



### Fact Sheet 17: Repairs

#### 1. Overview

Tenants of Housing ACT have the same rights as other tenants under the *Residential Tenancies Act 1997* (RTA) to have repairs made by their lessor, the Commissioner for Housing in the ACT. Your rights are set out in the Standard Residential Tenancy Terms (SRTT) which is Schedule 1 to the RTA. The relevant terms are set out in clauses 54 to 62.

You may be asked to be directly in touch with the contractor who does the repair work for Housing ACT (Programmed); this in no way removes the responsibility from your lessor to ensure that the repairs are made in accordance with the law. If they fail to do this, you have the right to seek orders from the ACT Civil and Administrative Tribunal (ACAT):

- requiring the repairs work to be done;
- for payment of compensation for any breach of the residential tenancy agreement by Housing ACT; and/or
- for reduction of rent.

A failure to do repairs that are required by law could also lead to a breach of the lessor's obligation not to interfere with the reasonable peace, comfort and privacy of the tenant.

#### 1.1. Important Points

There are some important things to remember:

- It is essential to make a complete check of the premises when you move in and note any defects in the condition report.
- Always report the need for repairs as soon as possible—it is only when a lessor has notice of the need for repairs that they have a legal duty to perform them.
- A restriction on repairs is that the lessor is not obliged to repair damage caused by the negligent or wilful act of the tenant.

#### 2. During your Tenancy

Housing ACT is required to maintain the premises in a reasonable state of repair, having regard to the condition of the property at the beginning of the tenancy. This is why it helps to have a good record of the condition of the premises when you moved in.

Your tenancy agreement makes a distinction between standard and urgent repairs.

#### 2.1. Standard Repairs

Housing ACT is obliged to make non-urgent repairs **within 4 weeks of being notified** of the need for repairs.

#### 2.2. Urgent Repairs

In recognition of the need for some repairs to be made within a shorter time frame, clause 60 of the SRTT sets out what are urgent repairs:

- A burst water service;
- A blocked or broken lavatory system;
- A serious roof leak;
- A gas leak;
- A dangerous electrical fault;
- Flooding or serious flood damage;
- Serious storm or fire damage;
- A failure of gas, electricity or water supply to the premises;
- A failure or breakdown of any service essential for hot water, cooking, heating or laundering;
- A fault or damage likely to be unsafe or insecure;
- A fault or damage likely to cause injury to person or property;
- A serious fault in any door, staircase, lift or other common area which inhibits or unduly inconveniences the tenant in gaining access to or use of the premises.

In these cases, Housing ACT is required to carry out repairs 'as soon as necessary,' having regard to the nature of the problem.

In most cases this should mean within 24 hours of being notified.

### 3. Tenant's Obligations

Clause 63 of the SRTT sets out the tenant's obligations to look after the premises. Specifically, during the tenancy the tenant must:

- Not intentionally or negligently damage the premises or permit damage of the premises (by persons under control of the tenant like children or guests, or by pets);
- Notify the lessor of any damage as soon as possible; and
- Take reasonable care of the premises and keep them reasonably clean, having regard to their condition at the start of the tenancy and the normal incidents of living.

### 4. Insurance

It is important to know that you could be liable for accidental damage done to the premises by you or your guests. Insurance against this possibility is a good idea and relatively inexpensive. Many home contents insurance policies provide such cover.

### 5. Alterations and Renovations

You can only make alterations/renovations with written permission of Housing ACT. However, while you are not permitted to add fixtures or fittings without consent, this is balanced by a requirement that the lessor's consent should not be unreasonably withheld. Keep in mind that if you act without permission, you risk eviction for breach, and improvements or fixtures you install may become the property of Housing ACT without compensation.

### 6. Getting Housing ACT to do Repairs

Housing ACT's policy is that a tenant reports the need for repairs to Programmed via the Maintenance Call Centre (6207 1500). They will ask you some questions about the problem and then either raise a Work Order for the repair or arrange an inspection to assess the problem. They should also indicate the time frame for the action to occur. You should keep a record of when you rang, who you spoke to and what was said.

If the repair does not happen within a reasonable time frame or you are not satisfied that the repair is effective, you have several options for taking the matter further, depending on the type of repairs.

### 6.1. Standard Repairs

You should write a 'Notice to Remedy,' pointing out Housing ACT's obligations under clause 55 of the Standard Residential Tenancy Terms of the RTA, outlining how they have breached the clause and setting a time limit for the 'remedy' (the completion of the repairs)—7 to 14 days is reasonable since they have already had 4 weeks to do the repairs.

If the Notice to Remedy does not achieve the desired result, you may have grounds for termination of the agreement for breach. You should get specific advice before embarking on this course of action. Most tenants of Housing ACT will want their tenancies to continue so it will probably be better to consider applying to the ACAT for appropriate orders.

The ACAT may make an order requiring the repairs to be done (it will usually set a deadline for this), and/or requiring payment for compensation for breach of the agreement. The ACAT may also order a reduction in rent for the period when your quiet enjoyment of the premises was disrupted.

### 6.2. Urgent Repairs

If Housing ACT fails to do the urgent repair (as defined above) within a reasonable timeframe, you may arrange for repairs to a maximum value of 5% of the rent of the property over a year. For example, if you pay rent of \$100 per week, your annual rent is \$5200, and you could authorize urgent repairs to the value of \$260 (5% of \$5200).

The strict procedure for authorizing repairs is set out in clause 62. The reality is that, if you pay a rebated rent, the value of the repairs you are permitted to authorize is likely to be too low to cover the cost of the repair you need. In general, it may be more effective and safer to apply to the ACAT for orders requiring the repair to be done.

**DO NOT HOLD BACK THE RENT.** Though tempting, it is not a good idea to refuse to pay rent because Housing ACT has failed to do the repairs. You have a continuing obligation to pay rent and only the ACAT can order that you pay less rent or that you should be compensated for Housing ACT's breach of your tenancy agreement.

### 7. Damage as a result of the lessor's failure to repair

If you believe your personal property has been damaged as a result of Housing ACT's failure to maintain the premises or any appliance, furniture or facility supplied in a reasonable state of repair, you may be able to ask Housing ACT to compensate you for the loss.

You can take the following steps:

- It is important to deal with the maintenance issue to avoid any more damage occurring. This should be done using the steps above for standard or urgent repairs.
- It is also important to do what you can to avoid damage happening. For example, move your personal items out of harm's way, if it is safe to do so. If you do not take care of your item, and try to avoid damage, you may not be compensated for its damage (or you might only be partially compensated).
- Attempt to resolve the issue directly with Housing ACT. In the first instance you should contact the Housing ACT Complaints Management Unit on 02 6207 1515. Explain what damage you have suffered, and how that damage is connected to the failure to repair.
- If you cannot resolve the issue directly with Housing ACT, you can make an application to the ACAT for orders to compensate you for the damage to your personal property as a result of Housing ACT's breach of the tenancy agreement. As explained at 6.1 Standard Repairs, the ACAT may also order a reduction in rent for the period when your quiet enjoyment of the premises was disrupted.

### 7.1. What do you need to prove?

When asking for compensation from Housing ACT it is important to show that there is a **clear connection** between the damage to your property and the failure of Housing ACT to maintain the premises or any appliance, furniture or facility supplied in a reasonable state of repair.

It is also important to show that you own the property you believe has been damaged. If you have a receipt, that is the best way to prove this.

The value of any compensation you can get will probably be the value of the item **at the time it was damaged**. Factors such as its age and condition can be considered. It is unlikely you will be compensated for the value of buying the same item new.

When contacting Housing ACT in the first place, writing your Notice of Remedy, and making an application to the ACAT you should provide copies

### 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 7900.

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

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of the following to help support your claim:

- Your tenancy agreement
- Your Notice to Remedy
- Any correspondence with Housing ACT (e.g. letters and emails)
- Start of tenancy condition report
- Inspection reports
- An itemised list of damaged property/goods
- Detailed photographs of damaged property/goods
- Receipts and invoices for all damaged property
- Quotes for repairing or replacing the damaged property
- Rental records showing payment history, amount owing of rent, daily accrual rates

It is a good idea to take multiple photos of the damage (both close ups and longer shots) in the best lighting possible, and also include a point of reference in the picture (like a ruler) so that the ACAT can easily understand the size of the damage.

Photographs that are going to be filed with the ACAT in support of your application should be in hardcopy, in colour, large enough to show relevant details, marked with the date and time they were taken and numbered for reference.

You should see **Fact Sheet 11 Applying to ACAT** for further information on how to make and lodge an application using the form 'Application for Resolution of Tenancy Dispute'.

Please also see our in depth repair guides at <https://www.canberracomunitylaw.org.au/fact-sheets-brochures/guides.html>

### 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.