

NEW ARRANGEMENTS FOR MATTERS UNDER THE *RESIDENTIAL TENANCIES* *ACT*



Commencement of the Residential Tenancies Jurisdiction in NTCAT

Amendments to the *Residential Tenancies Act* ('RTA') will transfer the jurisdiction formerly exercised by the Commissioner of Tenancies to the Northern Territory Civil and Administrative Tribunal ('NTCAT') from **1 June 2015**.¹

What Are The Main Changes?

Since 1 January 2015, NTCAT's registries in Darwin and Alice Springs have been taking processing RTA applications. In this regard, there will be **no change**. Frequent applicants or respondents in RTA matters will be familiar with contacting NTCAT registry staff and lodging documents via NTCAT's generic e-mail address at agd.ntcat@nt.gov.au.

There will also be **no change** with respect to the notices that are served on parties **prior to an application** being made to NTCAT. These notices are found on the Commissioner of Tenancies' website at <http://www.consumeraffairs.nt.gov.au/ForConsumers/ResidentialTenancies> and include:

- RT03 - Notice to Remedy Unpaid Rent
- RT04a - Notice to Remedy Breach by Landlord
- RT04b - Notice to Remedy Breach by Tenant
- RT05 - Notice by Landlord to Terminate
- RT06 - Notice by Tenant to Terminate
- RT07 - Withdrawal of Termination Notice
- RT08 - Intention to Retain Deposit & Stat Dec
- RT09 - Notice of Entry by Landlord
- RT10 - Notice of Rent or Bond Increase
- RT11 - Notice of Storage of Goods
- RT12 - Unclaimed Tenancy Bond Claim Form

Initiating Application

Although the above notices will remain the same, the form for **commencing** an RTA application **will change**. An application to NTCAT **must** be commenced using the **NTCAT Form 1 – Initiating Application**. RT01 and RT02 forms will no longer be accepted.

There will also be **important changes** after an application is lodged.

¹ It was originally intended that the RTA amendments would commence operation on **1 January 2015**; however, the commencement was **delayed** pending amendments to the *Northern Territory Civil and Administrative Tribunal Act*. The amendments have now been made.

When an Initiating Application is lodged with NTCAT and accepted by the Registrar:

(1) The Initiating Application will be sealed and returned to the applicant with important information added to the form.

(2) The information will include:

a. *the time by which the applicant must serve the respondent with a copy of the Initiating Application.*

Unlike the present system, where the Commissioner of Tenancies has responsibility for serving an application, **the applicant must serve a copy of the Initiating Application on the respondent.**

NTCAT Rule 3 deals with service of documents. The person required to serve the document must take reasonable steps to bring the document and its contents to the attention of the other person and must do so as soon as they reasonably can. An applicant may be required to prove what steps they took to effect service in some cases.²

b. *except in straightforward matters, a requirement that the respondent file and serve a Response to the Initiating Application by a particular date.*

The NTCAT Rules (rule 6) require a respondent served with an Initiating Application to lodge with NTCAT and serve on the applicant a Response in Form 2. The Response, which is to be provided to NTCAT and the applicant as soon as possible after the Initiating Application is served, will set out the basis upon which the respondent opposes the claims made in the Initiating Application.

If a matter is straightforward (for example an application for termination and/or for compensation for unpaid rent) the Initiating Application will note that a Response is not required.

In more complex matters (for example security deposit and general compensation disputes) the Initiating Application will specify a date by which the Response is to be filed and served. The date will be before the directions hearing (see further c. below).

c. *details of when the parties will first be required to attend³ NTCAT.*

Depending on the nature and complexity of the dispute, this may be for the final hearing or a directions hearing. **Notices of Inquiry will no longer be sent to the parties.**

If a matter is **straightforward**, a **final hearing date** – ideally within 14 days of the application – will be nominated. In more **complex** matters a **directions hearing** will be held. This will be for the purpose of identifying the core aspects of the parties' dispute and requiring them to provide materials in support of their claims to each other and to NTCAT.

Except in straightforward matters, the Initiating Application may include a

² If service cannot be effected, despite reasonable efforts, the applicant shall advise the Tribunal without delay.

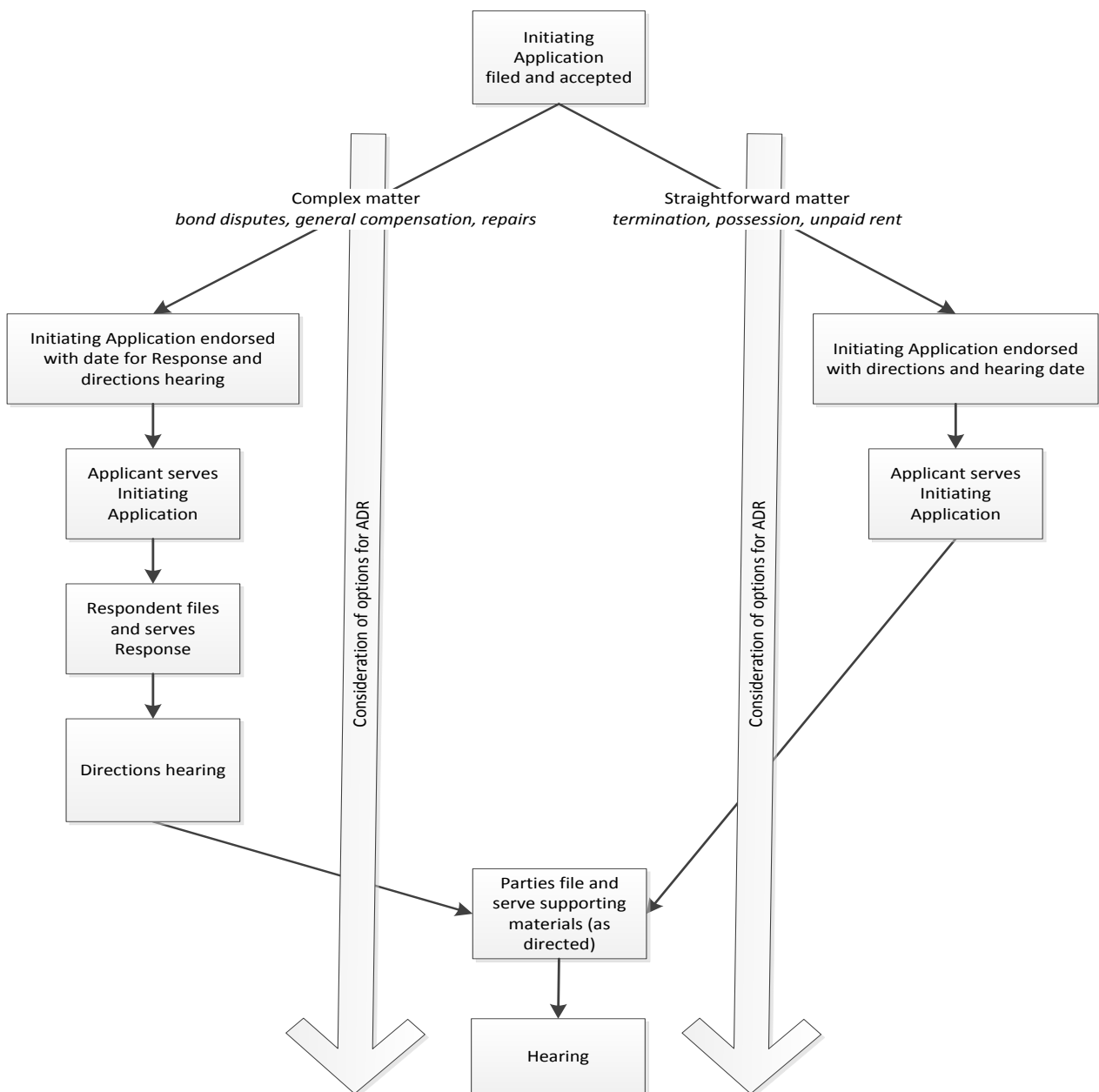
³ Attendance by phone or videoconference may be permissible, depending on the nature of the hearing and the parties' circumstances.

requirement that the respondent file and serve a Response to the Initiating Application prior to the directions hearing.

- d. *for straightforward matters, directions to the parties about the steps they are required to take before the hearing.*

In matters that are immediately listed for hearing, the sealed Initiating Application will include orders requiring the parties to provide to each other and to NTCAT copies of all materials they intend relying upon at the hearing.

Unlike the present system, where the Commissioner of Tenancies has assumed responsibility for distributing materials relied upon by parties, **each party will have responsibility for making sure that the other party is provided with their materials.**



Other Changes

Some of the other changes that should be noted include:

1. A non-refundable \$49 application fee⁴ is required for each application.
2. There is no restriction on lawyers representing parties.
3. There are no appeals to the Local Court. Parties can seek a review of an NTCAT decision through NTCAT's internal review process. The review involves a rehearing before a differently constituted tribunal.⁵ There is also a right of appeal against NTCAT decisions to the Supreme Court on questions of law.⁶
4. NTCAT will aim to hold hearings in Alice Springs to be heard by locally appointed NTCAT members where appropriate.
5. The \$10,000 jurisdictional limit for monetary claims no longer applies.
6. The use of alternative dispute resolution mechanisms such as mediation⁷ will be promoted as much as possible for appropriate matters. Parties can expect that NTCAT will actively explore possibilities for settlement at all stages of a proceeding.
7. NTCAT Members should be referred to by their surname during a proceeding eg. 'Mr Smith'.
8. Electronic communication and provision of notices and documents to and from NTCAT will be the preferred medium.
9. Applications seeking termination of a tenancy agreement based on hardship previously made to the Local Court under section 99 of the RTA will now be heard by NTCAT.
10. Sections 84 and 85 of the NTCAT Act provide for the enforcement of NTCAT orders. The order must be certified by the Registrar of NTCAT before being filed in the Local Court for enforcement purposes.

Savings and Transitional Issues

Any RTA applications lodged with NTCAT prior to 1 June 2015 will be dealt with under the provisions of the RTA prior to the relevant amendments taking effect. This means they will be processed under the previous system and heard and determined by delegates of the Commissioner of Tenancies. The right of appeal from these decisions remains to the Local Court.

Any RTA applications lodged with NTCAT from 1 June 2015 will be dealt with under the amended RTA and the NTCAT rules and processes. The avenue of appeal or review of these decisions is through the NTCAT internal review process.

⁴ Note – the application fee is set under the NTCAT Regulations and expressed as revenue units. It is possible that from 1 July 2015 the application fee may change in accordance with the *Revenue Units Act*.

⁵ Applications for review must be accompanied by the application fee of \$149.

⁶ The right of appeal is by leave – see s 141 of the NTCAT Act.

⁷ Under s.118 of the NTCAT Act parties may be required to attend mediation.

Clarification of the Role of the Commissioner of Tenancies

Up until an application is lodged with NTCAT, the role of the Commissioner of Tenancies as set out in the RTA remains the same as under the previous system.

NTCAT Rules and Forms

Parties utilising NTCAT should familiarise themselves with the NTCAT Rules.

The Rules and Forms can be found on the NTCAT website at www.ntcat.nt.gov.au.

Information and Assistance

All enquiries about process or procedure in relation to RTA applications should be directed to NTCAT.

General enquiries regarding rights and obligations of landlords and tenants under the RTA should continue to be directed to the Commissioner of Tenancies or to a legal practitioner.

More Information

NTCAT conducted an information session for real estate agents, lawyers and other interested stakeholders on 19 November 2014. This information session was electronically recorded and is available on request.

If you have any other queries please contact the NTCAT registry.