



Fact Sheet 9: Debts from a Previous Tenancy

1. Overview

You may be informed that you have a debt from a previous tenancy when you ask about being rehoused. If you feel discouraged from applying for housing because of a debt, it is important to persist with the application process and lodge a completed application form with Gateway Services of Housing ACT.

A debt from a previous tenancy can be a barrier to being rehoused—it can lead to a decision being made not to house you—but this is not an ‘automatic’ decision. There can be no lawful policy that denies rehousing to all applicants with a debt.

Three main things for you to think about are:

- Do you accept the debt?
- Can you repay the debt?
- Can you be housed despite the debt?

2. Do you accept the debt?

There are 2 main sources of debt to Housing ACT: unpaid rent and the cost of repairing damage caused by the tenant. The second of these is called Tenant Responsible Maintenance (TRM) debt.

You need to find out first what the debt is for. Generally, if you failed to pay rent in a previous tenancy, the debt is owed and there may be little point in contesting it. If you are in any doubt about this, you should seek legal advice.

TRM charges are another matter. You should get an itemized account of the charges, so you can see exactly what you have been charged and why. If you believe any or all the charges do not arise from damage caused by you (or others in your household or guests), you can seek review of the charges. See **Fact Sheet 8: Damage to your Housing ACT property**.

If you accept some of the charges, but not others, you may decide to repay the ones you accept. You will need to make it clear in writing which charges you do not accept and tell Housing ACT that you want them reviewed.

3. Repaying the Debt

When you apply to be rehoused and there is a debt from a previous tenancy, there will be strong encouragement to repay the debt—usually by instalments. Making regular repayment instalments for a period of time can generally give Housing ACT a basis to exercise the discretion to rehouse you, even if there is still some outstanding debt.

If you do enter into an instalment agreement with Housing ACT you need to make sure that the amount is affordable for you and is going to be affordable in the future. It is important to maintain those payments on a regular basis.

However, before you enter into any agreement to repay a debt, you should consider whether the debt is recoverable by Housing ACT (that is, whether Housing ACT cannot bring legal proceedings to force you to repay the debt).

There are two situations where a debt is not recoverable by Housing ACT:

- Where the debt is ‘statute barred,’ or
- Where the debt is part of a bankruptcy.

‘Statute barred’ debts are not recoverable when two basic conditions have been met. The first is that it must be at least six years since the debt first became due, and the second is that the debt must not have been ‘acknowledged’ at any time during that six-year period. ‘Acknowledged’ means that you have agreed in writing that the debt exists, or you have started to make repayments. In either case, once you agree in writing that the debt exists, or you start to make repayments, the six-year limitation period starts again from the date the debt was acknowledged.

Debts that are a part of a bankruptcy are a bit similar to statute barred debts—after you have been discharged from bankruptcy the debts do not exist in law. However, if the debt involves fraud it may not be covered by the bankruptcy.

If you think you may have a statute barred debt or one covered by bankruptcy, you should get legal advice before entering into an agreement to repay the debt.

4. Being housed despite the debt

There is provision in the law for Housing ACT to refuse to provide housing to someone who owes a debt to them or who has been in breach of a previous tenancy agreement (failing to pay rent or look after the property, for example). However, it is a discretionary decision whether or not to refuse housing, and therefore Housing ACT must look at the circumstances in each individual case before making a decision.

Examples of factors considered are:

- The amount of the debt;
- Reasons for non-payment of the debt including a consideration of domestic violence as part or all the reason for non-payment of the debt;
- What has been done to address the reasons for non-payment of the debt;
- Capacity to reduce his/her debt in the future.

A decision on the question of debt should not be made at the application stage but at the allocation stage so you have time to provide this evidence. In practice, however, Housing ACT may make the approval of a Priority listing conditional upon the debt issue being addressed.

Housing ACT may also impose a term (which must be endorsed by the ACT Civil and Administrative Tribunal (ACAT) on a new tenancy which requires the tenant to repay past debt. Housing ACT may decide to impose such a term in cases where it would not ordinarily rehouse without a repayment condition being imposed and/or where Housing ACT agree to transfer with debt (either at the tenant's request or as a Management Initiated transfer.

If Housing refuses Priority approval or refuses to allocate you because of past debt, this decision can be appealed. See **Fact Sheet 10: The Appeals Process**.

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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