

See also **Eviction from Your Home** (WRLC Fact Sheet 12)

If Housing ACT has decided to seek your eviction, they must first send you a Notice to Remedy (if a breach of the tenancy agreement is the reason for eviction) and then a Notice to Vacate.

If you do not move out in accordance with the Notice to Vacate, Housing ACT must then apply to the Residential Tenancies Tribunal ('RTT') for an order ending your tenancy and giving them possession of the property — known as a Termination and Possession Order.

The RTT will send you a copy of Housing ACT's application. The documents from the Tribunal will include a Notice to Respondent (that's you) telling you the date of the hearing and the date by which you should lodge any defence you want to make.

### OPTIONS

It is not easy to find rental accommodation, especially where the rent is rebated on the basis of your income. Therefore, if you want to keep your home, you will need to defend the eviction.

However, if the reason for the eviction is rent arrears and you have no intention of making up the arrears or paying rent on time in future, there is little point in defending the application. As long as you remain in the property, the rent arrears will grow and eventually the RTT will order you to pay the rent debt.

Note: This debt will impact upon any future applications for housing assistance or any future allocation

to you by Housing ACT. See **Debts from a Previous Tenancy** (WRLC Fact Sheet 3).

If you decide to vacate without defending, you should pay whatever you can towards the arrears, advise Housing ACT you are leaving, be present at a final inspection, leave the house clean and undamaged and return the keys (make sure you get a receipt for return of the keys and keep it in a safe place). This way you can ensure that the tenancy has ended and you will not be liable for any further rent. You may also be able to avoid further debt that may arise from 'tenant responsible maintenance' that may otherwise be charged to your account.

On the other hand, if you intend to remedy the breach or you have already remedied the breach (whether it be rent arrears or some other breach of the tenancy agreement) or if you do not believe there was a breach, you have a basis to defend the eviction.

If Housing ACT is seeking to evict you for a reason other than a breach of the tenancy agreement, you should seek legal advice because that is a relatively unusual situation.

## DEFENDING AN EVICTION

### POSSIBLE DEFENCES

If you believe you have not breached the tenancy agreement in the way Housing ACT thinks you have, you simply need to show the Tribunal there is no breach and therefore no basis to end your tenancy.

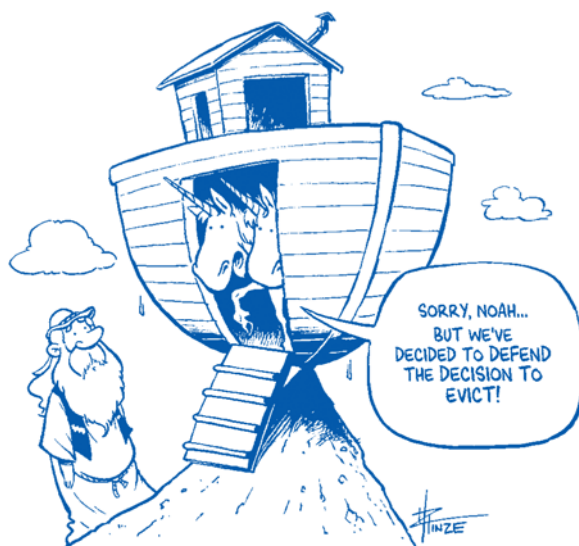
- For example, you have not failed to make a rent payment and Housing's calculations are incorrect; or the noise being complained about does not come from your place but from somewhere else.

If you have breached the agreement, your defence may be that you have remedied the breach.

- For example, you missed a rent payment but you have now made that up; or you have mowed the lawn and removed the rubbish.

If you have breached the agreement but have not yet been able to remedy the breach, your defence may be that you have a proposal for a method and a time frame in which to remedy the breach.

- For example, you will pay off the rent arrears of \$300 by paying an extra \$30 per fortnight for the next 10 fortnights; or you will mow the lawn within 2 weeks and remove the rubbish within 3 weeks.



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If you have breached the agreement but believe that it is a very minor breach (that is not rent arrears), your defence may be that the breach does not justify eviction.

- For example, you have installed a garden shed without the written consent of Housing ACT, but this does not undermine the tenancy in any way and you undertake to remove the shed and make good any damage to the lawn when you vacate.

### LODGING A DEFENCE

The RTT documents will include a form headed 'Statement Contesting/Defending Application'. You can either write on this form or you can write or type your own statement, as long as it has this heading. The form should be neat and easy to read.

This statement is used to give a clear and accurate account of your position — that is, why you should not be evicted. The statement should contain the key facts on which you will rely. Writing these in numbered points is a good way of making them clear and brief.

The statement of defence should be sent to or handed in at the RTT Registry by or before the date stated on the Notice to Respondent. This allows both the Member (the person who decides your matter) and the representative for Housing ACT to read your defence before the hearing. If you do not lodge a defence, the Member will begin the hearing knowing only one side of the story.

If you have not lodged a defence prior to the hearing, you can still appear at the hearing and put your case verbally. It may make no difference to the outcome, but advance notice of your position is likely to give the Member a better and more sympathetic understanding of your circumstances.

### DEFENCE IN THE CASE OF RENT ARREARS

If you are behind in the rent, no matter what the reason, you are at serious risk of losing your home. To save your tenancy, the Member must be satisfied that:

- You are reasonably likely to repay the rent owing, as well as pay rent that becomes due; **and**
- You agree to repay the rent owing and undertake to pay rent as it becomes due.

So, while it is important for the Member to know why you fell behind in the rent, it is even more important for the Member to see that you can and will pay the arrears and pay future rent. Making whatever payments you can in the lead up to the hearing not only reduces the arrears but indicates that you can and will pay in future.

### BEFORE THE HEARING

There are some other things you can do to prepare:

- It can be very helpful to attend other hearings before your own to see how the RTT works. Hearings are open to the public so you can sit in on other RTT matters. The Registry officers can tell you when hearings are on and which are eviction matters.
- Organise all your documents in a folder, put them in chronological order (from oldest to most recent) and label them so you can find them easily during the hearing.
- Make a summary of your documents and all the key events ordered by date. This is known as a chronology and helps the RTT Member to have a clear picture of the events leading to the eviction hearing.
- If you have any witnesses, make sure they are able to attend

on the day and know where to go. On the day, witnesses need to remain outside the Hearing Room until called to give their evidence.

- Assemble your evidence. The RTT is not a court and is not bound by the Rules of Evidence, but in order to convince the Member that you should not be evicted, you need to have reliable evidence to support the statements you make in your defence. For example, a receipt is evidence that a payment has been made; a dated photograph is evidence of the condition of the property; a statement from a neighbour that there has been no loud music for the last 2 weeks is evidence that you have remedied the breach.
- There are usually a number of matters listed in the RTT for the same time. It is important to be at the Hearing Room on time, but you also need to be prepared to wait while other matters are heard before yours.

### What if I can't attend the hearing?

It is possible to get the hearing date changed by seeking an adjournment, but you need to have a good reason for requesting this. For example, illness, a death in the family, or a court appearance on the same day.

If you need an adjournment, contact Housing ACT first to see whether they will agree to this and, if so, then fax or hand in a letter to the RTT Registry saying that the parties have agreed to an adjournment and why. The Tribunal may also order an adjournment even if Housing ACT opposes it. You would need to provide the Tribunal with a medical certificate or other evidence of your inability to attend.

### **What if the hearing goes ahead without me?**

If you do not turn up to a hearing, and the Member has only Housing ACT's application to go on, the Member is not likely to adjourn the matter, unless Housing ACT suggests or agrees to an adjournment in your absence. If Housing ACT opposes an adjournment and the Member is satisfied that the grounds for eviction exist, it is likely that orders ending your tenancy will be made *ex parte* (without one of the parties being present — in this case, you).

If you do not agree with these orders when you receive notice of them, you can apply to have them set aside. The RTT will only hear the matter again, set aside the *ex parte* orders and make different orders if it is satisfied on two matters:

- you had a reasonable excuse for not turning up to the first hearing; **and**
- there is a basis for defending the eviction.

### **THE HEARING**

When your matter is called, you take a seat at the tables in the Hearing Room. The Housing ACT representative sits on one side, you on the other side and the Member sits in the middle. The Member usually introduces him/herself and invites the parties to introduce themselves. The proceedings are taped so you should position yourself close to one of the microphones and speak clearly.

It is intended that the hearing process be fairly informal and that the parties understand what is going on. If you find the language unfamiliar and confusing, you should ask the Member to explain anything you do not understand.

Generally, the Housing ACT representative will speak first, presenting their reasons for seeking your eviction. You should

take notes of any statements you do not agree with or want to comment on, and make those points when it is your turn to speak. The Member may also ask questions of you. The important thing is that you have the opportunity to say everything you want to say. It is important not to interrupt either the Member or the Housing ACT representative while they are speaking.

Sometimes either the Member or the Housing ACT representative will suggest that the outcome of the hearing could be worked out by agreement or 'by consent'. If that is the case the Member may adjourn the hearing and send the parties outside the hearing room to work out 'Orders by Consent'. This is often a good outcome for a tenant but it is very important to know exactly what you are agreeing to and what will be required by the consent orders.

### **WHAT ORDERS CAN THE TRIBUNAL MAKE?**

The Tribunal can decide to do any of the following:

- Refuse to make an eviction order, and allow the tenancy to continue; or
- Order that the tenancy terminates immediately; or
- Order that the tenancy is to terminate but allow a period of time (up to 21 days) for the tenant to vacate; or
- Order that Housing ACT be compensated for any loss arising from the tenant's breach of the tenancy agreement (eg, any rent owing).

In addition, if the reason Housing ACT is seeking an eviction is due to rent arrears, the RTT can make a Conditional Termination and Possession Order, known as a 'Conditional Order'.

### **Conditional Orders**

If the Member is of the opinion that the tenant is reasonably likely to repay rent due, and pay future rent as it falls due, and agrees to do so, the Member can make a Conditional Order. This means that the tenancy will continue as long as the tenant complies with certain conditions (eg, that future rent is paid on time and that any rent arrears are paid off by instalments in addition to rent).

Conditional Orders will usually last for 12 months (unless at some stage an application is made to the Tribunal and the orders are changed or revoked). In extraordinary circumstances, the Member may make a Conditional Order for a longer period. If you breach a Conditional Order, Housing ACT can then apply for a warrant for your eviction. For more detail, see **Conditional Orders** (WRLC Fact Sheet 14).

### **Warrants of Eviction**

A warrant is issued by the RTT Registry and it authorizes the police to ensure that Housing ACT gains vacant possession of the property. The warrant will specify the day and time the eviction will take place. The police must give the tenant at least 2 days notice of the eviction and a warrant has a life of 21 days — therefore the police have anywhere between 2 and 21 days in which to execute the eviction warrant. A warrant can be executed between 8 am and 6 pm Monday to Thursday excepting public holidays.

### **What if I disagree with the Tribunal's Orders?**

You can appeal from the RTT to the ACT Supreme Court. You have 28 days from the date of the RTT decision to lodge the appeal, but in practice you would need to act very quickly in order to stop the eviction from going ahead. An appeal must be based on a question of law. It is not enough that the RTT's decision seems harsh — there must be an error of law. You should seek expert

legal advice and do this before lodging an appeal, because if you lose the appeal the Supreme Court could order you to pay Housing ACT's costs.

### **Variation of orders**

You can seek a variation of the RTT's orders, but this would need to be on the basis that there has been some change in your circumstances since the orders were made. For example, you could ask the RTT to reduce the rate of repayment of arrears because your income has reduced.



#### **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.

April 2008