

# RESIDENTIAL TENANCY ACT: OCCUPANCY LAW CHANGES



## FACT SHEET

## Changes to Occupancy Law: Dispute resolution

### BACKGROUND

Occupancy Laws in the ACT changed on 3 March 2021.

This Fact Sheet is designed to help you understand the changes. The information in this Fact Sheet is not legal advice. You should seek legal advice if in doubt about your individual circumstances.

The rights and obligations of the grantor and occupant depend on the *Residential Tenancies Act 1997* (the RTA) and on the individual occupancy agreement. You should always check your agreement as a starting point.

### WHAT IS AN OCCUPANCY DISPUTE AND WHAT CAN I DO IF I HAVE ONE?

Sometimes disputes may arise between grantors and occupants in relation to the terms and conditions of the occupancy. An occupancy dispute is a dispute between the parties to an occupancy agreement that is about, or relates to, the agreement. This is a broad definition and can include disputes about a range of things including the payment of fees, house rules, state of premises and whether an occupant is entitled to continue living in the premises or not.

Where possible, it is generally best to try to resolve disputes informally with the person you are having the dispute with. However, if a dispute can't be resolved in this way, it is possible to take the dispute to the ACT Human Rights Commission for conciliation or to the ACT Civil and Administrative Tribunal (ACAT).

For occupants in an education provider occupancy agreement, alternative arrangements apply. Where a dispute arises and a university dispute resolution process applies, the ACAT will be unable to hear the dispute until the parties have exhausted the university dispute resolution procedure. This is to ensure parties have an opportunity to resolve their dispute through internal university processes before the dispute goes to ACAT. However, there is no requirement to exhaust the university dispute resolution procedure before making a complaint to the Human Rights Commission (see further below). If you are a student in an education occupancy agreement, you should consider the specific information contained in the Fact Sheet *Education provider occupancy agreements*.

### Information about Dispute Resolution Processes

A grantor is required to provide an occupant with information about dispute resolution processes that apply to the occupancy agreement, including any internal dispute resolution processes that may apply. A grantor is also required to provide the occupant with contact details for:

- the Legal Aid Commission

# RESIDENTIAL TENANCY ACT: OCCUPANCY LAW CHANGES



## FACT SHEET

---

- the Human Rights Commission
- at least 1 community dispute resolution provider and
- the ACT Civil and Administrative Tribunal (ACAT).

This is so the occupant is aware of options to have disputes resolved and so that the occupant can access legal advice.

A grantor is also required to provide the occupant with their contact details so that the occupant has an address for service in the event of a dispute.

## WHAT CAN I DO IF I HAVE AN OCCUPANCY DISPUTE?

### Complaints to ACT Human Rights Commission

Occupants can make an occupancy dispute complaint to the ACT Human Rights Commission (HRC).

Complaints about occupancies can only be made by occupants (not grantors) to the HRC. If an occupant thinks they have an occupancy dispute, they can speak to the HRC about assistance with resolving the dispute. If the HRC determine that they can assist, the HRC can facilitate a conciliation process between occupants and grantors. Conciliation can help parties to engage in structured conversation about the occupant's rights and options for resolving the dispute in a way that both parties can agree to.

Occupants can go to the HRC at any time for help with resolving their dispute. There is no need to try to resolve the dispute directly with the grantor if that process is not right for the parties.

The HRC can require a grantor to attend an occupancy conciliation process. If the grantor and occupant reach agreement on how to resolve the dispute, the agreement is generally captured in a written document which is signed by the parties.

### What happens if the HRC decides not to refer a complaint to conciliation?

When an occupant goes to the HRC with an occupancy dispute, the HRC can decide whether to attempt to resolve the dispute through conciliation, depending on the nature of the dispute and the HRC's assessment as to whether conciliation will be beneficial for the parties.

If the HRC decides not to conciliate a complaint, it must write to the occupant who made the complaint (the complainant) to tell them why the complaint has not been referred, as well as what the complainant's options are for pursuing the complaint through ACAT. The complainant can ask the HRC to refer the complaint to ACAT (within 60 days), or after the 60-day period has passed, the complainant can apply to ACAT themselves (as long as there are exceptional circumstances as to why the complainant did not ask for the HRC referral within the initial 60-day period). This written statement from the HRC is called an **occupancy dispute referral statement**.

# RESIDENTIAL TENANCY ACT: OCCUPANCY LAW CHANGES



## FACT SHEET

### *What is an occupancy dispute referral statement?*

Occupancy dispute referral statements must be provided to complainants and included in final reports which close complaints which have not been able to be resolved through conciliation.

Occupancy dispute referral statements must include:

- a statement that the HRC has closed the complaint
- a statement advising that the complainant may ask the HRC to refer the complaint to ACAT within 60 days of receiving this advice and
- a statement advising that, if the 60-day period elapses, the complainant may apply to ACAT for the complaint to be heard.

### Applications to ACAT

#### What is ACAT?

ACAT is an independent body which decides disputes in accordance with the law. ACAT aims to resolve matters in a quick, informal, and inexpensive way. See below for ACAT's website and contact details.

#### Who can go to ACAT?

Both grantors and occupants can apply directly to ACAT to resolve an occupancy dispute.

#### Is there a cost?

An application fee will not be charged for referrals of complaints from the HRC to ACAT.

An application fee will usually apply where an application is made directly to ACAT, although, in some circumstances, applicants may be exempt from fees or fees may be waived due to financial hardship.

Information on ACAT fees can be found at [www.acat.act.gov.au/fees-and-forms/acat-fees](http://www.acat.act.gov.au/fees-and-forms/acat-fees).

#### Is it necessary to hire a lawyer?

ACAT is less formal than a court, so formal legal representation is not necessary. However, it may be beneficial to seek legal advice before going to ACAT. Information on representation at ACAT can be found at <https://www.acat.act.gov.au/what-to-expect/representation-and-advice>.

See below for more information on where to get further information or assistance.

#### What can ACAT do?

ACAT will usually require occupants and grantors to attend a 'preliminary conference' as the first step, so the parties can try to resolve their dispute by agreement in a facilitated professional environment. Many matters can be resolved at this stage.

# RESIDENTIAL TENANCY ACT: OCCUPANCY LAW CHANGES



## FACT SHEET

If the parties cannot reach agreement, ACAT will hold a hearing about the dispute. The parties will each have the opportunity to present evidence and to explain their positions. ACAT will then make a decision based on the law and may make orders which require the parties to do certain things, such as pay fees, change house rules, improve the condition of premises or vacate the premises.

### MORE INFORMATION AND ASSISTANCE

[Australian National University Student Association Legal Service \(ANUSA Legal Service\)](#)

**Phone:** 6125 2444 **Email:** [sa.admin@anu.edu.au](mailto:sa.admin@anu.edu.au) **Website:** <https://anusa.com.au/services/legal/>

Legal advice from this service is free and confidential. The service is only available to currently enrolled ANU students.

[Tenancy Advice Service \(Division of Legal Aid ACT\)](#)

**Phone:** 1300 402 512 **Email:** [TAS@legaidact.org.au](mailto:TAS@legaidact.org.au) **Website:** [www.legaidact.org.au/tasact](http://www.legaidact.org.au/tasact)

Legal advice from this service is free and confidential. It is not means-tested (the service is available to all occupants regardless of income).

[Legal Advice Bureau \(Open between 12:30pm and 2pm on weekdays\)](#)

**Phone:** 6274 0300

**Website:** <https://www.actlawsociety.asn.au/for-the-public/legal-help/legal-advice-bureau>

The Legal Advice Bureau at the Law Society is a free and confidential service and can provide advice in 15-minute consultation sessions to both occupants and grantors.

[Canberra Community Law](#)

**Phone:** (02) 6218 7900 **Email:** [info@canberracommunitylaw.org.au](mailto:info@canberracommunitylaw.org.au)

**Website:** <https://www.canberracommunitylaw.org.au>

If you are a tenant in public housing (from Housing ACT), or a tenant or occupant in crisis accommodation or social housing or living in a residential park (long stay caravan park), Canberra Community Law can provide you with free and confidential legal advice.

[Conflict Resolution Service](#)

**Phone:** (02) 61890590 **Website:** <https://crs.org.au/>

# RESIDENTIAL TENANCY ACT: OCCUPANCY LAW CHANGES



## FACT SHEET

---

Conflict Resolution Service (CRS) is a nationally accredited mediation service that resolves conflict professionally, competently, and compassionately. CRS have experience working with neighbours, landlords and residential tenants to provide a safe, structured, and confidential environment for discussion between parties.

### [ACT Revenue Office \(Rental Bonds\)](#)

**Phone:** 6207 0028    **Email:** [rb@act.gov.au](mailto:rb@act.gov.au)    **Website:** <https://www.revenue.act.gov.au/rental-bonds>

The Rental Bonds Portal allows grantors to lodge occupancy agreement security deposits and request refunds online. It also has template forms for condition reports, security deposit refunds, updating details and more.

### [ACT Civil and Administrative Tribunal \(ACAT\)](#)

**Phone:** 6207 1740    **Email:** [tribunal@act.gov.au](mailto:tribunal@act.gov.au)    **Website:** [www.acat.act.gov.au](http://www.acat.act.gov.au)

Please note that the Tribunal can assist with questions about its procedures, but it cannot give legal advice on individual situations.

### [ACT Human Rights Commission](#)

**Phone:** 6205 2222    **Email:** [HRCIntake@act.gov.au](mailto:HRCIntake@act.gov.au)    **Website:** <https://hrc.act.gov.au/occupancy-disputes/>

The Commission can accept complaints about occupancy disputes arising from occupancy agreements. They will try to resolve matters informally through a conciliation process.

### [Legislation](#)

You can access the *Residential Tenancies Act 1997* and other ACT legislation on the ACT Legislation Register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au).