

Tenancy: Occupancy Agreements

Arrangements such as short term stays, boarder/lodger agreements and other similar, less formal, situations are not classified as 'residential tenancy agreements'. They are usually classified as 'occupancy agreements'.

What is an occupancy agreement?

An agreement is an occupancy agreement if:

- (a) a person (the grantor) gives someone else (the occupant) a right to occupy a stated premises;
- (b) the stated premises are for the occupancy to use as a home (whether or not with other people);
- (c) this right to occupy the premises is given for value; and
- (d) The agreement is not a residential tenancy agreement.

Certain types of premises are presumed to have occupancy agreements, these include: a caravan or mobile home in a mobile home park, a hotel or motel, premises used for a club or premises on the campus of an educational institution. Furthermore, 'boarders' and 'lodgers' are almost always deemed to have occupancy agreements.

The difference between a boarder/lodger and a tenant usually relates to how much control the person has in relation to the premises. The more control someone has over the premises, the more likely they are to be a tenant and not a boarder or lodger.

'Occupancy Principles'

As opposed to Standard Tenancy Terms of the *Residential Tenancies Act 1997* (ACT) which apply to all residential tenancy agreements in the ACT, there are not set terms that apply to all occupancy agreements. Instead, there are a set of 'Occupancy Principles' which guide the decision-making of the

ACT Civil and Administrative Tribunal ('ACAT') when called upon to resolve an occupancy dispute.

The 'Occupancy Principles' are:

- (a) occupants are entitled to live in premises that are reasonably clean, in a reasonable state of repair and reasonably secure;
- (b) occupants are entitled to know the rules of the premises before moving in;
- (c) occupants are entitled to have the occupancy agreement in writing for certainty of its terms if the occupancy is to be for more than 6 weeks;
- (d) occupants are entitled to the quiet enjoyment of the premises;
- (e) grantors are entitled to enter the premises at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes;
- (f) occupants are entitled to 8 weeks' notice before the grantor increases the amount to be paid for the right to occupy the premises;
- (g) occupants are entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction;
- (h) occupants must not be evicted without reasonable notice;
- (i) grantors and occupants should try to resolve disputes using reasonable dispute resolution processes.

If an occupant occupies a mobile home on land in a mobile park, and the mobile home is not provided by the grantor, then occupancy principle (e) above applies to the land and any fixtures provided by the grantor but not the mobile home itself. Moreover, the grantor is entitled to enter the mobile home only with reasonable notice, at reasonable times, on reasonable ground and for reasonable purposes.

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Bond

If the grantor requires a bond, occupants can choose to lodge the bond with the ACT Revenue Office: Rental Bonds ('ARO') but are not required to do so. It is recommended that you lodge your bond with the ARO rather than paying it directly to the grantor. If you pay the bond directly to the grantor, there is no obligation on them to lodge it with the ARO.

Termination of occupancy agreements

Occupancy agreements can terminate by mutual agreement, because the premises have become uninhabitable, or by the grantor or the occupant.

Before forcibly evicting an occupant, a grantor must first obtain a 'Termination and Possession Order' from ACAT. This would follow a hearing at which you would be allowed to be present and defend the proposed eviction.

Before vacating and terminating the occupancy agreement as an occupant, be sure you are following the procedures detailed in your occupancy agreement. You could also terminate the occupancy agreement if your grantor is in breach of your occupancy agreement, but the breach would need to be serious enough to warrant terminating the agreement.

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

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