

Tenancy: ACT Tenancy Law Basics

This factsheet explains some basic information on tenancy in the ACT. Please see our other factsheets for more detailed information about these issues.

COVID-19 MEASURES CEASED

The *Residential Tenancies (COVID-19 Emergency Response) Declaration 2021 (No 3)* commenced on 2 September 2021 and significantly changed the responsibilities of tenants and landlords.

The post-moratorium transitional period was in effect between 26 November 2021 and 11 May 2022.

This transitional period and its measures expired on 11 May 2022. Changes under the COVID-19 Emergency Response have now ended, and the *Residential Tenancies Act 1997* is operating as normal.

Types of tenancy arrangements

It is important that tenants are informed about the different types of tenancy arrangements available.

Co-tenancy

A co-tenancy exists when two or more tenants enter into a tenancy agreement with a landlord. Tenants in a joint tenancy are 'joint and severally' liable for meeting their responsibilities under their tenancy agreement. This means the landlord can seek compensation from, or enforce the contract against, one or more of the tenants regardless of which tenant breaches the agreement. For example if one tenant damages the property, the co-tenants will also be liable for the cost of rectifying the damage, even if they did not cause the damage.

Sub-tenancy

A sub-tenancy is when a tenant lets out all or part of the premises to another party. This is only possible with the written consent of the landlord. A sub-

tenancy creates a second tenancy agreement and the tenant – now 'head-tenant' – acts as a landlord to the sub-tenant. The head-tenant is responsible for collecting rent, depositing bond and maintaining a rent ledger, while the sub-tenant is responsible for complying with their sub-tenancy agreement.

Residential tenancy agreement

The residential tenancy agreement is the agreement between the tenant and the landlord. As it contains the terms governing the arrangement, it should be carefully reviewed by both the tenant and the landlord.

Fixed term tenancy v periodic tenancy

A residential tenancy agreement may be for a fixed term or periodic. A fixed term agreement states the duration of the tenancy, after which the agreement becomes periodic. If the tenant vacates during the fixed term without grounds and without the consent of the landlord, they will be in breach of the tenancy agreement and may be found liable to pay compensation.

A periodic tenancy agreement does not specify the duration of the tenancy, and the tenant or landlord can give notice to end their agreement. The relevant notice periods are contained in the Standard Residential Tenancy Terms (SRTTs). See our **Ending a Tenancy** factsheet for more information.

Compliance with the Standard Tenancy Terms

The residential tenancy agreement automatically includes the Standard Residential Tenancy Terms. If the tenancy agreement includes a term inconsistent with the SRTTs, the landlord is obliged to notify the tenant, and the tenant does not have to accept it. The ACT Civil and Administrative Tribunal (ACAT) must formally endorse an inconsistent term before it forms part of the tenancy agreement.

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Paying a bond

The landlord will usually require a bond to be paid by the tenant, and this must then be lodged with the ACT Revenue Office: Rental Bonds. Any bond required by the landlord cannot exceed the equivalent of 4 weeks' rent.

Moving in

When moving in, it is a good idea for the tenant to take dated photos of the premises and check that all amenities function properly and all locks work. The tenant should accurately complete a condition report detailing the state of the premises. Having a report of the condition of the property at the start of the tenancy minimises disputes over things like property damage and cleanliness upon moving out.

Repairs

The landlord is required to keep the premises in a reasonable state of repair. The SRTTs recognise repairs as either urgent or non-urgent.

Simple repairs, such as the replacement of a light bulb, are the tenant's responsibility.

A landlord has four weeks from the date of notification to carry out non-urgent repairs. A landlord must carry out urgent repairs as soon as necessary. Urgent repairs include a burst water service, a blocked or broken lavatory system, serious roof leaks, breakdown in cooling, heating and cooking facilities, flooding and more.

If the property is in need of any repairs, the tenant must notify the landlord or their agent as soon as possible. Not doing so may result in the tenant having to pay compensation if the maintenance issue worsens.

See our **Maintenance and Repairs** factsheet for more information.

Ending a tenancy

If a tenant wishes to end a tenancy at or after the end of the fixed term, they can do so by giving at least 3 weeks' notice in writing to the landlord or their agent specifying the date they intend to vacate.

A tenant may terminate a periodic tenancy agreement by giving the landlord or their agent at least 3 weeks' written notice of intention to vacate.

If a tenant is in a fixed term agreement and wishes to terminate the tenancy agreement early, they can do so at any time if the landlord is willing to reach mutual termination in writing.

ACT tenancy laws also provide several other grounds allowing early termination. See our **Ending a Tenancy** factsheet for more information.

If there are no grounds for terminating a fixed term agreement and a tenant decides to leave the agreement, they will be 'breaking the lease', and may be required to pay the landlord compensation. See our **Ending a Tenancy** factsheet for more information.

Property Damage

Tenants are only responsible for damage caused to the premises as a result of the tenant's negligence, or by a wilful act of the tenant. Tenants are not responsible for damage caused by fair wear and tear, or damage caused by incidents outside of their control (e.g. a tree falling on the roof from a neighbour's yard). If tenants are found to have caused damage to property by negligence or a wilful act—that is, not arising from fair wear and tear—the landlord may require that the tenant rectify the damage or, at the end of the tenancy, make a claim against the bond for the cost of repair. Co-tenants may also be jointly liable for the cost of damage caused by a housemate.

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Evictions

Tenants can only be evicted by their landlords or agent in accordance with ACT tenancy law. However, sub-tenants should be aware that their sub-tenancy may terminate by virtue of their head-tenant's eviction. Proper notice of eviction is required.

Social Housing

The ACT Government offers Social Housing, which incorporates Public Housing, Community Housing and Affordable Housing. These are low-cost housing options for people on low to moderate incomes, or for groups who have housing needs not adequately met by other forms of housing.

To qualify for social housing, you must be over 16 years old, lawfully in Australia, a resident for at least 6 months immediately before the assessment date and income below the barrier. Please read more about the different types of housing and eligibility criteria at: www.communityservices.act.gov.au/hcs.

If you live in social housing, the *Residential Tenancies Act 1997 (ACT)* applies and you must comply with your legal obligations under your tenancy agreement.

If you are having difficulty obtaining or maintaining social housing, contact Canberra Community Law at (02) 6218 7900 for assistance.

If you have any questions arising out of the information provided in this fact sheet, contact the **Tenancy Advice Service** at:
1300 402 512 or TAS@legalaidact.org.au

Factsheet updated: 12 May 2022