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## Unpaid rent - applying for a termination and possession order

An order made by the ACT Civil and Administrative Tribunal (ACAT) ending a tenancy and giving possession of the property to the lessor is called a *termination and possession order*. A lessor can apply to ACAT for a termination and possession order if:

- the tenant has failed to pay rent; and
- the lessor has served a termination notice on the tenant because of the failure to pay rent; and
- the tenant has not vacated the premises.

To apply for a termination and possession order, the lessor should fill in an *Application for resolution of a dispute under the Residential Tenancies Act 1997* form. A fee is payable unless the lessor is exempt, or the fee is waived. Find out more about forms and fees [here](#).

Applications for a termination and possession order including applications for failing to comply with a payment order are listed for hearing approximately two weeks after lodgment, usually on a Thursday. The parties will receive a notice setting out when the hearing will happen (a listing notice).

## What is a payment order?

A payment order is an order made by ACAT requiring a tenant to pay one or both of the following:

- the rent (or part of the rent) that is overdue;
- future rent as it becomes due.

The ACAT can make a payment order instead of a termination and possession order.

## Hearing - a payment order may be made

At the hearing the ACAT Member will look at the evidence, hear from the parties, and decide what orders to make about the tenancy. The ACAT Member may:

- make a termination and possession order; or
- make a payment order; or
- refuse to make a termination or possession order, or payment order.

To make a payment order, the ACAT Member must be satisfied that the tenant is reasonably likely to make the payments required by the order. To make a payment order for future rent, the lessor must have made more than two applications made to ACAT for a termination and possession order in the previous 12 months, and the ACAT Member must be satisfied that it is in the interests of justice to make the order.

## **What if a tenant fails to comply with a payment order?**

If a tenant fails to comply with a payment order, the lessor can apply to terminate the tenancy. To do this, the lessor should fill in an *Application – failure to comply with payment order* form available [here](#). There is no fee for this application.

A lessor can lodge an application for failure to comply with a payment order when:

- the tenant has failed to comply with the payment order in the last 60 days (a payment is missed in the last 60 days); and
- the payment order has not expired; and the tenant continues to live at the premises.

At the hearing, an ACAT Member will decide whether to make a termination and possession order for not complying with the payment order.

If an ACAT Member makes a termination and possession order, the Registrar will be directed to issue a warrant for the eviction of the tenant. The ACAT Member may also make an order requiring the tenant to pay any unpaid rent that is payable.

## **Suspension of termination and possession order**

In some circumstances, the ACAT Member may suspend a termination and possession order for up to three weeks. This may be done where:

- the tenant will suffer significant hardship if the order is not suspended; and
- the tenant's hardship would be greater than the hardship that would be suffered by the lessor if the order were suspended.

## **What if a tenant has unpaid rent that cannot be paid in a year?**

A payment order can be made for a period of up to one year. The ACAT Member can make a payment order for all or part of the unpaid rent. If the payment order does not cover all the unpaid rent, the ACAT Member may also make a separate money order which requires the tenant to repay the arrears. If the tenant does not comply with the money order, it can be enforced at the ACT Magistrates Court. Information about enforcement is available [here](#).

## **Can a payment order be varied?**

A payment order may be varied if:

- both parties agree to the variation; and
- the variation does not postpone the expiry date of the order; and
- the ACAT considers it just and appropriate to vary the order.

To seek a variation, a party should complete an *Application for Interim or other orders* form, available [here](#). There is no fee for this application. A variation application will usually be considered by the ACAT without the need for the parties to attend a hearing. The parties may

need to attend a hearing if, for example, it is not clear what the variation is.

### **Where can I get more information about payment orders?**

The ACAT registry can provide procedural information about applications for payment orders: contact details are [here](#).

To obtain legal advice about rental property disputes, a list of free legal advice providers is available [here](#).