

Terminating co-tenancies when not all tenants leave

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 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 want to leave, or your co-tenant/s are moving out but you want to stay in the property. If all co-tenant/s want to leave and agree to end the tenancy see our factsheet called *You Want to Leave* for steps to end your tenancy. If your living situation is affected by violence you can also see our fact sheet *When Violence Affects Your Tenancy*.

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. If rent is unpaid, or damage is caused to the property, the lessor/agent can pursue you for payment, as well as anyone else who signed the agreement as a co-tenant.

It is not simple to end your legal responsibilities as a co-tenant when other co-tenants are staying. To change a tenancy agreement (including who the co-tenants are) all parties must agree in writing. *All parties* means all the co-tenants as well as the lessor or agent. This is the case whether the agreement is fixed term (an agreed time with a start and end date) or periodic (a weekly tenancy that continues with no end date). And remember, when a fixed term agreement ends it automatically becomes a periodic tenancy if no steps are taken to end the tenancy.

Not everyone who lives in a shared tenancy is a co-tenant. Some people may be sub-tenants, boarders, residents, or simply unapproved occupants. 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 boarder or lodger.

Agents or lessors sometimes require all people who reside in the premises to be named on the agreement as co-tenants. Alternately agents may allow approved occupants to live in the premises without being named on the lease. If people change during a tenancy the agent may demand new people to fill in application forms for approval. Agents sometimes charge a fee to process these applications.

You want to leave but your co-tenants are staying

Tenancy agreements can only be terminated in a way set out in the Act. If you want to leave, whether you are in a fixed term or periodic agreement, you cannot terminate the whole of the tenancy, or just your part without either:

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

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

If you terminate your part of the tenancy agreement you can apply to the RTA for your bond. You can send the RTA a Refund of Rental Bond Form 4. Alternately if someone is taking over your share of the bond, and everyone agrees, you can use a *Change of Shared Bond* form 6 to update the RTA records.

If there is a dispute over the bond refund, between co-tenants, or between the tenants and the lessor or agent, and you are unable to resolve the dispute with the help of the RTA Dispute Resolution Service you can apply to the Tribunal for a hearing about the bond.

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 want to stay and let you transfer your interests to them.

Put agreements in writing

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

Transferring your interest to 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 an agreed date. The lessor or agent must also agree to the transfer.

Any agreement to transfer interest in the tenancy must be put in writing and signed by all parties, including you, the other cotenants on the agreement and the agent or lessor. Everybody should receive a copy. If you have an existing lease agreement you can attach this to the lease as evidence the parties have changed

If you ask the lessor/agent to agree to transfer your interests to other tenants this request should be in writing. The lessor/agent must not unreasonably withhold their consent to the transfer. If you have difficulties you can use a Dispute Resolution Request form (RTA form 16) to apply to the Residential Tenancies Authority free Dispute Resolution Service.

The RTA can provide free telephone mediation to help parties resolve tenancy disputes. If you cannot reach agreement the RTA will send you a Notice of Unresolved Dispute. You and your co-tenants can then apply to the Tribunal for an order about the dispute.

Other tenancy issues

If you ask your co-tenants to allow you to transfer your interests to them, you may need to negotiate other terms to get them to agree; such as any responsibility you have for cleaning, how shared utility bills will be finalised, how your share of the bond will be dealt with, and whether you need to sign over your bond or pay your co-tenants any compensation or additional rent for an agreed period. Put any agreement in writing.

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

Finding someone to replace you

Sometimes your co-tenants want you to find someone to replace you as a co-tenant. Once you find a person to take over your share of the co-tenancy you need to sign an agreement with all parties to transfer your interest in the tenancy to the new co-tenant.

An agreement to transfer your interests in the tenancy must be in writing and signed by you, along with the remaining co-tenants, the new co-tenant, and the lessor or agent. Keep a copy. This agreement can be attached to the lease agreement as evidence of the change.

Approval for sub-tenants

Sometimes a replacement person is found but they do not become a co-tenant. If the new person is not going to be included on the lease as a new co-tenant, you and your housemates will still need permission from the lessor or agent to allow the person to move in as an approved occupant. Lessors and agents often require new occupants fill out an application form for approval.

If the new person is approved by the lessor or agent as an occupant, the new person will be a sub-tenant renting from the remaining co-tenants. The remaining co-tenants will become head-tenants and have similar obligations to a lessor; they must provide a written tenancy agreement, lodge any bond money they receive and provide rent receipts.

Boarders or lodgers

If the person replacing you does not become a co-tenant, and if there is no written permission from the lessor or agent for them to live in the property, they are likely to be a boarder or lodger. It is still good practice to put any agreement between the co-tenants and the lodger in writing; such as the agreed rent, who to pay rent to, costs for shared utilities, and how much notice must 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. the number of people allowed to reside in the property, you are allowed to have a boarder or lodger without the lessor/ agent's consent. However any bond you receive from a boarder or lodger must be sent into the RTA.

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

If you think your housemates are being unreasonable, you cannot find a replacement housemate, or you cannot reach a written agreement to be released from the tenancy, you may need to apply to the Tribunal for an order to terminate your part of the tenancy.

While your name remains on the lease, you continue to be jointly and severally liable for the property, even if you are not living there. If you move out and simply stop paying rent the remaining co-tenants could take action against you to recover losses they incur (such as extra rent they have to pay). This is because there is an implied contract between co-tenants to share the liability for the tenancy agreement you all signed.

When ending your part of a co-tenancy it is useful to document any steps you take to resolve the situation. For example, if you propose replacement housemates do this in writing. This may be important evidence if your housemates try to recover a debt or take your bond, and you think their actions are unreasonable and have contributed to the losses they are claiming.

If you think the situation cannot be resolved you may need to apply to the Tribunal for a termination order. You can apply to the Tribunal to terminate for different reasons, such as termination due to Excessive Hardship

Though it's not advisable to do so, if you leave before you get to a Tribunal termination order, 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 if you are leaving during a fixed term tenancy agreement.

Tribunal termination applications.

The Queensland Civil and Administrative Tribunal (the Tribunal or QCAT) can hear tenancy disputes. Visit www.qcat.qld.gov.au for information about residential tenancy hearings. To apply for a hearing you will need to fill out a QCAT Application for Minor Civil Dispute Residential Tenancy Dispute form 2. This form includes a list of tenancy applications that you can make.

Ending a tenancy for excessive hardship

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 such as excessive financial or personal difficulties.

In the Tribunal all applications for termination are Urgent applications. An application for a termination order due to Excessive hardship is an Urgent application under section 310 of the Act. If you are applying you are the applicant. The respondents are your co-tenant/s and the lessor or agent (if you have more than one respondent include their details on an extra piece of paper). You must state what section you are applying under and what order you want the Tribunal to make. You will need to attach a copy of the tenancy agreement, and evidence of your hardship.

There is no legislative definition of 'Excessive Hardship' but it might include: personal, financial, employment, health or domestic violence issues.

Tribunal decisions

At the hearing you will need evidence to show how your circumstances have changed since you signed the agreement (the hardship circumstances), and the steps you have taken (if any) to end your responsibility under the tenancy agreement.

If you are successful the Tribunal can make an order to terminate your responsibility for the tenancy on a specified date. Depending on the circumstances the Tribunal may also make an order about your bond refund, or an order you compensate your co-tenants for their loss or expense due to your early termination.

Compensation or bond claims are more likely if you are leaving during a fixed term agreement, or if you failed to take reasonable steps to try to resolve the situation. Disputes over bond and compensation are non-urgent matters and the Tribunal may, or may not, decide these matters at the urgent termination hearing. You may need to make a new Tribunal application about these issues at a later date if you cannot reach an agreement.

Your co-tenant leaves but you want to stay

If your co-tenant has left and stopped paying rent without sorting anything out with you, and you want to remain in the property, you must continue to meet the responsibilities under the tenancy agreement. This 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 find replacement housemates - a new co-tenant, sub-tenant or lodger.

Document your efforts to find a new housemate and your communication with the lessor or agent and get permission for new flatmates. If there is a dispute this is evidence if the lessor or agent takes action against you to terminate the agreement or recover money from you, 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. If this happens and you want to continue the tenancy inform the agent/lessor in writing that the notice was not signed by all the co-tenants and is not valid. You can also send the RTA a Form 16 *Dispute Resolution Request* along with a copy of your response to the agent/lessor.

You want to leave

If you need to end the tenancy agreement (for example because you can't cover the rent) and you can't find your former 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 former co-tenant/s and the lessor or agent should be named as the respondents.

Recovering any losses

If you believe you have suffered a financial loss due to the actions of a former co-tenant you can take action to try to recover these financial costs or losses.

Bond claims

If your former co-tenant contributed to the bond you can take action to claim their share of the bond to recover money owed to you. You can ask them to sign a Change of Shared Bond to sign over their share of the bond to you. The agent will also need to sign this form.

If they do not agree to sign over their share of the bond you could lodge a Refund of Rental Bond form 4 with the RTA to claim their share. You can ask the RTA to keep the full bond and put it in your name. If there is a dispute about this and you cannot resolve the dispute you may need to apply to the Tribunal for a non-urgent hearing about a bond dispute between co-tenants.

Alternately your former co-tenant may apply to the RTA to get their bond back. You will be notified of this and will have an opportunity to dispute this claim. If your former co-tenant successfully claims some or all of the bond, or gets a Tribunal order for the refund of bond money, you will need to negotiate with the agent to 'top up' the bond amount for your continuing tenancy.

If you have moved out of the property you can make a claim for the full bond, or can dispute a bond claim by your former co-tenant. You can ask for the bond to be paid to the lessor or agent to cover tenancy debts, or paid to you if you paid debts they were liable for.

I'm still owed money

If your co-tenant did not contribute to the bond, or the bond is not enough to cover your financial loss caused by their actions, you can take further action against them to recover your loss by making an application to QCAT for a Minor Debt Dispute. Use 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 need to know how much you are claiming and have evidence that the losses were caused by your co-tenant.

Free tenancy advice: Queensland Statewide Tenant Advice Referral Service (QSTARS) - 1300 744 263

RTA forms and tenancy information: Residential Tenancies Authority (RTA) - 1300 366 311

Useful websites: www.rta.qld.gov.au www.qcat.qld.gov.au www.tenantsqld.org.au www.qstars.org.au