



Occupancy *TIPS*

Having a dispute?

Got a problem with your occupancy and want to do something about it?

What are your options? Who can help you?

This leaflet sets out what you can do and who to go to....

Sometimes things go smoothly and your occupancy is hassle free. Other times, issues come up that make living there difficult, uncomfortable or plain frustrating. Just because you have a problem, it may not mean that you have to find somewhere else to live! There are a number of different options you have to work through a dispute. This tip sheet describes 4 different ways you might try to resolve the dispute.

1. Sorting out the problem with the grantor

Sometimes the issue might be just a misunderstanding. As a first step, it is worth trying to sort out the problem with the grantor directly. The best way to do this is to put your questions and concerns in writing. Some of the things you might like to put in the letter are:

- A description of the concern/ problem (when, how, what etc).
- Evidence that the problem exists. The type of evidence you provide will depend on the nature of the problem.

For eg, if the issue is about board payments, providing a copy of receipts might be helpful. Or, if the issue is to do with the condition of the house, then a copy of the original condition report might be relevant.

- What you would like the grantor to do about the problem.
- When you would like the grantor to take action.
- Ask the grantor to reply to your letter in writing.

Be sure to date and sign the letter and send it the grantor. REMEMBER to keep a copy for yourself! The copy of the letter might be useful evidence if the dispute gets more serious. Also, if you have any conversations about the issue, remember to write them up immediately afterwards in a letter or a note. The written letter or note should record what you talked about and what agreements you came to, if any.

2. Using dispute resolution processes

If the grantor isn't responding to your letter, then you could try dispute resolution. Occupancy principle (i) states that "*a grantor and an occupant should try to resolve disputes using reasonable dispute resolution processes*". Dispute resolution processes might include;

- The grantor giving written notice to the occupant that the occupant has breached the agreement. The notice should include information about what part of the agreement they think has been breached and why,

- The grantor to give the occupant an opportunity to question a grantor's version of events, and/ or
- The grantor to give the occupant an opportunity to remedy the situation, where possible.

If these dispute resolution processes are outlined in the agreement, they must be followed. If they are breached, then parties can go to the Residential Tenancies Tribunal (RTT). If there are no processes outlined in your agreement, try and negotiate to have them included.

But regardless of the dispute resolution processes that are outlined in the agreement, whatever process are **used** must be **reasonable**. What is reasonable will depend on the circumstances and the nature of the dispute. Factors that might affect what is reasonable would include;

- The seriousness of the breach
- Whether the dispute may lead to eviction of the occupant
- Whether the same dispute has happened before
- Whether the dispute relates to unpaid rent

If the dispute processes the grantor employs are not reasonable, then you can apply to the Residential Tenancies Tribunal (RTT) to challenge them.

3. The Residential Tenancies Tribunal

If the dispute resolution processes don't work or are unreasonable, you can take the dispute to the Residential Tenancies Tribunal (RTT). The RTT can hear disputes about occupancy agreements or any issues relating to the occupancy agreement.

About the Tribunal

When you make an application to the RTT, there is a small charge depending on the

nature of the dispute. When a dispute is heard, the process is informal. You don't need a lawyer to represent you. While the hearings are generally public, confidential hearings can be heard in very limited circumstances.

The role of the RTT is to resolve disputes. When your matter is called, the Tribunal will ask questions of both sides to ensure all relevant information is gathered. You will have an opportunity to put your case. If the grantor says something that you disagree with, you will have the opportunity to respond or deny it. The RTT will attempt to objectively apply the law to resolve the issues fairly.

Preparing to go to the Tribunal

If you are considering taking a dispute to the RTT, we recommend that you;

- visit the RTT and watch some matters being heard. The Tribunal is open to the public and it's a good idea to sit in on a hearing or two to get familiar with the place and the proceedings. The Registry has a list of the hearings for each week.
- create a folder for your case, arrange your documents in chronological order and label them with stick-on flags so that you can quickly find what you need during the hearing.
- assemble your evidence and if you have any witnesses, make sure they are able to attend on the day and know where to go.

You can also find out more information about the RTT from their website: www.courts.act.au/magistrates/tribunal/rtt.

What to take

If you are going to take a dispute to the Tribunal, then generally you will need to take :

- ⇒ A Copy of your Occupancy Agreement; including any house rules
- ⇒ Copies of all correspondence between grantor and yourself;
- ⇒ A Copy of condition report from the beginning of the occupancy (if one exists); and, if relevant, copies of any inspection reports, including final

- inspection report if the occupancy has ended;
- ⇒ A written chronology of phone calls and events related to the issues raised in the application;
- ⇒ Statutory declarations giving the evidence of any persons whose knowledge of the situation supports your application;

And if you cannot be present at the Tribunal on that particular day:

- a doctor's letter; or
- a copy of travel document and statement of necessity for travel; and /or
- a letter authorising another party to represent you.

For more information about assembling evidence to take to the RTT and what to include, read our Tenancy Tip Sheet: Evidence. This can be found at our website www.tenantsact.org.au.

What can the Tribunal do?

The Tribunal can make various orders to resolve disputes. They can make orders that;

1. Release the bond to you
2. To order performance (make the grantor do something)
3. Order compensation for any loss caused by breach of the agreement
4. Terminate the Agreement
5. Give you back occupancy of the premises

More information about these orders is outlined below.

1. RELEASE THE BOND TO YOU

Where there is a bond dispute and the Office of Rental Bonds has advised that they cannot release the bond or the disputed part of the bond, either the grantor or the occupant must apply to the Tribunal for an order to release the bond.

Because the bond is your money, the onus is on the grantor to prove her/his claim to it. This is the case regardless of whether it is you or the grantor making the application to the Tribunal. However, you should still provide whatever evidence you have to support your claim. For example:

- ⇒ Receipt for bond paid;

- ⇒ Acknowledgement of bond lodgement;
- ⇒ Condition report and/or photographs showing any existing damage at the start of the occupancy;
- ⇒ Receipts to show that board was paid up to the date of vacation;
- ⇒ Photographs and/or witness statements as to the condition of the property at the date of vacation;
- ⇒ Receipts of any services you employed, like carpet cleaners.

2. ORDER PERFORMANCE

If the grantor is failing to perform an obligation under the occupancy agreement, you can apply for orders for performance. For example, orders requiring the grantor to do repairs, or to stop coming onto the premises without your permission, or to participate in reasonable dispute resolution processes.

You will need evidence that the grantor has failed to observe a term of the agreement – for example,

- ⇒ A copy of a letter you sent to the landlord advising of the need for repairs;
- ⇒ A tradesperson's report that the particular fixture or amenity requires repair or replacement; and
- ⇒ A clear timeline of the sequence of events.

3. ORDER COMPENSATION

If you are seeking compensation for your losses arising from the grantor's breach of the agreement, you will need to show evidence of the breach, eg evidence that the grantor failed to conduct repairs or give the required notice. You will also need to show what those losses were and the likely dollar value of those losses. Your evidence may include:

- ⇒ Receipts for goods purchased;
- ⇒ Other proof of ownership of goods, and cost to replace;
- ⇒ Evidence that the loss arose directly from the grantor's breach – for example, a police report specifying that the point of entry for the burglars was the door with the faulty lock and identifying the goods reported missing;
- ⇒ Evidence of any other economic loss – for example, where the grantor has failed to

repair the faulty stove, evidence of the takeaway food purchased;

- ⇒ Evidence of any other loss – for example, a loss of peace, comfort or privacy in your use of the premises. (Before awarding compensation for non-economic loss, you will need to demonstrate the extent to which the breach has affected your use and enjoyment of the premises.)

Note: Where compensation is being sought (whether by occupant or grantor), the claimant has a duty to take reasonable steps to avoid incurring the loss for which compensation is sought.

So if you have to eat out because the stove has broken down and the grantor has failed to treat it as an urgent repair, you could claim the cost of your takeaway meals, but it is unlikely you would be entitled to claim the cost of dining out at the Hyatt.

4. TERMINATE THE AGREEMENT FOR BREACH

You can challenge the grantor's decision to terminate the occupancy agreement (and evict you) if,

- the grantor is claiming to end the agreement on grounds that you do not think have been satisfied, and/ or
- is trying to end the agreement in a way that is inconsistent with the agreement, the House Rules or the Occupancy Principles.

What if I disagree with the Tribunal Orders?

You can appeal to the Supreme Court if the Court gives you leave, but only on a question of law. You would need to get expert legal advice before lodging an appeal because the Supreme Court may order you to pay the grantor's costs if you lose the appeal.

Don't ignore Tribunal Orders

It is not wise to simply ignore the Tribunal's orders. If you fail to comply with an order, the Tribunal can order you to pay a fine of up to \$5,000.

4. Make a complaint

Making a complaint is different from taking legal action. Making a complaint raises the behaviour of the grantor with another organisation or body that they might have obligations or responsibilities to. Who you can complain to will depend on who the grantor is and what the complaint is about. Be aware that you may not be able to complain about everything, and that not every grantor will have an organisation that they are accountable to.

**This is a summary of your rights and responsibilities.
If you have a specific problem, you should seek more detailed advice.**

Tenants' Advice Service6247 2011 free legal advice and information for all ACT tenants

Tenants' Union (ACT) 6247 1026www.tenantsact.org.au	collective strength through membership general renting/tenancy information and news free legal advice and assistance for low income tenants
Welfare Rights and Legal Centre 6247 2177www.welfare-rights-act.org	
Office of Rental Bonds 6207 1178www.rgo.act.gov.au	bond lodgement, return and inquiries
Residential Tenancies Tribunal 6217 4260www.courts.act.gov.au/	dispute resolution and enforcement of tenancy legislation
Office of Fair Trading 6207 0400www.fairtrading.act.gov.au	complaints against real estate agents
Housing Review Committee 6207 1507	appeals against ACT Housing decisions
Housing ACT Website www.dhcs.act.gov.au	Housing ACT policies, general information