

## TENANCY, PERSONAL PROTECTION AND FAMILY VIOLENCE ORDERS

### Family Violence and Personal Protection in the ACT

In the ACT, people experiencing family or personal violence can apply to the Magistrates Court to protect themselves with either a Family Violence Order ('FVO') or a Personal Protection Order ('PPO').

An applicant who is granted a FVO or PPO is also known as a protected person. Sometimes a protected person may be living in the same property as the alleged perpetrator (respondent to the FVO or PPO) and both parties may be named as tenants in a residential tenancy agreement. This may lead to some issues if the FVO or PPO specifically excludes one tenant from being on the property.

If you or someone you know have safety concerns, you can contact Legal Aid ACT's **Family Violence and Personal Protection Order Unit** at 1300 654 314 or 6207 1874 (or via SMS at 0427 143 401).

For further information about Legal Aid ACT's services regarding family violence and personal protection, you can visit our website at <https://www.legalaidact.org.au/what-we-do/dv-unit>.

### How Does This Relate to a Tenancy?

Once a FVO or a PPO is made by the Magistrates Court, it is often the case that either the protected person or the respondent will vacate the property if they have been living together.

However, if both the protected person and the respondent are named as tenants on the residential tenancy agreement, they are still jointly and severally liable for rent and other charges associated with the property. This means that if a tenant leaves the property because of a FVO or PPO, but does not remove their name from the tenancy agreement, they are still responsible for the rent and other charges.

Sometimes, a protected person may not be able to afford the rent if the respondent leaves the property and may therefore risk being in rent arrears.

### Options for a Protected Person in a Tenancy Agreement

A protected person may be able to apply to the ACT Civil and Administrative Tribunal ('ACAT') to terminate a residential tenancy agreement.

Under Division 6.5A of the the *Residential Tenancies Act 1997* ('RTA'), the ACAT has the power to make an order terminating the existing agreement and requiring the landlord to enter into a new tenancy agreement with the protected person and any other person mentioned in the application to ACAT. ACAT also has the power to make an order terminating the agreement and granting vacant possession of the premises to the landlord.

### Applying to ACAT

For the ACAT to make an order terminating the tenancy agreement, the protected person must satisfy the ACAT that:

- the Magistrates Court has made a protection order; and
- the respondent is a party to a residential tenancy agreement in relation to the premises; and
- the protected person is also a party to the residential tenancy agreement or has been living in the premises as their home but is not a party to the agreement; and
- the order includes an exclusion condition, or a condition prohibiting the respondent from being within a particular distance from the protected person, or the respondent has given an undertaking to the court to leave the premises.

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### What ACAT Considers When Making Orders

In addition to the above, in making a decision as to whether the tenancy is to be terminated and/or a new lease granted to the protected person, the ACAT will consider:

- the length of the protection order and the length of time remaining on the existing tenancy agreement; and
- the interests of the protected person, the respondent and any other tenants; and
- whether the other tenants support the protected person's application to the ACAT; and
- whether the protected person or the dependent children of the protected person (or any other person mentioned in the ACAT application) would be likely to suffer significant hardship if the protected person were compelled to leave the premises and the hardship would be greater than the hardship the landlord would suffer if the order were made; and
- whether the protected person could reasonably be expected to comply with the terms of a tenancy agreement—that is, whether he/she can pay the rent; and
- If another person is mentioned in the ACAT application, whether the landlord has been given an opportunity to consider the other person's suitability as a tenant.

Remember that for the ACAT to make an order terminating or creating a new tenancy agreement for a protected person, the PPO or FVO must specifically exclude the respondent from the property or prohibit the respondent from being within a particular distance of a protected person or the respondent must give an undertaking not to be on the property.

If, after considering the above, the ACAT makes an order, which results in a new agreement between the landlord and the protected person, the new tenancy agreement must be subject to the same rent, frequency of rent payment, duration and terms as the original tenancy agreement.

The ACAT also has the power to determine the liabilities of the parties in relation to the bond paid under the original agreement.

If you have any questions about the information provided in this fact sheet, contact the **Tenancy Advice Service** at:

1300 402 512 or [TAS@legalaidact.org.au](mailto:TAS@legalaidact.org.au)