



### Fact Sheet 12: Conditional Orders

#### What is a Conditional Termination and Possession Order (CTPO)?

A conditional termination and possession order (CTPO) is a kind of order that the ACT Civil and Administrative Tribunal (ACAT) can make. A CTPO can be made if a lessor applies to the ACAT for termination of a tenancy agreement if you have failed to pay rent.

A CTPO is sort of like a long payment plan. If ACAT grants a CTPO, you are allowed to remain in your property, on the condition that you pay rent and a certain amount towards your rent arrears on a regular basis.

However, if a CTPO is granted, you are not out of the woods yet. If you breach the order by failing to make a payment, or paying late, the lessor can apply very quickly to the ACAT for a warrant of eviction.

If you are a public housing tenant, in practice it will be easier for you to get a CTPO than it is for a private renter. However, theoretically both public and private tenants can be granted a CTPO.

#### When will ACAT make a CTPO?

If you are in rent arrears, Housing ACT may apply to ACAT to seek your eviction under s49 of the Residential Tenancies Act 1997 ('the Act'). ACAT has the option of dismissing Housing's application, making a conditional order, or simply terminating your tenancy on the spot (though ACAT can suspend the order for up to 21 days).

The ACAT Member who hears the matter will only make conditional orders if he or she forms the view that you are **reasonably likely to pay your rent and the arrears**.

You do not need to be able to pay your arrears straight away, but you need to be able to show that you can consistently make payments towards

your debt. For someone on a low income, ACAT is likely to expect payments of around \$30-\$50 a fortnight towards your debt.

As an example, if your rent is \$250 a fortnight, you might need to be able to show that you can make your rent payment of \$250 a fortnight, plus \$30 towards arrears, totaling \$280 a fortnight.

#### How do you prove that you will make the payments?

ACAT will usually look at what has been going on in your life and why you haven't been paying your rent.

They will usually consider:

- Your rent history (i.e, whether or not you have paid on time in the past);
- The amount of arrears and the amount of rent you are required to pay;
- How many times you failed to pay the correct amount of rent;
- Any other debts you might have, for example on credit cards;
- Your income;
- Any steps you have taken to address the problems that stopped you from being able to pay the correct amount of rent;
- If your circumstances have changed, then the steps you have taken to take control and ensure your rent is paid – for example:
  - If you had trouble making regular manual payments, have you started paying by a method that is more reliable, like a bank or Centrelink direct debit?
  - If you had trouble paying rent because of difficulty managing your finances, have you sought financial advice, for example from CARE Financial Counselling Service?

- If you have started paying rent again, then how much rent you have paid recently;
- If you have started regular arrears payments, how much of the arrears you have paid; and
- The likelihood that the same problem will arise in the future.

It is very important that you can show that the situation has improved so you won't fall into arrears again. We highly recommend that you seek financial advice and prepare a budget, demonstrating that you will be able to sustain payments under a CTPO.

In making a decision, the Member will also look at whether or not you agree to repay the arrears and to pay the rent in full and on time in the future. It is important that you can show that you are committed to paying your rent and sustaining your tenancy.

### What Happens after Conditional Orders are Made?

Once the ACAT has made conditional orders, you must make sure you don't breach any of the conditions. It is your responsibility to make sure that the rent and arrears payments go through, even if you use a Centrelink or bank direct debit. It is very important that you check every fortnight to ensure that the correct amount has been paid to Housing ACT.

If you have a Centrelink direct debit and Centrelink fails to take the right amount of rent or rental arrears, you will need to contact Centrelink and Housing ACT to find out what has happened. You will also need to let Housing ACT know that you will be making a manual payment of the missed rent or rental arrears, and you will need to make the payment immediately.

### What Happens if I Miss a Payment?

If a payment of rent or rental arrears is missed, causing a breach of the conditional orders, Housing ACT will be able to apply to the ACAT for a warrant of eviction. Under the law, your tenancy will automatically terminate if you breach the conditional order and all the money owing becomes immediately due and payable. **This does not mean that you need to move out.**

Whilst Housing ACT can choose whether or not they apply for a warrant, it is not safe to assume

that because you have an excuse Housing will choose not to. You should assume that Housing ACT will apply for a warrant.

### What happens when Housing applies for a warrant?

If Housing ACT applies for the warrant, the ACAT will send you a notice. The notice will tell you that:

1. Housing ACT has applied for a warrant of eviction;
2. There will be a hearing of this application and when that hearing will be; and
3. You should seek legal advice if you wish to remain in the property.

**If you receive this notice, you should contact us for advice urgently.**

### What will happen at hearing?

At the hearing, depending on the content of your conditional order, you can ask for:

1. An order that a warrant for eviction not be issued;
2. An order setting aside the original conditional order and creating a new one;
3. An order restoring the tenancy.

At the hearing you will need to explain to the Tribunal what happened. Your argument might be that:

- No payment was missed. You will need evidence of this, such as receipts or bank statements detailing the payments;

**or**

- You believed the rent and rental arrears payment went through, and you had no reason to believe it didn't. You will need to explain what happened, and what you did once you found out a payment had been missed;

**or**

- The missed payment was caused by a Centrelink or Housing ACT error. You will need to explain what you did once you were aware of the missed payment.

The ACAT has the power to refuse to issue a warrant if the Member is satisfied that there has been no breach of the conditional order. It is

also likely to refuse to issue a warrant where it is satisfied that you had good reason to believe the rent was paid, and that when you became aware of the missed payment you did all that you could to fix the problem.

### Other Reasons

If you missed a payment for another reason, such as problems in your life, you may still defend the application for a warrant. If you do, it is very important that you are honest, and that you explain exactly why you missed the payment. You should also take as much evidence as you can to the ACAT about the problems you were (or are) experiencing. For example, if you have a serious medical problem and related expenses, you should give the ACAT a copy of medical certificate and copies of any bills you had to pay at the time you missed the payment.

Whatever your reasons were for missing the payment, in order to have the best chance of getting the Member to dismiss the application for a warrant, you should make every effort to make up all missed payments before the hearing. If you can't make up the entire amount you need to be able to show that you have paid as much back as you can, and say how you intend to pay the rest back.

There is no guarantee that the ACAT will dismiss the application for a warrant. It is important to remind the Tribunal that it has the power to make a new conditional order instead of issuing a warrant to evict you. You should explain to the Tribunal what the impact on you and your family will be if you lose your home. Negotiation with Housing ACT may also be useful in these circumstances.

**REMEMBER:** If you are successful in avoiding have a warrant issued but you then breach the conditional orders again, Housing ACT may again apply for a warrant for eviction. On a second occasion the Tribunal may be more inclined to issue the warrant.

### Disclaimer

This fact sheet contains general information available at the time of printing. It does not constitute legal advice. If you have a specific legal problem, please contact Canberra Community Law's advice line on 02 6218 7977.

Canberra Community Law is entirely independent of Housing ACT. All assistance is free.

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### How long does a conditional order last?

Ordinarily, a CTPO should last 12 months. However, the ACAT does have the power to make the order for a longer period. In practice, ACAT has tended to have the length of the period reflect the amount of the arrears: the larger the amount of arrears and the longer it will take to pay them off, the longer the period of the orders. Most Members of the Tribunal accept that the order does not have to account for the payment of all arrears.

### What happens if I miss the hearing?

If you fail to attend the hearing and an order is made for the issue of a warrant, you can apply to have the warrant stopped. This is called a "stay". Being granted a stay is not automatic and you need to have a **reasonable excuse for not having attended the hearing**. In order to get a stay, you need to contact the ACAT Registry and tell them you wish to make an application to stay the eviction proceedings. You will then be told when you have to appear at an ACAT hearing.

**If you receive notice that a warrant has been issued, you should contact us urgently.**

### What Happens If the Warrant is issued?

If the ACAT orders the issue of the warrant for eviction, it will be sent to the police who in due course will come to your house and serve the warrant on you. You will be advised of the day and time they will come back to execute the warrant. You may find that a small note has been slipped under your door or placed in your letterbox telling you that the police will come back in 2 days to change the locks. If you haven't already left when the police come back, they can physically remove you from the premises. Someone from Housing ACT will be with the police when they execute the warrant for eviction and the locks will be changed.

The police are required to execute the warrant not less than 2 days and not more than 21 days after the warrant has been served.