

hardship at the end of any agreed alternate payment arrangements, consider whether you will be able to extend or re-negotiate an agreement.

What can I expect during the Mediation?

The facilitator is there to ensure that all participants feel included, the discussion remains on task and focussed and that the parties are provided with a supportive environment to encourage a successful outcome.

The facilitator will assist to summarise points, challenge ideas and record outcomes. The facilitator does not make any decisions for participants and they do not take sides. Facilitators are there to help participants to have a conversation which will enable them to make decisions together about a situation.

The facilitator is not able to determine legal rights, provide legal advice or otherwise involve themselves in legal matters. From time to time, the facilitator may provide guidance on matters and the purpose is to ensure that the facilitation remains on track and time is not wasted on irrelevant matters.

How do we formalise the agreement reached at Mediation?

As part of the mediation process, the facilitator will help you develop an Outcome Statement setting out what was agreed during the session. The outcome statement is not a legal document. It is important to note that any outcomes agreed as part of a mediation are not legally binding or enforceable. Mediation is a voluntary process that requires good will from both participants.

Where landlords and tenants come to an agreement to amend payment terms, this mutual agreement can be given effect by:

1. Including a COVID-19 temporary rent reduction clause in your existing Residential Tenancy Agreement. The COVID-19 temporary rent reduction clause set out in the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020* is an optional Standard Residential Tenancy Term, which may be included in the residential tenancy agreement to give effect to a temporary rent reduction clause; and
2. Providing a written confirmation of the agreed reduced rent and the period the reduced rent applies.

Information and Support

Residential tenancy laws differ across the States and Territories. It is important that you keep up to date with local announcements and continuously inform yourself of your rights and obligations. The following resources and support services are a great place to start for further information:

For updated information regarding residential tenancy legislation and COVID-19 related amendments from the ACT Government:

<https://www.covid19.act.gov.au/help-and-advice/residential-tenancies>

For information regarding financial and other service support from the Australian Government:

<https://www.servicesaustralia.gov.au/individuals/subjects/affected-coronavirus-covid-19>

To determine your eligibility and to apply for Government incentives and subsidies via Centrelink:

<https://www.servicesaustralia.gov.au/individuals/centrelink>

For information regarding access to the Government's rates and land tax rebate from the ACT Revenue Office:

<https://www.revenue.act.gov.au/contact-us>

Legal Advice for Landlords:

The Small Business Clinic via Legal Aid: 1300 654 314 or

<https://www.legalaidact.org.au/contact-legal-aid>