



Matheson

COVID-19 Protections for
Certain Residential Tenancies
extended to 12 July 2021



In the latest of a series of residential tenancy protection legislative measures enacted by the Government in response to the COVID-19 crisis, the Residential Tenancies Act 2021 (the “**New Act**”) was enacted on 30 March 2021. The New Act extends the period of protection for certain residential tenants to 12 July 2021 and it also makes changes to the automatic residential tenancy eviction moratorium that applies whenever 5km restrictions are in place.

Lifting of the Automatic Residential Tenancy Eviction Moratorium

In October 2020, the Residential Tenancies Act 2020 was enacted to provide for the automatic application of a residential tenancy eviction moratorium when 5km restrictions are imposed on peoples’ movements due to COVID-19. This residential tenancy eviction moratorium automatically applied from 31 December 2020 until the recent 5km restrictions were lifted on 12 April 2021. For further detail on the practical impact of this protective measure on both tenants and landlords, please see [our previous update in respect of the residential tenancy eviction moratorium](#).

The New Act introduced changes to the Residential Tenancies Act 2020 to clarify that the imposition of 5km restrictions does not affect a tenant’s obligation to pay rent and to provide that the automatic moratorium will not apply to the termination of a residential tenancy for rent arrears. Such tenants in rent arrears may be able to avail of the protections set out below.

Modified Protections for Residential Tenants in Rent Arrears Due to COVID-19

Pursuant to the Residential Tenancies and Valuation Act 2020, certain protections applicable to residential tenants in rent arrears due to COVID-19 were introduced and since expired on 10 January 2021. Please see our full briefing [here](#). Such protections were modified by similar protections set out in Part 3 of the Planning and Development and Residential Tenancies Act 2020 (the “**Act**”) which initially applied from 11 January 2021 to 12 April 2021 and have now been extended to 12 July 2021 by the New Act (the “**Emergency Period**”).

Applicability

Part 3 of the Act addresses residential tenancies and its protections (which are detailed below) also apply to student accommodation licences. The Act does not apply to commercial tenancies. Similarly to the requirements under the Residential Tenancies and Valuation Act 2020, the new protections will apply to a residential tenant who makes the relevant declaration that they are in receipt of COVID-19 related or other financial state supports as detailed in the Act at any time from 1 August 2020, they are unable to pay their rent due to COVID-19 and they are at risk of losing their tenancy (the “**Eligible Tenants**”). Eligible Tenants must also serve a notice on the Residential Tenancies Board (the “**RTB**”) requesting assistance to obtain advice from the Money, Advice and Budgeting Service (“**MABS**”) and must serve a notice on the landlord within 5 days of making the declaration, seeking a consultation to make an arrangement to pay the rent due.

Protections for Eligible Tenants

Eligible Tenants who meet the requirements of the Act cannot have their rent increased during the Emergency Period (no back-dating is permitted) and any notice of termination grounded on rent arrears served on such Eligible Tenant during the Emergency Period must give 90 days' notice instead of the usual 28 days' notice and cannot specify a termination date earlier than 13 July 2021.

If an Eligible Tenant made the relevant declaration under the previous Residential Tenancies and Valuation Act 2020 and if they comply with the additional obligations under Part 3 of the Act, their termination date cannot be earlier than 13 July 2021.

The protections will not apply to a tenant who, on 10 January 2021 was in arrears for a period of 5 months or more (whether or not consecutively), a tenant who does not comply with the terms of the arrangement to pay the rent due or a tenant who does not comply with the provisions of the Act.

An Eligible Tenant will not acquire Part 4 rights as a result of these protections. Notably, the relevant tenancy agreement and residential tenancies legislation apply in the usual manner to all other grounds for termination.

Landlord counter-declaration to disapply protections

In a measure intended to recognise and balance the constitutionally protected property rights of landlords, Part 3 of the Act enables a landlord to make a counter-declaration to seek to disapply the protections detailed above. Such a declaration must be served on the RTB and the tenant and it must set out why the protections should not apply.

The grounds for such a declaration include where the tenant has been in arrears for 5 months or more or where the protections would cause undue financial hardship to the landlord. The Act clarifies that such undue financial hardship would arise where the landlord was in receipt of COVID-19 related supports such as the temporary wage subsidy, the rent is the landlord's sole or main income or the landlord is unlikely to be able to pay the mortgage on the dwelling if the rent is unpaid.

It is an offence for either the tenant or the landlord to make a declaration under the Act that is false or misleading.

Please get in touch with your usual Commercial Real Estate Department contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this update.

Full details of the Commercial Real Estate Department, together with further updates, articles and briefing notes written by members of the Commercial Real Estate team, can be accessed at www.matheson.com.

This material is provided for general information purposes only and does not purport to cover every aspect of the themes and subject matter discussed, nor is it intended to provide, and does not constitute, legal or any other advice on any particular matter. The information in this document is provided subject to the Legal Terms and Liability Disclaimer contained on the Matheson website.

Copyright © Matheson

Contacts



Sally Anne Stone

Partner

T +353 1 232 2563

E sallyanne.stone@matheson.com



Sarah Jane Corbett

Associate

T +353 1 232 2542

E sarahjane.corbett@matheson.com