

There are new provisions in the *Residential Tenancies Act 1997* that start on Friday, 14 December 2018. They introduce payment orders, which replace conditional termination and possession orders.

What is a payment order?

A payment order requires a tenant to pay to the lessor:

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

How is a payment order different to a conditional termination and possession order?

There are some differences between a payment order and a conditional termination and possession order, such as:

- ❖ a tenancy does not automatically terminate if a tenant fails to make a rent payment required under a payment order; and
- ❖ a payment order can be made in relation to all or part of the rental arrears; and
- ❖ a payment order can run for no longer than 12 months.

Unpaid rent - making an application for a termination and possession order

In relation to a tenancy agreement, a lessor may apply to the ACT Civil and Administrative Tribunal (ACAT) for a termination and possession order when:

- ❖ a tenant has failed to pay rent; and
- ❖ the lessor has served a termination notice in relation to the tenancy; and
- ❖ the tenant has not vacated the premises.

To apply for a termination and possession order, the lessor needs to use the form titled *Application for resolution of a dispute under the Residential Tenancies Act 1997*. A fee will be charged when a lessor makes this application, unless the lessor has a fee exemption or the fee is waived. Both the ACAT application form and information about fees is available [here](#).

Hearing – a payment order may be made

An application for a termination and possession order will be listed for hearing at the ACAT in approximately two weeks, usually on a Thursday. You and the other party will receive a notice letting you know when the hearing will happen.

At the hearing, the ACAT Member will decide what orders to make about the tenancy, after looking at the evidence and hearing from the parties in attendance. Instead of a termination and possession order, the ACAT Member *may* decide to make a payment order.

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

If a tenant fails to comply with a payment order, the lessor may decide to apply to the Registrar of ACAT for a termination and possession order. To do this, the lessor needs to use the form titled *Application – failure to comply with payment order*, available [here](#). There is no fee charged for this application.

An application for failure to comply with a payment order can be made when:

- ❖ the tenant has breached the payment order in the last 60 days (i.e. 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.

The application will then be listed for hearing at the ACAT in approximately two weeks, usually on a Thursday. You and the other party will receive a notice letting you know when the hearing will happen. At the hearing, an ACAT Member will decide whether or not to make a termination and possession order due to a failure to comply with the payment order.

If an ACAT Member makes a termination and possession order, the Registrar will be directed to issue a warrant of eviction.

Suspension of termination and possession order

In some circumstances, an ACAT Member may decide to suspend a termination and possession order for a period of up to three weeks. This can be done when:

- ❖ were the order not suspended for the stated period, the tenant would suffer significant hardship; and
- ❖ the tenant's hardship would be greater than the hardship that would be suffered by the lessor if the order were suspended for the stated period.

What if a tenant has rental arrears 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 rental arrears. If the payment order does not cover the full rental arrears, the ACAT Member may also decide to make a separate money order

that requires the tenant to repay the arrears. This money order is enforceable 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, the lessor and tenant will need to provide to the ACAT an *Application for Interim or other orders* form, available [here](#). There is no fee charged when this application is made.

It is likely that your variation application will be considered by the ACAT without the need for you to attend a hearing. However, in some circumstances you may need to attend for a hearing, for example when:

- ❖ it is not clear what variation is sought; or
- ❖ it is not clear that there is agreement between the lessor and the tenant about the variation.

What happens to conditional termination and possession orders under the new laws?

Conditional termination and possession orders that are in force immediately before the new legislative provisions commence will be taken to be a payment order made under the amended legislation. The new conditions of payment orders will apply to these orders.

If there is a breach of a conditional termination and possession order that was in force before the new legislation starts, you need to follow the process outlined under the heading 'What if a tenant fails to comply with a payment order.'

What if I need more information about payment orders?

If you need more information about a payment order:

- ❖ the ACAT registry can provide procedural information to you. Contact details are available [here](#); or
- ❖ you may need to obtain some legal advice. There is a list of free legal advice providers available [here](#).