



# Occupancy Factsheet

## Having a dispute?

**Got a problem with your occupancy?  
Read on for info on what you can do  
and who you can 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. If you're having issues with the person or company that granted you the occupancy agreement (the "grantor") there are steps you can take. Just because you have a problem, it may not mean that you have to find somewhere else to live! This Factsheet 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 and when, and
- ask the grantor to reply to your letter in writing

Be sure to date and sign the letter and send it to 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 you aren't satisfied with the grantor's response to your letter, you could try dispute resolution. This is a requirement of the Occupancy Principles that apply to all occupancies, set out in section 71E of the [Residential Tenancies Act 1997](#). Occupancy Principle (i) states that *"a grantor and an occupant should try to resolve disputes using reasonable dispute resolution processes"*. If you have an issue, one form of dispute resolution would be to:

- give written notice to the grantor that they have breached the agreement, explain what part of the agreement has been breached and how;
- give the grantor an opportunity to question your version of events; and
- give the grantor an opportunity to fix or remedy the situation, where possible.

Similarly, if the grantor has an issue with something you've done, you can ask that they follow the same steps.

The Conflict Resolution Service also assists with dispute resolution. Their number is 6162 4050 and their website is at [www.crs.org.au](http://www.crs.org.au).

If reasonable dispute resolution processes are outlined in the agreement, they must be followed. If they are breached, then parties can go to the ACT Civil and Administrative Tribunal. If there are no processes outlined in your agreement, try and negotiate to have them included.

- Whatever dispute resolutions processes 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; and
- whether the dispute relates to unpaid rent.

If the grantor tries to resolve the dispute in an unreasonable way, you can apply to the Tribunal to challenge their actions.

### **3. ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (THE TRIBUNAL)**

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

#### **About the Tribunal**

When you make an application to the Tribunal, there is a fee depending on the amount in 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 Tribunal is to resolve disputes. When your matter is called, the Tribunal will ask questions of both sides to gather relevant information. You should have an opportunity to put your case. If the grantor says something that you disagree with, you should have the opportunity to respond or deny it. The Tribunal is obliged to apply the law to the facts and the evidence to resolve the issue.

#### **Preparing to go to the Tribunal**

If you are considering taking a dispute to the Tribunal, we recommend that you:

- visit the Tribunal 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, or

you can check their daily lists on their website at [www.acat.act.gov.au](http://www.acat.act.gov.au)

- 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; and
- assemble your evidence and if you have any witnesses, make sure they are able to attend on the day and know where to go.

The Tribunal website has more information: [www.acat.act.gov.au](http://www.acat.act.gov.au).

#### **What to take**

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

- Your Occupancy Agreement including any House Rules;
- Copies of all correspondence between you and the grantor;
- The condition report from the beginning of the occupancy (if one exists) and, if relevant, inspection reports, including the final inspection report if the occupancy has ended;
- A chronology of phone calls and events related to the issues raised in the application; and
- Statutory declarations giving the evidence of any persons whose knowledge of the situation supports your application (they also need to be available for the Tribunal to call on the day of the hearing).

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

- a doctor's letter; or
- a copy of a travel document and statement explaining the necessity for travel.

If you have arranged for someone else to represent you at the Tribunal, you need to fill out a form called "[General Power of Attorney for Representation of an Individual](#)". This form can be found on the Tribunal website at [www.acat.act.gov.au](http://www.acat.act.gov.au) under 'General Information'. You need to sign the form with two witnesses.

#### **WHAT CAN THE TRIBUNAL DO?**

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

- Release the bond to you
- Order performance (make the grantor do something)

- Order compensation for any loss caused by breach of the agreement
- Terminate the agreement, or prevent the grantor from evicting you, or give you back occupancy of the premises.

Read on for more information on these options.

### Release the bond

At the end of an occupancy, the Tribunal can decide whether the bond should be returned to you, or whether the grantor has a claim to it. If you lodged the bond with the Office of Rental Bonds (ORB), the ORB can refer the dispute to the Tribunal (See Occupancy Factsheet: [Bond](#) for more information). If the grantor has your bond, you can apply to the Tribunal to order the grantor to pay it back.

Because the bond is your money, the onus is on the grantor to prove their claim to it. 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 bond 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

See Occupancy Factsheet: [Bond](#) for more information.

### 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.

### Order compensation

If the grantor breaches your occupancy agreement, section 83(d) of the Residential Tenancies Act says that the Tribunal can order compensation for losses this causes. 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 losses this caused you 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, how your use and enjoyment of the premises has been reduced by interference with your peace, comfort or privacy.

If a grantor or occupant wants compensation, they have to mitigate their loss. They aren't entitled to be compensated for loss that they could have avoided by taking reasonable steps.

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 part of the cost of your takeaway meals, but it is unlikely you would be entitled to claim the cost of dining out at the Hyatt. You also have to take into account that you have saved money on groceries by eating out. You would not be awarded the whole cost of your meals because then you would be eating dinner for free.

## Terminate the Agreement

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

- is claiming to terminate the occupancy on grounds that are not satisfied;
- has not provided reasonable notice;
- has not been reasonable about trying to resolve the dispute without eviction; or
- is trying to end the agreement in a way that is inconsistent with the agreement, the House Rules or the Occupancy Principles.

If the grantor has already evicted you, then the Tribunal could order that the grantor give you back occupancy of the premises, or access to collect your belongings and compensation.

If the grounds for termination are valid but the grantor hasn't provided reasonable notice, the Tribunal can decide that the occupancy will terminate on a later date than the date the grantor provided.

There may also be circumstances where you want to end the occupancy but your grantor doesn't. If your occupancy agreement is for a fixed amount of time, and the grantor has seriously breached the agreement, then you may have grounds to apply to the Tribunal for a termination order. If the Tribunal terminates your occupancy, then you may be able to move out early without having to pay compensation. Seek advice from the Tenant's Advice Service if you want to terminate the occupancy agreement.

See Occupancy Factsheet: [Ending an Occupancy and Eviction.](#)

## What if I disagree with Tribunal Orders?

You can appeal a decision of the Tribunal within 28 days, and in some circumstances could seek extra time to appeal. There is an application fee of around \$400 to appeal to a different tribunal member, or you can appeal to the ACT Supreme Court. Contact the Tenant's Advice Service if you are considering appealing a decision.

### Don't ignore Tribunal orders!

If you fail to comply with an order of the Tribunal, you can be fined up to \$5,000.

## 4. MAKE A COMPLAINT

Making a complaint is different from taking legal action. It 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 Service 6247 2011 free legal advice for all ACT renters (tenants and occupants)

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