

Co-Tenancy: Housemates and Flatmates

Changes to the Law

From 3 March 2021, changes to the *Residential Tenancies Act 1997* ('the Act') will significantly affect the rights and responsibilities of co-tenants.

The **Tenancy Advice Service** provides free and confidential assistance to tenants. To obtain assistance, please contact **1300 402 512** or TAS@legalaidact.org.au.

What is a co-tenancy?

A person is a co-tenant under a residential tenancy agreement if they are 1 of 2 or more tenants under the residential tenancy agreement.

There are two pre-requisites to determine whether someone is a co-tenant:

1. There has to be a residential tenancy agreement (not an occupancy agreement) between the tenants and the landlord (see our "**Occupancy Agreement**" Factsheet for more details); and
2. The tenants must be named as tenants under the residential tenancy agreement.

If you're not sure about whether you are a co-tenant, you can simply look at your tenancy agreement to see if your name is listed! Alternatively, if the ACAT declared you a co-tenant, then you are one, regardless if your name is on the lease.

Tenants in a joint tenancy are 'jointly 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. This is also the case with rental arrears. However, a tenant can still make a claim against a co-tenant.

Difference between subleasing and co-tenancy

A subleasing arrangement between a head-tenant and sub-tenants is different from a co-tenancy. A co-tenancy is where two or more tenants are named in a residential tenancy agreement with a landlord, whereas sub-tenants have an agreement with another tenant for the right to live on the property. See our "**Subletting**" Factsheet for more information about subtenancy arrangements.

Becoming a tenant under an existing agreement

A tenant in a residential tenancy agreement who wants another person to become a co-tenant under the agreement must first seek the consent of the landlord and any other tenants before the person can become a co-tenant.

The tenant must give the landlord and any other tenant written notice at least 14 days before the person is to become a new co-tenant. If the landlord or other tenants do not object within 14 days of receiving the notice, they are taken to have consented to the tenant's request.

A landlord must not unreasonably refuse to give consent to a new co-tenant becoming a party to the residential tenancy agreement. If a landlord refuses consent, they must provide the tenant with written reasons as to why they are refusing consent.

If a landlord refuses to consent (but the other tenants give consent), the tenant may apply to the ACAT for a declaration that the landlord's refusal was

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unreasonable. If the ACAT makes a “declaration order” that the refusal was unreasonable, the new person becomes a co-tenant.

As soon as an existing tenant makes an application to the ACAT for a declaration order, the new person can join as a co-tenant under residential tenancy agreement pending the ACAT’s decision. However, the new person is at risk of being required to move out of the property within 21 days if the ACAT rules in favour of the landlord.

If the new person becomes a co-tenant, the agreement continues as it normally would and the existing tenants must give a copy of the condition report of the premises to the new tenant not later than the day after the new tenant becomes a co-tenant.

When a co-tenant may leave a tenancy agreement

A co-tenant ‘leaving’ a tenancy agreement means they stop being a party to the residential tenancy agreement, meaning they sever the contractual relationship between themselves, the landlord and their co-tenant and therefore hold no further rights as tenants. The tenancy agreement continues with the remaining tenants and landlord.

A co-tenant may ‘leave’ a tenancy agreement only in 2 circumstances:

1. With the consent of the landlord and each remaining co-tenant; or
2. By order of the ACAT.

A leaving co-tenant must seek the consent of the landlord and each remaining co-tenant by giving them notice in writing at least 21 days before the day the leaving co-tenant intends to stop being a party to the residential tenancy agreement.

The landlord and the remaining co-tenant may refuse consent whether or not it is reasonable to do so if the tenant proposes to leave during the fixed term tenancy. However, they must not unreasonably refuse consent if the proposed leaving date is during a periodic tenancy.

If a tenant seeks the consent of the landlord and co-tenant but they do not respond to the request within 21 days, they are taken to have consented to the leaving tenant’s request.

Co-tenancy and bond

Repayment of bond to a leaving co-tenant

If a co-tenant stops being party to a residential tenancy agreement and has contributed to the bond, the remaining co-tenant(s) must, within 14 days, pay the leaving co-tenant the amount equivalent to their contribution to the bond and notify the ACT Revenue Office of this.

The remaining co-tenant(s) is entitled to deduct from this amount the outstanding rent owed by the tenant or other reasonable costs, such as damage to the property caused by the leaving tenant or their share of the outstanding utility bills. If the leaving tenant disputes the deductions from their portion of the bond, they may apply to the ACAT to resolve the dispute, even after they have ceased becoming a party to the tenancy.

As a result, there is no longer a need for landlords to conduct a final inspection when there is a change in co-tenants. It is the responsibility of the remaining co-tenants to assess for damages.

Payment of bond by a new co-tenant

A person becoming a new co-tenant under an existing residential tenancy agreement must pay their share of the bond to the other co-tenant(s)

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within 14 days after becoming a co-tenant and notify the ACT Revenue Office that they have paid their share.

Seeking release of the bond

These law reforms make it unnecessary for a bond to be released when co-tenants exit and enter into a tenancy agreement. However, when all tenants wish to end the tenancy agreement, then the bond will need to be released.

A landlord is required to give a signed bond release application form to at least one of the tenants.

If 1 of the co-tenants receive and sign the bond release application form but 1 of the other co-tenants does not, then the ACT Revenue Office must give written notice of this to the landlord and to each co-tenant who has not signed the form.

If the co-tenant who has not signed the form does not dispute the application form, the ACT Revenue Office will refund the amount to the parties (including any amount claimed by the landlord that is not disputed by the tenants who signed the application form) within 2 weeks of the parties receiving the written notice.

If there is an application for the release of a bond where the names registered on the bond do not match the details on the application, the ACT Revenue Office may refer the matter to the ACAT for determination as to who should receive the bond, and in what proportion. This is why it's important to notify the ACT Revenue Office of monies paid when co-tenants exit or enter into a tenancy agreement.

Alternatively, if you have any questions about your tenancy, please contact the **Tenancy Advice Service** for free and confidential advice:

1300 402 512 or tas@legalaidact.org.au

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For more information on bonds generally, please refer to our '**Bonds**' factsheet.

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Tenancy Advice Live Chat

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