

FACT SHEET FOR TENANTS

RESIDENTIAL TENANCY MEDIATIONS

This Fact Sheet will assist you as the Tenant, 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.

Tenants who are not impacted by the COVID-19 pandemic must continue paying rent in full and honour their existing Residential Tenancy Agreement.

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?

You should prepare information to help you to negotiate with your landlord, you will need to be clear on the amount of rent you can afford to pay.

You will need to inform yourself of your financial position right now, what you can expect in the coming months, and, what you can do to secure and/or improve your financial position. Things to consider are:

- Determine what income you will have from your employer and whether you will have job security. Will your employer be accessing incentives, such as JobKeeper to ensure your job is secure?
- Consider and apply for any Government incentives and subsidies you may be eligible for.
- 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, credit card repayments and amending car leasing instalments.
- Create a practical budget which includes all incomings and outgoings. Understand your personal expenditure which may include utilities, groceries, health, vehicle, insurances, entertainment, and expenses that you pay for the benefit of others.
- If you need further advice or assistance to navigate your financial circumstances, consider speaking to an Accountant or Financial Planner.
- Review and understand your rights and obligations as a tenant 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. Tenants who have had their income significantly impacted by COVID-19 are encouraged to engage with their landlords or managing agents to discuss alternative payment arrangements.

As a guide, paying more than 30 per cent of your 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 you have access to income. Any rent that is not collected during this period would become a debt owed to the landlord.
- Reduced rent. You will not be required to repay the difference between the original rent amount and the reduced rent back to landlord, if they 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 landlord 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 you are still in financial hardship at the end of any agreed alternate payment arrangements, you will need to approach your landlord about extending or re-negotiating an alternative payment 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>

Legal Advice for Tenants:

Tenancy Advice Service via Legal Aid ACT:
1300 402 512 or

<https://www.legalaidact.org.au/tasact>