



Fact Sheet 5: Remaining in a Housing ACT Property After Domestic Violence

1. Overview

Sometimes, it is possible to obtain a Family Violence Order from the Magistrates Court excluding a perpetrator from entering your property. If the excluded person is the tenant or a co-tenant, you can take steps to remove them from the lease and transfer the lease into your name alone. You can also apply to remove the perpetrator from the lease if the perpetrator has given an undertaking to the Magistrates Court to leave the property. This factsheet provides information about the process for removing an excluded person from your lease.

2. I have a Family Violence Order that excludes the perpetrator from the property, or the perpetrator has given an undertaking to the Magistrates Court to leave the property. What can I do to remove them from the lease?

Under ACT law, if the excluded person is the tenant or a co-tenant of the property, the ACT Civil and Administrative Tribunal (the Tribunal) has the power to terminate the lease and order a new lease with you alone. The Tribunal is similar to a court but has fewer formal procedures and fewer strict requirements. In the ACT, the Tribunal hears matters concerning tenancies.

If you are a protected person under the Family Violence Order, you can apply to the Tribunal to have the existing lease terminated and a new lease made with you alone. Housing ACT's Domestic and Family Violence Policy Manual states that Housing ACT will generally support you to remain in your property after or while experiencing domestic violence if that is what you want to do and you are eligible for public housing.

If you apply to the Tribunal, the hearing will involve:

- You (whether or not you are on the existing lease)
- The landlord (Housing ACT)
- The excluded person
- Any other existing tenant.

3. How do I apply to the Tribunal to get the lease changed?

1. Obtain an "Application for Resolution of Tenancy Dispute Under the Residential Tenancies Act 1997 Division 6.5A Protection Orders" Form

To obtain this form, you can:

- Call the Tribunal Registry on (02) 6207 1740 and ask the registry staff to mail or fax you one;
- Pick one up from the Tribunal Registry (ACT Health Building Level 4, 1 Moore Street Canberra City);
- Download one from the Tribunal's website at www.acat.act.gov.au.

2. Complete and return the application form

To complete the form, you will need to answer the questions and attach the required documents, which include:

- A copy of the Family Violence Orders from the Magistrates Court;
- A copy of the lease if you are a party to the lease;
- Copies of any other documents you want to use at the Tribunal hearing;
- Payment of fees. Note that if you are on a Centrelink payment or payment will cause you financial hardship, you can apply for an exemption.

Your completed application form needs to be lodged with the Tribunal registry. If the matter needs to be heard urgently, the form has a box that you can tick to indicate this.

3. Wait for the Tribunal to set a date for the hearing

You and the other parties will be informed by mail of the hearing date and time; this is known as a Notice of Hearing. How long you will have to wait will depend on whether you indicated that the matter was urgent, when you said you would be available in the application form, and how busy the Tribunal is.

4. Attend the hearing

It is very important that you attend ACAT on the day requested.

Attending a hearing

If possible, it is helpful to arrive about 30 minutes before your hearing is due to start. It might be helpful to write down the points that you want to make before you go into the hearing, and take a copy of your application with you, so that you have something to refer to if you forget what to say in the heat of the moment.

Do you need representation at the Tribunal?

No, but if you wish to, you can be represented by a lawyer or another trusted person.

The Tribunal is designed to be easy for people to represent themselves, and the Tribunal Member will usually help both parties through the hearing. If you don't understand something, you can ask the Tribunal Member to explain it to you.

5. Orders from the Tribunal

At the end of the hearing the Tribunal Member may make an order (or orders). If the order is not in your favour, ask the Tribunal Member to provide written reasons for the decision (this will be useful if you decide to appeal). To be safe, you should make this request in writing and give it to the front desk.

It is good idea to get legal advice if you are thinking of appealing a decision. You have 28 days from the date of the decision to lodge an appeal.

Shortly after the hearing you will get a copy of the order(s) in the mail.

6. What happens next?

Once an order has been made, that order is enforceable at law. If either party breaches the order, they risk substantial penalties.

If the Tribunal makes an order terminating your existing lease and ordering Housing ACT to enter into a new lease with you, Housing ACT will work with you to sign the new agreement.

If either party disagrees with the Tribunal'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 a Tribunal decision because this is a more complex process.

Disclaimer

This factsheet 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 7900.

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