



### Fact Sheet 15: Eviction from Your Home

#### 1. What Could Cause Your Eviction?

In general, there is no fixed term in the tenancy agreement of a Housing ACT tenant. You have a periodic tenancy which may continue indefinitely until you decide to leave and give the required 3 weeks' notice of your intention to vacate.

However, it is a mistake to believe that Housing ACT cannot or will not end your tenancy.

##### What Breaches Could Lead to Eviction?

##### 1.1. Rent Arrears

The most common breach of the tenancy agreement is getting into "rent arrears". This means you are behind in the rent because you have not paid on the due date or you have paid less than the amount due.

There are lots of reasons for getting into rent arrears and sometimes the circumstances are beyond the control of the tenant – for example, if you suddenly lose your income.

Housing ACT will not usually start eviction proceedings the minute you miss one payment or make a payment that is short of the full amount due. However, if for any reason you are unable to pay the rent as due, you should immediately advise Housing ACT and say why this has happened and how and when you will make up the shortfall. You should then do what you have undertaken to do. You may experience pressure to catch up immediately with a lump sum payment. Do not agree to this unless you know you have the means to do it. It's much better to pay by instalments that you can (and will) manage.

##### 1.2. What if You Don't Agree that You're in Arrears?

Mistakes and misunderstandings can occur, so check your method of payment, and ask Housing ACT to check their records. Sometimes the problem is that your rebate has expired, and you have been charged the full market rent for your home. (For more information on rebates, see **Fact Sheet 2: Rent and Rent Rebates**).

DON'T ignore any sign that you may be in rent arrears; and

DON'T hold back the rent because of some other problem. Even if you think Housing ACT is breaching the tenancy agreement in some way, you still have an obligation to pay rent.

##### 1.3. Other Breaches

There are a few other ways you can breach your tenancy agreement – for example, by failing to take reasonable care of the property, making alterations to the property without Housing ACT's consent, being a nuisance to the neighbours, using the property for illegal purposes, refusing access to Housing ACT, or subletting without Housing ACT's consent.

#### 2. Other Reasons for Eviction

Although in general Housing ACT tenants have security of tenure, there are some situations where Housing ACT may require you to leave your home even though you are not in breach of your tenancy agreement. For example, Housing ACT may have decided to sell the property or otherwise dispose of it. This is usually because there are major problems with the property that Housing ACT has decided cannot be fixed, or are too expensive to fix. In such a case, you should not be made homeless; you should be offered transfer to a suitable alternative home.

**WHATEVER THE REASON, IF YOU ARE THREATENED WITH EVICTION YOU SHOULD SEEK LEGAL ADVICE.**

### 3. The Eviction Process

Generally, before an eviction can take place the law requires all lessors, including Housing ACT, to take a series of steps.

#### 3.1. Notice to Remedy a breach of the agreement

This is the first step in the eviction process.

This notice advises you that Housing ACT considers you are breaching your tenancy agreement and gives you a period of time in which to remedy that breach (that is, fix whatever is the problem).

If the breach is rent arrears, the Notice to Remedy will give you 7 days to make up the arrears. The rent has to be at least 7 days in arrears before this notice can be issued.

If the breach is something other than rent arrears, the notice will give you 14 days to fix the problem.

If Housing ACT is satisfied that the breach has been remedied within the notice period, no further action will be taken. In practice, you can generally negotiate with Housing ACT so that a process for remedy is worked out that is acceptable to both parties.

For example, it may be agreed that the rent arrears of \$100 are to be made up by extra payments of \$20 per fortnight over the next 5 fortnights, or it may be agreed that the overgrown garden will be got under control over a period of 6 weeks.

#### 3.2. Notice to Vacate

This is the notice you will receive if Housing ACT is not satisfied that you have remedied the breach within the required (or agreed) time.

NOTE: if during your tenancy you have previously received 2 Notices to Remedy for failure to pay rent, and you then fail to pay rent again, Housing ACT can issue a Notice to Vacate without a further Notice to Remedy. In relation to other breaches of the tenancy agreement, if you have previously received 2 Notices to Remedy on any grounds and Housing ACT believes you are in breach of the agreement again, they can issue a Notice to Vacate without first issuing a 3<sup>rd</sup> Notice to Remedy.

A Notice to Vacate tells you to vacate by the end of the period given. If the reason for the Notice is a breach of the tenancy agreement, the Notice to Vacate must give you a minimum of 14 days' notice.

**A NOTICE TO VACATE DOES NOT END YOUR TENANCY AND YOU DO NOT HAVE TO MOVE OUT IMMEDIATELY.**

It may not be too late to try to negotiate an agreement to resolve the problem. There is no formal internal process for appealing a Notice to Vacate. However, if you believe there are some particular circumstances which caused your breach of the tenancy agreement, and Housing ACT may not be aware of these circumstances, you can write a letter explaining the circumstances and requesting that no further action be taken to terminate your tenancy.

If Housing ACT decides to act upon the Notice to Vacate they must apply to the ACT Civil and Administrative Tribunal (ACAT) in order to evict you.

**YOU CAN ONLY BE MADE TO LEAVE YOUR HOME IF ACAT ORDERS THAT THE TENANCY HAS ENDED AND A WARRANT FOR YOUR EVICTION IS ISSUED.**

In order to evict you Housing ACT must apply to ACAT for a Termination and Possession Order (TPO). ACAT will send you a copy of this application which is usually quite bulky as it contains a copy of your tenancy agreement and all the relevant correspondence between you and Housing ACT. There will also be a Notice of Hearing that will tell you the date ACAT will hear the matter, and the date by which you should lodge your defence, if you intend to defend the matter.

**IF YOU WANT TO TRY TO SAVE YOUR TENANCY, YOU MUST GO TO THE HEARING.**

### 4. Defending the Eviction

For more detailed information see **Fact Sheet 16: Defending an Eviction.**

In brief, to defend an eviction:

- Be at ACAT at the right time on the right day;
- Be prepared – have a list of the points you want to get across to the ACAT Member, for example, how/why you got behind in the rent, what steps you have taken and what you propose for the future;
- Have ready and in good order any documents you want to show the ACAT Member; and
- Keep cool and be polite, no matter what the ACAT Member or the Housing ACT representative says.

## 5. Need Legal Help?

Canberra Community Law provides a free, independent and confidential duty lawyer service at ACAT each Thursday for the residential tenancy public housing list.

### Access to Interpreters

The ACT Government is committed to ensuring that all Canberra residents, regardless of their background, have equal access to its programs and services. It is ACT Government policy to use professional interpreters when speaking with people who have difficulty communicating in English.

You are entitled to an interpreter free of charge when dealing with an ACT Government directorate or agency (such as schools, hospitals and Shopfronts).

Simply ask the staff member you are dealing with to arrange an interpreter.

### Disclaimer

This fact sheet contains general information available at the time of printing. It does not constitute legal advice. If you have a specific legal problem, please contact Canberra Community Law's advice line on 02 6218 7977.

Canberra Community Law is entirely independent of Housing ACT. All assistance is free.

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