

DEBTS FROM A PREVIOUS TENANCY

You may find out, or be reminded, that you have a debt from a previous tenancy when you ask about being rehoused. If you feel discouraged from applying because of a debt it is important to persist with the application process so that a completed application form is lodged with the Applicant Services Centre of Housing ACT. A debt from a previous tenancy can be a barrier to being rehoused — it can lead to a decision being made not to house you — but this is not an 'automatic' decision. There can be no lawful policy that denies rehousing to all applicants with a debt. It can be difficult to be rehoused with a debt, but it is possible.

Three main things to think about are:

- ▶ Do you accept the debt?
- ▶ Repaying the debt
- ▶ Being housed despite a debt

Do you accept the debt?

This is the first thing for you to work out. Just as with any other debts, it is important to get all details of what the debt is about. It may be that you can successfully challenge all or part of the debt. You have a legally enforceable obligation to repay a debt that has been properly raised against you.

Repaying the Debt

When you apply to be rehoused and there is a debt from a previous tenancy there will be some encouragement to repay the debt — often by instalments. But before you enter into any agreement to repay the debt you need to consider whether the debt is not recoverable by Housing

ACT (i.e. legal proceedings cannot be commenced to force you to repay the debt).

There are two situations where a debt is not recoverable by Housing ACT:

- ▶ Where the debt is 'statute barred'
- ▶ Where the debt is part of a bankruptcy.

'Statute barred' debts are not recoverable when two basic conditions have been met. The first is that it must be at least six years since the debt first became due, and the second is that the debt must not have been 'acknowledged' at any time during that six year period. 'Acknowledged' means that you have agreed in writing that the debt exists, or you have started to started make repayments. In either case, once you agree in writing that the debt exists or you start to make repayments, the six year limitation period starts to run again.

Bankruptcy — debts that are part of a bankruptcy are a bit similar to statute barred debts — after you have been discharged from bankruptcy the debts do not exist in law. It is important to work out if the debt was included in any bankruptcy. If the debt involves fraud it may not be covered by the bankruptcy.

If you think you may have a statute barred debt, or one covered by bankruptcy, you should get legal advice before entering into an agreement to repay the debt.

If you enter into an instalment agreement with Housing ACT or their debt collection agency you need to make sure that the amount agreed to is affordable for you, and is going to be affordable in the future. The worst thing for you is to miss payments after you have entered into an agreement, so it is better to negotiate a lower fortnightly repayment figure that you are sure you are going to be able to afford.

Being Housed Despite A Debt

All decisions made by Housing ACT to house people are governed by a law — the Public Rental Housing Assistance Program (often simply called 'the Program'). Clause 8(6) of the Program allows for someone to be refused housing if they have a debt (usually from a previous tenancy, but it could also be a bond loan debt), and/or due to breaches of a previous residential tenancy agreement. A decision to refuse you housing is not made at the application stage (when you lodge



Welfare Rights & Legal Centre

Advice line
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your application), it is made when your name reaches the top of the appropriate waiting list — the allocation stage — see **Applications for Housing Assistance** (Housing fact sheet number 1).

The most important thing to understand about this part of the law is that it contains a discretion which means that Housing ACT have to take into account your circumstances when deciding whether or not to rehouse you. A decision can be made to house you despite a debt or previous breaches of a residential tenancy agreement. You can help to have a decision made in your favour by doing a few things:

- ▶ If you accept the debt, arrange to pay it off by instalments and making sure the payments are regular
- ▶ Get support letters showing any housing crisis you might be facing
- ▶ Maintain regular rent payments in your current accommodation (eg, a refuge or other supported accommodation program).

These things help because they show your commitment to being a responsible tenant in any future tenancy, and that you are capable of meeting your financial obligations. There could be other things that would help depending on your circumstances. The important thing is to provide some evidence that the problems of the old tenancy are not likely to happen in a new tenancy.

Even though a debt may be statute barred or form part of a bankruptcy it could still be used to refuse housing not on the basis of a debt owing, but because it arose as a result of a breach of a residential tenancy agreement such as a failure to pay rent or not leaving the property in a reasonable condition. A debt based on a bond loan which is statute barred could not be regarded as a breach of residential tenancy agreement.

Appealing Decisions

A decision refusing to allocate you a home is reviewable. You can appeal to the Housing Review Committee, and the

Administrative Appeals Tribunal if necessary — see **The Appeals Process** (Housing fact sheet number 10). Any review will look at both the debt and how you are able to show that the problems of the old tenancy are unlikely to occur in the new one. This means that if you have failed to make regular payments towards the debt, or have not kept your rent up to date in your current accommodation, you may have little chance of succeeding.



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.