



Northern Territory of Australia

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Northern Territory of Australia

Business Tenancies (Fair Dealings) Act 2003

Modification Notice

I, Natasha Kate Fyles, Attorney-General and Minister for Justice, under section 11B(2)(a) of the *Business Tenancies (Fair Dealings) Act 2003*, make the following instrument:

1 Title

This instrument may be cited as the *Business Tenancies COVID-19 Modification Notice 2020*.

2 Period of effect

This instrument has effect during the emergency period.

3 Mandatory negotiation before giving notice to quit during emergency period

- (1) During the emergency period, a landlord must not give a tenant a notice to quit unless the landlord has, for a period of at least 30 business days, made good faith efforts to negotiate with the tenant to allow the tenant to remain in the premises.
- (2) Subsection (1) does not apply to the following:
 - (a) a notice to quit given under section 126 of the Act;
 - (b) a notice to quit given in the reasonable belief that the tenant engaged in or intends to engage in:
 - (i) illegal conduct on the premises; or
 - (ii) conduct that caused or will cause substantial damage to the premises contrary to the business lease.

- (3) A notice to quit given to a tenant by a landlord contrary to subsection (1) does not terminate the tenancy in respect of which the notice was given.
- (4) To avoid doubt, if a business lease requires negotiations or an alternative dispute resolution process between the landlord and tenant before a notice to quit can be given:
 - (a) those requirements continue to have effect to the extent that they are not contrary to subsection (1); and
 - (b) the negotiation period required under subsection (1) must run concurrently with any period for the negotiation or alternative dispute resolution process.

4 Costs of application during emergency period

- (1) The parties to an application for a warrant of possession made under section 131 of the Act during the emergency period must bear their own costs.
- (2) Despite subsection (1) of this section, the Local Court may make the following orders in relation to an application for a warrant of possession made during the emergency period:
 - (a) a costs order on a standard basis in favour of the applicant if satisfied that:
 - (i) the tenant's financial situation was not substantially affected by the COVID-19 public health emergency; or
 - (ii) the tenant significantly breached the business lease other than, or in addition to, failing to pay rent during the emergency period;
 - (b) a costs order on a standard basis in favour of the tenant if satisfied that the application was without merit;
 - (c) a costs order against a party if:
 - (i) the party failed in whole or in part to genuinely attempt to enable and assist the Court to make a decision on its merits; or
 - (ii) the party acted unreasonably in a way that resulted in unnecessary costs being incurred;
 - (d) an order under section 32 of the *Local Court (Civil Procedure) Act 1989*.

Dated 28 April 2020

N. K. Fyles
Attorney-General and Minister for Justice