

WHAT COULD CAUSE YOUR EVICTION?

Housing ACT tenants have what is known as 'security of tenure'. This means there is no 'fixed term'. You have a 'periodic tenancy' and it continues indefinitely until you decide to leave and give the required 3 weeks' notice.

However, it is a mistake to believe that Housing ACT cannot or will not seek to end your tenancy. Every week the Residential Tenancies Tribunal hears applications by Housing ACT for the eviction of tenants. Almost all of these applications for eviction are because the tenant has breached the tenancy agreement.

WHAT BREACHES COULD LEAD TO EVICTION?

Failure to pay rent is the most common breach of tenancy agreements by tenants. It is a serious breach. You can be in breach by failing to pay rent at all, by paying late, or by not paying enough rent.

Other breaches of the tenancy agreement that can lead to eviction include:

- Failing to take reasonable care of the premises;
- Failing to keep the premises reasonably clean;
- Intentionally or negligently damaging the premises or permitting someone else to;
- Altering the premises or adding fixtures or fittings without consent of the lessor;
- Disturbing neighbours;
- Using the premises for illegal purposes; and/or
- Subletting the premises.

Other reasons that can end your tenancy agreement or lead to eviction:

- Housing ACT may seek to end your tenancy for reasons not related to you. For example, they may decide to sell the property, to renovate or redevelop. In such a case, you will not be made homeless. You have the right to be transferred to a suitable alternative home.
- If a co-tenant has left or died, Housing ACT may say you are not eligible for the property in your own right. It is very important to seek legal advice in this situation. See **Death of a Tenant** (WRLC Fact Sheet 8).

WHATEVER THE REASON, IF YOU ARE THREATENED WITH EVICTION YOU SHOULD SEEK LEGAL ADVICE.

RENTAL ARREARS

When you fail to pay the required amount of rent on time, you fall into 'rent arrears'.

Housing ACT will not usually start eviction proceedings the minute you miss a rent payment or make a payment that is short of the full amount due. However, if you are unable to pay the rent as due, you should immediately contact Housing ACT, explain why you have got behind and propose how and when you will make up the shortfall. To avoid eviction, you then need to do

what you have undertaken to do, so make sure what you are promising is affordable.

Disputing rental arrears

Mistakes and misunderstandings can occur, so if Housing ACT believes you are in rental arrears and you disagree, check your method of payment and ask Housing ACT to check their records. Sometimes the problem is that your rebate has expired and you have been charged the full market rent for your home. See **Rent and Rent Rebates** (WRLC Fact Sheet 5).

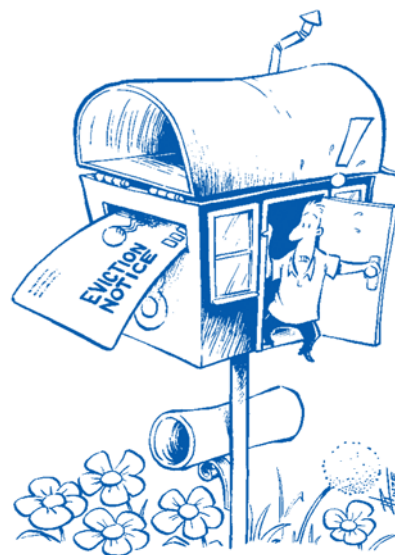
DO NOT ignore any sign that you may be in rent arrears; and

DO NOT hold back the rent because of some other problem or disagreement with Housing ACT. Even if you believe Housing ACT is in breach of the tenancy agreement you still have an obligation to pay rent.

THE EVICTION PROCESS

There are a series of steps that **must be followed** by all landlords, including Housing ACT, before an eviction can occur. These steps are set out below.

The only exception to these rules is when Housing ACT believes there is an immediate threat of serious damage to the property, serious or continuous interference with the quiet enjoyment of the neighbours or injury to Housing ACT officers. In these situations,



Welfare Rights & Legal Centre

Advice Line
6247 2177

Housing ACT can apply for immediate termination of the tenancy, without having to serve a Notice to Remedy or Notice to Vacate. However, the matter must still be heard and decided by the Residential Tenancies Tribunal and you will get to put your side of the story. Such an application means you are at great risk of losing your home and you should seek legal advice as a matter of urgency.

Notice to Remedy

This is the first step in the eviction process. The Notice to Remedy advises you that Housing ACT believes you are breaching your tenancy agreement and gives you a period of time in which you are to remedy that breach (eg, fix the problem or cease the behaviour causing the problem).

If the breach is rent arrears, the rent has to be at least 7 days in arrears before this notice can be issued. The Notice to Remedy will give you 7 days to make up the arrears to avoid further action being taken.

If the breach is something other than rent arrears, the notice will give you 14 days to fix the problem.

You need to respond to the Notice to Remedy. For example, contact Housing ACT and arrange an arrears payment plan where you pay an extra \$30 per fortnight for the next 6 fortnights. Or, where your garden is overgrown, you may make a commitment to bring the garden to a satisfactory state within 6 weeks.

Keep a record of any conversations you have with Housing ACT and keep any documentation recording the agreement you have made.

Notice to Vacate

If you fail to respond to or comply with the Notice to Remedy, you will receive a Notice to Vacate. Housing ACT will issue this if they are not satisfied that you have

remedied the breach satisfactorily within the required (or agreed) time.

A Notice to Vacate states that you have 14 days in which to vacate the premises.

NOTE: if you have previously received **TWO** Notices to Remedy, Housing ACT can issue a Notice to Vacate without a further Notice to Remedy, if you commit a third breach.

It is vital that you continue to pay your rent (and an amount towards arrears if necessary) after you receive a Notice to Vacate. Keeping up your rent payments will give you a much better chance of saving your tenancy.

A NOTICE TO VACATE DOES NOT END YOUR TENANCY AND YOU DO NOT HAVE TO MOVE OUT IMMEDIATELY.

It may not be too late to seek a negotiated agreement to resolve the problem. Housing ACT will usually send you a letter with the Notice to Vacate and give you a chance to appeal. An appeal allows you to put your side of the story and avoid the matter going to the Tribunal. If you have breached your tenancy agreement, explain the problems you have had, how you intend to fix the problems and the time frame within which you will do that. Your appeal should be in writing and received by Housing ACT by the date given in the letter. Make sure you keep a copy of your letter of appeal. See **The Appeals Process** (WRLC Fact Sheet 9).

If you do not appeal, or your appeal is denied, Housing ACT will usually apply to the Residential Tenancies Tribunal to seek your eviction. The only way you can be made to leave your home is if the Tribunal orders that the tenancy has ended and a warrant for your eviction is issued.

THE RESIDENTIAL TENANCIES TRIBUNAL

If Housing ACT decides to pursue your eviction, they must apply to the Tribunal for a 'Termination and Possession Order' ('TPO'). This is the legal term for an eviction order.

The Tribunal will send you a copy of Housing ACT's application. This is usually quite bulky as it contains a copy of your tenancy agreement and all the relevant correspondence between you and Housing. There will also be a Notice of Hearing that will tell you the date the Tribunal will hear the matter, and the date by which you should lodge your defence, if you intend to defend the matter.

If you want to try to save your tenancy, you must go to the hearing.

Defending the eviction

For more detailed information see **Defending an Eviction** (WRLC Fact Sheet 13). In brief, to give yourself the best chance of saving your tenancy you should:

- Be at the Tribunal at the right time on the right day;
- Be prepared. Have a list of the points you want to make to the Tribunal Member, for example how/why you fell behind in rent payments; what steps you have taken; and a concrete plan for the future;
- Be organised — bring any documents you want to show the Member; and
- Keep your cool and be polite.

See **The Residential Tenancies Tribunal** (WRLC Fact Sheet 11). If you are on a Conditional Order, see also **Conditional Orders** (WRLC Fact Sheet 14).

Being evicted from your home is a serious situation. You should seek legal advice as soon as possible.

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 the Welfare Rights and Legal Centre's advice line on 6247 2177. The Welfare Rights and Legal Centre is entirely independent of Housing ACT. All assistance is free.

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