

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 residential tenants and lessors and rooming 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.

Each type of renter has different rights and responsibilities under the Residential Tenancies and Rooming Accommodation Act (the Act) – and some types of shared accommodation are not covered at all. 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 what your rights and responsibilities are so you know what steps to take when moving into a place, paying a bond, ending your agreement or applying to get your bond back.

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.

Renters who are covered by the Act

Tenants

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.

Co-tenants

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.

Sub tenants

Sub-tenants are not named as tenants on the tenancy agreement. The tenants named on the agreement must get written permission from the lessor/agent to sub-let. However a sub-tenancy may exist even if there is no written agreement. There may be evidence the lessor/agent knows and has agreed to the sub-tenancy. For example a sub-tenant may have filled out an application form with the agent and been approved.

If tenants rent to a sub-tenant the tenant/s named on the tenancy agreement are referred to as head-tenants. Head tenants have the same rights and obligations as a lessor in relation to the sub-tenant. For example they must provide a written agreement, provide rent receipts and lodge any bond.

Sub-tenants may pay rent to the head tenant/s, or directly to the agent/lessor. However head tenants are responsible to the lessor for the whole tenancy, including the actions of the sub-tenant or any visitors or guests in the property.

Rooming accommodation resident

A resident is a person who rents a room and shares facilities such as the kitchen and bathroom with other residents. To be a resident there must be four or more rooms, including your own, available for rent. If the provider of the accommodation *does not* live in the premises, you are a rooming resident regardless of the number of rooms for rent.

The provider of the rooming accommodation is required to put the rooming agreement in writing using an RTA form 18 R. If this is not done, your verbal agreement is still covered by the Act

Rooming residents may pay rent directly to their accommodation provider, or there may be an onsite caretaker. In rooming accommodation there are often house rules that you must follow.

The law requires that lessors and head-tenants put tenancy agreements in writing. However a tenancy agreement can still exist even if the agreement is implied, oral or only partly in writing.

Student accommodation

If you rent a room in purpose-built student accommodation you are likely to be a resident. However, if you rent a room in on-campus university accommodation the Act does not apply.

Opting in to tenant rights and responsibilities

If you live in rooming accommodation and are given a Residential Tenancies Authority (RTA) General tenancy agreement (Form 18), to sign you will be covered by the parts of the Act that apply to tenants, instead of parts that apply to residents.

The Act provides better protection for tenants compared to residents, so by using a general tenancy agreement this implies your lessor has agreed to provide you with more substantial rights.

Renters who 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 if the Act applies to you?

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

Apply to QCAT for a decision

If you are having a dispute over what type of renter you are, you can apply directly to Queensland Civil and Administrative Tribunal (QCAT) under section 418 of the Act, for an urgent hearing and a decision. To apply to QCAT you will need to fill in an Application for Minor Civil Dispute – Residential Tenancy Matter (QCAT Form 2). QCAT forms are available online at www.qcat.qld.gov.au.

The Tribunal will set a date for a hearing where they can look at your evidence and decide if you are a tenant, sub-tenant a rooming resident or if your agreement is not covered by the Act. They can also decide if your agreement is for a fixed period of time or not.

Put agreements 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 agreement is different to the tenancy agreement, which is a legal contract between the lessor or agent and all of the co-tenants, who are each individually and jointly responsible.

See the sample share house agreement at the end of this factsheet.

Boarders and Lodgers

If you are a boarder (renting a room) or a lodger (receiving a room and services like meals) 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.

Share agreements

If you share accommodation the following is a list of things you might discuss and consider putting in a written agreement.

- ❖ Names of the parties and contact details
- ❖ The agreement between the parties (for example, 'X agrees that Y can rent a room as a lodger', or 'X and Y are co-tenants and have equal responsibility for the tenancy')
- ❖ State whether the agreement is periodic (e.g. ongoing week to week) or for an agreed fixed term (e.g. a three month lease)
- ❖ How much notice you must give if you want to leave and how you must give notice (verbal, written etc).
- ❖ RENT
 - How much rent you pay and how you will pay.
 - (Co-tenants) Is rent paid by each person or is rent 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 be on the accounts 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
- ❖ Responsibility for tasks, such as cleaning etc.

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 QSTARS advice line**

1300 744 263

9am – 5 pm Mon to Fri
And 5pm to 7pm Tues and Wed
www.tenantsqld.org.au

Further information:

Residential Tenancies Authority (RTA)
1300 366 311 www.rta.qld.gov.au

Queensland Statewide Tenant Advice Service (QSTARS) - www.QSTARS.org.au

QSTARS is a statewide advice and referral service for Queensland tenants. This service is managed by Tenants Queensland in partnership with community organisations across the state.

Tenants Queensland (TA)– www.tenantsqld.org.au

Tenants Queensland is an independent community organisation that aims to assist all Queensland tenants. We gratefully acknowledge funding from the Queensland Government Department of Housing and Public Works.QSTARS program and the Commonwealth Government Community Legal Service Program

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)