

EVICTIION FROM YOUR HOME

What could cause your eviction?

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

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

What breaches could lead to eviction?

Rent Arrears

The most common breach of the tenancy agreement is getting into "rent arrears". Your rent is in arrears when you are behind in the rent because you have not paid on the due date or you have paid less than the amount due.

There are lots of reasons for getting into rent arrears and sometimes the circumstances are beyond the control of the tenant — for example, if you suddenly lose your income. Housing ACT will not usually start eviction proceedings the minute you miss one payment or make a payment that is short of the full amount due. However, if for any reason you are unable to pay the rent as due, you should immediately advise Housing ACT and say why this has happened and

how and when you will make up the shortfall. You should then do what you have undertaken to do, so make sure what you are offering is affordable.

What if you don't agree that you're in arrears?

Mistakes and misunderstandings can occur, so 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. (For more information on rebates, see **Rent and Rent Rebates** (Housing ACT fact sheet Number 2).

DON'T ignore any sign that you may be in rent arrears; and

DON'T hold back the rent because of some other problem. Even if you think Housing ACT is breaching the tenancy agreement in some way, you still have an obligation to pay rent.

Other breaches

There are a number of other ways you can breach your tenancy agreement — for example, by failing to take reasonable care of the property, making alterations to the property without Housing ACT's consent, being a nuisance to the neighbours, using the property for

illegal purposes, refusing access to Housing ACT, or subletting without Housing ACT's consent.

Other reasons for eviction

Although in general Housing ACT tenants have security of tenure, there are some situations where Housing may require you to leave your home even though you are not in breach of your tenancy agreement. The most common one is that Housing has decided to sell the property or otherwise dispose of it. This is usually because there are major problems with the property that Housing ACT has decided cannot be fixed or are too expensive to fix. In such a case, you will not be made homeless. You have the right to be transferred to a suitable alternative home.

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

The eviction process

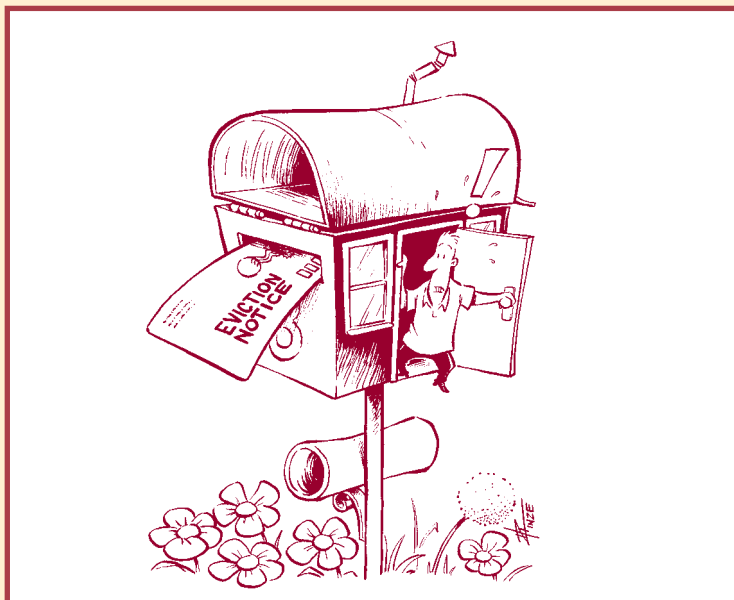
Before an eviction can take place the law requires all landlords, including Housing ACT, to take a series of steps.

Notice to Remedy

This is the first step in the eviction process. This notice advises you that Housing ACT considers you are breaching your tenancy agreement and

Welfare Rights & Legal Centre

Advice line
6247 2177



gives you a period of time in which to remedy that breach (that is, fix whatever is the problem).

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

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

If Housing ACT is satisfied that the breach has been remedied within the notice period, no further action will be taken. In practice, you can generally negotiate with Housing ACT so that a process for remedy is worked out that is acceptable to both parties. For example, it may be agreed that the rent arrears of \$100 are to be made up by extra payments of \$20 per fortnight over the next 5 fortnights, or it may be agreed that the overgrown garden will be got under control over a period of 6 weeks.

Notice to Vacate

This is the notice you will receive if Housing ACT is not satisfied that you have remedied the breach within the required (or agreed) time.

NOTE: if you have previously during your tenancy received 2 Notices to Remedy, Housing ACT can issue a Notice to Vacate without a further Notice to Remedy, if you again breach the same term of your tenancy agreement. For example, in March you got behind in the rent, received a Notice to Remedy and made up the rent, then in July you got behind

again and received a second Notice to Remedy and made up the arrears. If at any later point in your tenancy you get behind in the rent, Housing ACT can issue you with a Notice to Vacate.

A Notice to Vacate tells you to vacate by the end of the period given. If the reason for the Notice is a breach of the tenancy agreement, the Notice to Vacate must give you a minimum of 14 days notice.

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 and give you a chance to appeal their decision to end the tenancy. This is a chance to put your side of the story. 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.

If you do not appeal, or your appeal is denied, Housing ACT must apply to the Residential Tenancies Tribunal in order to evict you. 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

In order to evict you Housing ACT must apply to the Tribunal for a Termination and Possession Order (TPO). The Tribunal will send you a copy of this application which 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** (Housing ACT fact sheet Number 16).

In brief, to defend an eviction:

- ▶ Be at the Tribunal (Hearing Room 4, first floor of the ACT Magistrates Court building) at the right time on the right day;
- ▶ Be prepared — have a list of the points you want to get across to the Tribunal Member: for example, how/why you got behind in the rent, what steps you have taken and what you propose for the future;
- ▶ Have ready and in good order any documents you want to show the Member;
- ▶ Keep cool and be polite, no matter what the Member or the Housing ACT representative says.

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.