

# Appealing VCAT's decision to grant a possession order

## This fact sheet covers:

- ▶ Appealing a VCAT decision to grant a possession order;
- ▶ Getting a stay of a possession order;
- ▶ Getting legal help

**A possession order can allow your landlord to purchase a warrant, which can then be executed by the Victoria Police to evict you from your home. VCAT can grant your landlord a Possession Order after your landlord has served you with a Notice to Vacate.**

If you did not attend a hearing at which the Tribunal granted your landlord a Possession Order, then you have 14 days from when you find out about the order to apply to the Tribunal for a rehearing or review. You should apply for a rehearing as soon as possible because once you are evicted it is unlikely that you will be able to return to the property. You may only apply for one review without first seeking leave of the Tribunal.

If you attended a hearing and you are unhappy about VCAT's decision to grant a Possession Order to your landlord, then you might be able to appeal the decision to the Victorian Supreme Court. The circumstances in which you can appeal are limited and the appeals process is complex and expensive. If you want to file an appeal, then you should contact a lawyer as soon as possible.

## Appealing a decision to grant a Possession Order

### Reasons for Decision and hearing transcripts

At your VCAT hearing the Member will verbally tell you the reasons for the decision to grant your landlord a Possession Order. In order for you or your lawyer to understand how your matter was decided, you will need to get either written reasons for VCAT's decision or a transcript or recording of your VCAT hearing.

If you want the Member to give you written reasons for a decision in your tenancy matter, then you must request written reasons on or at the time a decision is made. VCAT will refuse a request for written reasons if the request is made after the hearing is complete.

If you cannot get written reasons for the Tribunal's decision, then you can request an audio recording or typed transcript of your hearing. To request an audio recording or transcript of your hearing you will need to [complete a form on VCAT's website](#). Please note that typed transcripts are more expensive to order than audio recordings.

### An appeal to the Victorian Supreme Court

To appeal VCAT's decision, you need to seek the Supreme Court's leave to appeal. In other words, you need the Court's permission to appeal VCAT's decision.

You can seek leave to appeal by applying to the:

[Court of Appeal](#) if the President or Vice President of VCAT made the decision; or

[Trial Division of the Supreme Court of Victoria](#) if any other VCAT Member made the decision.

You can find out who made the decision you want to appeal by looking at the VCAT order.



## **Time limit for filing an appeal**

You must file an appeal within 28 days from the date of the VCAT order.

You might be able to extend the filing time limit for your appeal by asking the Court's permission in what is known as 'seeking leave to appeal out of time'.

## **What is an appeal to the Supreme Court?**

An appeal from the Tribunal to the Court is limited to an appeal on what is known as 'a question of law'. This means that you can appeal VCAT's decision only if you believe that the Tribunal made a mistake in the way it applied the law to your case.

Some common errors that occur in Residential Tenancies matters are:

- Was the Notice to Vacate invalid?
- Was the Notice to Vacate invalidly served?
- Was there evidence to support the landlord's entitlement to issue the Notice to Vacate?
- Was the hearing conducted in a way that failed to afford you procedural fairness?

The Court will not grant you leave to appeal if your argument is only that the Tribunal should have preferred your evidence to that of your landlord. The Court will not grant you leave to appeal if you want to show the Court new evidence that was not available to the Tribunal at your earlier hearing.

It is important to note that if you are successful in your Supreme Court Appeal, then your matter may be sent back to the Tribunal to be decided again in a way that excludes the error of law in the Tribunal's original decision. There is a risk that when the Tribunal hears your matter it will again make a decision to grant your landlord a Possession Order.

## **Costs and fees associated with Appeals**

If you lose an appeal in the Supreme Court, then you will usually be ordered to pay your landlord's legal fees. Costs orders in the Supreme Court can be substantial, which means that you should seek legal advice before filing your appeal.

There are also fees associated with filing your Supreme Court Appeal. You can find the Supreme Court filing fees here: [https://www.supremecourt.vic.gov.au/sites/default/files/2018-10/prothonotaryofficefees-sept2018\\_v2.pdf](https://www.supremecourt.vic.gov.au/sites/default/files/2018-10/prothonotaryofficefees-sept2018_v2.pdf)

If you hold a current health care card, then you might qualify for a concession fee. To apply for a concession fee you will need to complete an [Application for Standard or Concession Court Fees Form](#).

## **Getting a stay of the Possession Order**

Filing your appeal in the Supreme Court does not automatically suspend the order for possession granted to your landlord. This means that your landlord can still purchase a warrant, which can then be executed by the Victoria Police to evict you from your home.

While you are waiting for your appeal to be heard you can make sure that you are not evicted by applying to VCAT for a temporary stay of the possession order. VCAT may grant a temporary stay of the order when it receives notice of your application for leave to appeal to the Supreme Court.

If you are granted a temporary stay of the Possession Order by VCAT, then you may have to apply for an ongoing stay to the Supreme Court.



## Getting legal help

If VCAT has granted your landlord a Possession Order, then you must act quickly to avoid eviction. Contact Justice Connect's Court Programs on 1800 727 550 if you want to appeal VCAT's decision.

Other Victorian legal services that may be able to give you free legal help with tenancy issues are:

- [Victoria Legal Aid](#)
- [Tenants Victoria](#)

## Crisis accommodation and housing referrals

If you are finding it difficult to find urgent housing or accommodation, then you should contact Opening Doors on 1800 825 955. This free call number is open 24/7 and will direct you to your local accommodation agency.