

## Order for Repairs

### *A guide for Tenants and Property Owners*

As of 1 October 2014, the Residential Tenancy Commissioner (the Commissioner) has the ability to issue an order for repairs in relation to a residential tenancy (*Residential Tenancy Act 1997* s.36A).

Tenants should see this as a last resort, it is best to maintain a positive relationship between tenant and owner and the best way to do this is to talk to the owner and give them the chance to address your concerns.

When considering an application for an order the Commissioner looks at the following factors;

- **Is the owner required by the Act to carry out this repair?**

*S.32(1) of the Act requires that an owner maintain the premises in as near as possible to the same condition, apart from reasonable wear and tear, that existed on the first day of the agreement.*

*An owner is not required to fix something that was obviously damaged or broken at the start of the tenancy, unless an undertaking was made that this item worked or was going to be fixed by the owner.*

- **Has the owner been advised and given time to carry out the repair?**

*An owner has 28 days to carry out a general repair, 14 days to repair heating elements on stoves. If the repair is urgent or an emergency, the owner should respond within 24 hours.\**

- **Is the need for repair “reasonable”?**

*The Commissioner would consider factors such as the loss of amenity or impact of the need for repair on the tenant.*

- **Is the need for repair due to the fault of the tenant?**

*The Commissioner would consider any disagreement in relation to this element on the balance of probabilities.*

\* A tenant may apply for an order before the time limits have expired, however a Commissioner is likely to factor the time limits into the decision or delay the issuing of the order to provide the owner with the full period allowed.

The Commissioner will always consider an application in light of the specific circumstances of the case and will also work to maintain, as far as possible, a constructive relationship between the owner and the tenant.

At any point in this process, a tenant may choose to issue a notice to terminate the agreement under s.38(1)(a) if 28 days has lapsed since notifying the owner of the need for repairs.

## **Applying for an Order**

If you believe that reasonable repairs have not been undertaken by the owner and you would like an order you will need to complete a complaint form (available on the CAFT website).

If you are having trouble accessing or completing this form contact CAFT or the Tenants' Union and they will be able to help you.

In addition to the complaint form, the Commissioner will need any further information or evidence that supports your claim. For example, include a copy of;

- Your residential tenancy agreement (if you have one)
- Your ingoing condition report (if you have one)
- Any written communication between you and the owner or agent in relation to the repairs.

If you have spoken to the owner or agent about the repairs, include any details you have about when these conversations occurred and as much detail of what was said as possible.

The Commissioner will approach the owner or agent with this information to allow them an opportunity to respond to the application. All information will assist the Commissioner to assess whether an order should be made.

Once the Commissioner has made a decision, either party has 60 days to appeal this to the Magistrate's Court. Information on applying to appeal can be found at

[http://www.magistratescourt.tas.gov.au/divisions/civil/residential\\_tenancy](http://www.magistratescourt.tas.gov.au/divisions/civil/residential_tenancy)

If you have any questions about what your rights or obligations are in relation to repairs, you can either contact **Consumer Affairs and Fair Trading on 1300 654 499** or the **Tenants' Union on 1300 652 641**

***This fact sheet is intended as information only and does not constitute legal advice.***