



OBJECTIVE

To ensure that Indigo Junction's appeal mechanism are governed by principles of natural justice or procedural fairness. This means that the decision will be reviewed fairly, equitably and without prejudice.

APPEAL NOTICE

If a person disagrees with a decision made by Indigo Junction, they are required to lodge written notice of an appeal within 14 days of receiving written notification of a decision. This notice must outline which decision, or part thereof, the client disagrees with and the reasons why.

If the person fails to lodge written notice within 14 days of receiving a decision, no further action can be taken and the original decision will stand. Upon receipt of a written notice, Indigo Junction will forward an "Acknowledgement of Appeal" letter.

Within seven days of sending the "Acknowledgement of Appeal" letter, Indigo Junction's representative will contact the appellant with either the Notice of Appeal Hearing (if an appeal is to be heard) or a "Decline of Appeal" letter stating the reasons for the decline (e.g. the request may be incomplete or not recognised as a reviewable decision).

The notice of Appeal Hearing will inform the appellant of the place, date and time of the appeal hearing. Appeals will be considered by the Appeals Committee within 14 days of lodgement.

APPELLANT'S RIGHT TO ATTEND HEARING

The hearing will take place either at Indigo Junction's office or a neutral venue. An interpreter will be arranged for persons who require it.

An appellant has the right to attend the hearing of their appeal and have the opportunity to present their case. They can bring an advocate or friend if they wish.

If an appellant is unable to attend a hearing in person but they wish to speak to the Appeal Committee, arrangements will be made for a hearing by telephone conference.



EXAMINATION OF APPEAL DOCUMENTS

Prior to the hearing, the Appeal Committee will examine all documents relating to the case. Documents relevant to the appeal are to be copied and forwarded to Committee members at least five working days before the hearing.

APPEAL HEARING

The Appeal Committee will review the person's situation and the original decision made.

Appeal Committee members prior to the hearing meeting should select a Chair and nominate a member to take notes of the proceedings.

Prior to hearing from an appellant, members are to prepare, discuss and apportion questions designed to ensure all the facts about the appellant's case are understood.

At the hearing, the Chairperson is to provide an overview of the appeal process, including an assurance that the hearing is informal and that the appellant's case can be told in their own words.

An explanation will be given that one member will be taking notes for record purposes and information provided about notification of the decision and of further avenues of appeal.

Should it become apparent in the course of the hearing that additional evidence is required about the appellant's case; the Committee and the appellant are to agree on the nature of the information and the time for it to be obtained/provided.

If an appellant fails to keep the appointment, without providing an adequate reason, the Appeal Committee will proceed to consider the appeal and make its decision based on documentary evidence.

The Appeal Committee will take note of all information presented and the processes used to arrive at the original decision. Ultimately, the Appeal Committee is looking to see that the decision has been fairly determined, having regards to the facts and appropriate policy. The Appeal Committee reserves the right to either re-apply the original decision or change the decision as they see fit.

When it has all the relevant facts, the Committee will discuss all the evidence and then make its decision, documenting the reasons the decision was reached. The Appeal Committee Decision will be documented and signed by all the Committee members.

RESULTS OF APPEAL

Decisions of the Appeal Committee are final and binding. The Appeal Committee must inform the appellant in writing within seven days of the outcome of their Appeal by sending a Result of Appeal letter.

Should a client wish to dispute the final appeals decision:

1. Tenant Liability appellants should be advised that they can proceed to the Small Dispute Division of the Local Court.
2. Appellants for matters other than housing will be advised they can speak to one of the following agencies:
 - Health Matters – HaDSCO for health and disability service complaints
 - www.hadsco.wa.gov.au
 - 6551 7620 / 1800 813 583
 - Citizens Advice Bureau
 - 9388 7455
 - Discrimination, disability or harassment – Equal Opportunity Commission
 - www.eoc.wa.gov.au
 - 9216 3900
 - Privacy Matters – Office of the Australian Information Commissioner
 - www.privacy.gov.au
 - 1300 363 992

Total time of providing written decision to the appellant should not exceed 30 days of the appeal being lodged.

CORRESPONDENCE AND RECORD KEEPING

If the appellant is being assisted by an advocate and has provided written consent for the advocate to act on their (the Appellants) behalf, a copy of all correspondence is to be forwarded to the advocate.

A copy of all communication with the appellant should be kept for record keeping purposes on the client's file.

SETTLING DISPUTES IN COURT (WHERE THE RTA APPLIES)

HEARINGS

The Local Court has a section known as the Small Dispute Division which is authorised under the RTA to hear and determine, by the minor case procedure, disputes relating to Residential Tenancy Agreements, such as application relating to Security Bonds and other matters, where the amount of the claim is not more than \$10,000.

Claims over \$10,000 other than in an application relating to a Security Bond must be brought to a Supreme, District or Magistrates Court, that is competent to hear and determine a claim founded on contract for the amount of the claim. If the claim is dealt with in the Magistrates Court, the parties may consent in writing to the minor case procedure.



DISPUTES WHICH END UP IN COURT

The most common disputes that find their way into court include:

- Refusal to return Security Bond money;
- Overdue rent;
- Damage to the property;
- Maintenance of the premises; and
- Problems when ending Residential Tenancy Agreements.

IMPORTANCE OF WRITTEN RECORDS

Whatever the problem that ends up in Court, it is important that staff keep written records of all communication with tenants to ensure there is adequate documentation to present as evidence in any matters that are to be heard before a court. Such documentation should be kept on the Tenant File and notes made in Chintaro.

Applications must be made to the court closest to the rented premises, unless the parties in the dispute agree to a different arrangement.

The address of the Court where the hearing will take place is shown on a form, which will be sent to Indigo Junction. Court staff will advise on the correct form to lodge for a hearing or to defend a matter in dispute, and the application fee cost. However, Court staff cannot give advice about the strength of the case, the possible result or what evidence might be needed.

PREPERATION IS IMPORTANT

Indigo Junction will need records of all Notices, receipts and other relevant documents that will support the case. Then Indigo Junction will take both the original documents and photocopies to court.

If witnesses are to be called to support the case, Indigo Junction will supply the following details:

- The hearing date;
- The court they should go to; and
- Any documents that they should bring.

If a witness is vital to Indigo Junction's case but will not come to court voluntarily, then Indigo Junction can serve him/her with a Summons to Witness. The document needs to be served on the witness personally as it cannot be sent by post. Indigo Junction will also need to give the witness sufficient money to enable them to use public transport for the return trip to the court.

ATTENDING COURT

The Registrar has authority to hear disputes if neither party objects.

Where only one party to a dispute attends Court, the Court can deal with the application without input from the absent party.

If both parties attend Court, a conference may be held before the hearing. This is not compulsory and either party may choose to go straight to a full hearing.

Such a conference can be held to:

- Relax the parties;
- Shorten proceedings by defining the matters at issue;
- Resolve the matter, either partially or fully;
- Make any orders with the consent of both parties; and
- Advise the parties of the procedure in court, if the dispute is not resolved.

If the matter appears likely to be settled in this way, it is important to be aware of what Indigo Junction is agreeing to, as it is final and binding for both parties.

HOW THE CASE IS HEARD

The Magistrate usually conducts the hearing in the following way (except in the case of a Form 6 Application for a Security Bond dispute, where the owner always proceeds first):

1. The applicant tells their story (evidence) and presents any documents in support of their case.
2. The respondent questions (cross-examines) the applicant about their evidence.
3. If the applicant has witnesses, they tell their story.
4. The respondent can cross-examine each witness.
5. The respondent then tells their story and produces any supporting documents.
6. The applicant can cross-examine the respondent.
7. If the respondent has witnesses, they tell their story.
8. The applicant can cross-examine each witness.

THE DECISION

When both parties have finished telling their stories, the Magistrate will make a decision, which is final.

Generally, the Magistrate will outline the problem, summarise what has been said and then give the decision, known as an Order.

Everyone must listen to what the Magistrate says when making the Order. The Court will usually send a copy of the Order by mail after the hearing. The



Magistrate will advise if this will be done, as procedures vary from Court to Court.

Indigo Junction can ask the Magistrate to explain the Order. Orders handed down by the Magistrate can include:

- Ending a Residential Tenancy Agreement;
- How Security Bond money will be paid out;
- Requiring that an action be carried out in accordance with the Residential Tenancy Agreement;
- Stopping any action which breaches the Residential Tenancy Agreement;
- Payment of compensation by the person in breach of the Residential Tenancy Agreement, for loss or injury (other than personal injury), caused by the breach; and
- Payment of rent into the court until the owner carries out the Magistrates Order to remedy a breach or for compensation.

If an Order is granted and the tenant can demonstrate that they would suffer hardship if it was effective immediately, they can ask the Magistrate to suspend the order for up to 30 days.

If the tenant does not pay an amount ordered by the Magistrate, Indigo Junction can take action to enforce the Order. There are different actions that can be taken (e.g. If the Small Dispute Division rules that an amount of money be paid but the other party in the dispute does not pay, action can be taken to enforce the order through the Local Court).

Organisational Policy this procedure relates to:

1. Client Appeals (HR1004)
2. Complaints, Grievances and Disputes (HR1003)

Effective Date: December 2019

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