

Section 90 applications – terminating a tenancy

Section 90 of the *Residential Tenancies Act 1995* (the Act) gives the South Australian Civil and Administrative Tribunal (SACAT), the power to end a residential tenancy agreement 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.

(Information about terminating an agreement where the premises have been used for an illegal purpose is not provided in this document).

Who can apply to have their 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. An interested person may also be a strata corporation, community corporation, police officer or an authorised CBS officer. An interested person 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 the tenant is a Housing SA tenant, Housing SA should be contacted before an application is lodged with SACAT. Housing SA has a policy for dealing with disruptive tenants. Housing SA can be contacted on 131 299.
- If your complaint about the tenant is that they are breaching the *Strata Titles Act* by interfering with communal property of a Strata Corporation you may take action in the Magistrates Court for resolution of the strata dispute rather than SACAT.
- The usual order made by SACAT is to terminate the tenancy. **If you do not wish to have the tenant evicted you should not seek an order under Section 90.**
- SACAT is not a neighbourhood dispute resolution forum. It is always good practice to try and resolve issues before applying to SACAT. Contact Community Mediation Services on 8342 1800 for assistance to resolve issues with the disruptive tenant.

What type of conduct would justify eviction?

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 sufficient grounds for an order. You will be required to establish that the tenant’s conduct has disturbed your quiet enjoyment of your property.

- SACAT 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. The noise must be unusual and excessive; SACAT 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. SACAT 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 consciously refrained from taking action when they knew this would lead to others causing the nuisance.

Do I have enough evidence to persuade SACAT to order eviction?

SACAT is not bound by the formal rules of evidence, but eviction is a serious matter and the SACAT will not make an order under Section 90 unless it is satisfied that eviction is warranted. SACAT is not responsible for collecting evidence. You must present sufficient material to SACAT to persuade it that an order should be made.

SACAT will not make an order on the basis of mere suspicion or on the strength of generalised statements. Your evidence must detail specific incidents. SACAT will consider relevant written statements from “witnesses”. However, evidence will be more persuasive if it is given in person, on oath or affirmation, and subject to questioning by the other party and SACAT.

Evidence to support your case may be:

- Detailed notes of incidents as they occurred (include date and time).
- Witnesses to the incidents attending the SACAT 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. Letters from witnesses may not be sufficient to persuade SACAT; (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 give evidence in person, they would not be able to answer any questions SACAT or the other party may have about the incidents.
- Evidence that the incident has been reported to the police. Police reports may not list sufficient detail of incidents and are therefore not a substitute for attendance of witnesses. A police report may not identify whether it was the tenant creating the disturbance or whether the disturbance was caused by someone outside the tenant’s control.

How do I apply for an order to have my neighbour who is a tenant evicted?

- If you wish to apply to SACAT for an order you must complete an online application form at www.sacat.sa.gov.au. Applicants who need further assistance can call 1800 723 767.
- Provide documentary evidence in support of your application.
- There is a cost to apply to SACAT.
- Once you have lodged your application with SACAT you will be asked to attend a hearing at which to put your case.

Will my application and supporting evidence be provided to the tenant?

- Yes. Generally, the rules of natural justice require that the tenant is entitled to know that you have applied for the order. A copy of your application together with supporting documentation will be provided to the tenant with a notice to attend a hearing. They are also entitled to see any evidence that you give to SACAT at the hearing.
- You cannot submit material that you wish SACAT to consider and ask that it not be shown to the tenant.
- If you are concerned about your safety or the repercussions of making an application to SACAT, you can discuss your concerns with CBS or the police.

What happens if the landlord does not agree with the application?

When you seek an order under Section 90, you are asking SACAT 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, SACAT can still terminate the tenancy if it believes that the circumstances warrant termination. However, this would only occur in exceptional circumstances.

Eviction is a serious matter and SACAT 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 individual case.

For further information contact Consumer and Business services on 131 882, or visit www.sa.gov.au/tenancy/renters