

REPAIRS

Tenants of Housing ACT have the same rights as other tenants under the Residential Tenancies Act 1997 (the Act) to have repairs made by their lessor: the Commissioner for Housing. Your rights are contained in the Prescribed Terms of the Act.

You may be asked to be directly in touch with the contractor who does the repairs work for Housing ACT — this in no way removes the responsibility from your lessor to ensure that repairs are made in accordance with the law. If they fail to do this, you have the right to seek orders from the Residential Tenancies Tribunal:

- ▶ Requiring the repairs to be done
- ▶ For payment of compensation for any breach of the residential tenancy agreement by Housing ACT
- ▶ For reduction of rent

or maybe all of these things. A failure to do repairs that are required by law could also lead to a breach of the lessor's obligation not to interfere with the reasonable peace, comfort and privacy of the tenant (clause 52 of the Prescribed Terms).

Important Points

There are some important things to remember:

- ▶ It is essential to make a complete check of the premises when you move in and note any problems in the condition report. This includes a garage, the grounds and garden (if any). An accurate condition report is needed not only for your protection in the future but also because the lessor has a duty to provide the premises in a reasonable state of repair.
- ▶ The duty to make repairs extends to appliances, furniture and equipment supplied with the premises.
- ▶ Always report the need for repairs as soon as possible (preferably in writing) — it is only when a lessor has notice of the need for repairs that they have a legal duty to perform them.
- ▶ A restriction on repairs is that the lessor is not obliged to repair damage caused by the negligent or wilful act of the tenant (clause 56) — see below for more details.
- ▶ Never withhold rent because repairs are not made — it only makes you vulnerable to eviction.

During your tenancy

Housing ACT is required to maintain the premises in a reasonable state of repair, having regard to their condition at the beginning of the tenancy (clause 55(1) — this is where it helps to have a good record of the condition of the premises when you moved in).

Your residential tenancy agreement makes a distinction between standard and urgent repairs.

Standard Repairs

Housing ACT is obliged to make non-urgent repairs within 4 weeks of being notified of the need for the repairs, unless otherwise agreed (clause 57). This is in relation to general repairs that do not have an immediate and significant effect or impact on the tenants' ability to live in, or use, the premises.

Urgent Repairs

In recognition of the need for some repairs to be made within a very short time frame, the Prescribed Terms include different obligations on Housing ACT regarding urgent repair of:

- ▶ A burst water service;
- ▶ A blocked or broken lavatory system;
- ▶ A serious roof leak;

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- ▶ A gas leak;
- ▶ Dangerous electrical fault;
- ▶ Flooding or serious flood damage;
- ▶ Serious storm or fire damage;
- ▶ A failure of gas, electricity or water supply to the premises;
- ▶ A failure of a refrigerator supplied with the premises;
- ▶ A failure or breakdown of any service essential for hot water, cooking, heating or laundering;
- ▶ A fault or damage that causes the premises to be unsafe or insecure;
- ▶ A fault or damage likely to cause injury to person or property;
- ▶ A serious fault in any door, staircase, lift or other common area which inhibits or unduly inconveniences the tenant in gaining access to or use of the premises.

In these cases, Housing ACT is required to carry out repairs 'as soon as necessary', having regard to the nature of the problem (clause 59). In most cases this should mean within 24 hours.

Tenants' Obligations:

The Prescribed Terms state that you are obliged to take reasonable care of the premises and keep them reasonably clean. Clause 63 partly clarifies this to mean that during the tenancy the tenant shall:

- ▶ Not intentionally or negligently damage (or permit damage of) the premises (this covers not only the tenant, but also any guests, animals or other persons under their control eg children or pets);
- ▶ Notify the lessor of any damage as soon as possible;
- ▶ Take reasonable care of the premises having regard to

the condition at the start of the tenancy and the normal incidents of living.

Insurance

It is important to know that you could be liable for any accidental damage done to the premises by you or your guests. Insurance against this possibility is a good idea and relatively inexpensive. Many home contents insurance policies provide such cover.

Alterations and renovations

You can only make alterations/renovations with written permission of Housing ACT (clause 67). However, while you are not permitted to add fixtures or fittings without consent, this is balanced by a requirement that the lessor's consent should not be unreasonably withheld (clause 68). Keep in mind that if you act without permission, you risk eviction for breach, and improvements or fixtures you install may become the property of Housing ACT without compensation.

The Act prohibits any requirement on tenants to make any improvements, alterations or repairs to the premises as a condition of getting the tenancy (section 15(3)).

Getting Housing ACT to do repairs

Request repairs in writing (keeping a copy of your letter). If your written request is not acted upon and you are required to deal with Housing ACT's contractor by telephone, make sure you get the name of the person you spoke to and a receipt or reference number for the call, then make a written record straight away. If the repairs are not made within the specified time after the request, you have several options for taking the matter

further, depending on the type of repairs needed.

Standard Repairs

Initially you should write a "Notice to Remedy", pointing out Housing ACT's obligations under clause 55 of the Prescribed Terms, outlining how they have breached that clause and setting a time limit for the "remedy" (completion of the repairs) — 7 or 14 days is reasonable since they have already had 4 weeks to do the repairs.

If the Notice to Remedy does not achieve the desired result, you may have grounds for termination of the agreement for breach. You should get specific advice before embarking on this course of action. Most tenants of Housing ACT will want their tenancies to continue so it will probably be better to consider going to the Residential Tenancies Tribunal.

The Tribunal may make an order requiring the repairs to be made (it will usually set a deadline for this), and/or requiring payment for compensation for breach of the agreement. The Tribunal may also order a reduction in rent for the period when your quiet enjoyment of the premises was disrupted — but the law on reducing rebated rents is not clear so you should get legal advice before asking the Tribunal to order a rent reduction.

Urgent Repairs

If Housing ACT refuses or fails to respond to your request for urgent repairs (as defined over the page) you are able to authorise that those repairs be done, but only if the set procedures are strictly followed.

If Housing ACT fails to do the urgent repairs within a reasonable time, you may arrange for repairs to a maximum value of up to 5% of the rent of the property over a year (clause

61). For example, if you pay \$100 per week rent, your annual rent is \$5200, and you could authorise urgent repairs to the value of up to \$260 (5% of \$5200).

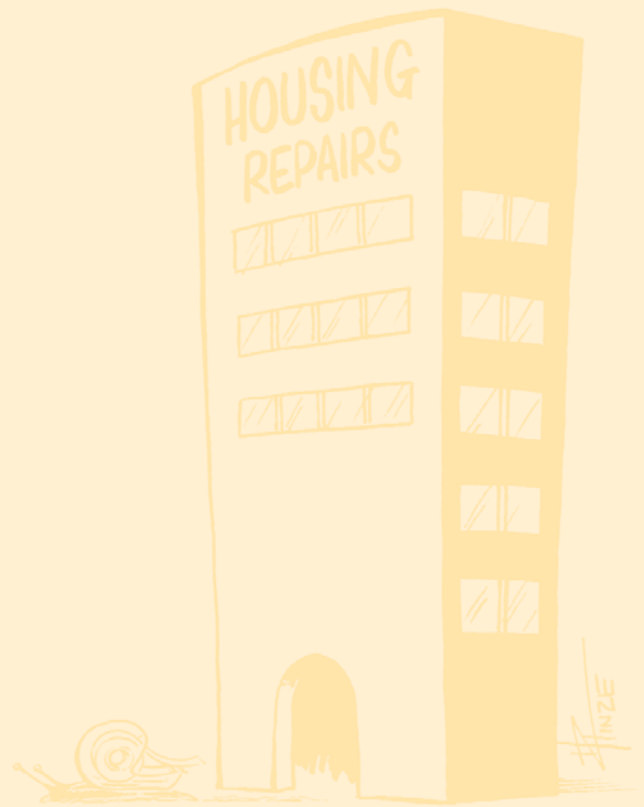
The procedure for authorising repairs is set out in clause 62:

- ▶ The repairs must be made by the qualified tradesperson nominated by Housing ACT in the tenancy agreement;
- ▶ If a tradesperson hasn't been nominated, can't be contacted or is unavailable, the repairs must be performed by a qualified tradesperson of your choosing;
- ▶ Where the repairs are arranged in accordance with these procedures, the lessor is liable for the cost of repairs and may be billed directly;
- ▶ Where you have not acted in strict compliance with these procedures you are liable for the cost of the repairs you have arranged.

For many Housing ACT tenants the amount they could authorise will be relatively low, so it may be better to make an urgent application to the Tribunal instead, requesting that it be listed within 24 or 48 hours.

Can you withhold rent?

NO. It is often tempting to withhold rent and apply it to the cost of necessary repairs, however it is counterproductive. Even if Housing ACT fails to carry out repairs, your obligation to pay rent continues and you risk eviction if you are in arrears.



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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