



Tenants Queensland Inc

Share Housing

Tenant, sub-tenant or lodger? Your legal status

The Residential Tenancies and Rooming Accommodation Act 2008 (the Act) is the law that covers tenants and lessors as well as residents and providers in Queensland. This law may apply to you if you rent shared accommodation. The Act applies to *all* bond money that is paid for residential accommodation, including share accommodation.

This factsheet will help you if you live in a sharehouse and you are trying to work out your legal status under the lease. It is important to know this as it determines what your rights and responsibilities are and what actions you need to take, for example, to move out without liability or to get repairs done.

Each type of renter has different rights and responsibilities under the Residential Tenancies and Rooming Accommodation Act (the Act) – and some are not covered at all.

What type of renter am I?

Co-tenancy, sub-tenancy and rooming accommodation agreements are covered under the Act. However, boarders and lodgers are not except for the application of rules about bonds.

The following types of renters are covered by the Act

A Tenant

If you are a tenant, you alone will be named as the tenant and have signed the tenancy agreement. You will pay rent to the agent or lessor.

A Co-tenant

If you are a co-tenant, both you and your other co-tenants will have signed a tenancy agreement and named as tenants. Co-tenants have joint and severable liability, which means that each tenant may be held liable for the whole tenancy individually or all the co-tenants may be held liable jointly.

You will all pay rent to the agent or lessor.

A Sub tenant

Sub-tenants are not named as tenants on the tenancy agreement. Written permission from the lessor/agent for the tenant/s to sub-let is required. However, sometimes a sub-tenancy will exist even when that agreement is not in writing because

there is evidence that the lessor/agent knows and agrees to the sub-tenancy. For example, a person filled out an application form for the agent. Sub-tenants might pay rent to the tenant/s or the agent/lessor.

When there is a sub-tenant, the tenant/s named on the tenancy agreement is referred to as the head-tenant. The head tenant has the same rights and responsibilities to the sub-tenant that the lessor has to the head-tenant.

A rooming accommodation resident (resident)

A resident is a person who rents a room only and shares facilities such as the kitchen and bathroom with other people. To be a resident there must be four or more rooms, including your own, available for rent. However, if the provider of the accommodation *does not* live on site, you will be a resident regardless of how many rooms there are.

The provider of the rooming accommodation is required to put the agreement in writing but if this has not been done, it is still an agreement.

Usually you pay rent to the accommodation provider but sometimes there is a caretaker. There are often house rules which you must follow.

Whilst the law requires that lessors put tenancy agreements and agreements to sub-let in writing, they may still be valid even if they are implied, oral or only partly in writing.

If you rent a room in a large purpose-built student accommodation you are likely to be a resident although that is not the case for on-campus accommodation.

If you live in rooming accommodation but you have been provided with a Residential Tenancies Authority (RTA) General tenancy agreement (Form 18), you will have the same rights as a tenant – it implies that your lessor has agreed to provide you these more substantial rights.

The following types of renters are not covered by the Act

A Boarder or Lodger

You will be a lodger if you rent a room only (and share facilities) from someone who lives in the property and there is less than four rooms available for rent. A boarder also receives food as part of their agreement.

There are often house rules and rent will be paid to the accommodation provider.

If you are a boarder or lodger you are not covered by the Act with the exception of any bond you pay. Rules in the Act about bonds apply and your bond must be lodged with the RTA. At the end of your tenancy you will need to claim your bond back from the RTA by lodging a Form 4 (Refund of Rental Bond).

If you are a lodger, it is helpful if you put your agreement in writing so that everyone knows what is required of them.

Still not sure?

It can be difficult to determine if and how you are covered by tenancy laws, especially if you live in a sharehouse. If you are still not sure what type of renter you are, seek further advice.

If you are having a dispute over what type of renter you are, you can also apply directly to Queensland Civil and Administrative Tribunal (QCAT) for a determination. You will need to complete a Form 2, found on the QCAT website and apply under section 418 of the Act. The Tribunal will then be

able to decide if you are a tenant, sub-tenant a rooming accommodation resident or if you are not covered. They can also decide if your agreement is for a fixed period of time or not.

Put your agreement with co-tenants or as a lodger in writing

Whilst it's not required by law, it is good practice to have an agreement between you and your housemates about how the house operates and how you live together.

Co-tenants

If you're a co-tenant, setting out what's expected of each other regarding the cleaning and shared bills or how disputes will be resolved can be helpful. This would be separate to the tenancy agreement between all the co-tenants and the lessor.

See the sample agreement at the end of this factsheet.

Boarders and Lodgers

If you are a lodger it's even more important to set out the terms of your accommodation in writing because the legal rules which apply depend on the circumstances. By putting your agreement in writing the rules will be clear to both parties and cannot be changed or forgotten along the way.

Below is a list of things you might consider discussing with the person you are lodging with before putting them in writing.

Tips for things in agreements

- ❖ Names of the parties and their contact details
- ❖ The relationship or agreement between the parties is (for example, 'X agrees that Y can rent a room as a lodger', or 'X and Y are co-tenants and have equal shared responsibility for the tenancy')
- ❖ Whether the agreement is periodic (e.g. week to week) or a fixed term (e.g. a three month lease)
- ❖ (For lodgers) How much notice you have to give if you want to leave and how you give it.
- ❖ RENT
 - How will rent be paid and how often?
 - (Co-tenants) Is the rent paid by each person or is collected and paid by one person?
- ❖ Shared service charges
 - How will services (e.g. electricity, internet, phone) be paid for?
 - Are they included in the rent?
 - Will they be a shared expense?
 - Whose name will the accounts be in and how will this person recover money from the others?
- ❖ Guests and visitors
 - Is it necessary to give notice about visitors? How much notice?
 - Can visitors stay overnight?
 - How long or frequently can someone stay before they have to contribute to the household funds?
- ❖ Use of shared amenities and responsibility for tasks.

Tips for Happy Sharehouses

Your sharehouse is going to work better in an environment that is safe, happy and secure. Here are some tips for ensuring that living in a share house runs as smoothly as possible.

- ❖ Choose your housemates wisely
- ❖ Set ground rules early
- ❖ Draw up a roster for cleaning and other jobs
- ❖ Establish a clear process for paying rent, groceries, and other household bills
- ❖ Keep the lines of communication open

For free tenancy advice call:

Tenants Queensland Inc

1300 744 263 – Statewide advice line

9am – 12.30pm Mon Wed Thurs & 3.30pm – 7pm Tues Wed

www.tenantsqld.org.au

Further information:

Residential Tenancies Authority (RTA)

1300 366 311

www.rta.qld.gov.au

Disclaimer: This fact sheet is provided as general information only. We encourage you to seek independent legal advice regarding your specific circumstances.

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Sample agreement between co-tenants

Here's a sample agreement which you could put in place between you and your co-tenants (extracts from 'Crowded House Legal Guide to Share housing Tenants' Union of ACT').

The following conditions apply to sharing the premises at (address)

All tenants indicated below agree to

Rent:

Each provides ___ (amount) rent per week/fortnight/month (circle) to _____ (the landlord)

The rent will be paid via (please circle):

Collected from the house delivered to the agent paid to a bank account

Bills

We agree to:

- ❖ Pay an equal share of utility (power, gas and water) bills
- ❖ Keep a log of all phone calls I make and pay for those phone calls
- ❖ Pay an equal share of any additional services (e.g. washing machine rental, cleaning service, Pay TV)
- ❖ Pay all bills before the due date. I will pay these bills to:
 - Power _____ (name)
 - Phone _____ (name)
 - Gas _____ (name)
 - Water _____ (name)
 - Internet _____ (name) – if the same as phone, write 'as phone'

Chores

We agree to:

- ❖ Rotate dishwashing duties and ensure the dishes are done every ___ days
- ❖ Do my fair share of the household cleaning. This includes:
 - Doing the gardening: _____ (who will be responsible and EXACTLY WHAT THIS INCLUDES i.e. mowing the lawn once a month)
 - Cleaning the bathroom and toilet once a week/fortnight: _____
 - Vacuuming common areas once a week/fortnight: _____
 - Share grocery shopping/buy our own food/other (circle ONE)
 - If other: _____
 - Share cooking/cook own food/other (circle ONE). If other, please specify _____

Step by step for resolving disputes – agreeing to resolve disputes by communicating openly to sort issues out or using mediation or dispute resolution services.

Parties agree that if we want to make changes to the agreement that parties will negotiate around rent liabilities/finding replacement tenants and resolution of any shared bond issues

Signed by:

_____ (co-tenant 1) _____ (co tenant 2) _____ (co tenant 3)