

When violence affects your tenancy

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.

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, under the Act you may apply to the Tribunal under section 245 (*Injury to a Domestic Associate*) 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 a 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 the application the Tribunal must take into account the following:

- ❖ whether you have applied for a protection order or

- ❖ 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.

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.

If you are the only tenant

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

- ❖ **If you have 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*. To end the agreement you must also return the keys and ensure that vacant possession of the property is handed back to the agent or lessor. 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 end the agreement. You will need evidence of your situation.

If you are 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.

If you are an occupant

If you live in the property as an occupant, but are not named on an agreement as a tenant, co-tenant or sub-tenant, 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 to live there, that is separate from the tenancy agreement, you should seek some advice about how to end your agreement 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.

You can apply directly to QCAT for a tenancy hearing, whether or not you are applying for other orders related to domestic violence. However if the parties to a protection order share a rental property, the Magistrates Court can hear your tenancy matter at the same time as an application for a protection order. To apply for an order relating to a tenancy agreement, at the same time as a protection order, you will need to fill in a QCAT Form 2 (Minor Civil Dispute – Residential Tenancy Matter) under any of the sections set out in this factsheet, and lodge it in conjunction with the Form DV1 Protection Order Application Form.

If you are 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 further violence may be 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.

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 important to ensure all rent is paid up to the day the tenancy ends.

It is your obligation to leave the premises clean and in the same condition to the start of the tenancy. However you are not liable for routine repairs or maintenance or reasonable fair wear and tear.

It is good to gather evidence to show you have met your obligations when you move out. If you pay for any cleaning, mowing etc. keep copies of receipts. You can also take photos of the premises. You can also obtain and complete an *Exit Condition Report* (RTA Form 14A) to record the condition of the premises. Keep a copy for your records.

You must give a copy of your completed Exit Condition Report to the agent or lessor when you leave the premises and return the keys. The lessor or agent then has 3 business days to inspect the premises, add their comments to the form, and return a signed copy to you at your forwarding address on the form.

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 a Refund of Rental Bond RTA Form 4 to apply to the RTA 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, you can 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 bond claim form they receive. If it is an “agreed” claim, signed by all parties they can release the bond. If it is a “disputed” claim that is not signed by all parties, the RTA will notify any other parties to the bond that there has been a claim lodged. These parties then have 14 days to respond to the Notice of Claim and lodge an RTA Dispute Resolution Request form 16 with the RTA to dispute the claim.

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 according to the first claim.

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 a lessor or agent is allowed to list a tenant on a tenancy database (such as TICA) and process they must follow.

Only people named as tenants on a tenancy agreement can be listed and the listing can only be made after the tenancy has ended.

Allowed reasons for listing a tenant

- You leave the tenancy and owe the lessor money in excess of your bond amount and fail to pay the money you owe under an RTA conciliation agreement or a Tribunal order.
- The Tribunal has terminated your tenancy due to your objectionable behaviour, or repeated breach of the agreement.
- You abandon the premises and owe money for the tenancy in excess of the bond amount.

Applying to the Tribunal to dispute a listing

You can apply to the Tribunal for an urgent hearing to dispute a listing and request removal of the listing, or stop a proposed listing. You can do this if:

- the listing person has not followed the required process under the Act (eg; not notified you about the proposed listing), or;
- you do not think the listing complies with the listing reasons set out in the Act (eg: the lessor claims you owe money but you paid the debt, or there is no Tribunal order about the debt)
- there are mitigating circumstances that led to the listing (eg: domestic violence) and due to the listing you are suffering hardship, such as homelessness (eg: you had to break the lease due to DV, or unpaid rent or damage to the premises was caused by someone else).

Under section 460 (*Application to tribunal about breach*) you can seek removal of a listing that does not comply with the Act. You must apply within 6 months of becoming aware of the listing.

Under section 461 (*Application to tribunal about incorrect or unjust listing*) you can seek removal if the listing is unjust or has mitigating circumstances.

Under section 462 you can stop a proposed listing (*Application to tribunal about proposed listing*).

See *Tenancy Databases* fact sheet for more info

More information:

Qld Statewide Tenant Advice Referral Service QSTARS
1300 744 263 www.qstars.org.au

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

Queensland Civil Administrative Tribunal (QCAT)
1300 753 228 www.qcat.qld.gov.au

DV Connect
1800 811 811 www.dvconnect.org

Legal Aid – online guide for how to apply for an AVO
1300 651188 www.legalaid.qld.gov.au

Women’s Legal Service
3392 0670 or 1800 677 278 www.wlsq.org.au

