



legal chat

with Solicitor

MARK TOBIN

LANDLORD AND TENANTS RIGHTS WITH COVID-19

A little over a month ago now with the community in shock over the rapid spread of the Coronavirus pandemic the government began putting restrictions in place and shutting down businesses under emergency legislation known as COVID-19 Legislation Amendment (Emergency Measures) Act 2020 (NSW). Immediately there were fears from tenants of residential properties and owners of businesses unable to trade as to how they could pay rents during the ensuing crisis. Similar fears were held by landlords, many of them investors or self-funded retirees, about what would happen with their income and the government announced proposed regulations covering both residential and commercial tenancies which have now come into force. The Residential Tenancies Amendment (COVID-19) Regulation 2020 and the Retail and Other Commercial Leases (COVID-19) Regulation both impose restrictions on the rights of landlords to evict tenants for not paying rent during the COVID-19 period, anticipated to be in force until September. For Residential premises the regulations provide an interim 60-day prohibition on landlords seeking to evict tenants due to rental arrears, together with longer six month restrictions on rental arrears evictions for those financially disadvantaged by COVID-19. This will restrict Landlords seeking eviction orders from the Tribunal (NCAT) and many Notice periods have also been extended up to 90 days. With Retail and Commercial Leases the guiding principle is the National Code of Conduct for SME Commercial properties which stops Landlords evicting tenants 'impacted' by the Covid-19 problem nor exercise a right of re-entry for failure to pay rent, outgoings or other breaches of lease terms which include not open or trading for minimum hours required, etc. Both the regulations impose the requirement that the tenants

have to be affected by the Covid-19 pandemic, residential tenants will need to show at least one occupant has lost their job or been stood down and their household income has reduced by at least 25%. Retail and Commercial tenants need to be 'impacted' by Covid-19 to the extent they have lost at least 30% of their turnover. Both also require landlords and tenants to negotiate in good faith to consider deferral or reductions in rental with the commercial sector having detailed rules to follow. Firstly they will have to be eligible for the Governments Jobkeeper Scheme and then produce evidence of their loss of turnover with the possibility of rental deferral or waiver equivalent to the proven reduction, so that half could be deferred and half waived in some circumstances.

Extreme measures in extreme times and we hope all come out of it well.

Johnston Tobin Solicitors are OPEN FOR BUSINESS for normal business hours throughout the pandemic.



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