

GUIDE 2: HOUSING ACT TENANTS APPLYING TO ACAT

This is a guide for Housing ACT tenants about applying to ACAT for repairs to be made to their property and/or for a rent reduction.

1. WHAT IS ACAT?

The ACT Civil and Administrative Tribunal (**ACAT**) is a tribunal, which is similar to a court but is more informal. ACAT decides disputes between tenants and lessors (also known as landlords).

ACAT is located on level 4 of the ACT Health Building at 1 Moore Street, Canberra.

2. WHEN SHOULD YOU APPLY TO ACAT?

Before applying to ACAT, you should read our guide 'A Guide for Housing ACT Tenants requesting Repairs' available online: www.canberracommunitylaw.org.au/fact-sheets-brochures/public-housing-fact-sheets

After reading that guide, you should only apply to ACAT if either:

- you have requested Housing ACT make **urgent** repairs and they have not done so within a reasonable period (which depends on the urgency of the particular situation); or
- you have requested Housing ACT make **non-urgent** repairs and you have:
 - waited 4 weeks;
 - sent a 'notice to remedy'; and
 - Housing ACT have not repaired the damage/broken item within the time stated in the notice to remedy.

3. WHAT CAN ACAT DO?

ACAT can order Housing ACT:

- to make repairs;
- to make a payment to you (for the repairs and/or the inconvenience suffered); and/or
- to reduce your rent if it considers that your enjoyment of the property decreased significantly because Housing ACT did not make repairs.

4. INCREASING THE CHANCES OF YOUR APPLICATION TO ACAT SUCCEEDING

You can increase the chances of your application being successful by doing the following:

- Make a detailed record of the damage (take photos and make notes);
- Contact Housing ACT to tell them about the damage as soon as possible and ask what they will do to fix the damage. Take copies/notes of any communications with Housing ACT;
- Take notes of any delay in repairs by Housing ACT; and
- If a broken item has been repaired, take photos and notes of the quality of repair and how the damaged/broken item is working after the repairs. If it is still broken, contact Housing ACT and take copies/notes of any further communications.

5. WHAT ARE THE STEPS INVOLVED IN APPLYING TO ACAT?

STEP 1: Getting the Application Form and the Fee Exemption Form

You will need to get:

- 'Application for Resolution of Tenancy Dispute Form' (**Application Form**) and;
- 'Request for Exemption from Paying Fees for ACT Courts or ACAT matter' (**Fee Exemption Form**).

You can get these forms by:

- downloading the forms from ACAT's website at www.acat.act.gov.au;
- calling the ACAT Registry on (02) 6207 1740 and ask the registry staff to mail or fax you the forms; or
- picking them up from the ACAT Registry (ACT Health Building, Level 4, 1 Moore Street, Canberra).

STEP 2: Completing the Fee Exemption Form

Simply follow the steps set out in the Fee Exemption Form so that you do not have to pay ACAT fees. You must have a Commonwealth-issued Health Care Card, Low Income Health Care Card or Pensioner Concession Card in order to qualify for the exemption.

STEP 3: Completing the Application Form

There are two sections of the Application Form which must be completed comprehensively:

- 'What is the Dispute About?'; and
- 'Orders Sought'.

'What is the Dispute About?' section

This section should contain the following information:

- The part(s) of the tenancy agreement you say Housing ACT has breached. Housing ACT's obligations to make repairs are set out in the following sections of the residential tenancy agreement:
 - clause 55(1) (Housing ACT to make repairs);
 - clause 57 (Housing ACT to make non-urgent repairs within 4 weeks); and/or
 - clause 59 (Housing ACT to make urgent repairs as soon as necessary).
- Background information about your property, including the address, size (including number of rooms, backyard etc), number of people living there and how long you have been the tenant;
- When and how the problem occurred and the type of repairs needed;
- When and how you notified Housing ACT about the need for repairs;
- Whether, when and how Housing ACT made repairs; and
- Any other relevant communications between you and Housing ACT. Where possible, you should provide copies and/or notes of the communications.

If you are having trouble describing the repairs required in sufficient detail, refer to the *Tenants Guide to Repairs & Maintenance* available online: www.communityservices.act.gov.au/data/assets/pdf_file/0003/724980/Tenants-Guide-Repairs-Maintenance.pdf. This guide lists the maintenance requests most frequently reported to Housing ACT.

EXAMPLE

To help you understand the facts that you should include when completing the Application Form, see the following example of the 'What is the Dispute About?' section:

Breach

Housing ACT has breached clauses 55(1) and 57 of our Residential Tenancy Agreement (**Agreement**) for 1 Example Street, Canberra (**Property**) by not maintaining the drain outside the living room and the carpet in the living room in a reasonable state of repair having regard to the condition of the Property at the commencement of the Agreement.

Clause 55(1) of the Agreement states that '[t]he lessor must maintain the premises in a reasonable state of repair having regard to their condition at the commencement of the tenancy agreement'.

Clause 57 of the Agreement states that '[s]ubject to clause 55, the lessor must make repairs, other than urgent repairs, within 4 weeks of being notified of the need for the repairs (unless otherwise agreed)'.

In accordance with clause 60(f) of the Agreement, flooding or serious flood damage are urgent repairs in relation to the premises. In any event, I gave Housing ACT the time required for non-urgent repairs (4 weeks) to do the repairs to the drain and the carpet. Over 5 weeks have now elapsed since I notified Housing ACT about the flood damage to the carpet and the broken drain. Failure to repair the broken drain and damage over this timeframe constitutes a breach of Housing ACT's obligations under clauses 55(1) and 57 of the Agreement.

Relevant facts

I started my tenancy on 23 January 2017. I **attach** the condition report which was provided at the start of my tenancy.

On 2 November 2017, there was a storm. I noticed that the drain outside the living room was full of water and the water was not running away. This was not due to any negligent or deliberate act by me. The water from the outside drain overflowed and entered the living room underneath the closed door. The water pooled in the living room and the carpet was soaked through. I removed my things from the flooded area, and mopped and cleaned the room, but some of my things were damaged by the water.

The items that were damaged by the water and are now unusable are:

- a) 3 books (which I estimate will cost approximately \$50 to replace);
- b) 3 board games (which I estimate will cost approximately \$30 to replace); and
- c) 10 DVDs and CDs (which I estimate will cost approximately \$150 to replace).

I have been unable to use the living room since that time due to dampness and mould in the carpet. Photos of the carpet and my damaged possessions are **attached** to this application.

As required by clauses 55(2) of the Agreement, I contacted Housing ACT and told them of the need for repairs that evening at 6:30pm by calling the Maintenance Helpdesk on 6207 1500. I spoke to Wendy. I told Wendy my name, my address and details of the damage. Wendy told me that Housing ACT would organise a contractor to come to the Property within 4 or 5 days.

On 6 November 2017, a contractor named Jim Smith from Spotless P&F Pty Ltd came to the Property. Mr Smith used a blower to dry the carpets. This did not properly repair the flood damage. The carpet was still very damp underneath and there was mould growing under the carpet. I **attach** photos of the carpet immediately after Mr Smith left the Property.

On 6 November 2017 at 3.00pm, I called the Housing ACT Maintenance Helpdesk to inform them that the drain was not fixed and the carpet was still damp and mouldy. I spoke with John. John told me that Housing ACT would "look into it".

On 1 December 2017, I sent Housing ACT a notice to remedy. The notice stated that repairs of the drain and for flood damage were required at the Property. It also stated that, if Housing ACT did not arrange for the repairs to be done by 8 December 2017, I may apply to ACAT for appropriate orders. A copy of the notice to remedy is **attached**.

As of the date of this application (9 December 2017), Housing ACT is yet to do further repairs.

‘Orders Sought’ section

There are a range of orders that ACAT may make. For failure to perform repairs, there are three orders which are most relevant:

Performance of the Agreement

ACAT may make an order requiring that Housing ACT (and/or a tenant) do what is required by the residential tenancy agreement. This means that ACAT can order Housing ACT to make the repairs that you requested.

Rent Reduction

In order to request a rent reduction, your application will need to state:

- how your use or enjoyment of the premises has been reduced;
- by how much you consider the rent should be reasonable reduced; and
- what period of time you want the reduction in rent to apply to (it can be a past period and/or a future period, if the repairs have not yet been done). This means you can receive the difference between the full rent you have already paid, and the reduced amount you should have paid according to ACAT. The reduction will usually be in place for no longer than 12 months, but reductions for longer periods of time may be ordered if appropriate.

Compensation

ACAT may order Housing ACT to pay you compensation (for example, you could request compensation for damage to your belongings). However, this is usually only ordered if you have left the premises. If you are still in the premises, ACAT may make an order compensating you through further rent reduction.

EXAMPLE

The ‘Orders Sought’ section of the application might look like this:

I am respectfully seeking that the Tribunal make the following orders:

- 1) An order under section 83(b) of the *Residential Tenancy Act 1997* [RTA] requiring Housing ACT to perform its obligations under clause 55(1) and 57 of the Residential Tenancy Agreement by performing the following repairs:
 - a) Replace the drain outside the living room.
 - b) Replace the carpet in the living room.
- 2) An order under section 71 of the RTA reducing the rent payable under the Residential Tenancy Agreement by \$55 per week for the period 2 November 2017 to the date of the replacement of the carpet, because the Tenant’s use and enjoyment of the Property has diminished significantly as a result of the loss of the use of the living room.

An order under section 83(d) of the RTA requiring Housing ACT to pay compensation for the damage to the Tenant’s possessions caused by the water damage in the following amounts:

- a) \$50 for books;
- b) \$30 for board games; and
- c) \$150 for DVDs and CDs.

STEP 4: Lodging the forms with ACAT

Your completed Application Form, Fee Exemption Form and copies of supporting documents need to be lodged with the ACAT Registry (ACT Health Building Level 4, 1 Moore Street, Canberra).

LODGEMENT CHECKLIST

Before lodging your Application Form, check you have done the following:

- **Check** you correctly filled out the Application Form, including:
 - Your name and full contact details;
 - Housing ACT's contact details (Commissioner for Social Housing, Housing ACT, Locked Bag 3000, Belconnen ACT, 2616);
 - Details of rental address of the property;
 - Nature of the dispute is clearly identified;
 - Times and dates that you may not be available; and
 - Form is signed and dated by you.
- Attached **copies of all the relevant documents** you will rely on for your application, including:
 - Your tenancy agreement and condition reports;
 - Photos of any damage and any repairs; and
 - Copies/notes of any communication with Housing ACT and their contractors.
- Prepared **three (3) copies** (one for ACAT, one for you, and one for Housing ACT) **plus the original application** for lodgement.
- If you cannot get a fee exemption, you must pay the appropriate **application fee** (as at September 2018, the fee was \$74 for most applications).

6. ATTENDING ACAT

The hearing date is likely to be scheduled around 2 to 3 weeks after the lodgement of the application. You and Housing ACT will receive a letter in advance stating the hearing date and time (this is known as a 'Notice of Hearing'). It is very important that you attend ACAT on the day requested.

Conference

The matter may be scheduled for a conference before the hearing. A conference is like a formal meeting, usually presided over by a Registrar or Member or ACAT, with the aim to see if you and Housing ACT can agree a solution without needing a hearing. At the conference, orders can only be made if both you and Housing ACT agree to them. If you cannot reach an agreement, there will be a hearing.

Hearing

ACAT is informal, so people can attend without a lawyer. The ACAT Member listening to your case will usually help both parties through the hearing. If you don't understand something, you can ask the Member to explain it to you. However, if you want to be represented by a lawyer or another trusted person, you should arrange that in advance.

It's a good idea to arrive at ACAT a little early (about 30 minutes before your hearing is scheduled). Among other things, this will give you some time to talk to the person from Housing ACT and see if you can come to an agreement without having a hearing.

You will need to speak at the hearing to tell the Member what repairs are required, what contact you have had with Housing ACT, and the time and cost you have gone to dealing with the issue (including why and how you have been unable to use part of the property because of the damage/broken item). You should re-read your application and write down the points that you want to make before you go into the hearing so that you have something in front of you to refer to as you speak.

Orders

At the end of the hearing the Member may make orders. If the order is not in your favour, you should ask the Member to provide written reasons for the decision. You should make this request during the hearing (after the orders are made) and in writing by giving a note to the front desk (you should include the name and number of the case, your name and your contact details).

Soon after the hearing you will get a copy of the orders in the mail.

7. WHAT'S NEXT?

Once an order has been made, that order is enforceable at law. If either party does not comply with the order, they risk significant consequences.

If either party disagrees with ACAT's decision, they have the right to appeal within 28 days of the date of the decision. It is always a good idea to get legal advice before undertaking litigation, but it is especially so if you are thinking about appealing an ACAT decision. This is a more complex process and may involve a much bigger fee if you are not eligible for a fee waiver.

If you would like to appeal, we recommend that you urgently contact our Housing Law service on 6218 7977.

Disclaimer

This guide contains general information available at the time of publication. 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.

September 2018