



Department of
Building and Housing
Te Tari Kaupapa Whare

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



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 the Collections Unit at your local District Court.

For information about renting law,
call 0800 TENANCY
(0800 83 62 62)
or visit www.dbh.govt.nz

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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.

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.

This must be done within 6 months of the date on the order or, if the order is a conditional order, the date on which the order becomes a final order. Mediator's orders from the Department of Building and Housing 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. At the hearing the adjudicator will listen to both people and make a decision.

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?

The Collections Unit of the Ministry of Justice is responsible for enforcing civil debts, including orders from the Tenancy Tribunal.

Before asking for an order to be 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.

Who may apply for, and appear at, enforcement proceedings?

Creditors

The creditor is the person or legal entity named on the order (either the landlord or the tenant) who is owed money. They may apply for, and appear at, enforcement proceedings. For corporations, this includes any officer of the corporation, for example a director or the secretary. It does not include general employees.

Lawyers

A lawyer may appear at enforcement proceedings on behalf of the creditor.

Non-solicitor agents

A non-solicitor agent, such as a property manager who is not a party to the tenancy agreement, can't appear on behalf of the creditor at enforcement proceedings unless they have permission from a judge. An application must be made to the District Court for this permission. There is an application fee.

What are the different types of enforcement?

The two main types of enforcement are:

- monetary orders to enforce the payment of an amount that has been ordered to be paid
- non-monetary orders that are most commonly to enforce the return of possession of the property.

All enforcement activities require a specific action to start the proceedings, for example making an application or filing a document in the District Court. Most enforcement activities attract a fee. All fees paid for enforcement can be recovered from the judgment debtor. This means the fees are added to the amount the debtor owes.

What are the most common enforcement proceedings?

The most commonly used monetary enforcement mechanisms are:

- distress warrants, which are most useful where you know the debtor has property worth seizing, for example a car or other property with reasonable resale value
- orders for examination, which allow the debtor's means to be examined to determine the most effective way for the debt to be paid.

Both enforcement mechanisms and the process for enforcing a possession order are outlined below.

Possession order (eviction)

A possession order becomes known as a warrant for recovery of land once it is filed in the District Court for enforcement. This warrant enables a court bailiff to return possession of the property to the person named in the possession order.

If you have a termination or possession order and the tenant has not vacated the property you must use this process. Even if you are unsure whether the tenant has left or not you should enforce your possession order through the Collections Unit.

To get a warrant for recovery of land, file your termination and possession order at the Collections Unit or District Court. No further forms or filing fee are required unless you want to enforce a conditional termination and possession order. If the possession order is conditional file your possession order at a Collections Unit along with an affidavit swearing that the conditions that terminate the tenancy have been met.

A possession order must be filed within 3 months of the termination order.

The landlord must provide details of the number of:

- tenants residing in the property in question
- pets residing in the property in question
- entry doors (for eviction notices to be posted on).

A collections officer will contact the landlord to arrange a time for enforcing the warrant for the recovery of land. The landlord must be at the premises at this agreed time. Tenants are usually 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 same time to change the locks so that the premises are secure.

If the tenant's possessions remain on the property after the date of eviction, the landlord should arrange for them to be uplifted by the tenant or apply for a disposal order.

It usually takes between 3 and 5 days to complete the eviction from the time of filing the possession order.

Distress warrant

A distress warrant enables a collections officer to visit a debtor's property and make a demand of that person for the money owed. They can also report on assets of sufficient value that can be taken (seized) and sold by the Collections Unit to pay the money owed to the applicant.

It is up to you to provide proof of ownership on assets that may be seized. The collections officer may only seize property that is owned outright by the debtor.

If you require a particular asset to be seized, the collections officer will require you to acknowledge that you indemnify the court bailiff for seizing that particular property. This provides legal protection for the collections officer in the event that the seizure is found to be unlawful, for example if the seized property does not belong to the debtor.

If you require a vehicle to be seized, you must provide the District Court with a registration docket and a copy of the financial securities on the vehicle (ie, whether any finance is owing on the vehicle). You can obtain this financial information by contacting the Motor Vehicle Securities Register on 0900 909 777. You can obtain the registration docket at New Zealand Post Shops for a \$2 fee.

A distress warrant is only useful if the Collections Unit is satisfied that the debtor has assets of sufficient value that can be sold to pay the money owed. If there is no money or assets of value at the property, the collections officer will provide a report called a *nulla bona*.

The application for a distress warrant must be accompanied by:

- the Tenancy Tribunal order or a sealed mediator's order
- a current address for the person who owes the money.

You must pay a fee to get a distress warrant.

Order for examination

An order for examination is an application to have the debtor brought before a Registrar of the District Court and examined about their financial means. If the debtor has the means to pay, then an order can be made.

The application for an order for examination must be accompanied by:

- the Tenancy Tribunal order or sealed mediator's order
- a deposit slip for the creditor's bank account
- the current address of the person who owes the money.

You must pay a fee to get an order for examination.

You will be notified of the hearing date and should attend or be represented at the hearing. It is your responsibility to examine the debtor. You are entitled to ask questions of the debtor at the examination.

At the hearing, the debtor will usually need to provide evidence of their assets and liabilities. Repayment options will be discussed.

The Registrar will usually make an order for the repayment of the debt. Payments can be ordered to be made by lump sum or instalment (most common). Payments can be ordered to be made by:

- automatic payment directly to you
- payment to the court
- an order on a benefit, wages or salary, known as an attachment order (requiring the debtor to pay some of the money owing directly to you).

If the debtor doesn't attend the hearing, you will be asked if you require a warrant of arrest to be issued.

A list of all possible enforcement actions and a brief description of what the process does is provided on the following pages.

ENFORCEMENT OPTION	DESCRIPTION
Attachment order	Orders the judgment debtor's employer (or the Ministry of Social Development if they are receiving a benefit) to deduct a certain amount from the wages or benefit paid to the judgment debtor each time they are paid. Usually issued following an examination hearing (see order for examination). No enforcement action can be taken until 48 hours after a Tribunal order is sealed.
Charging order	Allows a lien to be placed on certain types of property, including land, owned by the judgment debtor. The title to that property can't be changed without first discharging the debt. No enforcement action can be taken until 48 hours after a Tribunal order is sealed.
Contempt procedures	If the judgment debtor has the money to pay but refuses to do so, the judgment creditor can seek contempt proceedings. If granted, the judgment debtor will be required to undertake community service. The debt owing is not affected. Usually issued following an examination hearing (see order for examination).
Distress warrant	Allows the Court to demand payment and, if not paid, to seize property of the judgment debtor to be sold. Once sold, the proceeds are applied to the settlement of the debt. No enforcement action can be taken until 48 hours after a Tribunal order is sealed.

A fee applies to most enforcement options

ENFORCEMENT OPTION	DESCRIPTION
Garnishee proceedings	Allows the judgment creditor to intercept money owed to the judgment debtor by a third party. The money owed can be applied to the settlement of the debt owed to the judgment creditor. Usually issued following an examination hearing (see order for examination). No enforcement action can be taken until 48 hours after a Tribunal order is sealed.
Order for examination	An order for the judgment debtor to appear at a hearing in front of a Registrar of the District Court. The judgment creditor is entitled to be present and examine the means of the judgment debtor to pay the debt. No enforcement action can be taken until 48 hours after a Tribunal order is sealed.
Warrant for the recovery of land	If a possession order is granted, the order can be filed in the District Court, which creates a warrant for the recovery of land. A court bailiff executes this warrant to return possession of the property to the person named in the possession order. No enforcement action can be taken until 48 hours after a Tribunal order is sealed.

A fee applies to most enforcement options

Whose responsibility is it to provide the debtor's current address?

It is your responsibility to provide current work and/or home addresses and other contact information for the person the order is made against. A current address allows the Collections Unit to locate the person.

The Collections Unit is **not** responsible for locating a debtor to enforce an order. If a collections officer is unable to locate the debtor, you will need to provide a further address.

If you have been unable to locate your debtor to enforce an order, you can complete a 'Request for address information' form to apply to make further information available through the court system. You can download the form from the Department of Building and Housing website at www.dbh.govt.nz or call 0800 TENANCY (0800 83 62 62) to have a form posted to you. Larger District Courts will also have copies of the form available.

If no address can be located, you will receive a letter.

What information do you need to provide if you're seeking an address for a debtor?

If you do not successfully get an address through the above 'Request for address information' process, you can write to any government department seeking an address under the Official Information Act 1982.

To make an address request under the Official Information Act, you should follow the process below.

- Write to the Chief Executive of the government department.
- Include the debtor's full name, date of birth and any other identifying information that you have on the debtor.
- Include the debtor's last known address and the date that he or she was last at that address.
- Outline the actions you have taken to prove that the debtor's current address is not publicly available.
- Include a copy of the Court judgment or Tribunal order.
- State that you agree the debtor's address information will be released to the District Court for enforcement purposes only, and that you will not request access to this information from either the Ministry of Justice or the District Court.

WHERE CAN I GET MORE INFORMATION?

For help and information about the processes and forms for enforcement, contact the Collections Unit at your District Court. The Court will not advise you as to the best method to enforce your particular debt.

Information about making an appeal is available on the back of your Tenancy Tribunal order.

Published in October 2006 by
Department of Building and Housing
PO Box 10-729
Wellington
New Zealand

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ISBN 0-478-29729-7 (leaflet)
ISBN 0-478-29730-0 (website)

