

RESIDENTIAL TENANCIES TRIBUNAL DECISIONS

Rights of appeal & review for residential
park matters



Government of South Australia
Office of Consumer and
Business Affairs

Residential Tenancies

Tribunal decisions:

*Rights of appeal and review in matters concerning **residential parks**.*

The Residential Tenancies Tribunal makes legally binding decisions in cases where disputes have arisen between a park owner and resident(s). In some circumstances you may have that decision varied or overturned.

Rehearing of the matter

Section 121 of the *Residential Parks Act 2007* (the Act) allows you to ask the Tribunal to overturn or vary a decision it has made, and to rehear the matter. The Tribunal won't change a decision merely because you disagree with it - there must be proper grounds for doing so.

For the Tribunal to accept that you have grounds, you will need to show that:

- you had good reason for not attending the hearing at which the order was made. ***Needing to attend employment or other routine commitments will not be sufficient reason.***

You need to explain your reasons for non-attendance and whether this was because of some emergency or unforeseen circumstance. If you have documentary proof in support of the claim, that should be attached to the application;

OR

- you have relevant evidence that was not available at the hearing and which would materially affect the decision of the Tribunal.

The Tribunal can make minor changes to an order where there is a mistake or error such as a wrong date or an arithmetical error, without the need for a rehearing.

Limited grounds

Orders of the Tribunal are only varied or overturned in exceptional circumstances. An application to vary or set aside an order is not an appeal procedure. The Tribunal cannot hear appeals from itself. The grounds for a rehearing are limited.

Dissatisfaction with an order of the Tribunal does not provide grounds for the Tribunal to rehear the matter.

If you believe you have good grounds, you must complete a *Form F (Application to the Residential Tenancies Tribunal)* and lodge it with the Tribunal.

Form F applications are available from the:
Residential Tenancies Tribunal Registry
(4th Floor, 100 Pirie Street) or

The Office of Consumer and Business Affairs Tenancies Branch (Level 1, 91-97 Grenfell Street).

You must explain your reason for seeking the variation of the order in the *Form F* and detail any new evidence you have.

*You must lodge the Form F **within three months of the making of the order** with which you do not agree.*

If more than three months have elapsed you should explain why the application could not have been brought sooner and argue as to why the Tribunal should grant an extension of time.

You will then be asked to attend a hearing.

The **notice of hearing** that you receive from the Tribunal will specify whether your application is to be dealt with as a preliminary hearing **or** as a preliminary and a full hearing.

Preliminary hearing

At a preliminary hearing the Tribunal will decide whether your application has sufficient merit for it to strike out its previous order. The other party will be advised of this hearing and may attend if they wish to do so.

At this hearing the Tribunal will decide whether the original order should stand or whether the matter should be reheard.

If the Tribunal decides that there is merit to your application, **the matter will be set down for a new hearing** at which you and the other party will have a chance to put your case again and present all relevant evidence. The Tribunal will then make a new order. This order may confirm the original order or change it.

Preliminary and full hearing

In some circumstances, (eg: where the order is for eviction) the Tribunal may immediately proceed to rehear the matter if it is satisfied that there are proper grounds. In this case the parties should come prepared for a rehearing of the original application. The Tribunal will make an order either confirming or changing the original order.

Appealing to the District Court

Under Section 125 of the Act, you can appeal a Tribunal decision to the District Court.

The District Court may:

- confirm the Tribunal's decision;
- overturn the Tribunal's decision and substitute a decision the Court considers appropriate, or
- refer the matter back to the Tribunal for further consideration.

You must lodge your appeal to the District Court **within one month** of receiving the Tribunal's decision in writing, unless the District Court allows an extension of time. If you want to appeal after this time you will need to ask the Court for an extension of time to lodge the appeal.

The District Court will consider whether the Tribunal has made an error. Depending on the circumstances, the Court may rehear some evidence or permit new evidence to be given.

The District Court charges a fee to people lodging appeals. You may be able to apply to the court to have the fee waived. The District Court may decide that you will have to pay the other party's legal costs if you lose your appeal.

For these reasons you may wish to obtain independent legal advice on whether your claim has merit before lodging an appeal with the District Court. Neither the District Court nor the Tribunal can give you legal advice.

You can contact the District Court Registry for assistance with lodging an appeal. The District Court Registry is located in the Sir Samuel Way Building, Victoria Square, Adelaide. They can be contacted on **8204 0289**

The Law Society of South Australia may be able to advise you of lawyers who have experience in this area of law.

The Law Society can be contacted on **8229 0222**.

Some legal advice for those who cannot afford to pay for a lawyer can be obtained from:

The Legal Services Commission
Telephone: 1300 366 424

Community Legal Centres:

Central Community Legal Service

Telephone: 8342 1800

Outreach: Adelaide, Tea Tree Gully, Salisbury & Port Adelaide.

Para Districts Community Legal Service

Telephone: 8281 6911

Outreach: Barossa, Gawler, Munno Para

Riverland Community Legal Service

Telephone: 8582 2255

Outreach: Loxton, Renmark, Waikerie

Westside Community Lawyers Inc

Parks Community Centre

Telephone: 8243 5521

Advice for park residents can be obtained from

Shelter SA, 220 Victoria Square, Adelaide.

Telephone: **8221 6488**.

Members of SA Parks can phone **8363 7255** to receive information about obtaining legal advice.