



Fact Sheet 9: Debts from a Previous Tenancy

You may be informed that you have a debt from a previous tenancy when you ask about being rehoused. If you feel discouraged from applying for housing because of a debt, it is important to persist with the application process and lodge a completed application form with Gateway Services of Housing ACT.

A debt from a previous tenancy can be a barrier to being rehoused—it can lead to a decision being made not to house you—but this is not an ‘automatic’ decision. There can be no lawful policy that denies rehousing to all applicants with a debt.

Three main things for you to think about are:

- Do you accept the debt?
- Can you repay the debt?
- Can you be housed despite a debt?

Do you accept the debt?

There are 2 main sources of debt to Housing ACT: unpaid rent and the cost of repairing damage caused by the tenant. The second of these is called Tenant Responsible Maintenance (TRM) debt.

You need to find out first what the debt is for. Generally speaking, if you failed to pay rent in the previous tenancy, the debt is owed and there may be little point in contesting it. If you are in any doubt about this, you should seek legal advice.

TRM charges are another matter. You should get an itemized account of the charges so you can see exactly what you have been charged and why. If you believe any or all of the charges do not arise from damage caused by you (or others in your household or guests), you can seek review of the charges. See Fact Sheet 8: *Damage to your Housing ACT property*.

If you accept some of the charges, but not others, you may decide to repay the ones you accept, making it clear in writing the charges you do not accept and that you want them reviewed.

Repaying the Debt

When you apply to be rehoused and there is a debt from a previous tenancy there will be strong encouragement to repay the debt—usually by instalments. Making regular repayment instalments for a period of time is generally a basis for Housing ACT to exercise the discretion to rehouse you even if there is still some outstanding debt.

However, before you enter into any agreement to repay a debt you need to consider whether the debt is not recoverable by Housing ACT (that is, legal proceedings cannot be commenced to force you to repay the debt).

There are two situations where a debt is not recoverable by Housing ACT:

- Where the debt is ‘statute barred,’ or
- Where the debt is part of a bankruptcy.

‘Statute barred’ debts are not recoverable when two basic conditions have been met. The first is that it must be at least six years since the debt first became due, and the second is that the debt must not have been ‘acknowledged’ at any time during that six year period. ‘Acknowledged’ means that you have agreed in writing that the debt exists, or you have started to make repayments. In either case, once you agree in writing that the debt exists, or you start to make repayments, the six year limitation period starts again from that point.

Debts that are a part of a bankruptcy are a bit similar to statute barred debts—after you have been discharged from bankruptcy the debts do not exist in law. However, if the debt involves fraud it may not be covered by the bankruptcy.

If you think you may have a statute barred debt or one covered by bankruptcy, you should get legal advice before entering into an agreement to repay the debt.

If you enter into an instalment agreement with Housing ACT you need to make sure that the amount is affordable for you, and is going to be affordable in the future. It is important to maintain those payments on a regular basis.

Being housed despite the debt

There is provision in the law for Housing ACT to refuse to provide housing to someone who owes a debt to them or who has been in breach of a previous tenancy agreement (failing to pay rent or look after the property, for example). However, it is a discretionary decision whether or not to refuse housing, therefore Housing ACT must look at the circumstances in each individual case before making a decision.

Examples of factors taken into account are:

- Whether you experienced domestic violence in the previous tenancy;
- Whether there is evidence that problems you previously experienced (for example, an addiction) have now been resolved;
- Whether there is evidence you have maintained a tenancy since that time (a private tenancy, or supported accommodation);
- Whether you have made repayments towards the debt.

A decision on the question of debt should not be made at the application stage but at the allocation stage so you have time to provide this evidence. In practice, however, Housing ACT may make the approval of a Priority listing conditional upon the debt issue being addressed.

If Housing refuses Priority approval or refuses to allocate you because of past debt, this decision can be appealed. See Fact Sheet 10: *The Appeals Process*.

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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