



Talk with your tenant

If your tenant is struggling to pay rent or failing to comply with the lease:

- ▶ Find out why & ways to support the tenant – following strict termination provisions may not be your best option, talk to your tenant to understand the situation and to work through a way forward together.
- ▶ Any funding or agency support available?
- ▶ Can you reach a mutual agreement that works for you both? Talk to us about some practical options. Always record any agreement in writing and have it signed by all parties.



Check the lease

Does it include any special provisions?

Identify the default

Failure to pay rent or breach of a lease term e.g. causing damage to the premises?



Rent default

Issue Notice of intention to Cancel Lease

- ▶ It is vital the correct procedure is followed and the correct information is given in the notice.
- ▶ 10 working days notice must be given

COVID extension provisions for rent arrears. Notice needs to be 30 days if within 'COVID period' and that expires 6 months from 22 March 2021. [gazette.govt.nz/notice/id/2020-go5735](https://www.gazette.govt.nz/notice/id/2020-go5735)

A Landlord who acts on an invalid notice and cancels the lease can suffer harsh penalties such as damages for interrupting tenant's business, loss of profits, relocation costs, or the tenant applying to the Court for relief against termination.

▶ If tenant has left no need for notice ◀



Breach of term

Issue Notice of intention to Cancel Lease

- ▶ It is vital the correct procedure is followed and the correct information is given in the notice.
- ▶ Reasonable notice to rectify must be given. What is "reasonable" will depend on the situation and particular breach. e.g. a reasonable time to remedy damage to premises.



Serve notice on tenant or use process servers

You must validly service notice on your tenant – giving them **10 working days** to rectify any arrears. Be aware of public holidays.

Serve notice on guarantor and any sublessees, mortgagees or receivers.

- ▶ Make sure you know who you are serving. If your tenant is an individual, serve on the person by handing the notice to them. If a Company; by delivery to the Company's registered office. Process servers can be used to help with this.
- ▶ Diary at least 10 working days from date of service
- ▶ Failure to comply with notice requirements can render the notice invalid, and open you to a counter-claim from your tenant



Tenant does not make payment

No payment after 10 or more working days, or if breach not remedied within specified time.

Due diligence before taking possession

- ▶ Check PPSR searches to see if priority over chattels, fixtures etc
- ▶ Is there a Guarantor?



Tenant makes payment

Suggest the tenant set up AP's or ask for more security e.g. bank guarantee.



Tell your tenant that you are taking possession:

- ▶ What reinstatement obligations are in the lease?
- ▶ Who is responsible for this?
- ▶ What about tenant chattels/ fitout?



Tenant leaves peacefully

Re-enter and change the locks. Do this during day time and without committing forcible entry (not breaking and entering).



Tenant refuses to leave

You need to apply to the Court for Order of Possession. If the breach consists solely of failure to pay rent, the Court will likely grant relief against cancellation, providing the tenant pays all arrears in full and your legal costs. But generally, relief will not be granted if the tenant is clearly insolvent.



Recover rent arrears (and other costs).

For rent arrears and also damages (real loss needs to be established e.g. costs spent in recovery, legal fees etc), costs to reinstate premises and remove tenant's chattels/fit out. You can sue both your tenant and guarantor (if any) at the same time.



62 Ardmore Street
Wanaka

177 High Street
Christchurch

218 George Street
Dunedin



03 443 0900



reception@aspiringlaw.co.nz



www.aspiringlaw.co.nz