



Tenants Queensland Inc

# Terminating co-tenancies when not all tenants leave

**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 also apply to you if you rent shared accommodation. The Act also applies to all bond money that is paid for residential accommodation, including share accommodation.**

No matter how well (or not) that your co-tenancy works at some point you may want to leave while your co-tenant/s want to stay (or vice versa).

This factsheet will help you if you are a co-tenant and you either want to leave or to stay in the property but your other co-tenant/s do not. If your living situation has been affected by violence caused by someone else living in the premises or by your domestic associate you can consult our factsheet *When Violence Affects Your Tenancy* for your options.

If you are a co-tenant and you and all your co-tenant/s want to leave then you should read our factsheet called *You Want to Leave*. You can apply these facts as if there was only one person named as the tenant on the agreement and act collectively.

## What is a co-tenant?

When more than one person is named on a residential tenancy agreement as a tenant, each of those people are co-tenants. Under Queensland tenancy laws co-tenants are *jointly and severally liable*. This means that all co-tenants are legally responsible for the rent and care of the property as a group and as individuals. In the event rental arrears are owed or damage is caused to the property, the lessor/agent can pursue just you, as well as any or all co-tenants for payment.

It is not simple to end your legal responsibilities as a co-tenant when other co-tenants are staying. To change the term of a tenancy agreement (including who the co-tenants are) there must be an agreement (in writing) between all parties to that agreement. *All parties* means all the co-tenants as well as the lessor or agent. This is the case whether the agreement is fixed term (between a start and end date) or periodic (a continuing tenancy with no end date). And remember, fixed term agreements automatically rollover to become periodic if they are not ended according to tenancy laws.

Not everyone allowed to reside in a tenancy is a co-tenant. You can review our fact sheet *Share Housing – Your Legal Status* to find out more about when a housemate is a co-tenant, sub-tenant, rooming accommodation resident or lodger.

## 1. You want to leave but your co-tenant/s don't

If you want to leave, whether you are in a fixed term or periodic agreement, you cannot terminate either the whole of the tenancy or even your part of it alone. You must either:

- A. Get an agreement in writing; or,
- B. Get an order from the Queensland Civil and Administrative Tribunal (the Tribunal) which terminates your responsibilities as a co-tenant.

(These options are outlined below)

If you simply leave and your name is still on the lease, you will remain jointly and severally liable for the premises. Also, you will not be able to end your obligations under the co-tenancy by giving the lessor or agent a Notice of Intention to Leave or a letter which is only signed by you.

Once your responsibility under the tenancy agreement has ended, you should also apply for your bond back, either using an RTA Form 6 *Change of Shared Bond* (when everyone agrees) or by an order from the Tribunal (when there is no agreement). To commence claiming your bond when there is a dispute, send an RTA Form 4 Bond Return form to the RTA.

## How do I go about ending my responsibilities?

Once you know you need to leave you should start discussing the situation with your co-tenants. Find out if they want you to find a replacement housemate or

prefer to stay there alone and let you transfer your interests to them. If you're leaving a fixed term agreement early you may need to discuss compensation.

If you are trying to find a replacement housemate, you should put any proposals in writing to your co-tenants and keep records. This will be useful as evidence if you cannot resolve the situation with your co-tenants and a dispute arises.

## A. Agreements in Writing

### i Transfer your interest to your current co-tenants

Your part of the co-tenancy can be terminated if all parties to the lease agree to have your interest in the tenancy transferred to the remaining co-tenants on a certain date. The agreement should be put in writing and signed by all parties – you, the rest of the co-tenants and the agent or lessor. Everybody should receive a copy.

Make sure you put your request to the lessor/agent regarding the transfer of interests in writing. The lessor/agent is not allowed to unreasonably withhold their consent to the transfer. If you experience any difficulties you should send a Residential Tenancies Authority (RTA) Form 16 Dispute Resolution Request to the RTA.

You may need to negotiate other terms with your co-tenants in order for them to agree with the transfer of interests. These terms should also be set out in a signed agreement between you. They might include for example, that you will carry out certain cleaning, how the outstanding utility bills will be finalised, if there is any compensation to be paid and/or how the bond money will change hands.

You should also consider if there are any other responsibilities which you need to sort out, like having your name removed from the gas, electricity or internet accounts.

Your co-tenants may ask you to find someone to replace you. If this is the case, see below for some options.

### ii When you have to find someone to replace you

Sometimes your co-tenants want you to find someone to replace you as a co-tenant on the tenancy agreement. If your interest in the tenancy is transferred to a new person, that person will become a co-tenant along with the other co-tenants.

The agreement to transfer your interests should still be in writing and signed by you as the out-going co-tenant, the remaining co-tenants and the new co-tenant as well as the lessor or agent (see section A.i.).

Sometimes a replacement person is found but they do not become a co-tenant. If you and your housemates have agreement from the lessor or agent (agents often ask for new occupants to fill out an application form) but the new person is not named as a co-tenants, once approved they will become a sub-tenant. The approval should be in writing.

You should still get the agreement to transfer your interest in the tenancy to your co-tenants in writing. The remaining co-tenants will become head-tenants to the sub-tenant and they are required to have an agreement in writing about the tenancy with the sub-tenant. Any bond money taken from the sub-tenant is required to be lodged by the head-tenants with the RTA.

If the person replacing you does not become a co-tenant and there is no agreement from the lessor or agent for them to live in the property, they are likely to be a lodger. It is good practice to put the agreement between the co-tenants and the lodger in writing - things like how much the rent is, who it gets paid to, agreements about shared utility costs and how much notice is required to be given if they want to leave.

Often agents will tell you that you must have everyone living in the property approved by them beforehand, this is not entirely correct. As long as you are not in breach of another term of your tenancy agreement, e.g. how many people are allowed to reside in the property, you are allowed to have a lodger without the lessor/agent's consent. Bond received from lodgers must also be lodged with the RTA.

## What if I can't agree with my co-tenants?

If you think your housemates are being unreasonable or you can't find a replacement housemate or otherwise can't reach an agreement to be released from your responsibility under the tenancy agreement, you may need to apply for an Excessive Hardship termination.

If your name is still on the lease, you remain jointly and severally liable for the property. If you simply stop paying rent the remaining co-tenants could bring an action against you for losses they incur as a result. This is because there is an implied contract between you all as co-tenants, namely to share the liability in respect of the premises between you.

This is also why you should document your attempts to resolve the situation. For example if you propose any replacement housemates, do that in writing. You may need this later if your housemates try to recover a debt or take your bond, when you think their actions have contributed to the losses incurred.

When you think the situation is unresolvable, it may be time to apply for a termination in the Tribunal (see section B).

Though it's not advisable to do so, if you leave before you get to the Tribunal, inform your co-tenants and the agent/lessor in writing when you will be leaving and give back your keys to your co-tenants. This alone will not end your liabilities under the tenancy agreement but it may help show that you are not responsible if there is any damage done to the property after you leave. Your liability for losses such as debts arising from your failure to contribute to rent is likely to continue longer if you are leaving during a fixed term tenancy agreement.

## B. Getting an order from the Tribunal which terminates your responsibilities as a co-tenant.

- ❖ You may need to make an *Application for Termination for Excessive Hardship* to the Tribunal to end your responsibilities in the tenancy if:
- ❖ You cannot agree with your co-tenants about ending your responsibilities or,

- ❖ You need to quickly end your interest in the tenancy due to circumstances that demonstrate excessive financial or personal difficulties.

Excessive Hardship applications are made directly to the Tribunal. You will need to fill out a Queensland Civil and Administrative Tribunal Form 2 stating that you are applying under section 310, and lodge it in either the Tribunal local to the tenancy or in the Brisbane Tribunal. You are the applicant and all your co-tenant/s and the lessor or agent must be named as respondents. You will also need to attach a copy of the tenancy agreement and any evidence of your hardship.

At the hearing you will need to show how your circumstances have changes since you signed the agreement (the hardship circumstances), or, how you have, without success tried to end your responsibility under the tenancy agreement.

If you are successful the Tribunal will make an order ending your responsibility for the tenancy on a specified date. Depending on the circumstances the Tribunal might make an order requiring you to compensate your co-tenants if they suffered any losses or expenses due to your early termination. If this occurred it is likely to be at a separate hearing at a later date after an application from your co-tenants if you can't reach an agreement. This is more likely if you are leaving during the term of a fixed term agreement and/or if you did not take steps to try to resolve the situation.

There is no legislative definition of 'Excessive Hardship' but it might include for example:

Personal, financial, employment, health and domestic violence.

The Macquarie Dictionary defines 'hardship' as 'a condition that bears upon one; severe...need', and 'excessive' as 'exceeding the usual or proper limit or degree'.

## 2. Your co-tenant/s left

### You want to stay

In the event your co-tenant has left and stopped paying rent without sorting anything out with you, if you want to remain in the property you must continue to meet the responsibilities under the tenancy agreement which

includes covering all the rent and catching up on any arrears. Failure to catch up any rent arrears, after formally being asked to rectify the situation, may lead to eviction and a claim for compensation.

It's a good idea to keep the lessor or agent informed about the situation.

You may want to try to find a replacement housemate - a new co-tenant, sub-tenant or lodger (you should follow a similar process to that set out under section A.ii).

Document your efforts in finding a new housemate and your communication with and any request to the lessor or agent. You may need these if the lessor or agent takes action against you to recover monies or if you take action to recover your losses from the co-tenant/s who left.

Your co-tenant cannot end their part of or the whole tenancy agreement by simply sending a Notice of Intention to Leave to the agent or lessor. However, if this happens and you don't want to leave, inform the agent/lessor in writing that the notice was not signed by all the co-tenants and is not valid. Send a Form 16 *Dispute Resolution Request* along with a copy of your response to the agent/lessor to the RTA as soon as possible.

### You want to leave

If you need to end the tenancy agreement (for example because you can't cover the rent) and you either can't find your exiting co-tenant or they won't help you, you will need to apply to the Tribunal for a termination on the grounds of Excessive Hardship. This is particularly important if you are on a fixed term agreement because the potential liability is usually greater than under a periodic agreement which can be ended with two weeks' notice. In an Excessive Hardship application you and any other remaining co-tenants are the applicants and the exited co-tenant/s and the lessor or agent should be named as the respondents.

### Recovering any losses caused by your exiting co-tenant/s

If you believe you have suffered a financial loss as a consequence of the exited co-tenant/s' actions you can try to recover those losses. If your co-tenant

contributed to the bond, you should start action to retain their share to cover their unpaid debts.

### Bond

If your exiting co-tenant has not already commenced a claim on the bond you can make your own claim.

Send an RTA Form 4 Bond Return form stating on it that you are claiming your co-tenant's portion of the bond. You will also have to either negotiate with the lessor/agent to 'top up' the bond when the claim is settled or note on the form that you wish the monies to be retained by the RTA in your name (as the tenancy is continuing).

If you are already out of the property you may contest your co-tenant's part of the bond, either for it to be paid to the lessor or agent to cover debts they are responsible for or to you if you have covered those debts.

### I'm still owed money

If your co-tenant did not contribute to the bond or the bond is not enough to cover the financial loss which their actions have caused you, you can commence further action against them by making an application for a Debt Dispute in the Tribunal using a QCAT Form 3. Other than bond issues, disputes between co-tenants are not Residential Tenancy Disputes (which are disputes between the lessor/agent and the tenant/s). You will need to know how much you are claiming and have evidence that the losses were caused by your co-tenant.

#### 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](http://www.tenantsqld.org.au)

#### Further information:

**Residential Tenancies Authority (RTA)**

**1300 366 311**

[www.rta.qld.gov.au](http://www.rta.qld.gov.au)