

CONDITIONAL ORDERS & APPLYING for a STAY

WHAT ARE 'CONDITIONAL ORDERS'?

The phrase 'Conditional orders' is short for 'conditional termination and possession orders'. 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. The condition is usually that the tenant pays their rent and a certain amount of rental arrears on a regular basis. Sometimes the conditional orders also specify the method by which the rent is to be paid (e.g. by Centrelink direct debit). If a tenant breaches conditional orders, Housing ACT can apply to the RTT registry for a warrant of eviction.

HOW ARE CONDITIONAL ORDERS MADE?

If you are in rent arrears, the Residential Tenancies Act 1997 allows Housing ACT to apply to the RTT to seek your eviction. The RTT has the option of dismissing Housing's application, making conditional orders or simply terminating your tenancy on the spot. (It can suspend the order for 21 days). The Member who hears the matter will only make conditional orders if he or she forms the view that you are reasonably likely to pay your rent and the arrears.

Whether or not the Member forms the view that you will pay the rent and pay off arrears depend on a number of factors, including:

- Your rental history (i.e. whether or not you have paid 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, for example on credit cards;
- Your capacity to pay rent and arrears as it falls due;
- Any steps you have taken to address the problems that stopped you from being able to pay the correct amount of rent;
- If your circumstances have changed, then the steps you have taken to take control and ensure your rent is paid — for example:
 - If you had trouble making regular manual payments, have you started paying by a method that is more reliable, like a bank or Centrelink direct debit?
 - If you had trouble paying rent because of difficulty in managing your finances, have you sought financial advice, for example from CARE Financial Counseling?
- If you have starting paying rent again, then how much rent you have paid recently;
- If you have started regular arrears payments, how much of the arrears you have paid; and finally

- 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.

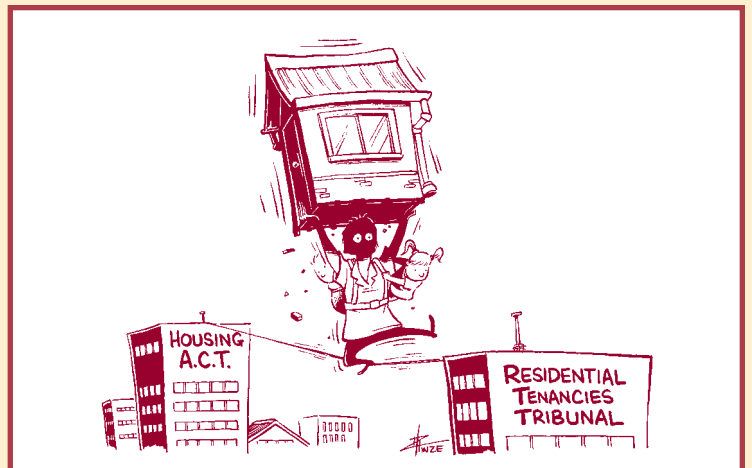
WHAT HAPPENS AFTER CONDITIONAL ORDERS ARE MADE?

Once the RTT has made conditional orders, all you have to do is to make sure that you don't breach any of the conditions. It is your responsibility to make sure that the money for rent and arrears payments goes through, even if you use a Centrelink or bank direct debit. It is very important you check every fortnight to ensure that the correct amount has been paid to Housing ACT.

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 and Housing ACT to find out what has happened. You will also need to let Housing ACT 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.

Welfare Rights & Legal Centre

Advice line
6247 2177



WHAT HAPPENS IF A PAYMENT IS MISSED?

If a payment of rent or rental arrears is missed, causing a breach of the conditional orders, then Housing ACT will be able to apply to the RTT for a warrant for eviction. Don't assume for any reason that Housing ACT won't apply for the warrant — instead assume that if they can, they will.

If Housing ACT applies for the warrant, the RTT will send you a notice. The notice will tell you that:

1. Housing ACT has applied for a warrant for eviction;
2. You have two days to apply for a stay; and
3. If you don't apply for a stay within two days, a warrant for eviction will be issued.

WHAT DO I HAVE TO DO TO APPLY FOR A STAY?

Depending on the content of the conditional order, when you apply for a stay of a warrant you may need to ask for any of three things:

1. An order that a warrant for eviction not be issued;
2. An order setting aside the original conditional order and creating a new one;
3. An order restoring the tenancy.

In order to get a stay, you need to contact the RTT registry and tell them you wish to make an application to stay the eviction proceedings. You will then be told when you have to appear at an RTT hearing. You must apply to the RTT within the 2 days given to you in the notice from the RTT.

At the hearing you will need to explain to the RTT what happened. Your argument might be that:

- ▶ 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 it didn't [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]

The RTT has the power to stay eviction proceedings if the Member is satisfied that there has been no breach of the conditional order. It is also likely to stay eviction proceedings where it is satisfied that you had good reason to believe the rent was paid, and that when you became aware of the missed payment you did all that you could to fix the problem.

OTHER REASONS

If you missed a payment for another reason, such as problems in your life, you may still apply to the RTT for a stay. If you do, it is very important that you are honest, and 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 getting the Member to grant a stay you should make every effort to make up the missed payments before you apply. If you can't 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 stay the eviction proceedings even if you have paid back all the arrears. Negotiation with Housing ACT may sometimes be useful in these circumstances.

WHAT HAPPENS IF THE RTT STAYS THE WARRANT?

If the RTT stays the warrant for eviction, 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 you are successful in getting a stay but you then breach the conditional orders again, Housing ACT may re-apply for a warrant for eviction.

Remember that conditional orders last the life of the tenancy unless the Tribunal orders otherwise.

WHAT HAPPENS IF THE RTT DOESN'T STAY THE WARRANT?

If the RTT doesn't issue a stay, the warrant for eviction will issue. The police will then come to your house and serve the warrant on you, and they will tell you the day and time they will come back to execute the warrant. If you haven't 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 are required to execute the warrant not less than two, but not more than 21 days after the warrant has been served.

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.