



### Fact Sheet 19: Incarcerated Tenants and '26 Week No Cause Notices'

#### 1. When can Housing ACT terminate a tenancy?

Under ACT law, Housing ACT can seek to terminate your tenancy if you breach your tenancy agreement (for example, by not paying rent or not keeping the property in a reasonable condition).

Housing ACT can also seek to terminate a tenancy without giving a reason, if they give you 26 weeks' notice to vacate your property. These notices can be given even if you have not breached your tenancy agreement. This is sometimes called a '26 week no cause' notice.

Housing ACT are using '26 week no cause' notices for incarcerated tenants as a way of managing housing properties. If you receive a '26 week no cause' notice, it is important that you get legal advice about your options. This factsheet provides some general information about what to do if you get a '26 week no cause notice.'

#### 2. What happens when I receive a '26 week no cause' notice?

Housing ACT will send you a Notice to Vacate, stating that you have 26 weeks (or six months) to vacate your property.

Even though the notice says that you must leave by the date in the notice, you do not have to move out by this date. Housing ACT need to get an order from the ACT Civil and Administrative Tribunal (ACAT) before they can force you to leave.

When the date in the notice passes, if you have not moved out, Housing ACT can apply to ACAT to get an order terminating the tenancy. You will receive a Notice of Hearing from ACAT which tells you when the hearing will be. **If you receive a hearing notice, you should get legal advice about it straight away.**

ACAT will conduct your hearing and consider whether to terminate your tenancy. ACAT usually organises with the jail for you to link into the hearing by phone or video link.

ACAT will then make a decision about your tenancy.

#### 3. How can I defend my tenancy?

'26 week no cause' notices can be very difficult to defend because Housing ACT do not need to have a reason to give you this type of notice. This means that you cannot argue that you have not breached the tenancy agreement, or that you are able to remedy a breach. It's important that you get some legal advice about your specific situation once you get a hearing notice.

There are some arguments that you can raise under the *Human Rights Act 2004* (ACT). This is because Housing ACT is a public authority, so it cannot unreasonably interfere with your protected rights. Under this law, your rights to home (section 12) and family (section 11) are protected.

This means that Housing ACT should not seek to terminate your tenancy if that would be an unreasonable interference with your rights.

#### 4. Does termination of my tenancy interfere with my human rights?

If a tenancy termination unreasonably interferes with your human rights, ACAT will take this into account when deciding if it is appropriate to terminate your tenancy and may find in your favour.

For the interference to be unreasonable, ACAT must find that the harmful impact on you outweighs any other relevant considerations.

Some factors that ACAT will consider are:

- When you are due to be released or when you will be eligible for parole. If you will be released soon, it is more likely that it's unreasonable to evict you;
- Whether you have any physical or mental health issues. If your property was allocated to you because it is suitable for your medical requirements (for instance, it has no stairs or is in a particular location), it is more likely that evicting you will unreasonably interfere with your rights;
- Whether you have strong links to your community. If you live close to your support networks, or have strong links with your neighbours and community, it is more likely that evicting you from that place is unreasonable;

- Whether having stable housing, especially in a particular place, is important for ongoing rehabilitation. Evidence about your rehabilitation work is usually helpful;
- Whether you have any alternative accommodation options. If you would have no other accommodation options with friends or family, or anywhere else to go, it is more likely that evicting you is an unreasonable interference;
- Whether you have children, and the impact that losing your tenancy would have on your ability to have care of your children restored; and
- Other factors that are relevant to you.

## 5. What else can I do?

There are some important things you should do when you receive a '26 week no cause' notice.

### 5.1. Get some legal advice

As soon as you receive a hearing notice from ACAT, it is important for you to get legal advice about your situation and what options you might have. You can call Canberra Community Law on (02) 6218 7977. We specialise in public housing law and our assistance is provided free of charge.

### 5.2. Make sure your rent is being paid

It can be very helpful to your case if your rent is being paid. Your caseworker can help you to arrange to have your rent paid while you are incarcerated.

It is Housing ACT policy to drop your rebated rent to \$5 for tenants who are incarcerated or in a residential rehabilitation program. If you believe you are being charged more than this, you can complete a Housing ACT rebate form or get legal advice.

### 5.3. Appoint a caretaker for your property

It is also important to appoint a caretaker to look after your Housing ACT property while you are incarcerated. Your caretaker must not live in your property unless Housing ACT and you agree that they can.

## 5.4. Get supporting letters and evidence

You will need to provide evidence to ACAT about your circumstances so that ACAT can decide whether terminating your tenancy would unreasonably interfere with your human rights.

Some evidence that can be helpful includes:

- Parole applications, or other parole documents;
- Pre-sentencing reports can sometimes include information about your circumstances;
- Prison Medical records, or medical records from your regular doctor if you have access to them;
- Supporting letters from your case worker, doctors and psychologists, family and friends, and other support workers; and
- Evidence of your work towards rehabilitation while you have been incarcerated.

## 6. How to contact us

You can contact us by calling our Housing Law service on 02 6218 7900. Our phone number is on the list of phone numbers you can call.

If you need an interpreter please call the Translating and Interpreting Service (TIS) on 131 450 and ask them to ring us.

If you are deaf or have a hearing impairment or speech impairment, contact us through the National Relay Service at [www.relayservice.gov.au](http://www.relayservice.gov.au)

### 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 7900.

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

May 2019