

Eviction in the ACT

This leaflet outlines the eviction process in the ACT.

For details about what to do if you intend to challenge an eviction see Tenancy Factsheet: [Defending an Eviction](#).

For information about termination of tenancies by tenants see Tenancy Factsheet: [Ending a Tenancy and Breaking a Lease](#).

All tenancies in the ACT are regulated by the [Residential Tenancies Act 1997](#) (RTA). The terms of your tenancy agreement are set out in the RTA and [Standard Lease](#), and are known as the Standard Tenancy Terms (STT). The landlord, or their agent, may only terminate a tenancy agreement in accordance with Part 4 of the RTA, and the STT.

When can a tenant be evicted?

The general effect of the legislation is to ensure that a tenant can only be evicted in the ACT if:

- They have breached the terms of their tenancy agreement; or
- The landlord has other lawful grounds for termination or reason for needing to recover the premises.

A landlord cannot terminate the tenancy just because the agreed fixed term has expired. When a fixed term expires it does not end the tenancy—it means that the tenancy no longer has a set term, this is called a periodic tenancy.

Who can evict a tenant?

The landlord or agent can serve a notice to vacate however, **only the ACT Civil and Administrative Tribunal (ACAT) can order an eviction, and only the police can carry out the eviction.**

An important protection given by the RTA is the prohibition in section 37 against a landlord attempting to recover possession in any other manner than that provided by the Act.

Protection of sub-tenants

The legislation not only protects tenants from

unlawful eviction, but also extends protection to lawful sub-tenants. **If the landlord has consented in writing to a sub-tenancy, then the sub-tenant is protected from unlawful eviction like any other tenant.**

The law does not protect occupants or unapproved sub-tenants from eviction to the same degree. If you think you might fall into one of these categories, you should seek specific advice or see Occupancy Factsheet: [Ending an Occupancy & Eviction](#).

EVICTIION PROCESS

A landlord seeking to terminate a tenancy must follow a strict process set out in the RTA. There is **no lawful short-cut available**, even where the tenant is in breach of the tenancy agreement or behind in the rent. In general, the process is:

1. Notice

- The landlord or agent must serve a valid, written **notice to vacate** on the tenant, providing the tenant with the correct period of notice applicable to the type of tenancy and grounds for termination: cl 83 (see over the page for grounds);
- The landlord/agent must have, and must state in the notice, one or more of the lawful grounds for termination set out in the RTA, as well as sufficient details identifying the circumstance giving rise to the grounds: cl 83(b);
- The notice to vacate should also specify that the landlord requires the tenant to vacate on expiry of the notice period, and that the tenancy will end on the day the tenant vacates;
- Note that if the landlord's/agent's reason for the termination is that the tenant has breached the tenancy agreement, the landlord usually must first issue a **notice to remedy** before issuing the notice to vacate – see page 3 "*Termination for breach by the tenant*".

2. Order from ACAT

- If the tenant does not voluntarily move out of the premises after receiving valid notice, the landlord **must** apply to ACAT for a **termination and possession order** (TPO); and
- The tenant has the right to (and should) be present at the ACAT hearing to defend an eviction.

3. Warrant for eviction

- If ACAT has made a TPO, it can also issue a warrant for eviction. This warrant gives the police the power to evict the tenant within a specified time if the tenant has not vacated of their own accord as directed by the TPO.

- The police must give the tenant at least 2 days notice of the eviction, unless there are exceptional circumstances involved.

GROUNDS FOR TERMINATION

Listed below are the only permissible grounds for termination of the tenancy agreement, leading to eviction:

Termination of any tenancy

Grounds in the RTA

The RTA says that, on application by the landlord, the Tribunal (ACAT) **MAY** terminate a tenancy in the following situations:

- Where there are grounds for termination under the STT (cl 86, 94, and 96), the landlord has given the correct notice; and the tenant has not vacated (s 47);
- Where the tenant has **breached** the STT (*see page 3 for details*), the landlord has given the correct notice and the tenant has not vacated (ss 48-49);
- Where the landlord would suffer **significant hardship** if the tenancy continued and this hardship is greater than the hardship the tenant would suffer if it was terminated (s 50);
- Where the tenant has caused or permitted **serious damage** to the property of the landlord, **or injury** to the landlord or a member of their family (s 51);
- Where the agreement was induced by a **false or misleading statement** of the tenant (s 52);
- Where the tenancy agreement was part of a contract of **employment**, the tenant has ceased working and the premises are required to house another employee (s 53);
- Where the tenant has *repudiated* the tenancy agreement, the landlord accepted this, and the tenant has failed to vacate (s 55). Repudiation means to indicate that you no longer wish to be bound by the tenancy agreement; or
- Where the tenant has **sublet** the premises without written permission (s 54).

Grounds in the Tenancy Agreement

Clause 86 – Termination where premises are unfit for habitation

Under cl86 **either party** may give written notice to terminate the tenancy if the premises are unfit for habitation, or are not available due to government action. The tenant must give 2 days notice, and the landlord at least 1 week (cl 87).

Posting Clauses

Some tenancy agreements also contain a special

term – known as a ‘posting clause’ – that provides an additional ground for termination on 4 weeks notice where a party (either the landlord or the tenant) is being posted to or away from the ACT in the course of their employment (s 8).

Termination of a periodic tenancy

As well as the above grounds, in a periodic tenancy (after the fixed term of the tenancy has ended, or where there is no fixed term) there is additional scope for the landlord to terminate the tenancy. The landlord may terminate a periodic tenancy where there are grounds set out in cl 96, or by issuing a ‘no cause’ notice to vacate: cl 94.

Clause 96 STT – Termination with cause

Cl96 sets out the grounds for termination and the period of notice the landlord must give, as follows:

- That the landlord *or* their immediate relative, *or* a person who has a close personal relationship, and a reasonable expectation that the landlord would provide them with accommodation, *genuinely* intends to **live in the premises** (cl 96(1)(a),(b) and (c)) [4 weeks notice];
- That the landlord has a *genuine* intention to **sell the premises** (cl 96(1)(d)) [8 weeks notice]; or
- That the landlord has a *genuine* intention to **reconstruct, renovate or make major repairs** that cannot reasonably be carried out with the tenant living in the premises (cl 96(1)(e)) [12 weeks notice].

A notice under cl 96 can only be issued when the tenancy is periodic. This means such a notice cannot be given to a tenant who is in a fixed term tenancy. However, such a notice can be served once the fixed term expires and the tenancy becomes periodic.

Clause 94 STT - Termination without cause

A landlord is able to terminate a tenancy without providing a cause. However, this may **only** occur where:

- (a) 26 weeks notice is given; and
- (c) the notice does not require the tenant to vacate during a fixed term.

A notice under cl 94 can be issued at any time (even during a fixed term tenancy), as long as the date for vacation is after the fixed term has expired.

Where cl94 or cl96 are used, the **tenant may vacate** at any time during the 2 weeks prior to the date for vacation on the landlord’s notice, as long as the tenant gives 4 days notice to the landlord (cl 95, cl 97).

Also, under cl88 the tenant can give their own 3 weeks written notice of intention to vacate at any time during a periodic tenancy.

TERMINATION FOR A BREACH BY THE TENANT

When a landlord or agent wants to terminate a tenancy and have the tenant vacate the property for a breach of the tenancy agreement they must have valid grounds and they must follow the processes set out in the STT.

Failure to pay rent—clause 92

If rent goes unpaid for 7 days (this includes only paying part of the rent), on the **8th** day the landlord may serve a **Notice to Remedy** (NTR). This must say if the outstanding rent is paid within the next 7 days, no further action will be taken and the tenancy will continue.

If the rent is not paid within that 7 days, a **Notice to Vacate** (NTV) may be served, giving the tenant 14 days to move out. At this time the landlord can also make an application for a **TPO** to ACAT. However the ACAT hearing cannot take place until the date for vacation specified in the NTV has passed.

Where 2 previous notices to remedy have been served for rent arrears during a tenancy, and there is a failure to pay rent the landlord may serve a notice to vacate one week after the day on which the rent is due without first serving the notice to remedy.

Other breaches—clause 93

For other breaches that are serious enough to justify terminating the tenancy the landlord must give a notice to the tenant to remedy the breach within 14 days, if it is capable of remedy. If the breach is not remedied within that time, or is incapable of being remedied, a notice to vacate within 14 days can be served. If the tenant does not vacate within the 14 days, the landlord will need to make an application to the ACAT for a TPO in order to remove the tenant.

If the tenant breaches the standard terms on three occasions on any grounds, on the third occasion a notice to vacate may be served immediately — a notice to remedy is not required.

Defective Notices

Where a defective notice is served on a tenant and the tenant vacates the property, the tenancy agreement terminates on the day the tenant vacates, but the tenant may apply to ACAT for compensation for wrongful eviction, or if possible for reinstatement as tenant (s 58).

Where a defective notice is served and the tenant doesn't vacate, the landlord may apply for the defect to be waived. To do so the Tribunal must be

satisfied that the defect didn't put the tenant in a significantly worse position (s 59).

WHAT IF I DON'T THINK THE LANDLORD HAS GROUNDS TO TERMINATE MY TENANCY?

If you have received a Notice to Remedy and you don't accept that the landlord or agent has a legitimate claim, or that the breach justifies termination of the agreement you can respond to the notice. For example if the agent sends a NTR stating that you have breached the tenancy agreement by having a guest stay overnight, or not having the premises spotless for an inspection you can respond that there has been no breach and therefore the NTR is not valid. Make sure you keep a copy of this response.

If you then receive a Notice to Vacate you can respond in writing to say that you do not accept these grounds and that there is no basis for terminating the tenancy and you will not be vacating.

If you don't vacate the landlord or agent may accept that they do not have grounds and not take any further action **HOWEVER** they can also still make (or have already made) an application to ACAT. If this happens you will be able to present your argument to the Tribunal.

THE TRIBUNAL PROCESS

If the notice to vacate has expired and the tenant has not vacated the premises, the landlord **must** make an application to the tribunal for a termination and possession order if they want to have the tenant evicted.

When a landlord or agent has made an application to the Tribunal the Registrar of the Tribunal must send out a written notice of the time and place for the hearing to the parties concerned. The tenant will receive a Notice of Hearing.

The Tribunal aims to have a turnaround of no more than 14 days for a matter. This means that once the tenant receives a "Notice of Hearing" they should act immediately. At this stage it is advisable to obtain advice from the Tenants' Advice Service, Welfare Rights and Legal Centre or an independent solicitor, if this has not already been done.

If you intend to challenge an eviction see our Tenancy Factsheet: [Defending an Eviction](#).

For details about Tribunal processes see our Tenancy Factsheet: [Tribunal \(ACAT\) General Information](#).

Retaliatory Applications

If you believe that the landlord has applied to terminate your tenancy in retaliation for you having made an earlier application to ACAT or making a complaint to a government organisation, or having otherwise sought to enforce your rights, e.g. by seeking legal advice about your rights, then you may be able to defend the eviction on that basis.

For details go to Tenancy Factsheet: [Defending an Eviction](#).

Do I need a lawyer?

Parties do not have to be represented by a lawyer at the ACAT, although they can be. The Tribunal will take into account whether parties are represented or not.

If a tenant is unrepresented the Tribunal must actively assist them to understand the hearing process and present their case (s81 RTA). If unrepresented it is advisable to at least seek advice before appearing at the Tribunal. Advice can be obtained from the Tenants' Advice Service or the Welfare Rights and Legal Centre.

It is very important that a tenant, or their representative, attend the hearing. If there is any problem with attendance, the Tribunal must be contacted immediately.

It is also useful to observe a hearing at the Tribunal at an earlier date in order to become aware of the environment.

Costs

Tenants can afford to defend an eviction without fear of having to pay the landlord's legal fees if unsuccessful. Section 48 of the ACAT Act 2008 expressly provides that the parties to a Tribunal hearing will bear their own costs unless the Tribunal

orders otherwise. The Tribunal can order that the unsuccessful party pay the applicant's filing fee.

The Tribunal can also order a party to pay the others' costs where that party caused unreasonable delay or obstruction before or during the hearing (s 48(2)(b)).

Compensation

It must be noted however, that RTA s56 does allow the landlord to make an application for compensation where the tenant fails to vacate in accordance with a TPO.

The landlord may claim:

- An amount equal to the rent that would have been payable to the landlord during the period the tenant was in possession of the premises after the termination of the residential tenancy agreement;
- An amount equal to the reasonable costs incurred by the landlord in applying for a warrant and having the warrant executed.

The tenant may claim:

For compensation where a person (such as the landlord or their agent) enters premises for the purpose of recovering possession, without a warrant from the Tribunal or order of the Supreme Court (s 37 RTA).

Public Housing

If you are in public housing there is additional information you should know.

Go to the **Welfare Rights and Legal Centre website** for their Fact Sheet on Eviction, or contact them directly. See contact details below.

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

Tenants' Advice Service 6247 2011 free legal advice for all ACT renters (tenants and occupants)

Tenants' Union (ACT)	6247 1026	— publications, information, workshops, law reform and news on renting issues
www.tenantsact.org.au		
Welfare Rights and Legal Centre.....	6247 2177	— free legal advice and assistance for low income tenants
www.welfare-rights-act.org		
Office of Regulatory Services (Bonds) ..	6207 1178	— bond lodgement, return and inquiries
(Fair Trading).....	6207 0400	— complaints against real estate agents
www.ors.act.gov.au		
ACT Civil and Administrative Tribunal ..	6207 1740	— dispute resolution and enforcement of tenancy legislation
www.acat.act.gov.au		
Housing ACT information line	6207 1150	— ACT public housing enquiries
www.dhcs.act.gov.au/hcs		