

Evidence Checklist for the ACT Civil & Administrative Tribunal

So, you are going to the Tribunal...

Being prepared is the key to making the best case possible.

You need to know what you need to support your case.

This factsheet outlines the forms of evidence you will need to support your application to the Tribunal or to support your defence of an application made by the landlord.

Please note that all examples given are simply that - examples of particular evidence that would be useful in particular situations.

It is essential that your particular evidence is accurate and truthful to the best of your knowledge.

General – all applicants:

- ⇒ Copy of your Residential Tenancy Agreement (lease);
- ⇒ Copies of all correspondence between landlord (or real estate agent) and yourself;
- ⇒ Copy of condition report from the beginning of the tenancy; and, if relevant, copies of any inspection reports, including final inspection report if the tenancy 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;

⇒ If you cannot attend:

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

The following outlines the kinds of evidence required for specific applications and defences.

APPLYING FOR EARLY TERMINATION

If you are in need of an order terminating the agreement early you must convince the Tribunal that your reason is serious enough to justify early termination.

- If the reason for your application is **hardship**:
 - ⇒ Financial
 - Income details
 - Bank statements
 - Outstanding bills or other debts owed
 - ⇒ Medical
 - If relevant, doctor's letter stating medical conditions and how these are affected by this tenancy, or similar letter from social worker, counsellor or other professional who has knowledge of your situation
 - ⇒ Work
 - Letter terminating employment
 - Letter advising of interstate transfer
- If the reason for your application is a **breach by the landlord**:
 - ⇒ Evidence of the breach – for example, a report from an electrician stating that the wiring is dangerous; or a witness statement that the landlord let himself into your house while you were out; or a statement from a locksmith that the

front door lock does not work;

- ⇒ Evidence of why the breach is serious enough that you need to end the tenancy – for example, letter from a relevant professional stating how the invasion of your privacy or the threat to your security has affected you; or a police report of a break-in; or a doctor's letter stating that the lack of heating has had a seriously adverse effect on your health;
- ⇒ Photographs that identify the premises, the problem and, if relevant, the date.

APPLYING FOR ORDERS RELEASING 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 landlord or the tenant must apply to the Tribunal for an order to release the bond.

Because the bond is your money, the onus is on the landlord to prove her/his claim to it. This is the case regardless of whether it is you or the landlord 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 tenancy;
- ⇒ Receipts to show that rent 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.

APPLYING FOR ORDERS FOR PERFORMANCE

If the landlord is failing to perform an obligation under the agreement, you can apply for orders for performance.

For example, orders requiring the landlord to do repairs, or to stop coming onto the

premises without your permission, or to lodge the bond.

You will need:

Evidence that the landlord 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.

APPLYING FOR COMPENSATION

If you are seeking compensation for your losses arising from the landlord's breach of the agreement, you will need to show the losses arose due to a breach, eg

- ⇒ Evidence that you contacted the landlord or agent identifying the need for repairs, and that they failed to act.

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 landlord'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 landlord 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, the Tribunal may need to be satisfied that there was a significant reduction in your quiet enjoyment of the tenancy and/or serious health issues arising from the breach.)

Note: Where compensation is being sought (whether by tenant or landlord), 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 landlord has failed to treat it as an urgent repair, you could claim part of the cost of your takeaway meals, but not the cost of dining out at the Hyatt.

DEFENDING AN APPLICATION FOR TERMINATION BY THE LANDLORD:

- If the reason for the landlord's application is **rent arrears**:

- ⇒ Rent receipts and a rent records showing history of payments;
- ⇒ Calculation of rent owing and number of days rent is unpaid, if you dispute the landlord's figures or the landlord has given no figures;
- ⇒ Evidence of financial problems that have caused you to fall behind on the rent;
- ⇒ Evidence that financial problems have been or are being overcome;
- ⇒ Evidence that income was disrupted (e.g. Centrelink benefit suspended) and the problem is now sorted.

- If the reason for the landlord's application is a **breach other than rent arrears**:

- ⇒ Evidence that there was no breach – for example, a dated photograph showing a mown lawn; or a letter from a neighbour stating they had never found you noisy; or a statement from the owner of the dog saying that the dog had only ever been visiting the premises and was not living there;
- ⇒ Or evidence that the breach has been remedied – for example, a photograph showing the lawn mown as of the current date; or a letter from a neighbour saying you had not been noisy for the past 2 weeks; or a letter stating that the dog that was staying with you is now staying elsewhere;
- ⇒ Or evidence that the breach will be remedied – for example, a letter from a lawn mowing firm confirming your booking of their services for a future date; or a letter from a motor mechanic confirming that the old muffler on your car was very noisy and a new muffler is on order and will be installed on a future

date; or a letter from a person confirming that they will take over the care of the dog as of a future date;

- ⇒ And/or evidence that the breach was very minor and does not justify eviction – for example, a dated photograph showing a lawn only 5cms high; or a letter from a neighbour stating that your music was audible but she did not mind it; or a statement signed by a number of neighbours stating that the dog is well under control and causes little or no nuisance.

- If the reason for the landlord's application is **hardship**:

- ⇒ Evidence of your own hardship if the tenancy was ended early – for example, proof of your income and lack of savings, copies of the "To Let" section of the paper showing few properties available and/or higher rents, quotations for the cost of moving, medical evidence of any disability or condition that would make moving difficult, a letter from your child's school regarding learning difficulties and the need for stability;
- ⇒ Evidence, if any available, of the landlord's lesser hardship relative to yours;
- ⇒ Evidence the landlord is not suffering hardship.

- If the reason the landlord's application is one of the grounds under **clause 96** (landlord or landlord's immediate relative wanting to move in, landlord wanting to sell, landlord wanting to reconstruct or renovate):

- ⇒ Evidence that the grounds are not genuine – for example, a current advertisement for the property in the "To Let" section of the paper.
- ⇒ Evidence that this is a **retaliatory eviction** – for example, a copy of a letter you wrote to the Office of Rental Bonds complaining about the landlord's failure to lodge the bond, a letter stating that you contacted TAS for advice.

See also [Tribunal \(ACAT\) General Information](#) and [Searching Decisions and Requesting Reasons](#) on www.tenantsact.org.au.

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

Tenants' Advice Service

The Tenants' Advice Service (TAS) is operated by the Tenants' Union ACT and provides free legal advice to ACT tenants and occupants. It is funded from interest earned on rental bonds lodged with the Office of Rental Bonds.

The Tenants' Advice Service is a call-back service.

To request legal advice, leave your name and number on 6247 2011.

Before you call, please check whether the information you need is on our website:

www.tenantsact.org.au

Due to high demand, it may be a few days before we can return your call. Our website contains our Factsheets, as well as a searchable database of Frequently Asked Questions and Sample Letters.

You can order copies of our publications using the order form on our website,
or by calling our admin number: 6247 1026

Other Tenancy Factsheets include:

- Access & Privacy ● Bond ● Defending an Eviction
- Ending a Tenancy & Breaking a Lease ● Eviction in the ACT
- Evidence Checklist for the Tribunal
- Making a Complaint about your Real Estate Agent ● Rent Arrears
- Rent Increases and Reductions ● Rent Increases: Formula and Figures ● Repairs
- Sale of Premises ● Tribunal (ACAT) General Information

Occupancy Factsheets include:

- Occupancy Agreements ● Occupancy Principles ● Rent/Board
- Privacy & Access ● Repairs and Electricity, Water and Gas
- Having a Dispute? ● Ending an Occupancy & Eviction

Also available:

- Regular newsletters which cover updates on any changes to legislation and specific tenancy issues

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.welfareightsact.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		