



FORM 8 - Residential Tenancies Act

APPLICATION TO THE RESIDENTIAL TENANCIES TRIBUNAL FOR TERMINATION OF TENANCY WHERE TENANT’S CONDUCT UNACCEPTABLE - SECTION 90

PLEASE FILL OUT FORM IN CLEAR PRINT USING BLACK PEN

1. Details of person making application (“applicant/s”)

Full name/s:

Postal address for service of notices:
.....
.....

Contact telephone number: (home) (work)
(The applicant must be the landlord or a person who has been adversely affected by the conduct of the tenant on which the application is based.)

2. Details of residential tenancy that applicant is seeking to terminate

Address of rented premises:

Name of tenant (“other party”):

Name of landlord (or agent):
(if not applicant)

Address of landlord (or agent):
(if not applicant)

3. Grounds of application *(see note on page 2)*

I/We make application to the Residential Tenancies Tribunal for the termination of the residential tenancy on the following grounds (ie. describe in detail the conduct which is unacceptable):

.....
.....
.....
.....

(If insufficient space, attach a separate sheet)

Signature of applicant:

Date:/...../.....

Note: The Tribunal may make an order for the termination of a tenancy on the basis of this type of application if it is satisfied that the tenant has -

- (a) used the relevant premises, or caused or permitted the relevant premises to be used, for an illegal purpose; or
- (b) caused or permitted a nuisance; or
- (c) caused or permitted an interference with the reasonable peace, comfort or privacy of another person who resides in the immediate vicinity of the relevant premises.

A COPY OF THIS APPLICATION AND ANY ATTACHMENTS WILL BE SENT TO ALL PARTIES BY THE TRIBUNAL WITH NOTICE OF THE TRIBUNAL HEARING

SEND THIS APPLICATION TO:

The Registrar, Residential Tenancies Tribunal **OR** Fax to 8226 8985 and forward the original paperwork by post or deliver to the address opposite
(Level 4, 100 Pirie Street, Adelaide)
GPO Box 2361, Adelaide 5001

If you have any questions or doubts about this notice, contact the advice section of the Tenancies Branch at Level 1, 91-97 Grenfell Street, Adelaide. Ph: (08) 8204 9544



SECTION 90 APPLICATIONS

CAN I HAVE MY NEIGHBOUR EVICTED BECAUSE OF THEIR BEHAVIOUR?

Section 90 of the Residential Tenancies Act 1995 gives the Residential Tenancies Tribunal the power to end a residential tenancy lease where the tenant has:

- used the premises for an illegal purpose; or
- caused or permitted a nuisance; or
- caused or permitted an interference with the reasonable peace, comfort or privacy of another person who resides in the immediate vicinity of the premises.

You can seek an order from the Tribunal, to end a neighbouring tenant's lease, for any of these reasons. *(This information sheet will not deal with using the premises for an illegal purpose because different issues are raised).*

ORDERS HAVE BEEN SOUGHT IN THE PAST BECAUSE OF THE FOLLOWING TYPES OF BEHAVIOUR:

- Substantial and unreasonable interference with the enjoyment of a neighbour's property by excessive noise or smell.
- Threats, intimidation and offensive behaviour from the tenant toward near neighbours (such behaviour to people who do not live within the immediate vicinity of the premises will not be relevant).
- Assault.
- Continual trespass onto neighbours' property; theft, vandalism and graffiti.
- Excessive and unusual noise from stereos and late night visitors.
- Noise and disturbance from domestic arguments.
- Street fighting and verbal abuse between tenants and their visitors causing regular interference to neighbours' use of that property.

DO I WANT MY NEIGHBOUR EVICTED?

- The only remedy the Tribunal can grant is termination of the tenancy agreement. **If you do not wish to have the tenant evicted you should not seek an order under Section 90.**
- The Tribunal is not a neighbourhood dispute resolution forum. If you do not wish to have your neighbour evicted, but what you are seeking is resolution of differences between you, then you should contact Community Mediation Services on:

Southern Metropolitan Area & South East South Australia
Phone 8384 5222

Eastern Metropolitan Area & Riverland South Australia
Phone 8202 5874

Northern Metropolitan Area & Mid North South Australia
Phone 8369 1044

Western Metropolitan Area & Iron Triangle South Australia
Phone 8243 5521

CAN I APPLY TO HAVE MY NEIGHBOUR EVICTED?

- Applications can be made by any “interested person”. This is defined in the Act to be the landlord of the premises, or a person who is “adversely affected” by the conduct of the tenant because of their connections with neighbouring property. You must live in close physical proximity to the property or in other respects have a direct interest that is adversely affected by the conduct of the tenant.
- If you do not reside in the immediate vicinity of the tenant, the Tribunal may need to decide whether you have been adversely affected to a sufficient degree to seek the order.
- The Tribunal has held that a landlord of a neighbouring tenancy whose tenants phoned him to complain of the intimidation of the tenant was an “interested person”.
- The tenant may be a tenant of Housing SA, or of a landlord in the private rental market.
- The order the Tribunal grants is the termination of the residential tenancy agreement. If there is no residential tenancy agreement or if it is an agreement to which the Act does not apply, the Tribunal can not assist you.
- If your neighbour is a tenant of Housing SA you may choose to contact Housing SA before making an application to the Tribunal. Housing SA has a policy for dealing with disruptive tenants.

Housing SA can be contacted on 131 299.

- If your complaint of the tenant is that they are breaching the *Strata Titles Act* by interfering with communal property of a Strata Corporation you need to consider whether you pursue an action in the Magistrates Court for resolution of the Strata Dispute rather than the Residential Tenancies Tribunal. It is only if the breach is also interfering with your enjoyment of your residence, as a neighbour, that you can seek an order for termination of the tenancy under Section 90.

DOES MY NEIGHBOUR'S CONDUCT JUSTIFY SUCH AN ORDER?

- The Tribunal has noted that in any community there must be a certain amount of “give and take” between neighbours.
- The fact that the tenant is an unpleasant neighbour, or that their conduct is strange or does not comply with your tastes or standards is not, in itself, sufficient grounds for an order - there must be interference with your enjoyment of the premises.
- The Tribunal is not concerned with the ordinary noise that can arise where people live in close proximity. Noise will only be regarded as sufficient grounds for an order if it materially interferes with the ordinary comfort of those living in the neighbourhood according to reasonable standards. It must be unusual or excessive. The Tribunal will consider whether it is deliberate, ongoing or repetitive.
- The fact that you find a certain noise or conduct annoying does not necessarily mean that it constitutes an unreasonable use of the premises such as to warrant eviction of the tenant.

Where the tenant allows people onto their property, they are responsible for the behaviour of those people. The Tribunal will decide whether the tenant caused the nuisance, or whether they “permitted” it; whether they made a conscious decision to allow others to cause the nuisance or else consciously refrained from taking action when they knew this would lead to others causing the nuisance.

HOW DO I APPLY FOR AN ORDER TO HAVE MY NEIGHBOUR EVICTED?

- If you wish to apply to the Tribunal for an order you must complete a Form 8 (*'Application to the Residential Tenancies Tribunal for termination of tenancy where tenant's conduct unacceptable - Section 90'*). You can obtain one of these from:

The Residential Tenancies Tribunal
4/100 Pirie Street
ADELAIDE
Phone: (08) 8226 8989

or

Office of Consumer and Business Affairs
Tenancies Branch
1/91-97 Grenfell Street
ADELAIDE
Phone: (08) 8204 9544

- Attach copies of any documentary evidence supporting your application to the Form 8.
- You do not need to pay a fee to lodge an application with the Tribunal.
- Once you have sent your application form in to the Tribunal, you will be asked to attend a Tribunal hearing at which to put your case. Sometimes the application will be listed for a preliminary hearing.

WILL THE TENANT FIND OUT THAT I AM TRYING TO HAVE THEM EVICTED?

- Yes. The rules of natural justice require that the tenant is entitled to know that you have applied for the order. They will be given a copy of your application form with the notice advising them of the date and time of the Tribunal hearing. They are also entitled to see any evidence that you give to the Tribunal.
- You cannot submit material that you wish the Tribunal to consider and ask that it not be shown to the tenant.

AM I LIKELY TO BE SUCCESSFUL IN GETTING MY NEIGHBOUR EVICTED?

When you seek an order under Section 90, you are asking the Tribunal to end a contract between the tenant and their landlord. It is possible that the landlord will not wish to end the tenancy agreement. Despite this, the Tribunal can still terminate the tenancy, if it believes that there are exceptional circumstances that warrant termination.

The Tribunal only has power to make an order ending the tenancy agreement and giving possession to the landlord. Eviction is only enforceable by the landlord and if the landlord chooses not to evict the tenant, the Tribunal cannot seek to enforce the order itself. You need to consider that, if the landlord is not supportive of your application, there may be no value in you pursuing it because the order may be of no practical effect.

DO I HAVE ENOUGH EVIDENCE TO PERSUADE THE TRIBUNAL TO MAKE AN ORDER?

- The Tribunal is not bound by the formal rules of evidence, but eviction is a serious matter and the Tribunal will not make an order under Section 90 unless it is satisfied that eviction is warranted.
- The Tribunal is not responsible for collecting evidence. You must present sufficient material to the Tribunal to persuade it that an order should be made.
- The Tribunal will not make an order on the basis of mere suspicion or on the strength of generalised statements. Your evidence must detail specific incidents. The Tribunal will assess the reliability of the evidence presented.
- The Tribunal will consider relevant written statements from "witnesses". However, you must be aware that evidence will be more persuasive if it is given in person, on oath or affirmation, and subject to questioning by the other party and the Tribunal.

IN ORDER TO SUPPORT YOUR CASE:

- Make detailed notes of incidents as they occur.
- Have witnesses to the incidents appear at the Tribunal hearing to support your application. It is not enough to have witnesses who heard the story from someone else; they must have witnessed the incidents themselves. The Tribunal may not make an order unless witnesses attend to give oral testimony. Letters from witnesses may not be sufficient to persuade the Tribunal; (if they are not in the form of an affidavit or statutory declaration, they are not written by someone who has sworn to tell the truth). If the witnesses do not appear, they are not available to answer any questions the Tribunal or other party may have about the incidents.
- Police reports will not usually list sufficient detail of incidents and are therefore not a substitute for attendance of witnesses. They may not identify whether it was the tenant creating the disturbance or whether the disturbance was caused by someone outside the tenant's control.

WHAT ELSE DO I NEED TO CONSIDER?

Eviction is a serious matter and the Tribunal will only terminate a tenancy if other reasonable means of resolving the situation have been exhausted. What are "reasonable means" will depend on the facts of each case.