

# Guideline for consent orders in SACAT

## 1. What is a consent order?

A consent order is an order made by the Tribunal which records an agreement reached by the parties to a tenancy dispute. A consent order gives effect to the agreement of the parties.

A consent order binds the parties in the same way as any other order of the Tribunal. This means that if a consent order requires a person to do something and they do not do it, then the order may be enforced in the Tribunal (or Magistrates Court) in the same way as any other Tribunal order.

The Tribunal can make consent orders without requiring the parties to attend a hearing but only where it is satisfied that the arrangement is reasonable and does not disadvantage one of the parties. The Tribunal may conduct a brief phone hearing with the parties to confirm the terms of a consent order.

## 2. When can a consent order be used?

You can request a consent order in any of the following situations:

- Payment plan for rent arrears<sup>1</sup>
- Payment plan for outstanding water invoices
- Payment of a security bond to settle a dispute in the Tribunal

<sup>1</sup> But please note that SACAT will not include any self-executing payments in a consent order, i.e. payments where the tenant must move out the next day if a payment is missed, and the Tribunal can send a bailiff to evict the tenant if satisfied that a payment has been missed.

- A request to change the terms of a previous Tribunal order.

## 3. Who can apply?

An application to change the terms of a previous Tribunal order relating to a residential tenancy matter may only be made by an agent or landlord.

For all other matters, any party to the proceeding can apply for a consent order.

## 4. How do I apply?

*If an application has already been lodged with the Tribunal*

At any time up until the Tribunal has made a decision, you can come to an agreement with the other party and ask for a consent order.

If you reach an agreement with the other party at any time before the hearing you need to contact the Tribunal in writing (which can be by email to [sacat@sacat.sa.gov.au](mailto:sacat@sacat.sa.gov.au) or by fax on 08 8226 8985) and request that the Tribunal make a consent order and that the hearing be cancelled.

A written request may also be hand-delivered to Level 4, 100 Pirie St, Adelaide or posted to GPO Box 2361, Adelaide SA 5001.

Your written contact with the Tribunal may either be:

- something written in your own words
- something written in the format suggested by the Tribunal

See <http://www.sacat.sa.gov.au/information/forms> for formats suggested by the Tribunal.

In either case the request must be signed by both parties.

If the request is not signed by both parties, you must provide some form of written communication indicating that agreement has been reached (e.g. an email from each party that records their consent).

*If an application has not already been lodged with the Tribunal*

You will need to lodge:

- an application<sup>2</sup> (please visit [www.sacat.sa.gov.au](http://www.sacat.sa.gov.au))
- the documents you would usually lodge in support of the application<sup>3</sup>
- the terms of the consent order (the agreement) which should be signed by both parties.

*If the Tribunal has already made an order*

In residential tenancy matters, an application to change an existing order of the Tribunal by consent may only be made by the agent or landlord upon the tenant's non-compliance with the existing order. Therefore prior to the submission of the application the tenant must have failed to comply with a term of the existing order and the parties must have reached an independent agreement on how to change the order.

Only the agent or landlord may submit the application. The tenant must then indicate his or her consent in writing (e.g. via email). Then if the Tribunal considers it appropriate to do so, it may

make an order by consent and without conducting a hearing.

See <http://www.sacat.sa.gov.au/information/forms> for a template suggested by the Tribunal for applying for a consent order by way of non-compliance.

In Retirement Village and Residential Parks matters a consent order does not require non-compliance and the application may be made by either party.

## 5. How does the Tribunal deal with an application for a consent order?

When the Tribunal receives a request for a consent order, that request and the documents supporting it will be reviewed by a Tribunal member or the Deputy Registrar in the same way as if the Tribunal Member were making a decision as part of a hearing.

If the Tribunal Member/Deputy Registrar decides that the request and supporting documents are all satisfactory, then a consent order will be made.

If the Tribunal Member/Deputy Registrar has a query arising from the documents then the parties will be contacted by the Tribunal Registry either to list the matter for a hearing, or to provide further documentation/explanation.

If the request is for a consent order to vary or set aside a previous Tribunal order, your request may be refused if the change would alter the basis of the previous Tribunal order. If this happens, the application will be listed for a hearing.

<sup>2</sup> Please note that SACAT cannot deal with your application unless you have paid the appropriate fee.

<sup>3</sup> For a payment plan for rent arrears or outstanding water invoices, this will include the tenancy agreement. Form 2 and rent record or water invoices.

For the payment of a bond, this will include the tenancy agreement, statement of claim and supporting documents such as inspection sheets and invoices.

*This fact sheet does not constitute legal advice and does not relate to the circumstances of any individual matter*

*If you wish to have legal advice you should seek that independently.*

