

NSW Civil and Administrative Tribunal

As a tenant you have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2010*. This factsheet explains how the tribunal settles disputes between tenants and landlords.

About the tribunal

The NSW Civil and Administrative Tribunal is an independent body which deals with certain kinds of disputes between landlords and tenants. It is not a formal court, but its decisions are legally binding. The people who hear cases at the tribunal are called tribunal members.

Most remedies from the tribunal are for breach of contract – not obeying the terms of the residential tenancy agreement. NCAT was established in January 2014 with the integration of 20 formerly separate NSW tribunals, including the Consumer, Trader and Tenancy Tribunal (CTTT).

Applying for a hearing

Application forms are available from:

- tribunal registries or website (phone 1300 006 228 or see www.ncat.nsw.gov.au)
- Fair Trading Centres (www.fairtrading.nsw.gov.au)
- your local Tenants Advice and Advocacy Service.

The form includes advice on how to fill it in. For an urgent hearing, attach a letter to the application saying why it is urgent.

Time limits An application about a breach must be made within 3 months of becoming aware of the breach. Other types of applications have different time limits – check the application form. If the time limit has passed, ask for an extension in your application.

Costs An application costs \$49 (\$12 if you are on a government pension or benefit, Austudy, Abstudy or have a Seniors Card – you must provide a copy of the card or Austudy/Abstudy advice). Fees may be waived or postponed for special reasons.

A summons for a witness or documents costs \$45. (Get advice from your local Tenants Advice and Advocacy Service about this.)

If the tribunal thinks that your application is not serious or that you are deliberately wasting its time, you may have to pay the landlord's costs.

Representation

Tenants usually represent themselves. You can ask the tribunal to let another person (such as a tenant advocate) speak for you, but you will need to convince the tribunal member that you need this. You can bring a friend or family member for support.

A landlord may use a real estate agent to represent them. Solicitors may only represent landlords or tenants with the permission of the Tribunal.

Right to an interpreter

If you need an interpreter, write this on your application or tell the tribunal when you get the notice of hearing. The tribunal will provide one for free.

You should go to the hearing

It is important to attend the hearing as the tribunal can make orders that affect you, even if you are not there. If you do not go, you could later find that:

- you have been evicted
- you have been ordered to pay charges that you did not know about
- everything the landlord said was taken as fact – you were not there to give evidence that the landlord was behaving unreasonably or making such claims.

If you apply for a hearing and do not attend, the tribunal will dismiss your application altogether.

Changing a hearing date

If the hearing is set for a date or time that you cannot make, write to the tribunal before the hearing and ask for another date or time. It also helps to ask the landlord/agent personally to agree to a change. You must give reasons for your request. For example:

- you are sick (you must provide a detailed medical certificate that explains why you could not attend the hearing)
- you want to arrange for someone to represent you
- the landlord has refused to give details of their claim.

If you do not hear from the tribunal about your request, attend the hearing as it may go ahead without you.

If you cannot ask for a change before the hearing, you can send someone else to ask for a new date. They will need a letter saying that they can speak for you, and they should also know the facts of your tenancy problem in case the tribunal refuses your request and runs the case without you.

If you are running late for a hearing, call the tribunal and say that you are on your way, otherwise the hearing may be over by the time you get there.

What to take to the hearing

The tribunal member hearing your case will need evidence that supports your arguments. If possible, take 3 copies of documents you want to use – one each for you, the landlord/agent and the tribunal member. These might include:

- the residential tenancy agreement
- a brief written statement of your case
- statutory declarations by other people who have witnessed important events or who can support your case (signed by a Justice of the Peace or a solicitor)
- receipts or quotes (e.g. for rent, bond, cleaning, repairs)
- copies of all letters between you and the landlord
- photographs that show the problem.

The first hearing

At the first hearing, the tribunal member will ask you and the landlord/agent to try to negotiate an agreement (*conciliation*). Sometimes a conciliator will help you, but often it will be just you and the landlord/agent. Do not feel pressured into agreeing to something unfair.

If an agreement is made, the tribunal member will write an order based on your agreement. This ends the matter.

If you and the landlord/agent cannot agree during conciliation, you have the right to have your case heard by a tribunal member. The tribunal may hear your matter on the same day or set it to be heard on another day.

During a hearing

In an 'informal' hearing, the tribunal member will listen to you, the landlord, your representative (if any), and the landlord's representative (if any). They will look at any documents, photos or other evidence, and will ask questions. They will then make a decision about the case – known as *orders*.

If the case is more complex, or either side wants to bring witnesses, a 'formal' hearing may be held. The case will be run more like a court, with evidence usually given on oath or affirmation. The tribunal member will usually ask the applicant (the person who

lodged the application) to present their case first, then ask the other side to respond.

Be aware that it is an offence to mislead the tribunal.

Notice of orders and reasons

The tribunal will give you a notice of orders. If you want the reasons for the orders, write to the Registrar within 28 days of getting the notice of orders.

Enforcing an order for payment of money

Orders for payment of money are enforced through the Local Court. You will need a *certified money order* from the Registrar. See www.lawlink.nsw.gov.au or phone LawAccess NSW on 1300 888 529 for guidance.

Renewing an application

If the landlord does not obey an order (other than a money order) you may apply to the tribunal to have the case renewed. The fee is the same as the original fee.

You must apply within the time given in the original order or within 12 months of the date for compliance in the original order.

Set aside and appeal applications

NCAT decisions can be challenged. The reasons for challenge are limited and time limits apply. Do not delay.

Get advice from a Tenants Advice Service or CLC before commencing any of the following procedures:

- Application to set aside or vary a decision
- Appeals to the Tribunal
- Appeal to the Supreme Court
- Judicial review by the Supreme Court

Fees:

- Set aside or vary: \$101 (conc. \$25)
- Internal appeal: \$414 (conc. \$103)
- Supreme Court: inquire of Supreme Court Registry

Fee waiver and/or postponement applications can be made to the Registrar of the Tribunal with your application.

July 2017

For free tenancy advice, call your local Tenants Advice and Advocacy Service:

SYDNEY:

- Eastern 9386 9147
- Inner 9698 5975
- Inner West 9559 2899
- Northern 8198 8650
- Southern 9787 4679
- South West 4628 1678
- Western 8833 0933

REGIONAL:

- Blue Mountains 4704 0201
- Central Coast 4353 5515
- Hunter 4969 7666
- Illawarra Sth Coast 4274 3475
- Mid Coast 6583 9866
- Northern Rivers 6621 1022
- Northwest NSW 1800 836 268
- Southwest NSW 1300 483 786

ABORIGINAL:

- Sydney 9833 3314
- West NSW 6881 5700
- South NSW 1800 672 185
- North NSW 1800 248 913

WEBSITE: tenants.org.au

NSW FAIR TRADING: 13 32 20

This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia. ©Tenants' Union of NSW