

Rehearing and appeals

CTTT decisions are final and binding subject to a limited right of rehearing or appeal. If you believe you may have suffered a substantial injustice, or you wish to challenge a decision made by a Tribunal Member, this fact sheet describes the options available to you.

What is a rehearing?

A rehearing is a provision under section 68 of the *Consumer, Trader and Tenancy Tribunal Act 2001* (the 'CTTT Act') that allows a decision, or parts of a decision, to be reheard as if it were a new application. A rehearing is not an appeal.

Parties to proceedings may only apply to the Chairperson for a rehearing after the matter is finalised.

The grounds for a rehearing application are very limited. A rehearing will only be granted if the Chairperson decides that you may have suffered a substantial injustice in specific circumstances. Dissatisfaction with the decision is not a sufficient reason for a rehearing.

The Chairperson's decision to grant or refuse a rehearing is final and not subject to review of any kind.

What is a 'substantial injustice'?

To be granted a rehearing, you must prove that you may have suffered a substantial injustice on one or more of the following grounds:

- The decision was not fair and equitable
- The decision was against the weight of evidence
- Significant evidence is now available that was not reasonably available at the time of hearing.

Can any matter be reheard?

Not all matters can be reheard. There are specific legislative provisions about the types of matters that cannot be reheard. These include matters where:

- The amount in dispute is more than \$30,000
- A warrant for possession has already been executed regarding an order for termination of a tenancy and possession of rented premises (where the landlord has already taken back possession of the property)
- Strata and community schemes matters (these matters have separate appeal processes and forms)
- A matter has previously been reheard.

How do I apply for a rehearing?

An application for rehearing form must be completed. You cannot request a rehearing by telephone or letter.

Rehearing application forms can be downloaded from www.cttt.nsw.gov.au or collected from any CTTT Registry or Fair Trading Centre.

The application form must be lodged within 14 days after the date of notification of the CTTT's order, or within 14 days after you receive a written statement of reasons.

A fee is payable with the rehearing application, being the same amount as the original application.

You may also ask for a 'stay of proceedings' on the application form. A stay of proceedings stops any action, such as the issuing of a warrant, until the rehearing application is determined.

What do I need to put in the rehearing application?

There are specific requirements which must be met for a rehearing to be granted.

- You must state how you may have suffered a substantial injustice
- Include all the documents you have in support of your application
- If you were absent from the original hearing due to illness you should provide a medical certificate
- In other circumstances you may be required to provide an affidavit.

There is no face-to-face hearing. A rehearing application is decided on the information you provide on the application form and any written submissions provided by the other party.

Read the rehearing application form carefully and provide as much information and documentation as possible.

How are rehearing applications decided?

Rehearing applications are decided 'on the papers' by the Chairperson or a delegate of the Chairperson.

Before a rehearing can be granted, the Chairperson must obtain written comments from the other party about the application. When written comments are sought, a copy of your application will be sent to the other party.

The Chairperson, or delegate, will either grant a rehearing or refuse the application after taking into account your application and any submissions from the other party.

If the rehearing is granted

If your rehearing application is successful, you will be advised in writing and new notices of hearing will be issued. The original application will be dealt with as if it were a new application.

CTTT Tip

Read the CTTT's *Preparing for hearing* fact sheet for more information about hearings.

If the rehearing is refused

If your application for rehearing is refused, the original orders will remain in full force and effect. If you were granted a stay with your application for rehearing, that stay will be lifted and the previous orders will become effective immediately.

In limited circumstances a further rehearing application may be possible (section 68(9A) of the CTTT Act).

Appealing CTTT decisions

If a party believes the CTTT has made a legal error they may appeal the decision under sections 65 and 67 of the CTTT Act.

Appeals against decisions made by the CTTT can be made to either the District Court or Supreme Court of NSW. The appropriate forum in which to challenge the decision will depend upon the grounds for the appeal.

Appealing a decision may be a costly and complex process, and you may need legal representation. You should seek independent legal advice before considering making an appeal.

CTTT Tip

The CTTT's *Getting help* fact sheet lists a number of organisations that can provide you with advice and assistance.

Appeals to the District Court

Appeals may be made to the District Court of NSW under section 67 of the CTTT Act. The ground for an appeal to the District Court is that the CTTT made an error when it decided a question with respect to a matter of law.

An appeal to the District Court must be made within 28 days from the date the CTTT's order is made.

Appeals to the Supreme Court

Appeals may be made to the Supreme Court of NSW under section 65 of the CTTT Act. The grounds for an appeal to the Supreme Court include that there was a denial of procedural fairness or that the CTTT did not have jurisdiction to make the order.

Strata or Community Schemes decision appeals

If you want to appeal an Adjudicator's decision you can appeal the decision to the CTTT within 21 days of the order coming into effect. Complete the *Strata and Community Schemes Division Application Form* and lodge at a CTTT Registry with the lodgement fee. The matter will be then listed for hearing before a Tribunal Member.

If you want to appeal a Tribunal Member's decision in a strata or community schemes matter, you will need to appeal against the decision to the District Court of NSW.

You cannot apply for a rehearing in Strata or Community Schemes matters.

CTTT Tip

Read the CTTT's *Strata & Community Schemes Division Adjudication* fact sheet for more information about strata and community schemes decisions.

CTTT Registries

Telephone: 1300 135 399

Facsimile: 1300 135 247

www.cttt.nsw.gov.au

Fair Trading Centres

General enquiries: 13 32 20

www.fairtrading.nsw.gov.au