



Fact Sheet 16: Defending Eviction

Housing ACT, like any private landlord, can apply to the ACT Civil and Administrative Tribunal (ACAT) for termination of a tenancy. It is not safe to assume that because you are a public housing tenant you will not be evicted. Public housing tenants are evicted for many reasons.

If you think Housing are going to try and evict you, please contact us on 6218 7977 as soon as possible.

1. How will I Know I'm Being Evicted?

(see Fact Sheet 15: *Eviction from Your Home*)

There are two categories of termination proceedings:

1. Termination where the tenancy agreement has been breached; and
2. Termination where the tenancy agreement has not been breached.

2. Termination for breach

2.1. Notice to remedy

If Housing ACT allege that you have breached your tenancy agreement, they may issue a Notice to Remedy. A notice to remedy will identify a breach of one (or more) of the Standard Terms of your tenancy agreement and will ask you to fix the situation within either 7 days (if it is rent related) or 14 days (if it is not rent related).

For example, the notice could say that you have failed to pay your rent, that you have failed to keep your property in a reasonable condition, or that you are making too much noise and interfering with the neighbours.

If you remedy the breach by the date specified on the notice, no further action will be taken.

2.2. Notice to vacate

If you fail to comply with the notice to remedy, that is, you fail to fix the problem identified, Housing may issue a Notice to Vacate. This notice will ask you to leave your property within a certain period of time (at least 14 days).

You do not have to leave the property in response to this notice. If you do not leave, the only way the tenancy can end is by order of the ACAT.

2.3. Application to ACAT

If you do not vacate, Housing ACT may then apply to the ACAT for a termination and possession order.

ACAT will send you a copy of Housing ACT's application for a TPO. The documents from ACAT will include a Notice to Respondent (that's you) telling you the date of the hearing and the date by which you should lodge any defence you want to make.

3. Deciding whether to Defend the Eviction

If you want to keep your home, you will need to defend the eviction.

4. If you don't agree with the reason for the notice

The easiest way to defend an eviction is to show that you did not breach your tenancy agreement. If you believe you have not breached the tenancy agreement in the way Housing ACT thinks you have, you simply need to show ACAT there is no breach and therefore no basis to end your tenancy.

For example, you have not failed to make a rent payment and Housing ACT's calculations are incorrect; or the noise being complained about does not come from your place but from somewhere else.

5. If you acknowledge that there has been a breach

5.1. If you have remedied the breach

In most situations, if you have remedied the breach Housing ACT will not pursue their application in ACAT.

If you find yourself in ACAT and Housing ACT are still trying to evict you, you should explain to ACAT how you have fixed the problem, and why the problem is unlikely to happen again.

For example, since Housing ACT has applied to ACAT, you have removed all of the furniture on your front lawn and mowed the lawn.

5.2. If you have not remedied the breach: not rent related

If you have not remedied the breach, and the breach is not rent related, Housing ACT will need to prove that the breach of your tenancy agreement justifies termination. Usually, this will involve ACAT looking at the circumstances, like how bad the breach is, the likelihood that you will fix the situation, the impact on those around you, and the impact that eviction will have on you.

For example, if you have installed a garden shed without the written consent of Housing ACT, but this does not undermine the tenancy in any way, and you undertake to remove the shed and make good any damage to the lawn when you vacate, it is unlikely that breach would justify termination.

5.3. If you have not remedied the breach: rent arrears

If you have fallen into rent arrears and have been unable to repay Housing ACT by the time you get to ACAT, and you wish to stay in your property, in most situations the best outcome is a payment order. Please see our factsheet entitled 'Payment Orders', Fact Sheet 12.

Your best chance of getting a payment order is being able to show you are willing and able to pay rent (and something towards your arrears) in the future.

6. Lodging a Defence

The documents from the ACAT Registry will include a form headed "Response - Resolution of a Dispute under the Residential Tenancies Act 1997". Although the Notice of Hearing will also indicate the date by which your response should be lodged (usually about a week prior to the hearing), you do not have to lodge a response. Most tenants will defend the eviction at the hearing itself.

If you don't lodge a defence, the hearing begins with the ACAT Member knowing only one side of the story. It may make no difference to the outcome, but advance notice of your position may give the ACAT Member a better and more sympathetic understanding of your circumstances.

If you wish to give ACAT advance notice of the fact that you will contest Housing ACT's application, you can complete the form and lodge it at ACAT by the due date. You can hand-write on the form as long as it is neat and easy to read, and/or you can type an accompanying statement. A copy of your Response will be sent to Housing ACT prior to the hearing.

7. Before the Hearing

There are some other things you can do to prepare:

- Hearings are open to the public and it can be very helpful to attend other hearings before your own to see what the processes are. The ACAT registry officers can tell you when there are hearings in the week before your own, and which are eviction matters.
- Organise all your documents into a folder, put them in chronological order and label them so you can find them easily during the hearing.
- If you have any witnesses, make sure they are able to attend on the day and know where to go. On the day, witnesses need to remain outside the Hearing Room until called to give their evidence.
- Assemble your evidence. ACAT is not a court and is not bound by the Rules of Evidence, but in order to convince the ACAT Member that you should not be evicted, you need to have reliable evidence to support the statements you make in your defence. For example, a receipt is evidence that a payment has been made; a dated photograph is evidence of the condition of the property; a statement from a neighbour that there has been no loud music for the last 2 weeks is evidence that you have remedied the breach.
- There are usually a number of matters listed in ACAT for the same time. It's important to be at ACAT on time, but you also need to be prepared to wait while other matters are heard before yours.

8. What if I Can't Attend the Hearing?

It is possible to get the hearing date changed by seeking an adjournment, but you need to have a good reason for requesting this. For example, illness, a death in the family, a court appearance on the same day.

If you need an adjournment, it can be helpful to contact Housing ACT first to see whether they will agree to this and, if so, then fax, email or hand in a letter to the ACAT Registry saying that the parties have agreed to an adjournment and why.

If Housing ACT do not agree to an adjournment, you should ask ACAT for an adjournment. Usually, you would need to provide ACAT with a medical certificate or other evidence of incapacity to attend.

Do not assume that your matter has been adjourned. It is really important to follow up with ACAT prior to the hearing to confirm the outcome of your request.

9. What if the Hearing Goes Ahead Without Me?

If you do not turn up to a hearing and the ACAT Member has only Housing ACT's application to go on, the ACAT Member is not likely to adjourn the matter, unless Housing ACT suggests or agrees to an adjournment in your absence. If Housing ACT opposes an adjournment and the Member is satisfied that the grounds for eviction exist, it is likely that orders ending your tenancy will be made. These orders are known as *ex parte* (without one of the parties).

If you do not agree with these orders when you receive notice of them, you can apply to have them set aside. However, ACAT will only set aside the *ex parte* orders and agree to hear the matter again if satisfied on 2 issues:

1. You had a reasonable excuse for not turning up to the first hearing; and
2. There may be a basis for making different orders.

10. The Hearing

When your matter is called, you take a seat at the tables in the Hearing Room. The Housing ACT representative sits on one side, you on the other side and the ACAT Member sits in the middle. The ACAT Member usually introduces him/herself and invites the 2 parties to introduce themselves. The proceedings are taped so you should speak clearly.

It is intended that the hearing process is fairly informal, and the parties understand what is going on. If you find the language unfamiliar and confusing, you should ask the ACAT Member to explain anything you don't understand.

Generally, the Housing ACT representative will speak first, and give their reasons for seeking your eviction. You should take notes of any statements you don't agree with or want to comment on, so you don't forget when it's your turn to speak. The ACAT Member may also ask you questions. The important thing is that you should have the opportunity to say everything you want to say. As long as you don't interrupt either the ACAT Member or the Housing ACT representative while they are speaking, there is no strict order as to who speaks when.

Sometimes either the ACAT Member or the Housing ACT representative will suggest that the outcome of the hearing could be worked out by agreement or 'by consent'. This is often a good outcome for a tenant, if Housing ACT is agreeing that the eviction will not proceed, but it is very important to know exactly what you are agreeing to, and what will be required by the consent orders.

11. What Orders can ACAT Make?

ACAT can decide to do any of the following:

- Refuse to make an eviction order, and allow the tenancy to continue;
- Order that the tenancy terminates immediately;
- Order that the tenancy is to terminate but allow a period of time (up to 21 days) for the tenant to vacate;
- Order that Housing ACT be compensated for any loss arising from the tenant's breach of the tenancy agreement. For example, any rent owing.

In addition, where rent arrears is the reason Housing ACT is seeking an eviction, ACAT can make a payment order.

Please see our factsheet entitled '**Payment Orders**', **Fact Sheet 12**.

12. What if I Disagree with ACAT's Orders?

You can appeal an ACAT decision to evict you. The first avenue of appeal is within ACAT itself. The law allows 28 days (from the date of the decision) to lodge the appeal, but in practice you would need to act very quickly in order to stop the eviction from going ahead. An appeal may be based on a question of fact or law.

It is important to seek legal advice before lodging an appeal.

13. Variation of Payment Order

You can apply for a variation of an ACAT payment order. This would generally be on the basis that there has been some change in your circumstances since the orders were made. For example, you could ask ACAT to reduce your rent repayment instalment from \$40 per fortnight to \$20 per fortnight because your income has significantly reduced. You should seek legal advice if you are thinking about making this type of application.

14.If you decide to move out

If you decide to vacate without defending Housing ACT's application, you should pay whatever you can towards the arrears, advise Housing ACT that you are leaving, leave the house clean and undamaged as far as possible, and return the keys. In this way you can ensure that the tenancy has ended and you do not owe rent beyond the day you vacated. You may also be able to avoid a further debt for "tenant responsible maintenance".

15.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.

It is a good idea to arrive at ACAT at least 60 minutes prior to the hearing time to ensure you have time to speak to our duty lawyer about your matter.

It is important that you bring to ACAT, the tribunal documents and any other documents you think may be relevant (eg receipts for rent payments, support letters, proof of income).

If you have problems finding our duty lawyer ask ACAT staff at the front counter for assistance.

If you need legal assistance at ACAT when our duty lawyer is not there, phone us on 6218 7977 and ask to be urgently put through to a lawyer. If you can't get through to us please tell the ACAT member and Housing ACT that you would like to obtain legal advice before the hearing goes ahead.

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.

May 2019