

WHAT ARE 'CONDITIONAL ORDERS'?

The phrase 'Conditional Order' is short for 'Conditional Termination and Possession Order'. When the Residential Tenancies Tribunal ('RTT') makes a Conditional Termination and Possession Order, it means that they are allowing the tenancy to continue as long as the tenant fulfils a condition. Conditional Orders can only be made for rental arrears and not for nuisance or other breaches.

The 'condition' is usually that the tenant pay their rent and a certain amount of rental arrears on a regular basis. Sometimes the Conditional Order also specifies the method by which the rent is to be paid (eg, by Centrelink direct debit). Conditional Orders are serious — if a tenant breaches a Conditional Order, Housing ACT can apply to the RTT for a Warrant for Eviction.

HOW ARE CONDITIONAL ORDERS MADE?

If you have rent arrears, Housing ACT can apply to the RTT to seek your eviction. The RTT has the option of dismissing the application, making a Conditional Order or simply terminating your tenancy on the spot (in this situation you can ask the Member to suspend the termination for up to 21 days if you will suffer hardship).

The Member who hears the matter will only make a Conditional Order if he or she forms the view that you are reasonably likely to pay your rent and the arrears. This will depend on a number of factors, including:

- Your rental history (that is, whether or not you have paid rent on time in the past);
- How much rent you pay compared with the amount of arrears;
- How many times you failed to pay the correct amount of rent;
- The reasons why you failed to pay the correct amount of rent;
- Any other debts you might have (eg, credit cards);
- Your capacity to pay rent and arrears as it falls due;
- Any steps you have taken to address the cause of the current situation where you are unable to meet your rent obligations;
- If your circumstances have changed, what steps have you taken to ensure your rent is paid;
- If you had trouble making regular manual payments, that you have started paying by a method that is more reliable (eg, a Centrelink direct debit)
- If you had trouble paying rent because of difficulty in managing your finances, that you have sought financial advice (eg, from CARE Financial Counselling);
- If you have started paying rent again, how much rent you have paid recently;
- If you have started regular arrears payments, how much of the arrears you have paid; and
- The likelihood that the same problem will arise in the future.

In making a decision, the Member will also look at whether or not you agree to repay the arrears and to pay the rent in full and on time in the future.

HOW LONG WILL THE ORDERS LAST?

Orders are generally made for a period of up to one year. In 'extraordinary circumstances' the RTT can make longer orders. If you have been able to clear your arrears and establish a good, consistent pattern of rent payments, you can apply to the RTT to have the orders set aside.

Conditional Orders made before February 2006 last indefinitely and people often find themselves back in the Tribunal for missing rent payments years after the original orders were made. If you are on one of these old Conditional Orders and have now caught up with your rent and you can show a pattern of



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consistent rental payments, you can make your own application to the RTT asking to have order set aside.

In either case, you should seek legal advice before making your own application to the RTT.

WHAT HAPPENS AFTER CONDITIONAL ORDERS ARE MADE?

Once the RTT has made Conditional Orders, you must ensure you do not breach any of the conditions. It is your responsibility to ensure any rent and arrears payments are paid, even if you use a Centrelink or bank direct debit. It is very important you check that the correct amount has been paid to Housing ACT every fortnight.

If you have a Centrelink direct debit and Centrelink fails to take the right amount of rent or rental arrears, you will need to contact Centrelink to find out what has happened. You will also need to contact Housing ACT and let them know that you will be making a manual payment of the missed rent or rental arrears, and you will need to make the payment immediately. It may also be a good idea to contact the RTT (in writing would be best) and let them know what has happened and what you are doing about the incorrect payment.

WHAT HAPPENS IF A PAYMENT IS MISSED?

If a payment of rent or rental arrears is missed, causing a breach of the Conditional Order, then Housing ACT will be able to apply to the RTT for a Warrant for Eviction. Do not assume for any reason that Housing ACT will not apply for the warrant — instead assume that if they can, they will.

If you breach the Conditional Order and Housing ACT decides to apply for a warrant, they must serve you a notice of the breach and file a Statutory Declaration with

the RTT registry giving details of the breach and declaring that the breach notice has been served on you.

The RTT Registry will then list the application for a hearing before the Tribunal after 7 days and serve a hearing notice on both parties.

WHAT WILL HAPPEN AT THE HEARING?

If you want to keep your home, you will need to defend Housing ACT's application for a warrant. If you do not attend the hearing, the RTT will almost certainly allow Housing ACT's application and direct the Registrar to issue a warrant for your eviction.

DEFENDING A BREACH OF CONDITIONAL ORDERS

If you decide to defend Housing ACT's application, you will need to explain to the RTT at the hearing what happened. Possible scenarios include:

- No payment was missed (you will need evidence of this, such as receipts or bank statements detailing the payments); or
- You believed the rent and rental arrears payment went through, and had no reason to believe otherwise (you will need to explain what happened, and what you did once you found out a payment had been missed); or
- The missed payment was caused by a Centrelink or Housing ACT error (you will need to explain what you did once you were aware of the missed payment).

At the hearing, the RTT will decide whether to allow or dismiss the application. If the breach has been proved but the Tribunal decides not to grant Housing ACT's application for a warrant, it is likely that the RTT will either confirm the current Conditional Order or make a new Conditional Order.

If you missed a payment for another reason, such as problems in your life, you may still defend Housing ACT's application for a warrant. If you do, it is important that you explain exactly why you missed the payment. You should also take as much evidence as you can to the RTT about the problems you were (or are) experiencing. For example, if you have a serious medical problem and related expenses, you should give the RTT a copy of a medical certificate and copies of any bills you had to pay at the time you missed the payment.

Whatever your reasons were for missing the payment, in order to have the best chance of convincing the Member not to allow Housing ACT's application you should make every effort to make up the missed payments before the hearing. If you cannot make up the entire amount you missed, you need to be able to show that you have paid as much back as you can, and say how you intend to pay the rest back.

There is no guarantee that the RTT will decide in your favour. Negotiation with Housing ACT may sometimes be useful in these circumstances.

WHAT HAPPENS IF HOUSING ACT'S APPLICATION FOR A WARRANT IS REFUSED?

If the RTT decides to dismiss Housing ACT's application for a warrant, the warrant for eviction will not be issued. You must, of course, continue to pay the rent plus arrears as detailed in any order that is made.

REMEMBER: If the Tribunal dismisses Housing ACT's application but you then breach the Conditional Order again, Housing ACT may reapply for a warrant for eviction during the life of the Conditional Order.

WHAT HAPPENS IF THE APPLICATION IS ALLOWED?

If Housing ACT's application is allowed, the Tribunal will direct the Registrar to issue a warrant for your eviction. The police will then come to your house and serve the warrant on you. They will tell you the day and time they will come back to execute the warrant. If you have not already left when the police come back, they can physically remove you from the premises. Someone from Housing ACT will be with the police when they execute the warrant for eviction.

The police must give you 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 THE DECISION TO EVICT ME IS WRONG?

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.



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