

A Day at the Tribunal

The Basics



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An Overview

COMMON PROBLEMS HEARD AT THE TRIBUNAL INCLUDE:

- urgent and non-urgent repairs
- bond claims
- compensation claims
- rent increases
- possession orders (eviction)

Unlike a court, the Tribunal generally doesn't award costs, although it may do so in some special circumstances. Unlike a court, the Tribunal only has the power to make an order. The order outlines the specifics of a claim along with any sums of money as the member may determine is due to be paid by either the applicant or the respondent.

While the Tribunal order may direct monies to the claimant/respondent, if the claimant/respondent fails to pay, a further enforcement order must be sought, which is outside the Tribunal's power.

WHO CAN APPLY

If your rental situation and your tenancy problem are covered by the Residential Tenancies Act (RTA), you can apply to the Tribunal.

Generally, this includes people who are:

- private tenants and landlords
- public housing tenants and the Director of Housing
- rooming house residents and owners/managers
- caravan park residents and owners/managers
- transitional housing tenants and managers

Application



HOW TO APPLY

To apply to the Tribunal, you need to complete a Tribunal Application form. As each state and territory are different across Australia, you will need to source the form from your state authority. Some examples of these are, Tenants Union, the Tribunal or Consumer Affairs, Fair Trading or Consumer protection, Residential Tenancy Tribunal or Commissioners Office. In the majority of state and territories now, the Tribunals have their own sites such as VCAT, QCAT, NCAT etc.

You will find instructions on the form. Make sure that where you are asked to name the landlord, you put the landlord's name and not the name of the agent.

Attach a copy of all the relevant documents to your application such as formal notices (for eg, a Notice to Leave), a Consumer Affairs or Fair Trading report, letters, bills or receipts. Remember the Tribunal prefers receipts to quotes.

The application must be specific and completed with all details setting out your claim, the reason for the claim along with any reference to sections of your relevant legislation. You must also provide all supporting documentation that supports your claim, this includes evidence to prove your claim.

Make sure you give an address where notices can be sent to you. You should also include a phone number, which can be a mobile phone number or even just somewhere that a message can be left for you.

If you need to make any changes to your Tribunal application you should notify the Tribunal and the tenant in writing immediately. However, there are some cases where the Tribunal will not allow changes to be made once a claim is submitted. You should contact your local Tribunal Registrar if you need further assistance in this regard.

APPLICATION FEE

When you send your application to the Tribunal, you will need to attach a money order or bank cheque to cover the application fee. Most real estate agencies have established accounts with their Tribunal. If you are paying in cash, you will need to take your application to the Tribunal and pay in person.

Fees vary greatly from state to state and from case to case. All fees are listed on the Tribunal websites.

If a tenant can't afford the fee because they are on a low income, they may be able to have the fee waived or reduced. There is no fee for the tenant applying for the return of their bond money.

Application

URGENT HEARINGS

VICTORIA

If your tenancy problem is urgent, make this clear on the application form and if possible, take your application to the Tribunal in person. You may be able to get a hearing on the same day in Victoria.

QLD

In Queensland the process is a lot slower and you need to apply to QCAT under the section that relates to your dispute and the type of order you are seeking. In some situations you can apply directly to QCAT for an urgent tenancy hearing without having to apply to the RTA Dispute Resolution Service first. Urgent Tribunal applications are defined in section 415 of the Residential Tenancies and Rooming Accommodation Act 2008 (the Act).

All other matters fall under non-urgent applications, which means you must first apply to the RTA Dispute Resolution Service. If the RTA cannot help you resolve your dispute they will send you a Notice of Unresolved Dispute (NURD) and you can then apply to the Tribunal for a non-urgent tenancy hearing.

Urgent applications include applications for termination orders, urgent or emergency repair issues, disputes over abandonment or goods left on premises and applications by tenants to dispute Tenancy Database listings.

Non-urgent matters, include bond disputes, disputes about notices, applications for orders regarding a breach of agreement, claims for compensation and applications for rent decreases.

NSW

In NSW, if your dispute is about an urgent issue, NCAT can arrange for an urgent hearing of your application.

An 'urgent issue' is where there is a real or perceived threat of damage or injury to person or property, health and safety issues, or where parties will suffer severe personal or financial hardship.

Examples of urgent situations include:

- A lockout from a rented premises
- A threat of damage or injury to person or property
- Health and safety issues
- Severe personal or financial hardship.

If granted, an urgent hearing of the application will be listed within 1 to 7 days depending upon the urgency.

IF YOU NEED AN INTERPRETER

If you or your tenant needs an interpreter, contact the Tribunal before the hearing date to let them know. If an interpreter is not provided at the hearing, your tenant may seek an adjournment.

With the Tribunal's permission, a hearing can be held by video link or telephone conferencing. This will need to be arranged well before the date of the hearing.

Application

NOTICE OF HEARING

The Tribunal will send both you and your tenant a Notice of Hearing to let you know when and where the hearing will take place. How long you have to wait depends on the type of problem, how busy the Tribunal is and where the hearing is to be held.

Depending on your location will depend on where your hearing will take place. For some more regional centers if a Tribunal member is not available it may be determined that the hearing is conducted in a local court with a magistrate.

IF YOUR TENANT HAS APPLIED

If your tenant has applied to the Tribunal, you should receive a copy of their application in the mail. You should also receive a Notice of Hearing from the Tribunal. It is vital that you go to the Tribunal hearing.

If you are not there to defend your side of the dispute, it is very likely that your tenants will succeed in whatever claims they are making against you. If the tenant tells you that they have withdrawn their application or that the hearing has been postponed or canceled, you should phone the Tribunal to make sure this is correct. Ask the Tribunal for confirmation in writing.

WITHDRAWING YOUR APPLICATION

If you wish to withdraw your application, you must do this in writing giving as much notice as possible. You will need to complete the Withdrawal of Application form. You will find this on the back of the 'applicant's copy' of the Tribunal application form. You will generally not get your application fee back.

APPLYING FOR AN ADJOURNMENT

If you know that you won't be able to go to the hearing on the day it has been scheduled, you will need to write a letter to the Tribunal to request an adjournment. If your request is granted, your hearing will be re-scheduled for another date.

A request for an adjournment must be made at least two business days before the date of the hearing. You will need to substantiate your request with some kind of documentation such as a medical certificate.

REPRESENTATION

There are a number of circumstances where a tenant can be represented by a professional advocate such as a tenancy advocacy service or some type of legal representation. The following are some of the instances where this may apply:

- the landlord is seeking an Order of Possession to have the tenant evicted.
- the landlord is a professional advocate
- the landlord is represented by a professional advocate
- the Tribunal allows the tenant to be legally represented If the tenant thinks that he or she will need representation

AUTHORISATION TO ACT ON THE TENANT'S BEHALF

If it is not possible for the tenant to go to the Tribunal, they can authorise someone to act on their behalf. This may be necessary, for example, if the tenant has moved interstate or overseas. If the tenant chooses someone to attend on their behalf, that person must have a letter signed and dated declaration that states they are 'authorised to act on the tenant's behalf'.

Preparation



PREPARING YOUR CASE

To be well prepared for your hearing, you should collect all the relevant documents that will help to support your case.

The Tribunal Member can only make their decision based on the arguments and evidence presented to them at the hearing. Sometimes the Tribunal will set a hearing date at short notice. If you don't have much time to get organised, prepare the best you can with as much evidence as possible or otherwise seek an adjournment but you must present evidence to support the adjournment.

DOCUMENTS

At the hearing, you should have your supporting documents with you such as your tenancy agreement, Condition Report, letters, receipts and/or photographs .

Dates can be very important. It is helpful to write down a brief account of events (including telephone calls) and the date on which they occurred.

Before the hearing, make two photocopies of any documents or photographs that you want to show the Tribunal (ie one for the Tribunal Member and one for the tenant.)

Bring the originals with you also, as the Member will probably ask to see them. Have all your documents clearly labeled so you can find them quickly and easily. Put them in a file or document holder and attach a contents page at the front so you and the tribunal member can see things at a glance.

WITNESSES

If there is anyone who can help support your claims, they are welcome to attend the hearing as a witness to tell the Tribunal what they know. It is up to you to arrange for a witness to attend the hearing.

You should make sure that the Tribunal is aware that you are preparing your case including these witnesses so that the hearing time can be accommodated. Some Tribunals call this a Formal Hearing, but you should speak with the Registrar of the respective Tribunal before just turning up on the day with your witness.

If a witness cannot attend the hearing, they can give their evidence in a statutory declaration or affidavit for you to present to the Tribunal. However, the Tribunal does prefer that a witness give evidence in person.

If a witness refuses to attend the hearing and you believe that their evidence is important, you can ask the Tribunal to issue a witness summons. You must apply for a summons before the date of the hearing.

Make sure your witness knows when and where the hearing will take place and that they understand how important it is that they arrive on time.

EXPERT WITNESSES

Increasingly, expert witnesses are being relied upon by Tenancy Tribunals to determine issues that require more than opinions of property managers or hearsay evidence.

Typically, experts are relied on for opinions on severity of injury or damage cause, of failure in a machine or other device and loss of earnings and associated benefits.

The Tribunal member may call upon experts to technically evaluate a certain fact or action, in order to provide the court with a complete knowledge on the fact or action his or her judgment.

Expert witnesses are often used by both sides to advocate differing positions and it is left up to the

Preparation

PERSONAL APPEARANCE

What you wear to the Tribunal hearing is important. Check that your clothes are neat and tidy and that you appear well groomed. This is an indicator of how seriously you take these proceedings.

At the Tribunal

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ARRIVING AT THE TRIBUNAL

When you arrive at the Tribunal, report to reception or the registrar. Give your name and let them know that you are there to attend a hearing.

When the hearing is about to begin, you will be called by your landlord's name into a hearing room.

Arrive at the Tribunal at least 30 minutes before the hearing starts. If you are late and you are the applicant, the hearing will be dismissed. If the tenant is late and the landlord is the applicant, the hearing will probably go ahead.

Arriving early will give you time to:

- go through security
- find the room where your case will be heard
- take a seat

Make sure you do not leave the venue and are close enough to hear your name called.

If you are not there when your name is called, your case may not be heard.

If you (or any of your witnesses) are running late for the hearing, it is important that you ring the Tribunal and let them know. It may be possible to delay your hearing for a short time, although this will not reflect well on your case.

If you plan to speak to your tenant or their representative before the hearing, you will need to allow extra time for this. If for some reason you cannot get to the Tribunal, you may be able to apply for a review of the decision, but this can be very costly.

SECURITY AT TRIBUNAL

If you are concerned that a person named in your application may be a potential security risk at the hearing then you can formally request security guards be present at the tribunal. This request must be done in writing and with as much notice as possible.

NEGOTIATION

Even when you are about to go into a hearing you can still try and negotiate with the tenant. It's not always possible, but you may be able to reach an agreement before the hearing starts. This is especially important if your case is weak.

If you do reach an agreement, go ahead with the hearing and ask the Tribunal Member to make a 'Consent Order' to formalise the agreement. This will make all parties legally bound to keep to the agreement.

During the hearing, the Member will probably ask if you and the tenant have tried to reach an agreement. Even if you weren't able to reach an agreement, it helps to be able to say that you tried.

At the Tribunal



WHAT THE TRIBUNAL LOOKS LIKE

1. Judicial Officer

This is a tribunal member (in NCAT, VCAT and QCAT) to magistrate in the Local Court.

2. Court Officer

This person helps the judicial officer and/or records the proceedings. There is usually no court officer in an NCAT, VCAT and QCAT hearing.

3. Bench

This is where the judicial officer sits. You should not go up to the bench unless asked. If you need to give documents to the judicial officer, the court officer will get them from you.

4. Respondent

The person who is defending or responding to an application

5. Applicant

The person who applied for a Fencing Order.

6. Bar table

This is the table where you should sit when your case is called.

7. Witness box or stand

This is where a witness will sit if they are asked to give oral evidence, under oath.

At the Tribunal

TRIBUNAL RULES AND ETIQUETTE

While the Tribunal is less formal than a court, there are some rules to be followed.

Firstly, make sure your mobile phone is turned off before you enter the hearing room.

Make sure that you sit in the correct place at the bar table. The applicant (the person who applied to the Tribunal) sits on the right side facing the bench where the Member will sit. The respondent sits on the left.

Don't put your bag or personal belongings on the table. This space is used only for documents, notepads and pens.

Whatever you require to support your argument you must bring with you. It is not the job of the tribunal member to supply you items such as a copy of the Residential Tenancy Act.

THE MEMBER

The person who hears a case at the Tribunal is called a 'Member'. The Member is usually a judge or an experienced legal practitioner. Members don't wear wigs or gowns or use gavels but you are still expected to show them respect at all times.

You should stand up when the Member enters or leaves the room and only sit when the Member directs you to do so.

The tribunal member may or may not introduce themselves - they may have a nameplate in front of them.

Address the Member as Sir, Ma'am (it rhymes with jam) or Member. If you want to hand the Member a document or other item, you must first ask for permission to approach them or the bench.

Never interrupt or talk over the Member and always speak respectfully during the hearing.

DURING THE HEARING

At the start of the hearing, you will be asked to 'swear in'. The Member will ask you and the tenant to take an oath on the Bible or to make an affirmation that you will tell the truth.

At the start of the hearing, the Member will ask about the details of the tenancy. These are usually the start date of the tenancy, the amount of rent paid and the frequency of rental payments (i.e., whether you pay weekly, fortnightly or monthly).

Usually the applicant will be asked to present their case first.

Let the tenant tell their side of the story without interrupting or commenting. It's a good idea to take notes if you wish to disagree or question something they are saying. Wait patiently and when the Member asks how you respond, speak directly to the Member instead of the tenant.

If you feel that you haven't been given enough time to state your case, politely but firmly point out that you have further points to make or other evidence to present.

If you would like to present new evidence, you should first ask the Member for permission to do so and provide a copy to the tenant as well as to the Member. If the tenant says anything that is not relevant to the case, you should point out to the Member that the comments are not relevant and should not be taken into consideration. If the Member believes that the applicant has not proven their case, they will dismiss it.

At the Tribunal

ORDERS

After hearing from both sides, the Tribunal Member will make a decision on the case, which they will then put into the form of an 'order'. If your case is complicated, you can ask the Tribunal to provide written reasons for their decision, but you should ask the Member for this at the start of the hearing. If you don't understand the decision, ask the Member to explain it to you slowly.

The Tribunal has the power to make a range of "orders" in relation to tenancy matters, including;

- termination orders
- orders about rent payments
- orders about repairs
- orders about the payment of compensation
- orders about rent increases or decreases
- orders about bond refunds
- tribunal decisions are final and binding on both parties

Both you and the tenant will receive a written copy of the order, usually within a couple of weeks of the hearing.

Tribunal orders are legally binding. Remember however, that they do not automatically guarantee that monetary amounts will be paid. In saying that, failure to follow a monetary or non-monetary order could result in a further civil hearing and prosecution and/or a fine.

REVIEW HEARINGS AND REHEARINGS

If the applicant misses the hearing, the case will be dismissed. If your landlord has applied for a hearing and you do not attend, orders can be made in your absence. If you missed a Tribunal hearing due to illness or other circumstances beyond your control and an order has been made against you, you can apply for a Review Hearing.

If you are given a Review Hearing, you will be sent notice of the time and date. At the Review Hearing, the Tribunal Member will decide if a rehearing will be granted.

If granted, the rehearing may go ahead immediately and the Tribunal Member will expect to hear and see your evidence (and that of any witnesses you may have). The Member will then decide whether to uphold, reject or change the previous orders.

Appeals

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APPEALS

If you are unhappy about the decision made by the Tribunal, you can appeal to the Supreme Court. Every state and territory is different in the time frames it sets for appeals, so it is important that you check with your state specific Tribunal for these. In some states, you have 28 days from the date of the order to lodge an appeal.

Supreme Court appeals can be very expensive.

REASONS FOR APPEALS

There are very limited grounds under which you can appeal a tribunal decision. You cannot appeal a decision just because you are unhappy with the decision that was made, or because you want another opportunity to present your evidence.

To appeal a tenancy matter you need evidence to show that the Tribunal made an error in fact or an error in law when they made their decision or need evidence that there was a denial of natural justice or procedural fairness when the decision was made.

Basically, an appeal must have either one of the following components

1. There is new evidence introduced
2. A point of law was not taken into consideration at the initial hearing.

These are not easy to win and you should ensure that you are well prepared when considering an appeal.

A Definition of Terms

The following is an explanation of some of the terms used. While some of the terms have a broader meaning, we have given the definitions as they apply to tenants and the Tribunal..

Adjournment

Where a Tribunal Member agrees to delay or interrupt a hearing until a later time or date.

Advocate

A person who is qualified and/or has the knowledge and experience to represent a tenant at the Tribunal. The role of the advocate is to advise and act in the tenant's best interests.

Affidavit

A written statement that is believed by the person who wrote it to be the truth.

An affidavit from a witness can be shown as evidence at the Tribunal.

Agent

See 'Real Estate Agent'.

Amendment

A change or correction to a document or form.

Appeal

Taking a Tribunal or court decision to a higher court with the aim of having the decision overturned.

Appeals against Tribunal decisions can be made to the Supreme Court.

Applicant

A person who applies or has applied to the Tribunal.

Bond

A security deposit paid at the start of a tenancy, usually equal to four weeks rent.

Breach (of Duty)

When a tenant, resident, landlord or agent fails to meet their duty under a tenancy agreement or the Residential Tenancies Act (RTA) 1.

Compensation

Money paid to someone to make up for having caused them financial loss, inconvenience and/or pain and suffering. The Tribunal can order the payment of compensation for financial loss and/or inconvenience.

Compliance

The act of obeying an order, rule, or request

Condition

Report A form that documents the condition of a property when moving into the property and again when moving out. It is completed by both the tenant and landlord or their agent.

Costs

The out-of-pocket expenses involved in going to the Tribunal, such as loss of income, travel expenses etc. Usually both parties cover their own costs, although in some circumstances the Tribunal may order that one party pays the costs of the other.

Deemed

As decided by the Tribunal

Director of Housing

The 'landlord' of public housing, which is the rental housing owned by the Office of Housing and provided to eligible tenants at a reduced rent.

Duty Lawyer

A lawyer who can give free legal advice and can represent someone who is scheduled to go to a hearing. You can find a duty lawyer at the Tribunal.

Enforcement

Action taken to make someone comply with (i.e., obey) a Tribunal order.

Eviction

The removal of a tenant from a property. It is illegal for a landlord or agent to evict a tenant themselves. They must apply to the Tribunal for a Warrant of Possession, which they then give to the police. Only the police can carry out an eviction.

Evidence

A statement or testimony of fact or truth, or anything such as a document or photograph that provides supporting proof.

Expert witness

Expert witness evidence may be relied upon by the Tribunal to form an opinion about a specialised or technical matter that is relevant to the issues to be determined in a proceeding.

Hearsay Evidence

Hearsay evidence is generally inadmissible. This essentially means that anything you intend to say at a tribunal hearing has to be backed up by evidence that supports what you want to say or prove. You can't really ever expect to win a case just because you represent the landlord, you have to prove everything.

Fixed-term Agreement

A tenancy agreement with a fixed start and end date.

Hearing

Where two parties who are in dispute can each present their side of the story to an independent Member, who decides how the dispute will be resolved.

Landlord

A person who leases a property to a tenant.

Lease

See 'Tenancy Agreement'.

Medical Certificate

A signed statement from a medical professional that states that they have seen someone as a patient on a certain date and found them to have a medical condition.

Member

The person who presides over a Tribunal hearing and makes legally binding decisions in the form of orders.

Notice of Hearing

Notification in writing that a Tribunal hearing has been set, including the time, date and location of the hearing.

Order

A legally binding decision or ruling of the Tribunal based on the arguments and evidence presented at a hearing.

Party

A person or entity (e.g., a company or agent) who enters into an agreement, transaction or legal proceedings with another person or entity.

Periodic Agreement

A tenancy agreement that has no fixed end date and is not limited to a set time frame such as 12 months. A periodic agreement runs from period to period (i.e., month to month) until either the tenant or landlord ends the tenancy.

Perjury

The voluntary violation of an oath or vow either by swearing to what is untrue or by omission to do what has been promised under oath: false swearing. Be very careful of this, ignorance is not an excuse.

Proceedings

A case that is underway in a court or Tribunal.

Real Estate Agent

A professional person who is paid to act on behalf of a landlord.

Registrar

A staff member who organises the work of the Tribunal. The Principal Registrar is the head Registrar at the Tribunal.

Rehearing

See 'Review Hearing and Rehearing'.

Reimbursement

Repayment of money that has been spent.

Rent Money

Paid by a tenant in exchange for living in a landlord's property.

Representation

Where one person speaks, acts, or makes submissions on behalf of another person.

Residential Tenancies Act (RTA)

The legislation that sets out the rights and duties of tenants, residents and landlords in various states.

Respondent

A person who receives notice to attend a Tribunal hearing because someone is making a claim against them.

Restraining Order

A court or Tribunal order that prevents a person from doing something.

Review Hearing and Rehearing

At a Review Hearing, a Tribunal Member hears why a person was unable to attend a Tribunal hearing and decides whether or not the applicant has the right to a rehearing. At a rehearing, the Member reviews any orders made at the hearing that the applicant was unable to attend and decides whether to uphold, reject, or change the orders.

Statutory Declaration (or 'Stat Dec')

A form used to write a sworn statement, signed both by the person making the statement and a person witnessing the statement. The witness must be a respected member of the community such as a solicitor, Justice of the Peace (JP), police officer, pharmacist or medical professional. It is against the law to make a false statement in a statutory declaration.

Summons

Notice given to a person that they are required by law to appear at a court or Tribunal hearing to give evidence and/or show documents.

Swearing

In A declaration or statement that a person will tell the truth and will provide only truthful evidence.

Sworn Statement

A written statement that is 'sworn' or given as the truth. A sworn statement can be a statutory declaration or an affidavit.

Tenancy Agreement (or 'Lease')

An agreement between a tenant and landlord that the tenant will meet certain conditions such as the payment of rent in order to live in premises owned or managed by the landlord. A tenancy agreement can be written or verbal.

Tribunal

A Government sponsored or private body to settle disputes. Administrative Tribunals are concerned with executive actions of government. Civil tribunals are concerned with resolving private disputes.

Undertaking

A formal promise to the Tribunal or to another party to act or to not act in a particular manner.

Witness

A person that has seen, heard, or who knows something that is relevant to a matter being heard at the Tribunal.