

When Violence affects your Tenancy

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.

This factsheet will help you if you want to change your living arrangements after an act of violence was committed against you by someone else living in the property or by a domestic associate (whether or not your domestic associate lives in the property).

You have options to move out of the premises, or stay and have the tenancy transferred into your name and the perpetrator's name removed. Either way, depending on the circumstances, you may need to apply for an urgent hearing to the Queensland Civil and Administrative Tribunal (The Tribunal) using the QCAT Form 2, Application for Minor Civil Dispute – Residential Tenancy Dispute.

If you want to stay in the property

You're a Domestic Associate

If you are a domestic associate of a tenant or co-tenant, you may apply to the Tribunal under section 245 (*Injury to a Domestic Associate*) of the Act, for an order recognising you as a tenant or co-tenant instead of your domestic associate, because the domestic associate has committed an act of domestic violence against you.

A domestic associate is defined in s 245(9) of the Act as meaning any person in any of the following relationships

- ❖ A spousal relationship;
- ❖ An intimate personal relationship;
- ❖ A family relationship;
- ❖ An informal care relationship.

This definition is the same as the one set out in Division 3 of the *Domestic and Family Violence Protection Act 2012* (Qld).

When deciding on the application the Tribunal must take into account the following:

- ❖ whether you have applied for a protection order;

- ❖ if an application for a protection order was made, whether an order was made or is still in force;
- ❖ if a protection order was made whether a condition of the order prohibits your domestic associate from entering or remaining on the premises; and,
- ❖ anything else the Tribunal considers relevant (including an order that any other person must not list the person's personal information in a tenancy database under s459).

For an application under this section the Tribunal must allow the lessor/agent an opportunity to be heard so you must name them as a respondent on your application. You're an occupant but not a tenant or co-tenant or domestic associate

The Act also applies to you if you occupy the premises but are not named as a tenant on the tenancy agreement, and a tenant or co-tenant has, or is likely to intentionally or recklessly cause:

- ❖ Serious damages to the premises; or
- ❖ Injury to you or someone else occupying, or allowed on, the premises.

You can make an application to the Tribunal under section 246 of the Act (*Injury or damage affecting occupants*) for an order to be recognised as a

tenant or co-tenant instead of the tenant or co-tenant who has perpetrated the violence.

For an application under this section the Tribunal must give the lessor/agent an opportunity to be heard so you must name them as a respondent on your application.

If you want to leave

Instead of remaining in the premises you may wish to move out. If so, it is important that you end any on-going responsibilities you have for the tenancy.

You're the only tenant

If you are the only person named as a tenant on the tenancy agreement and:

- ❖ **If you are on a periodic agreement** (commonly called week to week); you can give two weeks written notice on the RTA Form 13 *Notice of Intention to Leave*. You must make sure that vacant possession of the property is handed back to the agent or lessor to end the agreement. You will also need to complete a Form 14A, *Exit Condition Report*.
- ❖ **If you are on a fixed term agreement** you can apply to the Tribunal under section 310 (Excessive Hardship) to ask that the

agreement be ended. You will need to show evidence of the situation.

You're a co-tenant

If you are a co-tenant you may apply to the Tribunal under section 312 of the Act (*Termination by Co-tenant*) to end the agreement because another co-tenant has intentionally or recklessly caused or is likely to intentionally or recklessly cause:

- ❖ Serious damage to the premises; or,
- ❖ Injury to the applicant or someone else occupying or allowed on the premises.

You will need to show evidence of the situation and name the other co-tenants and the lessor or agent as respondents in the application.

You're not named as a tenant or co-tenant

If you are an occupant in the property but are not named as a tenant or have a sub-tenancy agreement, you do not have responsibilities under the tenancy agreement. You can move out by giving notice to the person in the house you rent from.

If you have an on-going agreement (separate from the tenancy agreement) to rent there, you should seek some advice about how to end it correctly.

Domestic and Family Violence Protection Act 2012 (Qld)

The *Domestic and Family Violence Protection Act 2012* (Qld) allows parties to apply to the Magistrates Court for a protection order (Form DV1 Protection Order Application Form). An order will be made if the court is satisfied that it is necessary or desirable to protect an aggrieved person from domestic violence. The Magistrates Court can include conditions in the order that prohibit a party from remaining at, entering or even approaching the premises. This is known as an ouster order. An ouster order can be requested by completing question 11 of the Form DV1. These conditions can be imposed regardless of any tenancy agreement that the respondent is listed under.

If the parties to a protection order share a rental property, any tenancy matter can be heard by the Magistrates Court concurrent to the protection order application.

The process for applying for an order relating to a tenancy agreement at the same time as a protection order is to complete a QCAT Form 2 (Minor Civil Dispute) using any of the sections set out in this factsheet, and lodge it in conjunction with the Form DV1 Protection Order Application Form.

Alternately, any tenancy matter can be heard separately at QCAT as it would in a normal application.

You're a domestic associate

If you are a domestic associate, whether or not you are a tenant yourself, you may apply to the Tribunal under section 321 of the Act (*Termination by domestic associate*) to end the agreement.

Ending the Agreement when you are not a tenant

Termination by occupant (s 322):

When you are not responsible for the tenancy agreement (that is, you are not named as a tenant), you can apply to the Tribunal to end the tenancy because the tenant has:

- ❖ Intentionally or recklessly caused, or is likely to cause, serious damages to the premises; or
- ❖ Committed an act of violence against you

If your application is successful, it will end the tenancy agreement of the perpetrator of the violence.

To do so:

- ❖ If you are an occupant, apply under section 322 of the Act;
- ❖ If you are a domestic associate, apply under section 321 of the Act.

If you are concerned that further damage may be done to the property or violence against perpetrated against you, at the same time you can seek an order to restrain the tenant from these actions under section 323 of the Act.

Magistrates Court

A domestic associate may make an application under s245, s321 or s323 and have this application heard at the same time as an application for a domestic violence order. The lessor and the respondent must receive written notice of your application.

If you already have a QCAT application on foot you may apply to have it removed (transferred) to the Magistrates court and dealt with at the same time as your application for a domestic violence order as long as you notify the lessor and respondent of this in writing and give them a copy of the application. If an adjournment of the tenancy application is sought you must also notify the lessor of the adjournment application.

Ouster Orders

An ouster order is an order made by a court stating that the respondent must leave a particular place, or stopping the respondent from entering or attempting to enter the premises and/or approach within a stated distance of the place.

It may require the respondent to move out of the house shared with another person (the aggrieved). If you are seeking an ouster order as a condition of the protection order it's possible to seek an order under s245, s321 or s323 at the same time whilst in the magistrate's court.

When your tenancy has ended

Moving out

If the tenancy is ending and you were a tenant or a co-tenant make sure you return the keys promptly. It is your obligation to leave the premises clean and in the same condition to the start of the tenancy, excluding fair wear and tear. It is important to ensure all rent is paid up to the day the tenancy ends.

Obtain and complete an *Exit Condition Report* (RTA Form 14A), keep a copy and give a copy to the agent or lessor upon leaving the premises. The lessor or agent must, within 3 business days after receiving the Exit Condition Report, sign the copy, showing parts they agree or disagree with and return a copy to the tenant. If you pay for any cleaning, mowing etc., keep copies of receipts.



If the tenancy is not ending, as far as possible, clean and leave your room and any other areas you can in the same condition as when you moved in except for fair wear and tear. It is useful to get some photos.

If you are not a tenant, co-tenant or sub-tenant you do not have responsibilities under the tenancy agreement.

Getting your bond back

If you paid a bond, when you move out you can use an RTA Form 4 "Refund of Rental Bond" to apply for a refund of your bond. If the claim is agreed between you and lessor (and any other bond contributors) you can all sign the form to release the bond immediately. If you cannot agree with your lessor, agent or co-tenant, sign and lodge your own Form 4 directly with the RTA as soon as you know there is a dispute.

The RTA will act on the first Form 4 they receive and notify the other parties of the claim on the bond. Time limits apply to dispute a bond claim. The RTA will hold the disputed bond money until the parties reach an agreement or the Tribunal makes an order. If the other party fails to dispute the bond claim within the prescribed time, the RTA will release the bond to the first claimant.

If you agree to release your bond to the lessor, as compensation for rent owed, damages or costs associated with breaking the lease, confirm that this is the total compensation they are claiming. If this is the case you can write "full and final settlement" when signing the Form 4.

Tenancy Databases

The Act sets out reasons why tenants in Queensland can be listed on a tenancy database and processes required before a listing occurs. Only people named as tenants on a tenancy

agreement can be listed and a listing can be made only after the tenancy has ended.

Applying to the Tribunal to dispute a listing

There are a number of applications which you can make to either prevent a proposed listing or for removal of a current tenancy database listing.

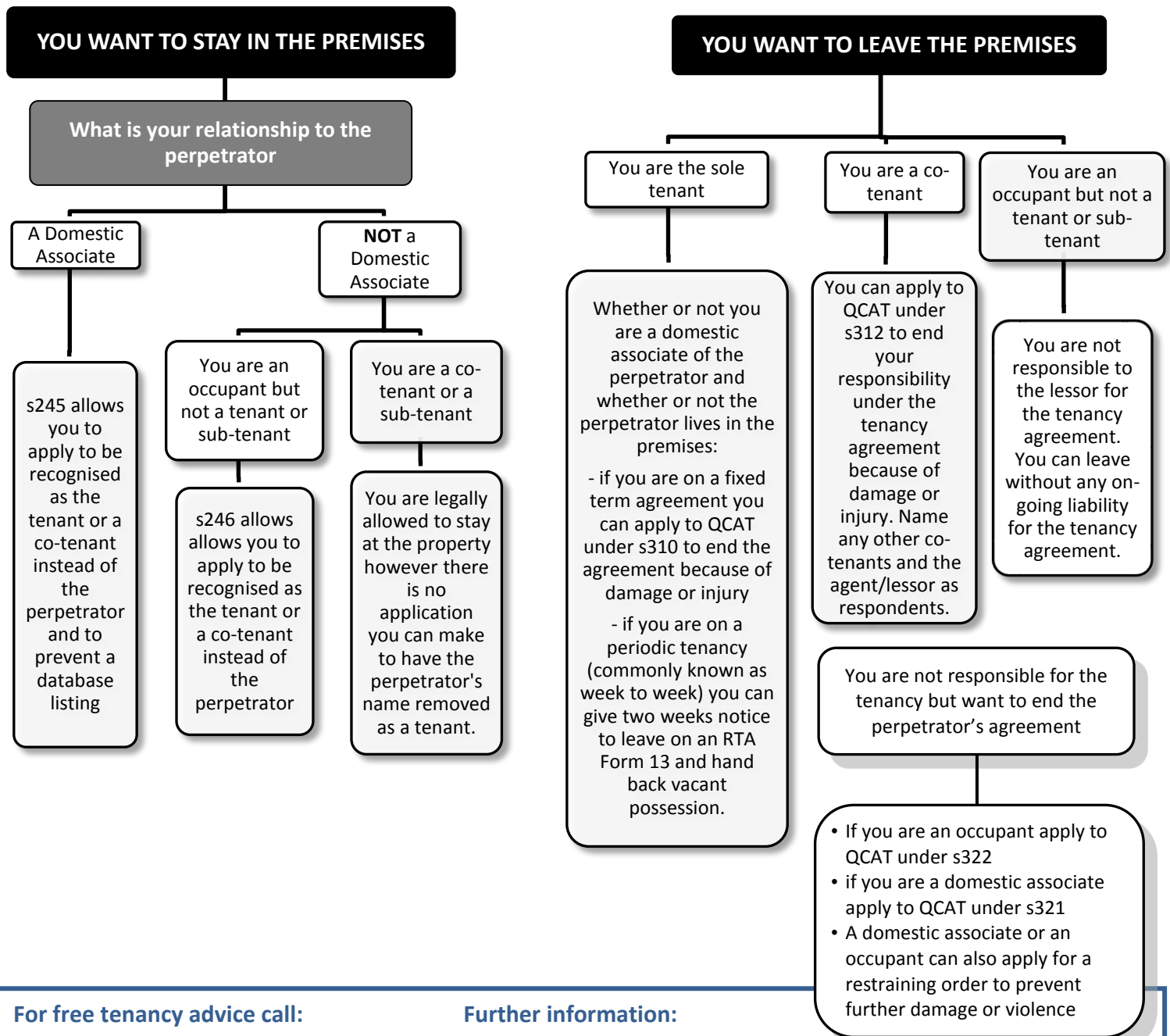
A person who has experienced domestic or family violence can apply to QCAT for an order not to be listed on a tenancy database, or can request a listing be removed. This applies if the database listing relates to a breach of the tenancy agreement arising from an act of domestic or family violence.

A co-tenant can apply to the Tribunal under s245 Injury to domestic associate and request an order they not be listed.

If you are listed because violence perpetrated by another person resulted in having to break the lease, damage to the premises or unpaid rent etc. you can apply for removal. You may make an application to the Tribunal about an inaccurate, incomplete, ambiguous or out of date listing. Apply to the Tribunal under section 461 (*Application to tribunal about personal information listed*), naming the listing person/agent and the database company as respondents and providing evidence of the tenancy situation and a copy of the listing.

However, a tenant under the agreement, who was a perpetrator of domestic or family violence, can be listed on a tenancy database if there are grounds for the listing

For full details about database listing reasons and applications for removal please consult our factsheet *Tenancy Databases*.



For free tenancy advice call:

Tenants Queensland Inc

1300 744 263 – QSTARS statewide advice line

www.tenantsqld.org.au

Tenants Queensland receives funding from the State and Commonwealth funded Community Legal Services Program and also manages the Queensland Statewide Tenant Advice and Referral Service (QSTARS) which is funded by the Queensland government

DV Connect

1800 811 811

www.dvconnect.org

Legal Aid

"How do I get a Domestic Violence Order?" fact sheet and sample Form DV1, Application for a Protection Order

1300 651188

www.legalaid.qld.gov.au

Further information:

Residential Tenancies Authority (RTA)

1300 366 311

www.rta.qld.gov.au

Women's Legal Service

(07) 3392 0670 or 1800 677 278 outside Brisbane.

www.wlsq.org.au