

Breach notices

If a commercial tenant breaches their lease obligations, the lessor may issue a Form 7 Notice to Remedy Breach of Covenant under the *Property Law Act 1974*.

Notice to Remedy Breach

The *Property Law Act 1974* (the PLA) sets out the procedures for issuing a Form 7 Notice to Remedy Breach of Covenant (a Form 7 Notice).

The lessor must comply with the lease when issuing notices and Section 124 of the PLA sets out what a Form 7 Notice must include.

- Failure to strictly comply with the requirements of the PLA when issuing a Form 7 Notice can result in the notice being deemed invalid by a court.
- If a notice is deemed invalid, the notice would be ineffective and would need to be reissued by the lessor.
- If an invalid notice was relied upon by the lessor for a 'lock out', a tenant may have a right to compensation.

Important facts

- Courts have jurisdiction to decide the validity of notices and stop any actions.
- Tenants should seek urgent legal advice from a qualified attorney experienced in property and tenancy law on how to dispute the notice or stop any actions.
- The QSBC may be able to offer mediation; however, it may not be suitable, or required, in urgent situations.

Impact of inaction

If a breach is not disputed or rectified in full by the date specified in the breach notice **the financial and legal implications can be serious and significant** including terminating the lease, having the locks changed, any possessions inside seized or sold, forfeiture of any bond or bank guarantee, and reputational damage with staff and customers.

Response options

When a tenant receives a Form 7 Notice, there are generally four options:

1. **Rectify the breach** (within the timeframe specified in the notice).
2. **Dispute the breach** if they believe that it is incorrectly served, invalid, unfounded, or unjustified.
3. **Attempt to negotiate** a resolution. Providing a specific plan to the lessor may increase the likelihood of acceptance; however, the lessor may have no obligation to negotiate and might proceed with legal action.
4. Tenants could **ignore the notice**, only partially rectify the breach, or do nothing and hope the issue goes away. **This option is not advised.**

Reasonable time

Lessors must give tenants reasonable time after service of the Form 7 Notice to remedy the breach.

- The courts decide what is a reasonable time to remedy all breaches and, in some cases, have identified 14 days as being reasonable.
- In each case, what is a reasonable time will depend on the circumstances.

Unable to remedy in time

If you cannot meet the deadline to remedy a breach:

- Seek legal advice immediately.
- Consider the potential impacts and the options available to rectify the breach.
- Check if the Form 7 Notice complies with the PLA and seek legal advice on how to proceed.
- Try to negotiate an extension with your lessor, get any extension in writing.
- Propose interim measures to mitigate the impact of the breach while you work to achieve a complete resolution.

Locked out without notice

If you find yourself locked out without the proper notice, consider the following steps:

- Seek legal advice immediately.
- Assess the viability of pursuing legal proceedings for relief or compensation.
- Assess whether the lessor's actions are consistent with the lease.

- Talk to the lessor about how you can work together to find a resolution.
- Keep detailed records in case legal action becomes necessary.

Struggling to pay rent

Rent arrears are a common trigger for re-entry or forfeiture. If you are struggling:

- Seek support from the [Small Business Debt Helpline](#) (1800 413 828)
- Access information on [cash flow management](#)
- Contact your bank's [financial hardship team](#)
- Book [free mentoring](#) to review prices or pivot your business
- Access free [mental health and wellbeing resources for businesses](#).

Top tips

- Seek urgent legal advice from a qualified attorney experienced in property and tenancy law.
- The QSBC may be able to offer mediation; however, it may not be suitable, or required, in urgent situations.

More information

Contact the QSBC by submitting an [online enquiry](#) or calling 1300 312 344.

This information provides general guidance only. It does not constitute legal advice. We recommend you seek independent legal advice which considers your individual circumstances and applicable laws.