

Enforcing a Tribunal order

Monetary orders

If you have an order from the Victorian Civil and Administrative Tribunal that your landlord pay you a sum of money but they haven't done so, there are some steps you can take to try and get them to pay you.

Step 1. Letter of demand

Start by writing a letter of demand to the landlord. Keep a copy of any letters that you send, or that the landlord sends to you. The following is a sample letter of demand:

(landlord's name)
(landlord's address)

(your name)
(your address)
(date)

Dear (landlord's name),

I enclose a copy of the Victorian Civil and Administrative Tribunal order made on (date of order). Please forward a bank cheque to me for \$ (amount of order) within 14 days of the date of this letter. If I do not receive a cheque from you within this period I will take legal action without further notice that may result in additional costs to you.

Yours faithfully,

(your signature)
(your name)

Step 2. Register with the Magistrates' Court

You can register the unpaid Tribunal order with the Magistrates' Court. This means you can enforce the order as if it were a Magistrates' Court order. This also entitles you to claim interest on the unpaid money from the date that you register. There is a registration fee, which you can add to the debt as a claimable cost.

To register, you must take the following documents to the Magistrates' Court Registry:

- > a certified copy of the Tribunal order (the Tribunal will give you a certified copy if you request one in writing or in person)

- > a statutory declaration stating that you are the person to whom payment is to be made under the order, and that the amount of money has not been paid

Step 3. Enforcement

Once the order has been registered, there are several methods you can use for enforcing the payment of the debt. The best method to use depends on the landlord's financial situation.

This information is only a guide, and you should get advice from the Tenants Union or a Community Legal Centre before you begin. You can also get assistance from the Magistrates' Court Registrar. There are costs involved with each method and the Registrar can advise you about this.

➔ As of 1 July 2003, Consumer Affairs Victoria has the ability to prosecute for failure to comply with a Tribunal order, and this applies to both monetary and non-monetary orders. The maximum penalty is \$1000, plus \$200 a day until the order is complied with (up to \$2000).

Oral Examination

You can take out a Summons for Oral Examination against the landlord. This means that the landlord must attend the Magistrates' Court to answer questions about their financial position. Either you or the Court Registrar can ask the questions, or you can pay a solicitor to represent you.

You don't have to go to the Examination if you don't want to. The Court Registrar can ask the questions and you can suggest questions when you take out the summons. After the Examination, the Registrar will send you details of the landlord's answers.

Warrant to seize property

This is a document authorising the Sheriff to seize goods belonging to the landlord if they do not pay you the money they owe. This method is only useful when the landlord owns property of sufficient sale value to cover the debt. Only goods that are not household necessities can be seized and sold.

Attachment of Earnings Order

This is an order directing the landlord's employer to deduct a set amount from their pay each pay period and pay it directly to you. Obviously this method is only useful when the landlord is in regular paid employment. This order requires a further court appearance by you or your legal representative, which may increase your costs.

Instalment Order

An Instalment Order directs the landlord to pay off the debt by instalments. This method is useful when the landlord has a regular income but doesn't have a regular employer (eg they are self-employed or do contract work).

An Instalment Order can also be used when the landlord agrees to pay the debt but can't pay it all at once.

To get an Instalment Order, you will either have to get the landlord's agreement or convince the Magistrates' Court that the landlord can afford to pay the instalments. If the landlord's sole income is a pension or benefit, the court will not make an Instalment Order without the landlord's consent.

Attachment of Debt Order

Any money due to be paid to the landlord, such as rent on a property, may be attached by an order of the Magistrates' Court and paid to you. This process is known as 'garnishment'. You will need to know what debt is owing to the landlord and by whom. You should seek assistance from the Magistrates' Court Registrar or the Tenants Union as this process is not used very often.

Non-monetary orders

If the landlord has been ordered by the Tribunal to do something by a set date (eg carry out repairs), and they haven't done it, you should renew your application to the Tribunal. You can do this in writing or by fax.

Victorian Civil and Administrative Tribunal
55 King Street Melbourne 3000

☎ (03) 9628 9800

☎ 1800 133 055 (Freecall)

fax (03) 9628 9822

Open 9.00am to 4.30pm Monday to Friday

The Tribunal can then make further orders, including the payment of compensation and an order for your rent to be paid into the Rent Special Account. This is an account that is operated by the Tribunal. Your rent is paid into the Rent Special Account instead of to the landlord until the Tribunal is satisfied that the landlord has carried out all their orders.

➡ As of 1 July 2003, Consumer Affairs Victoria can prosecute for failure to comply with a monetary or non-monetary Tribunal order. See the *Complaints about estate agents and landlords* fact sheet for more information.

For more information phone the Tenants Union Advice Line on ☎ (03) 9416 2577.