

Occupancy Agreements from 3 March 2021 onwards

COVID-19 NOTICE

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

For more information, see our '**Tenancy and COVID-19**' factsheet.

From 3 March 2021, changes to the *Residential Tenancies Act 1997* ('the Act') will significantly affect the rights and responsibilities of occupants under an occupancy agreement.

Why is the concept of an 'occupancy agreement' important?

Most arrangements where a person pays money to live on a property as their home will either be:

- (a) a residential tenancy agreement (between a 'tenant' and a 'lessor'); or
- (b) an occupancy agreement (between an 'occupant' and a 'grantor').

The distinction is important because the rights and responsibilities arising from these two arrangements are different.

This factsheet does not cover situations where no money is paid for the right to live at the property (such as a 'couch-surfing' arrangement), or the property is not intended to be a 'home' (such as renting a property for a holiday). This is because these arrangements are neither residential tenancy agreements nor occupancy agreements.

What's the difference between a residential tenancy agreement and an occupancy agreement?

The following situations are likely to be occupancy agreements:

1. **Landlord is also a resident:** Where the 'landlord' is living with the 'tenant', unless the contract explicitly says it's a residential tenancy agreement;
2. **Shared accommodation:** Where the agreement is to exclusively occupy a sleeping space with access to shared facilities or the provision of domestic services, and the agreement explicitly says it's an 'occupancy agreement'. Common examples are university dormitories and boarding houses;
3. **Crisis accommodation;**
4. **Housing Support Programs:** where accommodation is provided through a program funded by the ACT government for people who are homeless or at risk of homelessness, or people who will receive welfare or health support or services when using the accommodation (e.g. alcohol and drug services).
5. **Club membership:** where the arrangement arises because of a membership in a club;
6. **Caravan parks.**

If your arrangement doesn't fit within the above categories, or it explicitly says it's a 'residential tenancy agreement,' then it is likely to be a residential tenancy agreement.

If you're unsure what type of arrangement you're in, contact the **Tenancy Advice Service** for free and confidential advice on **1300 402 512** or TAS@legalaidact.org.au.

Occupancy Agreements from 3 March 2021 onwards

The rights and obligations of an occupant under an occupancy agreement

Occupancy agreements give the parties greater flexibility in determining the rules of the arrangement than residential tenancy agreements.

Despite this greater flexibility, there are a set of “occupancy principles” that establish the minimum set of rights and obligations of an occupant. Any clause in an occupancy agreement that is inconsistent with an occupancy principle is void.

The below is a summary of the occupancy principles.

Premises must be clean, safe and secure

The grantor must provide premises that are reasonably clean, in a reasonable state of repair and reasonably secure;

Reasonable and proportionate rules

Any occupancy rules, and the consequences for breaking them, must be in writing and ‘reasonable and proportionate’ to the outcome they’re designed to achieve.

Occupancy agreement to be in writing

While occupancy agreements can be oral only, if the total length of the occupancy agreement is longer than 6 weeks, then the grantor has an obligation to ensure the occupancy agreement is in writing.

Security deposits

Any ‘security deposit’ the occupant is required to pay must be in writing, lodged with the ACT Revenue Office and capped at the following rates:

- (a) if the occupancy agreement is for longer than 6 months – 4 weeks’ worth of occupancy fees; or
- (b) if the occupancy agreement is for less than 6 months and more than 14 days – 2 weeks’ worth of occupancy fees; or
- (c) if the occupancy agreement is for less than 14 days – no security deposit is payable.

Quiet enjoyment

Occupants are entitled to ‘quiet enjoyment’ and 24 hour access to their premises and bathrooms, and access at reasonable times to shared facilities.

Limited intrusion into the premises

A grantor is only entitled to enter an occupant’s premises to carry out repairs or for other “reasonable purposes”.

Fees and charges payable are transparent

Any fees or charges payable under the occupancy agreement (e.g. utilities) must state the frequency of the fee and how such calculations are worked out.

Condition report

On the first day an occupant takes possession of the premises, the grantor must give a condition report to the occupant as well as a reasonable opportunity to check it.

8 weeks’ notice of changes to the occupancy agreement

The grantor must give 8 weeks’ notice to changes to the occupancy agreement (such as fees payable or ‘house rules’).

Termination of occupancy agreement provisions

Occupancy Agreements from 3 March 2021 onwards

The occupancy agreement must state under what circumstances the occupancy agreement may be terminated, and provide a reasonable period of notice that must be given by a party before the agreement is terminated.

Dispute resolution details

The grantor must provide the occupant with the details of any internal dispute resolution process that applies to the agreement, and the contact details for:

- (a) the grantor; and
- (b) at least 1 community dispute resolution service provider; and
- (c) the Human Rights Commission; and
- (d) Legal Aid ACT; and
- (e) The ACT Civil and Administrative Tribunal ('ACAT').

Receipts

Written receipts must be provided by the grantor to the occupant for payments over \$75, or if the occupant requests a receipt.

Obligations on occupants

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The Declaration allows grantors and occupants experiencing financial difficulty due to COVID-19 to negotiate a reduction of occupancy fees. The difference in the fee reduced is not a debt owed to the grantor.

For more information, see our '**Tenancy and COVID-19**' factsheet.

An occupant must not behave in a way that detracts from the rights of others (including another occupant) to live and work in the premises in a safe environment, free from harassment or intimidation.

An occupant must vacate the premises when the agreement ends. If this does not occur, the grantor can commence proceedings in the ACAT seeking a warrant for the occupant's eviction.

An occupant must also, at the end of the occupancy agreement, leave the premises:

- (a) in substantially the same state of cleanliness the premises were in at the start of the occupancy agreement;
- (b) in substantially the same condition the premises were in at the start of the occupancy agreement (allowing for fair wear and tear); and
- (c) ensure the premises is reasonably secure.

A failure to do so can result in deductions from the occupant's security deposit.

Terminating an occupancy agreement

There are five ways in which an occupancy agreement can be terminated:

- (a) By agreement between the occupant and the grantor;
- (b) If the termination is allowed under the occupancy agreement and reasonable notice has been given;
- (c) There has been a serious breach of the occupancy agreement justifying termination;

Occupancy Agreements from 3 March 2021 onwards

- (d) The grantor has given notice to change one of the rules of the occupancy agreement, and the occupant has given 2 weeks' notice of an intention to terminate the occupancy agreement; or
- (e) The occupancy agreement is abandoned by the occupant, which generally occurs when an occupant misses three consecutive payments and is not contactable.

If you have any questions arising out of the information provided in this factsheet, contact the **Tenancy Advice Service** for free and confidential advice at:

1300 402 512 or TAS@legalaidact.org.au

Updated: 2 September 2021