

Tenancy Services

Enforcing a
sealed mediator's
order or a Tenancy
Tribunal order



www.tenancy.govt.nz



MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

This brochure provides information about how to enforce a sealed mediator’s order or a Tenancy Tribunal order.

For more information about enforcing orders, contact Collections – Ministry of Justice on 0800 233 222 or visit www.justice.govt.nz/fines/civil-debt.

For information about renting law, visit www.tenancy.govt.nz

Fifth edition, printed in August 2017 by the Ministry of Business, Innovation and Employment
PO Box 10-729
Wellington
New Zealand

This document is also available on our website www.tenancy.govt.nz

You can copy all or some of this guide only if you are using it for education or public information, and you say it came from us. You cannot copy any of this guide in any way for commercial use, and you cannot keep it in a retrieval system unless you ask us first.

ISBN 978-1-98-851793-3 (print)

ISBN 978-1-98-851792-6 (online)

Printed in New Zealand on paper sourced from well-managed sustainable forests using mineral oil free, soy-based vegetable inks.

Contents

What is a mediator's order?	4
What is a Tenancy Tribunal order?	5
How are orders enforced?	6
Where can I get more information?	13



What is a mediator's order?

When an agreement is reached at mediation, the mediator can write it down and give copies to both parties. This is usually written down as a mediator's order that the mediator, landlord and tenant sign.

If it is a telephone mediation where parties agree, a mediator will confirm acceptance of the agreement verbally and send the parties a copy electronically or by post for their records.

The order may say what one or both parties will do, for example, pay rent arrears or make repairs, and what will happen if they don't, such as the tenancy being terminated.

A mediator's order is binding. If one party has not done what the order said they would, the other party can start the procedure to enforce the order as though it was an order of the Tenancy Tribunal.

To have a mediator's order enforced, it must first be sealed by the Tenancy Tribunal. Contact your mediator or case coordinator to ask to have your order sealed. An adjudicator will consider whether or not the order can be enforced. If it can be enforced, they will seal it.

Mediator's orders from the Ministry of Business, Innovation and Employment's Tenancy Services can be enforced 48 hours after the order is sealed.

What is a Tenancy Tribunal order?

If agreement isn't reached at mediation, the landlord and tenant can go to the Tenancy Tribunal for a hearing. The Tenancy Tribunal is part of the Ministry of Justice and hearings take place at the local Court. At the hearing the adjudicator will listen to both people and make a decision according to the Residential Tenancies Act.

The adjudicator writes down his or her decision as a Tenancy Tribunal order. The landlord and the tenant are given a copy. The adjudicator's decision is a court order, which both sides have to obey.

In most cases, if the decision is simple and straightforward, the parties can get a decision immediately after the hearing. Otherwise, the decision has to be written up by an adjudicator and posted out at a later date.



How are orders enforced?

You may choose to talk to the other person first to try to settle the matter by yourselves. If you can't settle the matter yourselves, you can enforce the order through the court system. This is called civil enforcement. The applicant for any enforcement action has to pay filing fees and the fees can be added to the debt for recovery.

Who may apply for civil enforcement?

Only a named party on the order, either the judgment creditor or in some cases the judgment debtor. A lawyer can also apply on behalf of the parties.

All Civil Enforcement applications can be sent to the following address, or filed at any District Court of New Zealand.

Ministry of Justice
Central Processing Unit
SX10042
Wellington

What are the different types of enforcement?

■ Eviction

If you have a termination or possession order and the tenant has not vacated the property you must use this process. A possession order becomes known as an eviction warrant once it is filed with Collections – Ministry of Justice for enforcement. This warrant enables a court bailiff to return possession of the property to the person named in the possession order.

To apply for eviction you need to send a completed application form along with a sealed copy of the tenancy order and the applicable filing fee to Collections – Ministry of Justice. There are two types of tenancy orders:

1. an order obtained from the Tenancy Tribunal which specifies when the eviction can be enforced
2. an order obtained from mediation (also known as a sealed mediator's order).

Sealing of a mediator's order

Once agreement is reached between a landlord and tenant and there is a legally enforceable clause, the mediator usually sends the written order on to the Tribunal for it to be sealed.

On occasions and usually at the request of the applicant(s), a mediated order with a legally enforceable clause will not be sent to the tribunal for sealing. However, if there is a breach of the order later on, the applicant would need to take their copy of the mediated order to the District Court requesting for it to be sealed to instigate legal proceedings.

You must file the application within 90 days from either the date the order states the tenancy has ended, or if a conditional mediated order 90 days from the first breach that gave rise to termination. If your eviction is conditional on the tenant breaching a payment arrangement, a copy of the rent schedule showing the breach must be attached.

Once your application has been processed an eviction warrant will be forwarded to a bailiff who will make contact with you to set a date for the eviction to take place. The landlord (or agent) must be at the premises at this agreed time. It is important to advise the bailiff of any known health and safety risks such as dogs on property, gang affiliations, tenant is a known drug user or anything else you think maybe useful for the bailiff to know before entering the property.

Tenants may be given 24 hours to remove themselves and their belongings. It is a good idea for the landlord to arrange for a locksmith to be present at the time of eviction to change the locks so that the premises are secure. If the tenant's goods remain on the property after the date of eviction, you as the landlord should arrange for them to be uplifted by the tenant. Alternatively, you may follow the process for disposal of tenant's goods under the Residential Tenancies Act 1986 or apply for an order to dispose the tenant's goods through the Tenancy Tribunal.

If there is money owing on the order, you can apply for an attachment order or assessment of financial means at the same time as the eviction for no additional cost.

■ Attachment order

An attachment order directs an employer or Ministry of Social Development to deduct money from the debtor's wages or benefit and to transfer those deductions to the creditor. You need to provide information relating to the debtor's source of income and their date of birth and/or benefit number.

An attachment order can be set up at two different times:

1. If the creditor and debtor agree at the hearing when the judgment order is made. Also known as an agreed attachment order.

An agreed attachment order provides a quick, cost effective option for both parties without the need for a separate enforcement application.

If both parties agree at the hearing when the order is made, details of the attachment order can be recorded in the order by the adjudicator. You must both agree on:

- › how much will be deducted
- › how often it will be deducted – weekly, fortnightly or monthly.

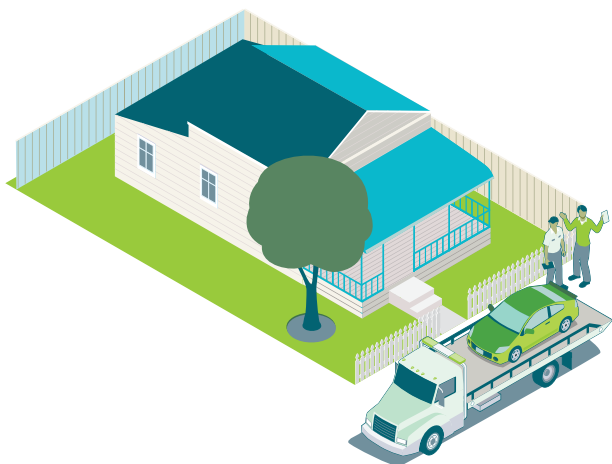
You will need to provide bank account details of the creditor if you would like the adjudicator to make an attachment order at the hearing.

Even after the hearing has finished and the Tribunal has made its order, you can still apply for an attachment order, as long as you have this information.

You can file the order with the agreed attachment order, after the hearing, by sending your order and the filing fee to Central Processing Unit, SX10042, Wellington.

2. Either party can also apply for an attachment order after the order has been made by the Tenancy Tribunal. You will need the debtor's:
 - › employment details if they are employed
 - › benefit number or date of birth if they are receiving a benefit

If you are the creditor or debtor, you can apply for an attachment order if you have this information. If you are the debtor and you don't have the creditor's bank account details, our staff can assist by contacting the creditor to obtain the information.



When you file an attachment order application:

- › include a copy of the order
- › pay the filing fee
- › give a copy of the application to the other party by email, post or in person.
- › post your application from to the Central Processing Unit, SX10042, Wellington.

When the attachment order is set up, it is the creditor's responsibility to keep track of the payments. The court does not monitor payments being made. Often payments stop due to the debtor changing employment or because a benefit has been suspended or cancelled. It is often a good practice to wait a few weeks as benefits are often suspended and then reactivated within a short period.

You can apply to change an attachment order

Either party can apply to vary, suspend or cancel an attachment order. There is no fee for this application. An attachment order may be changed if:

- › the debtor's employer changes
- › the debtor moves from employment to benefit or vice versa
- › the debtor is having difficulty paying or their income has changed. They can apply to reduce the amount of the deduction or suspend payments for a specific length of time
- › the creditor can seek an increase due to another disclosed debt being paid off
- › a request for a rehearing has been filed, and the attachment order needs to be suspended while the court makes a decision.

When you file an application to change your attachment order:

- › provide a copy of the application to the other party by email, post or in person.
- › attach any information you have to support your application i.e. current means assessment with supporting documents
- › you can post the form to: Central Processing Unit, SX10042, Wellington.

■ **Assessment of financial means**

You can apply for a Registrar to phone the debtor to assess their ability to pay. This can be useful if:

- › you don't want to attend a hearing
- › the debtor hasn't completed a financial statement
- › you don't have enough information to apply for an attachment order.

To apply for an assessment of financial means:

- › complete the application form and pay the filing fee
- › include the debtor's phone number
- › include a copy of the order.

Once Collections – Ministry of Justice have processed your application, a Registrar will phone the debtor to assess their means. The Registrar can then make a range of orders including an order for payment by instalment or an attachment order.

If the Registrar cannot assess the debtor's finances over the phone, they may issue a summons for the debtor to attend a hearing to complete a formal means assessment before a Registrar. The court will notify you with the result of the hearing.

■ Financial assessment hearing

You can apply for a hearing to ascertain details of the debtor's means and assets.

You may attend the hearing if you wish but if you don't attend the hearing can still proceed. At the hearing a range of orders can be made by the court.

To apply for a financial assessment hearing:

- › pay the filing fee
- › complete the application form and include the copy of the order.

The court will issue a summons telling the debtor to come to the hearing. You can serve the summons yourself or request a bailiff to do it.

If you decide to serve the summons yourself, the court will provide you with the following documents:

- › the summons and a financial statement
- › instruction on how to serve the summons
- › a form to record that you have served the document. You must complete and return it by email or post.

If you or your agent serve the summons, you can claim up to \$50 at the hearing for expenses.

Alternatively, you can request the bailiff to serve the summons.

■ Warrant to seize

A warrant to seize property enables a bailiff to demand payment from the debtor and on failure to meet this demand attempt to seize property that is owned by the debtor. If assets are seized and the debtor fails to pay within seven days the property will be sold at public auction to recover seizure expenses and the debt.

You need to provide:

- › an address for the bailiff to attempt seizure
- › provide any information that may assist the bailiff to identify any assets the debtor may have including vehicle details.

To apply for a warrant to seize:

- › pay the filing fee
- › complete the application form and include the copy of the order.

Once we have processed your application, a bailiff will attempt execution at the address you have provided on your application form.

Creditors should be aware that second hand assets, including vehicles, seized and sold at public auction often reach only a fraction of the perceived value.

Where can I get more information?

To find out more information on civil enforcement, application forms and fees, please visit

www.justice.govt.nz/fines/about-civil-debt/

