

DFV TENANCY TOOLKIT

for DFV sector workers

This integrated tenancy toolkit sets out the steps women may take to manage their rental housing when deciding whether to start, stay in or leave a tenancy.

'Keeping Women Safe in their Homes'



Tenants Queensland Inc

Funded by



Queensland
Government



Introduction to this toolkit

Acknowledgement

Tenants Queensland (TQ) acknowledges the funding received from The Department of Child Safety, Youth and Women and the federal government for the funding used to develop and deliver this integrated tenancy toolkit.

Purpose

This integrated tenancy toolkit aims to build the capacity of domestic and family violence service providers to assist women to STAY, START, LEAVE their rental accommodation when their housing is affected by domestic and family violence.

Structure of the toolkit

This toolkit provides tenancy law information and procedure in relation to **STARTING, STAYING AND LEAVING** a tenancy. Each of these three tenancy options is explored in detail including the relevant procedural steps a domestic and family violence professional may be required to follow when working through a tenancy issue.

Tenants Queensland

[Tenants Queensland Inc](#) is a specialist Community Legal Service for tenants. Established in 1986, Tenants Queensland aims to assist tenants (and their advocates) to understand their tenancy rights and responsibilities and empower tenants (and advocates) to take action to resolve disputes and maintain secure rental accommodation.

Tenants Queensland, manages the [Queensland Statewide Tenants Advice Referral Service](#) (QSTARS). QSTARS was established in October 2016 and continues to be funded by the Department of Housing and Public Works.

This integrated features of this tenancy toolkit includes:

- Key tenancy law definitions
- Practical steps tenants can take to resolve tenancy disputes
- Hyperlinks to relevant tenancy forms and fact sheets
- Flow charts for easy reference
- Quick Tips – snapshots summarising the tenancy law issues
- Sample RTA and QCAT tenancy form
- A referral list for legal services, referral services, counselling and support services and practical assistance.

Relevant legislation referred to in this toolkit includes:

- [Residential Tenancies and Rooming Accommodation Act 2008 \(Qld\)](#) ('the Act') and
- [Residential Tenancies and Rooming Accommodation Regulation 2008 \(Qld\)](#) ('the Act');
- [Domestic and Family Violence Protection Act 2012 \(Qld\)](#) ('DFVPA'); and
- [Queensland Civil and Administrative Tribunal Act 2009 \(Qld\)](#) ('QCAT Act').

The use of the letter 's' and 'ss' throughout this tenancy toolkit are taken to mean 'section' and 'sections', respectively, of the legislation being relied upon.

Legal disclaimer

This integrated tenancy toolkit is intended to act as an information guide for domestic and family violence sector and is not intended to substitute for specific legal advice for an individual tenancy matter.

In the case of ambiguity or inconsistencies between the toolkit and legislation, the legislation prevails.

Contents

Overview.....	4
Definitions and common terms.....	5
Part 1 DFV tenant wanting to	
STAY, LEAVE or START a tenancy?.....	7
STARTING a tenancy	7
1.1.1 Application to rent	8
1.1.2 Signing the tenancy agreement.....	8
1.1.3 Discrimination issues	9
1.1.4 Tenancy database listings.....	9
1.1.5 The tenancy agreement	10
1.1.6 Fixed and periodic tenancy agreements.....	10
1.1.7 If there is no written tenancy agreement.....	11
1.1.8 Money at the start of a tenancy agreement.....	12
1.1.9 Standard of the rental property and Condition Reports	13
1.1.10 Outgoings and service charges	14
1.1.11 Sub-letting	14
STAYING in a tenancy	16
1.2.1 Injury to domestic associate (application to be recognised as a tenant) s245.....	17
1.2.2 Injury or damage affecting occupants (application to be recognised as a tenant) s246.....	18
1.2.3 Locks and keys and tenant security	19
1.2.4 Installing security features and safety upgrades.....	20
1.2.5 Damage to the rental property and liability.....	21
1.2.6 Paying the rent	21
1.2.7 Failure to pay rent.....	22
1.2.8 Termination for rent arrears in general tenancies	23
1.2.9 Resolving disputes about rent arrears	24
LEAVING a tenancy	25
1.3.1 Ways to end a tenancy.....	26
1.3.2 Mutual Termination Agreement	27
1.3.3 Giving a Notice of Intention to Leave or "Break lease"	28
1.3.4 Application to QCAT for urgent hearing to terminate a tenancy	29
1.3.5 Termination by tenant due to Excessive Hardship (s310)	30
1.3.6 Application by co-tenant for termination for damage or injury (s312).....	31
1.3.7 Application by tenant's domestic associate or termination for damage or injury (s321).....	32
1.3.8 Application by occupant for termination for damage or injury (s322)	33
1.3.9 Application for interim order about damage or injury (s323)	33
1.3.10 Abandoning a tenancy	34
1.3.11 Disputes about abandonment.....	35
1.3.12 Goods and documents left behind after a tenancy ends	36
1.3.13 Lessor obligations when dealing with goods left on premises.....	37
1.3.14 Seeking the return of goods left on premises after a tenancy ends	38

1.3.15 Moving out tips	39
1.3.16 Exit Condition Report.....	39
1.3.17 Bond Refunds.....	40
1.3.18 Potential compensation claims by the lessor for early termination of a fixed term lease	41
1.3.19 Disputing unreasonable or excessive break lease costs.....	42
1.3.20 Dealing with debt collectors	43
1.3.21 Unacceptable behavior by debt collectors	45
1.3.22 Tenancy Database listings	46
1.3.23 Disputing a tenancy database listing.....	48

Part 2 The Residential Tenancies Authority 50

2.1 What is the RTA?	51
2.2 RTA forms.....	52
2.3 Notice of Intention to Leave - RTA Form 13	53
2.4 Dispute Resolution Request – RTA Form 16.....	54
2.5 Refund of Rental Bond – RTA Form 4	55
2.6 Exit Condition Report – RTA Form 14a	56

Part 3 Queensland Civil and Administrative Tribunal 57

3.1 What is QCAT?	58
3.2 The QCAT Application	58
3.3 Preparing for the QCAT hearing.....	59
3.4 Attending a hearing by telephone.....	59
3.5 Adjournments.....	60
3.6 Interpreter service.....	60
3.7 Assistance for people with a hearing impairment.....	60
3.8 Wheelchair access.....	60
3.9 Security at the hearing	61
3.10 Closed Hearing.....	61
3.11 What happens at the hearing?	61
3.12 After the hearing	62
3.13 Re-openings.....	62
3.14 Appeals.....	62

Part 4 The Magistrates Court and tenancy law..... 63

4.1 Applications in the Magistrates Court	64
4.2 Adjournments.....	65
4.3 Magistrate Court forms	65

APPENDIX..... 66

Start, Stay and Leave Flowcharts.....	67
Sample Letter to Propose Mutual Termination Agreement.....	70
Sample Mutual Termination Agreement	71
Sample Break Lease Letter.....	72
Sample QCAT Form 2 – Application for Minor Civil Dispute – Residential Tenancy.....	74



Overview

Purpose

Safe and secure housing is essential for individual wellbeing. It is widely acknowledged domestic and family violence is a key cause of homelessness for women. With over 30% of Queenslanders living in rented accommodation service providers need access to information to support women when domestic violence impacts on a tenancy.

This integrated tenancy toolkit aims to provide domestic and family violence service providers with relevant tenancy law information and tools to enhance their capacity to assist women when their tenancy is affected by domestic violence.

When considering tenancy options women who are impacted by domestic violence may want to start a new tenancy, stay in their current tenancy, or leave the tenancy. This tenancy toolkit describes these three tenancy pathways; STARTING, STAYING AND LEAVING a tenancy.

By assisting women to take steps in accordance with Queensland tenancy law, we hope DFV service providers can assist women to minimise the impact of domestic violence on their tenancy and reduce the risk of tenancy debts and tenancy database listings affecting their future rental options.

Tenancy law in Queensland

In Queensland, the [Residential Tenancies and Rooming Accommodation Act 2008 \(Qld\)](#) (the “Act”) is the legislation that sets out the rights and responsibilities of tenants and lessors in general tenancies and moveable dwelling tenancies (caravan parks). The Act also applies to rooming accommodation residents and providers.

Residential Tenancies Authority

The [Residential Tenancies Authority](#) (RTA) is the Queensland Government statutory authority that administers ‘the Act’. The RTA provides tenancy information, bond management, dispute resolution, investigations and prosecutions, and policy and education services.

Queensland Civil Administrative Tribunal

The [Queensland Civil and Administrative Tribunal](#) (QCAT or the Tribunal) can hear and decide tenancy disputes for parties covered under the Act. Women experiencing domestic violence are able to apply directly to QCAT for a decision about a tenancy matter in cases where those involved in a tenancy dispute are unable to resolve the tenancy matter for themselves.

Magistrates Courts

[Magistrates Courts in Queensland](#) hear domestic violence matters and in certain circumstances, may also hear QCAT tenancy matters at the same time.





Definitions and common terms

Agent	A person appointed by the lessor to manage rental property
Co-tenant	If more than one person signs a tenancy agreement these parties are considered to be co-tenants. They are individually and jointly responsible for meeting the terms of the tenancy contract with the lessor/agent
DFVPA	Domestic and Family Violence Protection Act 2012 (Qld) (the 'DFVPA')
Dispute resolution	The RTA offer a free, confidential dispute resolution service to assist tenants, lessors and agents resolve disputes without the need to apply to QCAT
Domestic associate	A 'domestic associate' – is a relationship with the perpetrator of domestic and family violence. This relationship may be: (a) A spousal relationship; (b) An intimate personal relationship; (c) A family relationship; (d) An informal care relationship
Domestic Violence	Domestic violence is defined in the DFVPA section 8
Fixed term tenancy	Has a start date and end date and can be for any agreed length of time (such as 6 months or 12 months)
Lessor	The person who gives the right to occupy residential premises under a residential tenancy agreement
Moveable Dwelling	A caravan or a manufactured home
NOITL	Notice of Intention to Leave – RTA Form 13
Non-urgent QCAT hearing	Non-urgent matters must go through dispute resolution before an application can be filed in QCAT, you will be required to attach a Notice of Unresolved Dispute as evidence of that process
NTL	Notice to Leave – RTA Form 12
NTRB	Notice to Remedy Breach – RTA Form 11. An RTA form used to notify a party that they are in breach of their obligations and must take steps to solve the problem
NURD	Notice of Unresolved Dispute (NURD) is issued by RTA when the dispute resolution service is unable to assist parties reach an agreement
Occupant	A person who occupies residential premises but is not named on the tenancy agreement. An occupant may be named on the agreement as an "approved occupant" but is not legally responsible for the tenancy agreement with the lessor/agent
Periodic tenancy	Is a week-to-week ongoing agreement that continues until the tenancy is terminated by either party



Provider	A person who provides rooming accommodation to residents
QCAT Act	Queensland Civil and Administrative Tribunal Act 2009 (Qld) ('QCAT Act')
QCAT/the Tribunal	Queensland Civil and Administrative Tribunal
QSTARS	Queensland Statewide Tenant Advice Referral Service – a free advice service for tenants
Resident	A person who rents a room in rooming accommodation where they, occupies 1 or more rooms as the person's only or main residence; and who is not the provider; or a relative of the provider
Residential Tenancy Agreement	An agreement under which the lessor gives the tenant the right to occupy residential premises
Rooming Accommodation	Generally, rooming accommodation is where a resident rents a room and the room is not self-contained, and there is no right to occupy the entire property, and they share facilities such the bathroom, kitchen or common room
RTA	Residential Tenancies Authority
Service Provider	A funded entity providing domestic and family violence services to a person experiencing domestic and family violence
Sub-tenant	A sub-tenant is a person who rents premises from a head tenant. The head tenant holds the same responsibilities as a lessor under the tenancy agreement with the sub-tenant
Tenant	A tenant is a person who is given permission to occupy a residential tenancy premises under a residential tenancy agreement
The Act	Residential Tenancies and Rooming Accommodation Act 2008 (Qld) (the 'Act')
TQ	Tenants Queensland – a specialist tenancy law service for Queensland tenants and residents
Urgent QCAT hearing	<p>For a full listing of urgent matters please refer to: http://www.qcat.qld.gov.au/matter-types/residential-tenancy-disputes/urgent-and-non-urgent-disputes</p> <p>Urgent matters do not have to go through the RTA's dispute resolution service prior to an application to QCAT</p>





PART 1 STARTING A TENANCY





1.1.1 Application to rent

When applying for a rental property an applicant may be asked to complete an application form and provide evidence including income, proof of identity, references, and rental history. This information allows the lessor/agent to assess whether the applicant is a suitable tenant. The lessor/agent may ask for personal information including:

- Personal identification;
- Financial information;
- Tenancy history;
- Previous bond refunds; and
- Personal references.

When applying for a tenancy, applicants are not legally obliged to provide all of the above information but lessors or agents may not consider an application if the applicant refuses to provide requested information.

It is the lessor/agent who decides which applicant will be offered the tenancy. The lessor/agent is not required to provide a reason for refusing a tenancy application although it is useful for a prospective tenant to seek feedback if their application is unsuccessful.

If an applicant is refused a tenancy due to being listed in a Residential Tenancy Database, it may be possible to seek a legal remedy by disputing the issue at the Tribunal. Please see 1.1.4 and 1.3.22 in this toolkit for more information.



1.1.2 Signing the tenancy agreement

When renting a residential property the lessor/agent must provide the approved applicant with a written tenancy agreement to sign. A residential general tenancy agreement must include:

- the name and address of the tenant and property manager/owner;
- the start and end date of the agreement (or state that it is periodic);
- how the tenant should pay rent and how much is to be paid;
- standard terms (a summary of the Act that sets out the rights and responsibilities of the parties); and
- any special terms (these special terms must not contradict the Act and should be agreed in advance, e.g. a dog is allowed but must be kept outside, permission for tenant to install fixtures, agreements about pool or garden maintenance, or improvements the lessor has agreed to provide – such as new carpet, air con etc).

The lessor/agent is responsible for preparing the tenancy agreement and providing a copy to the approved applicant. The tenancy agreement must be provided to the approved applicant before they can be asked to pay any monies for the tenancy (other than a key deposit or holding deposit) and before the tenancy, agreement can be considered to be legally binding.

On, or before, the day the tenant occupies the property, the approved applicant must:

- sign the agreement; and
- within 5 days of receiving the agreement return the signed agreement to the lessor/agent.

It is always advisable for a tenant to keep a copies of the proposed tenancy agreement for their records. Once the tenant returns a signed copy, the lessor/agent must sign the agreement and return a signed copy to the tenant within 14 days.





1.1.3 Discrimination issues

[The Anti-Discrimination Act 1991 \(Qld\)](#) states, every person has the 'right to be treated fairly'.

If an applicant for a rental property believes they have experienced unlawful discrimination on the basis of a personal attribute including gender, race, religion, age and/or parental status, it is advisable to make contact with the Anti-Discrimination Commission of Queensland (ADCQ) on 1300 130 670 to make a complaint or visit www.adcq.qld.gov.au for information.



1.1.4 Residential Tenancy Databases (RTD)

Many real estate agents and lessors use tenancy databases to assess the suitability of prospective tenants. The application form usually requires the prospective tenant to give written consent for their references to be checked, including a check to see if the applicant has been listed on a tenancy database by a previous real estate agent.

There are a number of companies that operate tenancy databases in Australia. Some tenancy databases operate on a regional basis and others on a national basis. Regardless of the specific area the data base may cover, tenancy databases, such as TICA in Qld, are sometimes referred to as 'blacklists'.

A tenant can be 'blacklisted' if an agent or lessor alleges that they defaulted on their tenancy obligations.

If the lessor/agent uses a tenancy database the agent/lessor is legally obliged within 7 days after using the tenancy database, to provide the applicant with written notice as to the name of the data base used and that personal information about the applicant is in the data base: s 458B.

Reasons for being listed on a tenancy data base may include damage to the rental property resulting from the perpetrator's acts of domestic violence.

If the lessor/agent uses a tenancy database they must inform the applicant of this. If a reference check reveals the applicant is listed on a tenancy database, the lessor/agent must provide the applicant with information about this listing.

If an applicant discovers they are listed on a tenancy database they may be able to dispute the listing. See the [TQ Tenancy Databases fact sheet](#) for more information.





1.1.5 The tenancy agreement

When tenants rent a place the lessor/agent must provide a written agreement that is written in a clear way and in accordance with the requirements of the Act. The RTA website has sample standard tenancy agreements.

There are three types of tenancies covered under the Act including:

1. [General Tenancy Agreement - RTA 18a](#) - is used when renting a house, unit, apartment, townhouse or houseboat.
2. [Moveable Dwelling Agreement - RTA 18b](#) - is used when renting a caravan, moveable dwelling or site. And
3. [Rooming Accommodation Agreement - RTA R18](#) - when a resident rents a room from a provider and shares common areas such as bathrooms, kitchens with others residents. If the provider also lives in the premises a rooming accommodation agreement only applies if 4 or more rooms are rented out.



1.1.6 Fixed and periodic tenancy agreements

A residential tenancy agreement may be for either a periodic agreement, or a fixed-term agreement.

A periodic agreement, is a week-to-week ongoing agreement that continues until the tenancy is terminated by either party.

A fixed term agreement has a start date and end date and can be for any agreed length of time (such as 6 months or 12 months). Tenants should only sign a fixed term agreement if they intend to stay the full term, as it can be costly if tenants need to "break a lease" and terminate their fixed term agreement early.

When a fixed term agreement expires, if neither party takes steps to terminate the tenancy agreement, the agreement will automatically roll over into a periodic "week-to-week" agreement.

A residential tenancy agreement is a legally binding contract between the lessor/agent and the tenant/s.





1.1.7 If there is no written tenancy agreement

It is an offence under the Act for the lessor/agent to fail to provide a written agreement to a tenant.

However, if the tenancy agreement is only verbal, or the written agreement does not comply with the requirements of the Act, the tenancy laws may still apply to all parties.

If there is doubt about whether a tenancy agreement is covered by the Act, seek tenancy advice or apply to QCAT for a decision.

For more information, see the following Tenants Queensland fact sheets: [Renting in Queensland](#) and [Starting a Tenancy](#).

QUICK TIPS: The start of a tenancy

At the start of a tenancy, the lessor/agent must provide a copy of the signed tenancy agreement, which set out the agreed terms and conditions of the tenancy.

The lessor/agent must provide a rent receipt or keep a rent record for all rent payments. Rent receipts must be provided if rent is paid by cash or cheque.

If a tenant pays a rental bond they must be given a receipt and all bond contributors must sign a [Bond Lodgment - RTA Form 2](#). The lessor/agent/provider must lodge this bond money with the RTA within 10 days.

The lessor/agent must fill in an [Entry Condition Report- RTA Form 1a](#) and give the tenant a copy at the start of the tenancy. After moving in the tenant has 3 days to inspect the premises, add comments to the form, and return a signed copy to the lessor/agent. When moving in it is also useful for tenants to take photos of the property. For more information please view the RTA video on how to complete the Entry Condition Report at <https://www.youtube.com/watch?v=VSLAGs4Mo4w>.

The lessor or agent must give the tenant a copy of the RTA information booklet [Pocket Guide for Tenants - RTA Form 17a](#). RTA booklets are also available for rooming residents or moveable dwelling tenants.

Other documents that may be required: In rooming accommodation the resident must be given a copy of the House Rules. In a moveable dwelling park the tenant must be given a copy of the Park Rules. In a set of units the tenant must be provided with the copy of the body corporate by laws if they apply.





1.1.8 Money at the start of a tenancy agreement

A prospective tenant cannot be required to pay any money at start of a tenancy (except for a key and/or holding deposit) until they are given a copy of the proposed tenancy agreement.

Once parties enter into a tenancy agreement prospective tenants can be asked to pay rent in advance and a rental bond. Tenants cannot be asked to pay more than 2 weeks rent in advance for a periodic agreement, or one month rent in advance for a fixed term agreement.

In general tenancies the maximum bond is equal to 4 weeks rent. However, if the weekly rent is over \$700 there is no maximum bond amount.

Assistance with bond and rent payments

[The Department of Housing and Public Works](#) provides [bond loan](#) and [rental grant](#) services to assist low income tenants meet the costs of starting a new tenancy. Eligibility guidelines apply. An [application](#) for a bond loan or rental grant must be approved prior to a tenant signing a tenancy agreement, or starting a new tenancy.

Bond Loans:

A Bond Loan is an interest-free loan to cover the rental bond when moving into private rental accommodation. The loan is up to a maximum of 4 weeks rent, and must be repaid. Bond Loans are available to eligible people only.

Rental grants:

The Department of Housing and Public Works provides Rental Grants to help people experiencing a housing crisis who are moving into private rental housing. A Rental Grant is a once-only grant of two weeks rent. It does not have to be repaid. The Rental Grant is not intended to be used for two weeks rent in advance as it can not be paid until the tenancy is established.

Call 13 74 68 for information about bond loans or rental grants or visit www.qld.gov.au/housing. [Applications](#) can be submitted online or at a local [Housing Service Center](#). If needed the Rent Connect worker at the local Housing Service Centre can assist people apply for a bond loan or rental grant.

Eligibility Criteria:

There are various elements to the 'eligibility criteria', for both bond loans and rental grants.

The eligibility criteria is can be accessed at <https://www.qld.gov.au/housing/renting/rent-assistance/bond-loan/bond-loan-rental-grant-guide/bond-loan-rental-grant-eligibility>.

TQ encourages DFV service providers to develop formal connections/relationships with their local Rent Connect service - local Housing Service Centre as housing staff can assist tenants to apply for a bond loan or rental grant as described above. For more information: <https://www.qld.gov.au/housing/renting/rent-assistance>.





1.1.9 Standard of the rental property and Condition Reports

Entry Condition Reports

At the start of a tenancy the lessor/agent must ensure the premises are clean, in good repair and fit for the tenant to live in. Premises must also comply with all health and safety requirements, such as inclusion of working smoke alarms and electrical safety switches.

When tenants move in the lessor/agent must give the tenants a prepared Entry Condition Report to record any defects in the property and note any areas that are not clean or in good repair. Tenants must return a signed copy of the Entry condition report to the lessor/agent within 3 days of moving in. It is also a good idea to keep a copy.

If the tenant notes any repair or maintenance issues that need attention the tenant can give the lessor/agent a written request to do the repairs. If repairs are not done in a reasonable time tenants can give the lessor/agent a [Notice to Remedy Breach - RTA Form 11](#) giving the lessor/agent 7 days to fix the problem.

For more information see the [TQ fact sheet Repairs and Maintenance](#).

Exit Condition Reports

When tenants move out they must leave the property clean, in the same condition as the start of the tenancy, except for reasonable fair wear and tear.

At the end of the tenancy tenants must use an [Exit Condition Report - RTA Form 14a](#) to record the condition of the premises and must give a completed copy to the lessor/agent when they return the keys. Tenants can also take photos of the property and keep copies of cleaning receipts, as evidence they have met their obligations.

The Entry condition Report, Exit Condition Report, and other evidence, such as photos and cleaning receipts, can assist tenants to dispute unfair bond or compensation claims by the lessor/agent at the end of the tenancy.





1.1.10 Outgoings and service charges

The tenancy agreement should state whether or not tenants are responsible for service charges during the tenancy.

Tenants can only be held liable for water charges if this is stated in the agreement and the premises are individually metered for water supply. The lessor can recover the full cost of water use if the premises are fully water efficient and this is stated in the agreement. If premises are not water efficient the lessor must pay for a reasonable supply of water and this reasonable amount should be agreed at the start of the tenancy.

When moving in tenants will normally need to get services connected, such as gas, phone or electricity, and will be responsible for these costs. If the account is in the name of the lessor, or if the premises are not individually metered for these services, the agreement must state this. For shared services the agreement must state how the tenant share will be calculated and how the lessor will recover payment from the tenant.

The lessor/agent must not require a prospective tenant to agree to buy goods or services from the lessor, agent or a third party, as a condition of being accepted for the tenancy.



1.1.11 Sub-letting

When a tenant named on an agreement gives another person (a 'sub-tenant') the right to rent part, or all of the property, the tenant becomes the 'head-tenant' in relation to the sub-tenant.

A 'head-tenant' has the same responsibilities as a lessor and must provide the sub-tenant with a written tenancy agreement, provide receipts or keep a record of rent payments, and must lodge any bond with the RTA.

Any agreement between a head-tenant and sub-tenant should be in writing. It is also a good idea to include any arrangements for sharing bills (e.g. gas, electricity or internet).

Tenants must get written consent from the lessor/agent before they can sub-let the rental property. Approval for additional occupants or sub-tenants can be noted in the special terms of the tenancy agreement.

If the tenant believes the lessor/agent has acted in an unreasonable way in refusing to sublet, the tenant may apply to the tribunal for an order authorising the tenant to make the sublet without the lessor's/agent's written consent to sublet ss 239(1)(2).

If you are an occupant in the property but not named as a sub-tenant, you do not have responsibilities under the tenancy agreement, please refer to 1.2.2, 1.2.8 in this toolkit for more information.





PART 1 STAYING IN A TENANCY





STAYING in a tenancy

The action a person can take to stay in the tenancy may depend on whether they are a **domestic associate**, **occupant**, or named on the tenancy agreement as a **tenant** or **co-tenant**.

The definition of domestic associate in the Act is the same definition as in the [*Domestic and Family Violence Protection Act 2012 \(Qld\)*](#) (the DFVPA).

A domestic associate - has a relationship with the perpetrator of domestic and family violence described as:

- a. A spousal relationship;
- b. An intimate personal relationship;
- c. A family relationship;
- d. An informal care relationship.

An occupant – is a person occupying the premises and not named on the Tenancy Agreement (lease agreement).

A **tenant** is a person named on the tenancy agreement and legally responsible for meeting the terms of the agreement. A co-tenant is someone named on the agreement as a tenant along with other tenants/co-tenants. All co-tenants are individually and jointly responsible for the tenancy agreement.





1.2.1 Injury to domestic associate (application to be recognised as a tenant) s245

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

Ouster conditions:

Ouster conditions as directed by the Magistrates Court are those conditions which may prohibit the perpetrator of domestic violence (the 'respondent'), from remaining at a stated premises, entering or attempting to enter a stated place and/or approaching within a stated distance of a stated premises s63 the Act.

If an Ouster condition is imposed on a respondent (perpetrator of domestic violence), the applicant (as the 'aggrieved'), may be able to apply under the Act, s245 for an order recognising the applicant/aggrieved as the tenant instead of the respondent/perpetrator of domestic violence.

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

- whether a protection order has been applied for;
- if an application for a protection order was made, whether an order was made or is still in force; and
- if a protection order was made whether a condition of the order prohibits the tenant from entering or remaining on the premises: ss57; 63-67 DFVPA.

The court must give reasons for making or not making the ouster condition: s64(3) DFVPA.

If an applicant has not applied for a protection order they may be able to provide the Tribunal with other relevant evidence of domestic violence occurrence, such as a letter or affidavit from a support worker or health practitioner.

If the Tribunal makes an order they can also make any other order they consider appropriate, such as orders about the bond paid by the person's domestic associate, or orders to prevent a person being listed on a tenancy database.

Magistrates Court and tenancy applications:

It is also important to remember the Act also allows the Magistrates Court to hear and decide those tenancy applications ordinarily heard in QCAT: ss 139 (2); 140 (2); 141 of the DFVPA - refer to the QCAT and Magistrates Court section of this toolkit for further information.

For an application under this section the Tribunal must allow the lessor/agent an opportunity to be heard so the domestic associate must name the lessor on the application as a respondent, along with any other tenants or co-tenants: The court must not be open to the public unless the court orders otherwise (s141 (3) DFVPA);

- written notice of the tenancy application, an application to remove it to the Magistrates Court or any adjournment of the application must be given to the lessor by the aggrieved or respondent making the tenancy application: s141(5) DFVPA - please refer to the Magistrates Court section of this toolkit for further information.





1.2.2 Injury or damage affecting occupants (application to be recognised as a tenant) [s246](#)

The Act also applies to a person who is an occupant of the premises but not named as a tenant on the tenancy agreement, where a tenant or co-tenant has, or is likely to intentionally or recklessly cause:

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

An application can be made to the Tribunal under section 246 of the Act (Injury or damage affecting occupants) to seek an order the occupant be named 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 the occupant must name the lessor or agent as a respondent on the application, in addition to any other tenants or co-tenants.

QUICK TIPS: Applying to QCAT to stay in the tenancy

The definition of domestic associate is in [s245](#) in the Act and this is the same as the definition set out in the [Domestic and Family Violence Protection Act 2012 \(Qld\)](#).

To apply to QCAT for an urgent hearing applicants need to fill in a [QCAT Form 2 – Application for Minor Civil Dispute – Residential Tenancies](#).

Under section [245](#) a domestic associate may apply to be recognised as the tenant (or co-tenant) instead of a tenant who has committed an act of domestic violence. The applicant may also seek an order to prevent being listed on a tenancy database.

Under section [246](#) an occupant may apply to be recognised as a tenant (or co-tenant) instead of a tenant who has committed damage to premises or injury to the applicant or other occupant.

The Tribunal must give the lessor/agent an opportunity to be heard. The applicant must name the lessor/agent and any other tenants or co-tenants as respondent/s on the QCAT application.





1.2.3 Locks and keys and tenant security

If a lessor/agent or tenant changes a lock they must seek agreement from the lessor/agent and give a key to the other party, unless the other party agrees not to be given a key, or the Tribunal orders a key not be given.

A tenant may change the locks if:

- There is reasonable excuse to make the change or the lessor agrees to the change; and
- A copy/copies of the new key/s are provided to the lessor.

It is useful to remember:

- Changing of a lock by the tenant, without the lessor's agreement, is evidence the tenant did not have a reasonable excuse for making the change
- The tenant will need the lessors written permission to add any other safety upgrade to the rental property including for example, deadlocks, security screens, sensor lights, or alarms and state in clear terms whether the tenant will be required to remove the fittings at the end of the tenancy.

If the lessor/agent unreasonably refuses a request to change a lock, or add security features, a tenant can apply to the Tribunal for an order ([s213](#)). This is a non-urgent application so parties must first lodge a [Dispute Resolution Request- RTA Form 16](#) with the RTA and try to resolve the dispute through conciliation, before they can apply to QCAT for a hearing.

Financial Assistance and support

A domestic associate may apply to [Victim Assist Queensland](#) for financial assistance and support services if they are a victim of violent crime, including domestic violence. The financial assistance may cover the costs associated with recovery from domestic violence and may be available for additional safety upgrades to the rental property including other security costs for the rental premises.





1.2.4 Installing security features and safety upgrades

If a tenant needs to add security features to the rental premises the first step is to seek the consent of the lessor/agent. Some domestic and family violence support services can provide home security support through their Home Security Safety Upgrades (HSSU) service. Following an assessment of risk and consideration of the client's circumstances, a service may arrange for physical security enhancements to their home such as changing locks, installing door and window locks, installing screens and sensor lights.

Additional safety and security technologies to support women to remain safely in their home is also available through the Keeping Women Safe in their Home (KWSITH) initiative being trialed in Cairns, Ipswich, Rockhampton and Caboolture through the specialist domestic and family violence support services.

The various technologies available through KWSITH include:

- Personal duress alarms with 24x7 monitoring through an external security service;
- CCTV home security cameras linked to devices to record data;
- Victim-focused smartphone technology applications;
- Training and support to raise awareness about technology-facilitated abuse among trial participants; and
- Electronic sweeps, scans and debugging of victims' homes and belongings for surveillance technology.

To find out more about HSSU or KWSITH contact your [local domestic and family violence support service](#).

These specialist domestic and family violence services are available from various funded service providers. Contact the service provider or [DV Connect](#) for further information. Additional assistance may be sought through the [Keeping Women Safe in their Home](#) (KWSITH) programme to help improve the safety of women and their children escaping domestic violence.

QUICK TIPS: Changing locks or adding security features

The lessor/agent must ensure the premises are reasonably secure and locks, keys and security devices are maintained in working order ([s210](#)).

A tenant must seek the lessor's written consent to change locks or install security upgrades features to the rental property ([s211](#)).

Any agreement to change locks or install security features should be put in writing.

The lessor must not unreasonably refuse a request to change a lock ([s211](#)).

If the lessor fails to agree to change the locks, the tenant may lodge a [Dispute Resolution Request - Form 16](#) with the RTA to seek conciliation of the dispute.

If the dispute is not resolved the tenant may apply to QCAT under s213 for an order to authorise the tenant to change a lock/s ([s213](#)).

At the hearing QCAT may consider the likelihood of risk to the tenant's personal safety and likelihood of break-ins or other unlawful entry to the premises.





1.2.5 Damage to the rental property and liability

Tenants and co-tenants must not disturb neighbours or damage the rental property. Tenants named on the tenancy agreement are also responsible for the actions of guests and visitors.

The tenant must not maliciously damage, or allow someone else to maliciously damage the rental premises. If premises are damaged and need repair tenants should notify the lessor/agent as soon as practicable.

If the tenant or their guests cause damage the tenant may be liable to carry out the repairs or compensate the lessor/agent for the cost of the repairs.

It is good to negotiate an agreement with the lessor/agent regarding when the repairs will be done and who will be responsible for arranging and paying for the repairs.

If the damage to the property is done by a co-tenant, or a person who was on the property without the tenant's permission, the tenant can advise the lessor/agent of this in writing and request the lessor/agent seek any compensation from the person who was responsible for causing the damage.



1.2.6 Paying the rent

All tenants or co-tenants named on the tenancy agreement are responsible for ensuring that rent is paid on time, and in accordance with the tenancy agreement.

The tenancy agreement will state how much rent must be paid, and how and when rent is to be paid. The way rent is paid can only be changed during the agreement if all parties agree in writing.





1.2.7 Failure to pay rent

If a tenant fails to pay the rent this is a 'breach' of the tenancy agreement and is a serious matter.

If a tenant is late in paying the rent there is a process the lessor/agent must follow to resolve the rent arrears.

The timeframes that apply to rent arrears matters will depend on the type of tenancy as outlined in the table below.

Termination notice periods

Type of tenancy	How many days late?	Notice to Remedy Breach for Rent Arrears	Notice to Leave (With Grounds) for Rent Arrears
General tenancy	If rent is 7 days late	Notice to Remedy Breach for rent arrears 7 days to pay	7 days notice to move out
Moveable dwelling (MD) Long tenancy	If rent is 7 days late	Notice to Remedy Breach for rent arrears 5 days to pay	2 days notice to move out
MD Short tenancy	The day rent is due	No notice needed	2 days notice to move out
Rooming accommodation if there longer than 28 days	If rent is 2 days late	Notice to Remedy Breach for rent arrears 4 days to pay	4 days notice to move out
Rooming accommodation if there less than 28 days.	The day rent is due	Notice to Remedy Breach for rent arrears 2 days to pay	Immediate notice to move out

If a tenant is aware they will have problems paying the rent it is advisable they advise the lessor/ agent of the financial difficulty as soon as is practicable and seek a written agreement laying out the specific repayment of rent arrears.





1.2.8 Termination for rent arrears in general tenancies

If a tenant fails to remedy a breach by the due date on a Notice to Remedy Breach the lessor can give them a Notice to Leave “with grounds”. If a tenant disputes the Notice to Leave, or fails to leave as requested, the lessor/agent cannot self-evict the tenant but must apply to QCAT for an urgent hearing to seek a Termination order and a Warrant of Possession to remove the tenant from the rental premises. This application must be lodged with QCAT within 14 days of the handover day on the Notice to Leave. In rooming accommodation however, the provider does not need to apply to QCAT to remove a resident.

If the lessor/agent applies to QCAT for a Termination order for tenant failure to leave for an unremedied breach of the agreement, the Tribunal may consider a number of issues including:

- have the correct notices been issued; and
- is the breach serious enough to justify ending the tenancy?

If a tenant disputes the Notice to Leave it is important they attend the QCAT hearing to put forward their evidence. A tenant can ask QCAT to dismiss the lessor’s application to terminate the tenancy if the lessor/agent has failed to issue the correct notices, if the tenant has evidence the breach is not serious enough to justify ending the tenancy, or the breach has been remedied and the rent has been paid.

If the Tribunal does agree to make a termination order, it will also issue a [Warrant of Possession \(WoP\)](#), will be sent to the local Queensland Police Service (QPS) for enforcement. This WoP is valid and therefore enforceable for 14 days. The police will give the tenants prior notice of the date and time they will attend the premises to enforce the WoP. The role of the police is to ensure the tenants leave peaceably and the lessor/agent can change the locks and recover possession of the rental property.

If a tenant is in rent arrears and the lessor/agent applies to QCAT and obtains a WoP it is advisable for the tenant or occupant to immediately plan to remove all personal goods from the premises. Other tasks include leaving the rental property clean and returning the keys to the lessor/agent this will minimise any potential compensation or bond claims by the lessor/agent.





1.2.9 Resolving disputes about rent arrears

A tenant who is in rent arrears may receive a Notice to Remedy Breach, or Notice to Leave for rent arrears, it is important to talk to the lessor/agent to see if the parties can reach an agreement to continue the tenancy and enter into a rent repayment plan. Tenants need to show they are willing and able to pay the weekly rent and can catch-up any rent arrears. Any rent repayment plan should be put in writing.

The lessor/agent should act reasonably to negotiate a rent payment plan. However, if the lessor/agent refuses to accept a reasonable proposal, the tenant can still write to the lessor/agent to dispute any notices and can attend the QCAT hearing to put forward their reasons why the tenancy should continue.

At the Tribunal hearing the tenant can show their evidence and ask that the tenancy not be terminated, because they have paid the rent they owe, or can pay off the rent arrears within an acceptable timeframe. The tenant can also provide other relevant evidence regarding their circumstances: for example if the rent arrears arose due to domestic violence affecting their tenancy or financial capacity.

QUICK TIPS: Resolving disputes about breach of agreements

If the lessor or agent claims the tenant has breached the agreement they can give the tenants a [Notice to Remedy Breach - RTA Form 11](#) that asks the tenant to remedy the breach (fix the problem) by the due date.

If tenants have breached the agreement, it is important to remedy the breach or talk to the lessor/agent to make an agreement to resolve the dispute. Put any agreement in writing.

If the tenant does not remedy the breach by the due date on the notice the lessor/agent can give the tenants a [Notice to Leave - RTA Form 12](#). This notice may be issued "with grounds" because the tenant has failed to remedy a breach of the agreement.

If the tenant disputes a Notice to Remedy Breach, or a Notice to Leave, they can use a [Dispute Resolution Request - RTA Form 16](#) to apply to the RTA Dispute Resolution Service for assistance to mediate the dispute.

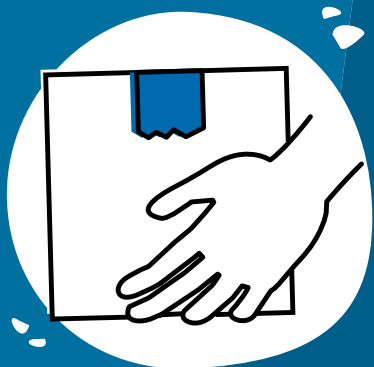
If parties cannot reach an agreement to solve the dispute the RTA will issue a Notice of Unresolved Dispute.

If the RTA Dispute Resolution Service sends the tenant a Notice of Unresolved Dispute Notice ('NURD') the tenant may apply to QCAT for a hearing.

To apply to QCAT the tenant will need to fill in a [QCAT Form 2 – Minor Civil Dispute – Residential Tenancy Dispute](#) for a non-urgent hearing under [s426](#) Disputes about lessor's notices.

If the lessor issues a Notice to Leave and the tenant fails to leave the lessor/agent can apply to QCAT for an urgent hearing to terminate the tenancy. If this happens QCAT will send the tenants a notice of this hearing. It is important tenants attend this QCAT hearing to present their evidence and say why they do not think the tenancy should be terminated.





PART 1 LEAVING A TENANCY





1.3.1 Ways to end a tenancy

Under s 277 the Act, a tenancy can only be ended in one of the following three ways:

- 1. A Mutual Termination Agreement (MTA)**

This is a written agreement between all parties to end the tenancy. All co-tenants and the lessor or agent must sign any written agreement. Alternatively, if one tenant wants to stay, or a replacement tenant is found, all parties could sign an agreement to transfer the tenancy to the remaining tenant, or replacement tenant; or

- 2. A Notice of Intention to Leave (NOITL) or Notice to Leave (NTL)**

Either party can issue a written notice to end the tenancy. If the tenant issues a [Notice of Intention to Leave - RTA Form 13](#) they must return all keys and hand over vacant possession of the premises on or before the handover day on their notice; or

- 3. Apply to QCAT for a termination order**

In serious circumstances, either party can apply to QCAT using a [Form 2 – Application for Minor Civil Dispute](#), to seek an order to terminate the tenancy agreement. Serious reasons to end a tenancy may include damage or injury by another party (s312), or excessive hardship (s310) experienced by the tenant.

When moving out of a rental property, a tenant must remove their possessions and leave the property in the same condition as the start of the tenancy except for fair wear and tear. In order to clarify the expectations when a tenant ends a residential agreement, any safety upgrades or security features that have been installed, must be removed.

As for all rental properties, the rental premises must be left by the tenant, in the same condition as when the tenant entered the rental premises - fair wear and tear excepted). The tenant has an obligation to obtain and fill in an [Exit Condition Report - RTA Form 14a](#) and provide a copy to the lessor or agent when they return the keys. The lessor or agent has three (3) business days to complete the exit report and provide the tenant with a completed copy of the report.





1.3.2 Mutual Termination Agreement

If a tenant has a fixed term tenancy, and a situation arises where the tenancy is unable to continue, the tenant may discuss this with the lessor or agent to see if they will agree to end the tenancy by mutual agreement.

A Mutual Termination Agreement (MTA) must be put in writing and all parties must sign the agreement, including the lessor, agent and all tenants or co-tenants.

The Mutual Termination agreement should state any agreed terms, such as whether the tenant can leave the tenancy without penalty and will not be liable for rent after the agreed handover day, and agreements about what will happen with the bond, and what amount, if any, the tenant will pay the lessor as compensation for ending the agreement early.

QUICK TIPS: Mutual Termination Agreements

A Mutual Termination Agreement to end a fixed term agreement early must be in writing and needs to be signed by all parties. A tenant will not be required to give a Notice of Intention to Leave if they have negotiated and signed a MTA to terminate the tenancy. Please keep a copy of the MTA as evidence.

See the sample [Mutual Termination Agreement](#) in the Appendix at the end of this kit.

Transferring a tenancy to a remaining co-tenant or a new replacement tenant

If a co-tenant, or replacement tenant, wants to take over the tenancy and all parties (including the lessor/agent and any co-tenants) agree to this, all parties can draft and sign a written agreement to transfer the tenancy agreement into the name of the continuing tenant.

Bond refunds and changes to rental bond contributors

If parties agree to transfer the tenancy they may also want to update the names on the rental bond. To do this all parties can sign a [Change of Bond Contributors - RTA Form 6](#) and send it into the RTA. Tenants can use this form as long as one of the original bond contributors is going to stay in the tenancy.

As part of an agreement to transfer the tenancy, the tenant who is leaving may agree to sign over some of their bond to the remaining tenant as compensation for breaking the agreement.

If a new replacement tenant takes over the tenancy, the lessor/agent will usually get them to sign a new tenancy agreement and pay a new bond.

If all tenants are moving out and a replacement tenant is moving in and paying a new bond the outgoing tenants can use a [Refund of Rental Bond - RTA Form 4](#) to apply to the RTA for a bond refund. If the tenants agree they owe money for the tenancy, they can allocate a share of the bond to the lessor/agent.





1.3.3 Giving a Notice of Intention to Leave or “Break lease”

To end a tenancy the tenant may give the lessor/agent a [Notice of Intention to Leave \(NOITL\) - RTA Form 13](#). If the tenant has a fixed term tenancy agreement the NOITL is still valid, even if the handover date is before the end of the fixed term agreement.

When moving out the tenant must leave the property clean and undamaged, similar to the start of the tenancy (except for reasonable fair wear and tear). The tenant must return all keys to the lessor/agent and hand over vacant possession of the premises on, or before, the handover date stated on their NOITL.

If the tenant has terminated a fixed term agreement early, the lessor/agent can seek compensation for any financial loss they incur. The lessor/agent must take reasonable steps to mitigate (minimize) their loss [s362](#) of the Act.

The lessor’s compensation claims may include loss of rent income and costs to advertise and re-let the property. If parties cannot reach an agreement about reasonable compensation claims this dispute may be resolved as part of the bond refund process.

If another co-tenant has not signed the NOITL, or remains in the premises, the tenant will be unable to hand back vacant possession and return all keys. This means a co-tenant may be unable to properly terminate their tenancy in this way. If all parties cannot reach a written agreement to transfer the tenancy to the remaining tenant or occupant, the outgoing co-tenant may need to apply to QCAT for an order to terminate their part of the tenancy and remove their name from the tenancy agreement.

Refer to Sample [Breaklease letter to Lessor/Agent](#) - Appendix 1 at the end of the DV tenancy toolkit.





1.3.4 Application to QCAT for urgent hearing to terminate a tenancy

In certain circumstances tenants, co-tenants, domestic associates, and occupants, may be able to apply to QCAT for an urgent hearing to terminate the tenancy. Tenants can also apply to QCAT for a termination order if the lessor has seriously or repeatedly breached the agreement or behaved in an objectionable way.

A QCAT termination order may provide certainty for tenants if they cannot continue the tenancy and are unable to reach a mutual termination agreement with the other parties, or unable to terminate a co-tenancy due to conflict with another co-tenant.

To apply to QCAT for hearing, tenants will need to fill in a [QCAT Form 2 Application for Minor Civil Dispute – Residential Tenancy](#). Lodge the application with QCAT, along with any attached supporting evidence.

All applications to terminate a tenancy are urgent QCAT applications and can be lodged directly with QCAT without first having to apply to the RTA Dispute Resolution Service.

Applications to QCAT to terminate a tenancy include:

- Termination by tenant for termination due to excessive hardship ([s310](#)).
- Termination by co-tenant for termination due to damage or injury by another co-tenant ([s312](#)).
- Application by tenant's domestic associate for termination for damage or injury by tenant ([s321](#)).
- Application by occupant for termination due to damage or injury by tenant ([s322](#)).





1.3.5 Termination by tenant due to Excessive Hardship ([s310](#))

A tenant can apply to QCAT under [s310](#) of the Act to end a residential tenancy due to the tenant's '**excessive hardship**'. This applies where unforeseen circumstances have arisen during the tenancy and 'the tenant would suffer excessive hardship if the tenancy agreement were not terminated.'

Excessive hardship may apply to situations such as relationship break down, loss of employment or income, serious illness, work transfer, or needing to relocate due to family reasons or personal safety or security issues related to domestic violence.

QCAT will look at each application on a case-by-case basis and can make the termination order if they are satisfied the applicant has established the grounds (reasons) for the application. Therefore when applying to QCAT it is important to attach evidence to support the claim.

QUICK TIPS: Negotiating with lessor/agent to terminate

- always communicate with the lessor/agent first before taking any action on behalf of the client/tenant;
- explain the situation and ensure there is an understanding as to the lessor/agent's position in each circumstance;
- try to reach a mutually agreeable outcome, known as a Mutual Termination Agreement - be clear as to who does what and who may owe what money in the written agreement;
- advise the tenant to remain courteous and be prepared to listen to the lessor/agent throughout the process;
- try and remain impartial throughout proceedings in order to further the client/tenant's chances of a successful outcome;
- put all communication in writing and this may be used as supporting evidence should the tenancy matter go to QCAT or the Magistrates Court; and
- contact QShelter and other such entities including RTA and QCAT when needing to have queries about the lessor answered.

QUICK TIPS: Applying to QCAT to terminate the tenancy due to excessive hardship

Tenants can apply to QCAT under section [310](#) for an urgent hearing to terminate the tenancy due to the tenant's Excessive Hardship

To apply tenants need to fill in a [QCAT form 2 Application for Minor Civil Dispute – Residential Tenancy](#) matter, attach evidence, and lodge required copies of this application at the QCAT central registry in Brisbane or the local Magistrates Court that is closest to the rental premises.

A NOITL does not need to be issued by the tenant if they are applying to QCAT for a termination.





1.3.6 Application by **co-tenant** for termination for damage or injury (s312)

A person who is a **co-tenant** may apply to QCAT 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.

When applying to QCAT for termination for damage and injury the applicant will need to provide a statement and evidence regarding serious damage to the premises or injury or threat of injury to the applicant or someone else.

The applicant will need to name both the lessor/agent and any other co-tenants as respondents to the application.





1.3.7 Application by tenant's domestic associate for termination for damage or injury (s321)

If a person occupying the rental premises is a **domestic associate** of the tenant, but not named as a tenant or sub-tenant on the tenancy agreement, they are not legally responsible for the tenancy agreement and can move out at any time.

If the person is a domestic associate of the tenant, and the tenant has committed damage or injury, or committed an act of domestic violence against the domestic associate, the domestic associate may apply to QCAT for an urgent hearing to terminate the tenancy of the tenant.

Ouster conditions and tenancy matters:

If an Ouster condition is imposed on a respondent (perpetrator of domestic violence), the applicant (as the 'aggrieved'), may be able to apply for an order terminating the tenancy: s321 (and s323 interim order pending the determination of the termination request).

While these applications normally lie to QCAT, the person may, if they are also making an application for a protection order or a variation of a domestic violence order –

- make the tenancy application to the Magistrates Court: s 139 DFVPA; or
- where there are already tenancy proceedings on foot, if the court considers it appropriate, remove such an application from QCAT to the Magistrates Court: s140.

Magistrates court and tenancy applications:

The Magistrates Court is able to hear and decide those tenancy applications and perform any other function or exercise any other power conferred on QCAT for a tenancy application: s 141 DFVPA.

An order of the Magistrates Court about the tenancy application is taken to have been made under QCAT rules: s141(6) DFVPA.

The court must not be open to the public unless the court orders otherwise (s141 (3));

- written notice of the tenancy application, an application to remove it to the Magistrates Court or any adjournment of the application must be given to the lessor by the aggrieved making the tenancy application (s 141 (5)).

Refer to the [Magistrates Court section](#) of this toolkit for further information.





1.3.8 Application by **occupant** for termination for damage or injury ([s322](#))

If a person is an **occupant** in the rental premises, but not named as a tenant or sub-tenant on the tenancy agreement, they are not legally responsible for the tenancy agreement and can move out at any time.

An occupant may apply to QCAT to terminate the tenancy, if the tenant has committed serious damage to the premises, or injury to the applicant or someone else occupying or allowed on the premises. On the QCAT application the applicant will need to name both the lessor/agent and the tenant or other co-tenants as respondents.



1.3.9 Application for interim order about damage or injury ([s323](#))

If an **occupant**, or **domestic associate**, has applied to QCAT for a termination order under [s321](#) or [s322](#) and the applicant believes on reasonable grounds the tenant is likely to cause further damage or injury for which a termination order could be sought, the applicant may apply to QCAT under [s323](#) for an interim order to restrain the tenant from causing further damage or injury.

QUICK TIPS: Applying to QCAT to terminate a tenancy due to damage or injury

A tenant, co-tenant, occupant or domestic associate may apply to QCAT for an urgent hearing to terminate the tenancy due damage or injury by the tenant or co-tenant.

To apply tenants need to fill in a [QCAT Form 2 Application for Minor Civil Dispute – Residential Tenancy](#) matter, attach evidence, and lodge required copies of this application at the QCAT central registry in Brisbane or the local Magistrates Court that is closest to the rental premises.

This application will need to name both the lessor/agent and the tenant or other co-tenants as respondents.

The Applicant will need to attach evidence regarding the damage or injury. This may include documents, photos, phone messages, and police reports, copies of protection orders or letters from health practitioners or support workers.

The Applicant may apply to QCAT under one of the following sections:

- A **co-tenant** may apply to terminate a tenancy due to damage or injury under [s312](#).
- A **domestic associate** may apply to terminate a tenancy due to damage or injury under [s321](#).
- An **occupant** may apply to terminate the tenancy due to damage or injury under [s322](#).

If a domestic associate, or an occupant, applies to QCAT for a termination order under [ss321 or 322](#) at the same time they can also apply for an Interim Order under [s323](#) to restrain the tenant from committing further acts of domestic and family violence.

If a person applies to QCAT to terminate the tenancy a Notice of Intention to Leave is not required.





1.3.10 Abandoning a tenancy

If a tenant does not end their tenancy according to the Act, and moves out and abandons the tenancy, the lessor can take steps to terminate the tenancy due to abandonment. The lessor or agent can issue a 7-day abandonment notice, or may apply to QCAT for an abandonment order.

A tenant can dispute an abandonment notice, or abandonment order, but must act quickly and apply to QCAT as time limits apply.

It may be difficult to ascertain whether, a tenant has abandoned a tenancy. Under the Act evidence to suggest a person has abandoned a tenancy may include:

- Failure by the tenant to pay rent;
- Presence of uncollected mail, newspapers or other material;
- Reports from neighbours;
- Absence of household goods at the rental property;
- Disconnection of services to the rental property; and
- Failure of the tenant to respond to entry notices.

If a lessor or agent believes the property has been abandoned they can take steps to terminate the tenancy in one of the following ways;

- They can send the tenant an [Abandonment Termination Notice - RTA Form 15](#). If the tenant does not respond to the notice within 7 days and apply to QCAT to dispute the Abandonment termination notice, the tenancy is deemed to be terminated.
- Alternately, the lessor/agent can apply to QCAT for an urgent Abandonment termination order. At the hearing, QCAT can declare the tenancy was abandoned on a particular date.





1.3.11 Disputes about abandonment

If a tenant disputes an Abandonment Notice, or wants to seek a review of a QCAT abandonment termination order, they may apply to QCAT for an urgent hearing, but must do so within 28 days of the abandonment notice being issued, or the QCAT order being made.

Tenants can apply to QCAT under [s356](#), for an urgent hearing to dispute an abandonment termination notice. If the tenant applies within 7 days of the notice being issued QCAT has the option to set aside the notice and reinstate the tenancy. If the tenant applies to QCAT within 28 days of the notice being issued QCAT can make an order for compensation if the tenancy has been unfairly terminated.

If the lessor/agent has obtained an abandonment, order from QCAT a tenant can apply to QCAT under [s361](#) to seek a review of this decision. The tenant must apply within 28 days of the original decision. QCAT can then re-hear this matter and review their decision. If the tenancy has been terminated unfairly QCAT can also make an order the lessor/agent pay compensation to the tenant for their loss or expense.

QUICK TIPS: Disputing an abandonment termination notice or QCAT abandonment order

If a lessor or agent has reasonable grounds to believe that the tenancy has been abandoned they can take steps to terminate the tenancy due to abandonment:

- Giving the tenant a 7 day [Abandonment Termination Notice - RTA Form 15](#). If the tenant does not apply to QCAT to dispute the termination notice the tenancy is deemed to be terminated after 7 days; or
- Applying to QCAT under [s357](#) for an urgent hearing to request an Abandonment termination order declaring the tenancy was abandoned on a particular date.

A tenant may dispute an abandonment notice by applying to QCAT within 28 days after the notice is given under [s356](#).

A tenant may dispute an order about abandonment by applying to QCAT within 28 days after the decision is made in QCAT under [s361](#).

If QCAT determines the premises was not abandoned it may award compensation to the tenant for any loss incurred to the tenant because of the termination.

If a tenant abandons the premises, a person who is occupying the premises can apply to QCAT to be recognised as the tenant, or be joined as a party to a QCAT matter to dispute an abandonment notice or QCAT order.





1.3.12 Goods and documents left behind after a tenancy ends

If a tenancy ends and a tenant or occupant leaves goods or documents behind in the premises, the lessor/agent must deal with the goods according to the Act. The lessor or agent must deal with goods according to [s363](#) and personal documents according to [s364](#) of the Act.

The lessor/agent is not permitted to take or dispose of the tenant's possessions as payment for rent or money owed. This is a breach of [s95](#) of the Act and is a serious offence. If this breach does occur, the tenant may make a formal complaint to the [RTA investigations unit](#) who can investigate and prosecute parties who fail to comply with the Act.

After the tenancy ends, if a tenant, or other interested person, is dissatisfied with the way the lessor or agent has dealt with their goods or documents, the person may apply to QCAT for an urgent hearing under [s365](#) Application about goods left on premises.

In QCAT the applicant may seek an order requiring the return of their goods, or compensation for the loss or unlawful disposal of their goods. The applicant would need evidence of their ownership of goods left in the premises and evidence of steps they took to contact the lessor/agent in writing to seek the return of their goods.





1.3.13 Lessor obligations when dealing with goods left on premises

When a tenancy agreement ends, if a tenant or occupant leaves goods in the premises, the lessor or agent must safely store these goods for at least one month. The lessor's obligation to store tenant goods applies if the value of the goods is over \$1500 and it is safe to store the goods. The Act does not provide any guidance about how to determine the value of goods.

Personal documents, which include passports, birth certificates, photographs and money, must be given to the tenant or the Public Trustee within seven days from the date the tenancy agreement was ended, or the documents were found.

During the one month-storage period, if the owner of the goods makes a written request for the return of their goods, the lessor or agent must return the goods. However, the lessor or agent may seek compensation for the reasonable removal and storage costs.

However, a lessor/agent is not required to store goods if:

- The total market value of the goods is less than \$1500;
- Storage of the goods would be unhealthy or unsafe;
- Storage of the goods would cause their market value to be completely or substantially reduced; and/or
- The cost of removing, storing and selling the goods would be greater than the amount raised in the sale of the goods.

If the goods do not fall into one of the above categories, the lessor/agent must store the goods for one month; and

- If the goods are a moveable dwelling (caravan), stored for three months.

If the lessor/agent is required to store the goods, and the former tenant or occupant fails to reclaim their goods, the lessor or agent may dispose of the goods at the end of the one month storage period.

At the end of the storage period the lessor or agent may sell or dispose of the tenant's goods:

- by auction unless the Tribunal orders their disposal by another method; or
- the lessor/agent may apply to the Tribunal for an order about disposal of the goods.





1.3.14 Seeking the return of goods left on premises after a tenancy ends ss363-367

When moving out if a tenant is unable to remove all their goods it is useful to take photos and make a list of goods left in the premises. It is also useful to talk to the lessor or agent to make an arrangement regarding the future collection and removal of the goods. Confirm any agreement in writing.

The lessor/agent must not withhold goods or refuse to return goods. However, the lessor or agent may be entitled to request compensation for the reasonable storage and removal costs.

If goods are left on the premises, the lessor agent must allow the **former tenant**, or an **interested person** who is the owner of the goods, to reclaim their goods:

- Put the request for return of goods in writing;
- Attach a list of the goods; and
- Provide contact details and propose an arrangement to collect the goods.

If there is a dispute over the return of the goods, the former tenant or interested person may apply to QCAT for an urgent hearing under [s365](#) application about goods left on premises. At the hearing QCAT can make an order for the return of the goods, or can make an order for compensation, if there is evidence the lessor or agent damaged goods or unlawfully disposed of goods.

QUICK TIPS: Goods left in the premises when a tenancy ends

Goods left in premises if goods are left on the rental premises after a tenancy has ended the lessor must deal with goods according to [s363](#) in the Act.

The lessor or agent must store the goods for at least one month, as long as the goods are non-perishable and valued at over \$1500.

During the one-month storage period, if the former tenant, or owner of the goods, writes to the lessor/agent to seek the return of their goods, the lessor or agent must return these goods as requested.

The lessor/agent can request reimbursement for reasonable removal or storage costs they have incurred.

If tenants or occupants are unable to remove their goods at the end of the tenancy it is useful to take photos and make a list of items. Talk to the lessor or agent to arrange to collect these goods.

If a former tenant or occupant is dissatisfied with the way a lessor or agent has dealt with their goods they can apply to QCAT for an urgent hearing under [s365](#) to seek an order about goods left on premises.

In QCAT the applicant can seek an order for the return of their goods, or seek compensation if the goods have been damaged or disposed of unlawfully.

The Tribunal may make orders for compensation or other orders, which may be appropriate.

It is a serious offence for the lessor or agent to unlawfully dispose of goods or refuse to return goods. The tenant can make a complaint to the [RTA Legal Investigation Unit](#) if this happens and the lessor or agent may face investigation and a fine.





1.3.15 Moving out tips

At the end of the tenancy the tenant must:

- Remove all possessions and leave the premises clean, similar to the start of the tenancy.
- Leave the premises, as far as possible, in the same condition they were in at the start of the tenancy except for 'fair, wear and tear'.
- Fill in an [Exit Condition Report](#) to record the condition of the property when moving out. It is also useful to take photos and keep copies of cleaning receipts. Evidence such as this shows the tenants have met their obligations. This is useful if tenants later have a dispute over the bond refund.
- Return all keys to the lessor/agent and provide the lessor with a copy of the completed [Exit Condition Report](#). The lessor/agent has 3 business days to inspect the premises, add comments to the [Exit Condition Report](#), and return a copy to the tenant at the tenants forwarding address noted on the form.
- After moving out tenants can fill in a [Refund of Rental Bond - RTA form 4](#) and lodge it with the RTA to reclaim their bond. If there is a dispute over the bond refund the RTA will hold the bond until the dispute is resolved, or QCAT makes an order about the bond refund.
- Tenants are not responsible for the cost of general maintenance or reasonable wear and tear over time (such as faded curtains, worn carpet, or scuff marks on floors).
- Tenants may be responsible for repairs if the tenants damaged the premises. If possible, tenants should repair the damage before moving out, or make arrangements with the agent regarding agreed repair costs. Tenants can take photos of the damage and get quotes for reasonable repair costs.

It is a serious offence for the lessor or agent to unlawfully dispose of goods or refuse to return goods. The tenant can make a complaint to the RTA Legal Investigation Unit if this happens and the lessor or agent may face investigation and a fine.



1.3.16 Exit Condition Report

At the end of the tenancy, the tenant must obtain an [RTA Exit Condition Report - RTA Form 14a](#) to record the condition of the premises. The tenant must provide a signed copy to the lessor or agent when they return the keys and move out. Once the lessor/agent receives a copy of the Exit report they have three (3) business days to inspect the premises, add their comments, and return a signed copy to the tenant.

Tenants must leave the premises clean and undamaged, in the same condition as the start of the tenancy, except for reasonable fair wear and tear s188 (4).

The Entry Condition Report and Exit Condition Report record the condition of the premises at the beginning and the end of the tenancy. Tenants can also take photos when moving in or moving out of rental premises for evidentiary purposes and may be referred to later when attending a QCAT hearing.





1.3.17 Bond Refunds

A rental bond is money a lessor/agent can ask tenants to pay at the beginning of the tenancy as financial security for the tenancy.

At the end of the tenancy, the lessor/agent may want to claim money from the bond if the tenant has failed to meet their obligations under the agreement.

In Queensland, all bonds must be lodged with the RTA during the tenancy. The RTA will hold and manage the bond and administer the refund of the bond at the end of the tenancy.

For more information see the [TQ Rental Bond Factsheet](#).

QUICK TIPS: How to apply for a Refund of Rental Bond

To apply for a bond refund tenants can fill in a Refund of [Rental Bond -RTA Form 4](#) and lodge it with the RTA. Tenants do not need the lessor or agent's signature to lodge a bond claim at the end of the tenancy.

However if all parties sign an "agreed" form the RTA can immediately release the bond according to the amounts stated on the form. (Never sign a blank form as this is like signing a blank cheque).

If not all parties have signed the form, the RTA will issue a Notice of Claim to the other parties who have 14 days to contact the RTA to dispute the claim.

If there is a dispute over the rental bond, the RTA will hold the bond until all parties reach an agreement, or an application is made to QCAT for a decision about the bond refund.

If other parties do not dispute the bond claim within the required time frames, the RTA will automatically refund the bond according to the first bond claim they received.

When moving out tenants should let the RTA know their new contact details. This ensures the RTA can contact tenants about any bond refund issues.

Keep copies of tenancy documents as these provide important evidence if there is a bond dispute.





1.3.18 Potential compensation claims by the lessor for early termination of a fixed term lease

If a tenant terminates a fixed term agreement before the end date on the agreement, the lessor/agent may seek compensation from the tenant for “break lease” costs resulting from the tenant’s breach of the agreement.

Potential compensation claims by the lessor if the tenant ends a fixed term agreement early may include:

- Advertising costs; and
- A re-letting fee, if the lessor employs an agent to find replacement tenants they may have to pay the agent a relet fee. This relet fee is usually equal to one weeks rent plus GST; and
- Compensation if the lessor suffers a loss or rent income after the tenant moves out. The lessor may claim lost rent income until a new tenant moves in, or the fixed term agreement ends.

These claims may be in addition to any claims for outstanding cleaning costs, tenant damage, or other claims at the end of the tenancy.

Any compensation claims by the lessor or agent must be reasonable. Under s362 of the Act the lessor has a “duty to mitigate loss” and is not entitled to seek compensation for costs that could have been avoided.





1.3.19 Disputing unreasonable or excessive break lease costs

A dispute over the lessor's compensation claims at the end of a tenancy can usually be dealt with as part of the bond dispute process. However, the tenant's liability is not limited to the amount of bond. The lessor can seek compensation from the tenant whether or not the RTA holds a bond, or the bond has been released.

If the tenant and the lessor/agent cannot agree on the amount of compensation that is reasonable, either party may apply to QCAT for a decision about the bond amount and the amount of compensation owed.

If the tenant claims the lessor/agent is seeking excessive compensation, it is up to the tenant to gather evidence to show the lessor/agent has failed to take reasonable steps to mitigate (minimise) their loss.

Evidence of a failure to mitigate loss may include:

- Copies of advertisements to show the lessor failed to advertise the property or unreasonably delayed advertising the property for rent;
- Advertisements showing the property advertised at a higher rent, or if market rents have gone down a failure to reduce the asking rent in order to secure a new tenant within a reasonable time;
- An unreasonable delay in the date the property was advertised as available for rent;
- Evidence if the lessor or agent unreasonably refused to allow the former tenant to sublet or transfer the tenancy to a new tenant;
- Evidence the lessor or agent has unreasonably refused tenancy applications without reasons; and
- When the tenant moves out taking time to renovate the premises, instead of taking steps to advertise the property and find new tenants as quickly as possible.

QUICK TIPS: Compensation claims if a tenant breaks a fixed term agreement early (break lease)

If the tenant breaks the lease early the lessor can seek reasonable compensation from the tenant for any financial loss the lessor faces due to the tenant's breach of the agreement.

The lessor may seek compensation for their loss of rent income after the tenant moves out, and costs to advertise and relet the property, (agent relet fees are usually one weeks rent plus GST).

Under [s362](#) the lessor/agent has a duty to mitigate loss, which means they must take reasonable steps to minimise any financial loss they incur. The lessor is not entitled to claim compensation for costs or loss that could have otherwise been avoided.

The lessor/agent must take reasonable steps to minimise their loss and find new tenants as soon as possible.

Compensation claims for breaking a fixed term agreement may be dealt with during the bond claim process.





1.3.20 Dealing with debt collectors

Lessors may Landlords Insurance, which may cover them for loss of rental income and loss or damage to their building and contents.

If the lessor makes a claim against their insurance policy, a debt collection agency may contact the tenant they believe is responsible for the costs, seeking payment of the outstanding tenancy debt.

A debt collector may contact a tenant to:

- Provide information about their account owing;
- Demand payment from a tenant and explain the consequences of non-payment; and
- Offer to settle the account, make alternative payment arrangements, or review existing arrangements.

If a tenant has not responded to a debt collector's letter demanding payment or has not kept to an agreed repayment plan, a debt collector may make contact with the tenant. A tenant should seek legal advice if the tenant received a notice of a court or tribunal hearing.

Debt collectors may contact a tenant by phone, letter, email, and social media or by visiting a tenant in person. Debt collectors must respect a tenant's right to privacy and by law, they are not permitted to reveal they are a debt collector to another person or provide information about a tenant's financial situation to another person without the tenant's written consent.

There are restrictions on the times debt collectors can contact a tenant, for example, debt collectors are not permitted to contact a tenant on national public holidays.

Other restrictions on debt collectors include:

- **Phone:** Debt collectors should not call more than 3 times in a week (or 10 times in a month). Unless a tenant agrees otherwise, they can only call between 7.30am-9.00pm on weekdays, or 9.00am-9.00pm on weekends.
- **Face-to-face:** Debt collectors should not visit a tenant in person if repayment arrangements can be worked out over the phone, by email or letter. However, if a tenant does not respond to other attempts to contact the tenant, debt collectors may visit the tenant at home as a last option: visits only between 9.00am-9.00pm (weekdays and weekends), but no more often than once a month.
- **Social media and email:** If a debt collector uses email, social media or similar technology to contact a tenant about a debt, they must be reasonably sure that the account is not shared with another person and that their message cannot be viewed by anyone except the tenant.





1.3.20 Dealing with debt collectors (Continued)

It is advisable to keep good records of all communication with debt collectors. Include dates and times of contact, how they contacted the tenant (by phone, in person), their name and company, and what was said.

When a debt collector claims a tenant owes money for a former tenancy the tenant can write back to the debt collection agency to seek details of the claim. Tenants can request an itemised list of all claims, a copy of receipts or other evidence to justify each of these claims, and a copy of any QCAT or court order regarding liability for the amount being claimed.

Tenants can dispute claims if the claims are excessive or unreasonable or if the debt collection company cannot provide evidence to justify the amounts being claimed. The debt collector may require a QCAT order in order to settle the dispute and the tenant may then be required to resolve the debt dispute by completing a [QCAT Minor Civil Disputes Form 2 application](#). If the debt collector continues to contact the tenant after receiving this letter the tenant may then complain about the debt collector's behavior to the [Australian Competition and Consumer Commission](#) or the Office of Fair Trading in Queensland.





1.3.21 Unacceptable behavior by debt collectors

Under the [Debt Collectors \(Field Agents and Collection Agents\) Act 2014 \(Qld\)](#) it is against the law for debt collectors to behave in any of the following ways:

- **Threatening, trespassing or intimidating the tenant:** This includes such behaviour such as threatening physical force towards the tenant or anyone else; damaging (or threatening to damage) the property; blocking access to the tenants rental premises or blocking the tenant's way; remaining on the rental property when asked to leave, unless they have a Court Order. If a debt collector behaves this way, contact the police immediately;
- **Harassing or verbally abusing the tenant:** This includes shouting at the tenant or making personal or demeaning comments; using obscene or racist language; or contacting the tenant more than necessary or at unreasonable times;
- **Making false or misleading statements or engaging in deceptive conduct:** For example, debt collectors must not make false statements about the money a person owes or what will happen if the debt is not paid; send letters demanding payment that are designed to look like court documents; or pretend to be or to act for a solicitor, court or government body.

Debt collectors should not take advantage when the tenant:

- is disadvantaged because of illness, disability, age, illiteracy or other circumstances; and/or
- is not familiar with the law, the debt recovery process, or the consequences of not paying the debt.

QUICK TIPS: Disputing a debt

How to dispute a debt –

- dispute the debt in writing and keep copies of any letters
- do not admit liability if called by a debt collector, but rather write to clarify
- verify debts before paying a debt
- request an up to date rent ledger and draft a ledger for evidence
- apply for [Dispute Resolution - RTA Form 16](#)
- keep copies of evidence of payments
- if it is believed a debt is not owed, write to the debt collector and request they do not contact the tenant
- if the debt is old seek legal advice before making any payments or admit liability
- if co-tenant owes money, send letter of demand and/or apply to QCAT via a [Form 3 – Application for Minor Civil Dispute – Minor Debt](#)
- if money is owed over the bond, request that you not be listed on a tenancy database due to DFV
- if an insurance company is chasing an alleged debt, request to utilise their financial hardship policy see <http://codeofpractice.com.au/for-consumers/financial-hardship>
- a debt be disputed by contacting the [Financial Ombudsman Service](#)
- if a debt collector's behaviour is unacceptable, a complaint can be lodged the [Queensland Office of Fair Trading](#)
- for more information contact the ACCC or read the [Australian Debt Collection Guidelines for collectors & creditors](#)





1.3.22 Tenancy Database listings

In Queensland, many real estate agents and some private lessors are members of tenancy database companies. The main tenancy database company that operates in Queensland is called TICA.

Tenancy database information:

- [TQ Tenancy Databases fact sheet](#)

Agents and lessor use tenancy database to check references of prospective tenants and may list a tenant on a tenancy database if the tenant breaches the agreement and there is a lawful reason to list the tenant at the end of the tenancy.

Tenancy laws set out guidelines that lessors and agent must follow when they use a tenancy database. The Act also sets out steps tenants can take if they are listed on a tenancy database for unlawful or unjust reasons and want to dispute the listing in QCAT.

When applying for a rental property agents and lessors must advise applicants of any databases they use and get consent from the applicant to check their references on the database.

If the reference check shows the applicant is listed on a tenancy database they must advise the applicant of this and within 7 days provide written information about who listed the applicant, when they were listed and what database they are listed on.

The maximum length of listing is 3 years. After 3 years the database company must automatically remove the listing.

Rules about listing tenants on a tenancy database:

- only people named on the tenancy agreement as tenants may be listed;
- can only be listed after the tenancy has ended;
- can only be listed by for a lawful reason set out in the Act;
- tenants must be informed about proposed listings and given 14 days to object;
- tenants may dispute proposed or existing listings;
- tenants may apply to QCAT to seek removal of listings that do not comply with the Act or are unjust;
- tenants must not be listed for more than 3 years (after 3 years database listings should automatically be removed); and
- When applying for a rental property the lessor/agent must notify the tenant if the agent becomes aware the applicant is listed on a tenancy database.

Some approved reasons for a listing include:

- The tenant owes money over the bond amount;
- There is a QCAT order (or RTA agreement) as evidence of the outstanding debt;
- The tenant has abandoned the premises and there is a QCAT order for an outstanding debt above bond amount;
- During the tenant's stay they were given a breach notice for rent arrears and the tenant failed to remedy the breach prior to ending the tenancy (rent arrears would have to be more than the bond amount); and
- QCAT made an order to terminate the tenancy due to objectionable behaviour by the tenant or tenants repeated breach of the tenancy agreement.





1.3.22 Tenancy Database listings (Continued)

Tenancy databases, such as TICA, are sometimes referred to as 'blacklists'. A tenant can be 'blacklisted' if an agent or lessor alleges that they defaulted on their tenancy obligations.

If the lessor/agent uses a tenancy database they must inform the applicant of this. If a reference check reveals the applicant is listed on a tenancy database, the lessor/agent must provide the applicant with information about this listing.

A listing on a tenancy database may prevent a prospective tenant from being deemed a suitable tenant.

- Unfortunately, many victims of domestic and family violence are added to TICA due to such issues as damage to the property committed by the perpetrator of violence. If an applicant discovers they are listed on a tenancy database they may be able to dispute the listing.





1.3.23 Disputing a tenancy database listing

If a tenant wants to dispute a listing and have their name removed from a tenancy database, the tenant can take the following steps:

- Tenants can write to the agent and the database operator to dispute the listing and request removal in 14 days;
- Tenants can also apply to QCAT for an urgent hearing to seek an order the listing be removed;
- To apply to QCAT tenants need to fill in a [QCAT Form 2](#);
- Name both the listing agent and database operator as respondents;
- Attach evidence of the listing, or proposed listing;
- State why the listing is unlawful, incorrect, ambiguous, unjust, or out-of-date, and should be removed; and
- Request a QCAT order that the listing agent and database operator immediately remove the listing.

When disputing a tenancy database listing it is a good idea to get a copy of the listing from the lessor/agent or tenancy database operator. If the tenant makes a written request for a copy of their listing they must be sent a copy within 14 days. The listing agent or database operator may charge a “reasonable” access fee.

To dispute a tenancy database listing

1. Put your request in writing - write to the agent and database operator to dispute the listing and request removal in 14 days. Attach evidence to show the listing is in breach of listing rules; or
2. Apply to [QCAT – QCAT Form 2 Application for Minor Civil Dispute](#) to apply for an urgent hearing and seek an order that the respondents take steps to remove the database listing.

Tenants can apply to QCAT for an urgent hearing to dispute a tenancy database listing under the following sections:

- Under [s460](#) tenants can dispute a listing that is in breach of the listing rules.
- Under [s461](#) tenants can dispute a listing if the listing of their personal information is unjust in the circumstances and is causing them severe hardship.
- Under [s462](#) tenants can also apply to QCAT to dispute a proposed database listing.





1.3.23 Disputing a tenancy database listing (Continued)

QUICK TIPS: Reasons tenants can be listed on a tenancy database and how to dispute an unfair listing

Lessors and agents can only list a tenant after a tenancy has ended and only if there is a lawful reason for the listing [s459](#). Only tenants named on the tenancy agreement can be listed.

Tenants can only be listed on a database if they left a tenancy and owe money over the bond amount. Tenants can also be listed if QCAT terminated the tenancy due to tenant objectionable behavior or repeated breach of the agreement.

Lessors or agents must notify tenants if they propose to list them on a database and must allow 14 days to dispute the listing. Tenants can apply to QCAT under [s462](#) to dispute a proposed listing.

If a listing is unlawful, out of date, incorrect or unjust, tenants can write to both the listing agent and the database operator to state this and request the listing be removed or amended within 14 days.

Tenants can apply to QCAT for an urgent hearing to dispute unlawful or unjust tenancy database listings.

All applications to QCAT to dispute a tenancy database listing are Urgent QCAT applications

- under [s460](#) tenant can seek removal of a database listing if there is no lawful reason for the listing, or the listing agent cannot provide evidence to justify the listing.
- under [s461](#) tenants can seek removal of listings that are unjust in the circumstances or where the applicant is now facing hardship. Unjust circumstances may include debts that occurred in relation to domestic violence, where a tenant had to leave or another party damaged the premises. Hardship includes being homeless or at risk of homelessness due to the listing.

QUICK TIPS: Reasons tenants can be listed on a tenancy database and how to dispute an unfair listing

To apply to QCAT for a hearing tenants can fill in the [QCAT Form 2 application](#).

Tenants are required to:

- Obtain a copy of the listing (obtain a copy from the listing agent or database operator);
- Attach evidence of the listing, or proposed listing;
- Name both the listing agent and database operator as respondents;
- State why the listing is unlawful, incorrect, ambiguous, unjust, or out-of-date, and should be removed;
- If a debt has been paid provide evidence of this, or state reasons why the listing is unjust; and
- Request a QCAT order that the respondents (both the listing agent and database operator) take steps to immediately remove the listing.

See the [TQ Tenancy Databases fact sheet](#) for more information.





PART 2
**THE
RESIDENTIAL
TENANCIES
AUTHORITY**





2.1 What is the RTA?

The [Residential Tenancies Authority](#) (the 'RTA') is the Queensland Government statutory authority responsible for providing a range of residential tenancy services in Queensland. The RTA administers the Act on and provides a wide range of tenancy based services for all parties to a tenancy agreement, including tenants, residents, lessors, agents and rooming providers.

RTA services include:

- a phone-based tenancy information service;
- print and online tenancy information materials;
- approved tenancy forms for general tenancies, rooming accommodation tenancies and moveable dwelling tenancies in caravan parks;
- bond management – the RTA holds and manages tenant bond money during the tenancy and administers the refund of rental bonds;
- a free tenancy dispute resolution service for disputes covered by the Act; and
- policy and education services, including prosecuting offences under the Act.





2.2 RTA forms

The RTA website provides tenancy forms used for general tenancies (flats, units, houses etc.), rooming accommodation tenancies (room only with shared facilities) and moveable dwelling tenancies (renting a site or a van in a caravan park).

[RTA forms](http://www.rta.qld.gov.au) are available online at www.rta.qld.gov.au. The RTA can also post forms out to tenants if requested. Call the RTA on 1300 366 311

The following is a list of common tenancy forms used in general tenancies.

Form 18a	General tenancy agreement
Form 1a	Entry Condition Report
Form 2	Bond Lodgment form
Form 3	Change of rental property
Form 4	Refund of Rental Bond
Form 5	Change of lessor, agent or manager/provider
Form 6	Change of bond contributors
Form 9	Entry notice
Form 10	Notice of lessor's intention to sell premises`
Form 11	Notice to remedy breach
Form 12	Notice to leave
Form 13	Notice of intention to leave
Form 14a	Exit condition report
Form 15	Abandonment termination notice
Form 16	Dispute resolution request
Form 19	Notice to vacate from mortgagee to tenant/s





2.3 Notice of Intention to Leave - RTA Form 13

A notice to end a tenancy must be given in writing. Tenants must use a [Notice of Intention to Leave-RTA Form 13](#) (NOITL) to advise the lessor/agent of their intention to leave the rental property by a certain date (the handover date).

If tenants are ending a fixed term agreement early (eg: break-lease) a NOITL is still valid, even if the date the tenant is moving out is before the end of a fixed term lease. However a tenancy agreement is a legally binding contract. Lessors/agents may seek compensation from tenants for breach of the agreement and early termination of their tenancy.

If tenants need to leave a fixed term tenancy early due to a serious reason, including domestic violence, instead of giving a Notice of Intention to Leave, tenants may choose to apply to QCAT for an urgent hearing and seek an order to terminate their tenancy.

While waiting for the QCAT hearing date, if tenants need to move out prior to the hearing, it is always a good idea give the lessor or agent written notice confirming the date the tenant moved out and returned the keys, or intends to move out and return all keys to the lessor/agent .





2.4 Dispute Resolution Request – RTA Form 16

The [RTA Dispute Resolution Service](#) provides free telephone conciliation service to assist parties resolve a tenancy dispute. The role of the RTA is to remain impartial and assist parties to communicate and reach a voluntary agreement to settle their dispute.

To apply to the RTA parties must fill in a [Dispute Resolution Request - RTA Form 16](#) and lodge it with the RTA. For all non-urgent tenancy disputes parties must apply to the RTA, and attempt to resolve their dispute, before they can apply to QCAT for a tenancy tribunal hearing.

When applying to the RTA Dispute Resolution Service parties can indicate on the Form 16 if they need an interpreter, or need assistance with reading or writing.

The RTA usually provides dispute resolution over the phone, either through a series of calls to each party, or as a telephone conference with all parties on the phone along with a trained RTA Conciliator.

RTA conciliators are impartial, their aim is to facilitate communication to assist parties to negotiate an agreement. Conciliators cannot make decisions or force people to make an agreement.

If parties are unable to resolve their dispute, or if the RTA considers the matter is not suitable for conciliation (for example if the parties are not willing to participate or exchange information) the RTA will issue a Notice of Unresolved Dispute with a conciliation number. The person who receives this letter then has the option to apply to QCAT for a hearing and a final decision.

Non-urgent matters require RTA conciliation before parties can apply to QCAT for a hearing. These include general disputes about agreements, breach notices, routine repairs, locks and keys, or service charges, and disputes over rent decreases, compensation claims, or bond refunds.

Urgent tenancy matters are defined under [s415](#) of the Act. These matters can go direct to QCAT without the requirement to first seek resolution through the RTA Dispute Resolution Service. However, parties can still use the RTA Dispute Resolution Service if they wish.

Urgent matters include applications to QCAT to terminate a tenancy, remove a tenancy database listing, or seek an order about emergency repairs, or repairs affecting tenant health and safety.

QUICK TIPS: Dispute resolution

- Where possible it is a good idea to communicate with the lessor or agent (and other tenants if applicable) to try to resolve the dispute through self-resolution. However if parties cannot resolve a dispute the RTA Dispute Resolution Service may assist.
- The RTA provides a free dispute resolution service for tenancy matters. To apply simply fill in a [Dispute Resolution Request - RTA Form 16](#) and send it into the RTA.
- An RTA conciliator will contact the person who lodged the Form 16 to obtain further information about the dispute.
- The RTA will usually contact the parties by telephone to exchange information and see if the parties are willing to participate and reach a voluntary agreement to solve the tenancy dispute.
- If the RTA Dispute Resolution Service cannot assist parties to reach an agreement, the RTA will issue a Notice of Unresolved Dispute (NURD) that includes a conciliation number.
- The person who receives a Notice of Unresolved Dispute from the RTA then has the option to apply to QCAT for a tenancy hearing and a final decision.





2.5 Refund of Rental Bond – RTA Form 4

At the end of the tenancy parties can fill in a [Refund of Rental Bond - RTA Form 4](#) and send it into the RTA to seek a refund of the rental bond.

If all parties sign an “agreed” bond refund form the RTA can immediately release the bond into the nominated accounts.

If parties cannot agree, either party can lodge their own Form 4 with the RTA at the end of the tenancy.

If the RTA receives a bond claim, and all people listed on the bond have not signed the form, the RTA will send the other parties a Notice of Claim that gives them 14 days to dispute the claim.

If other parties do not dispute the bond claim by the due date, the RTA will release the bond to the person who lodged the first Refund of Rental Bond Form 4.

When moving out it is always advisable tenants notify the RTA of their new contact address so tenants are promptly notified of any bond claims or disputes.

Bond disputes

If someone disputes the bond claim and sends the RTA a [Dispute Resolution Request - Form 16](#). The RTA will hold the disputed amount of the bond until the parties go through the dispute process.

The RTA Dispute Resolution Service will set up a telephone conference where parties can exchange information about the claims and seek agreement about the bond refund.

It is important to communicate with the other party to seek full details of the bond claims and request evidence to justify the claims, such as photos, reports, invoices or receipts for the amounts being claimed.

If parties reach an agreement about the bond refund the RTA will get all parties to sign a new Refund of Rental Bond form to reflect the agreed amounts.

If tenants agree to sign over some or all of their bond it is useful to seek agreement that this amount is *‘in full and final settlement of all claims’* and write this on the form as confirmation of this agreement.

If parties cannot reach a final settlement to release the bond the RTA will issue a Notice of Unresolved Dispute. The person who receives this notice has 7 days to apply to QCAT for a bond dispute hearing and notify the RTA of this. If the RTA do not receive this notification within 7 days they will automatically release the bond according to the first Refund of Rental Bond form that was lodged with the RTA.

If there is a tenancy hearing QCAT will send all parties a letter with the date and time of the hearing. At the QCAT hearing the QCAT member will look at the evidence presented by each side and make a final decision about the bond refund.





2.6 Exit Condition Report – RTA Form 14a

Tenants need to obtain and complete an [Exit condition report - RTA Form 14a](#) to record the condition of the premises when they leave. Tenants can also take photos and keep copies of cleaning receipts as further evidence they have met their obligations.

Tenants must give the lessor/agent a copy of the completed Exit Condition Report when they move out and hand back the keys. The lessor/agent then has three (3) business days to inspect the property, add their comments to the form and return a copy to the tenant at their forwarding address stated on the form.

When moving out it is important tenants gather evidence to show they have left the premises clean and undamaged. The Exit Condition Report is the tenant's record of the condition of the property at the end of the tenancy. This report can provide important evidence if there is a dispute over the bond refund at the end of the tenancy.

QUICK TIPS : At the end of the tenancy

- Leave the property as far as possible in the same condition it was in at the start of the tenancy, except for "fair, wear and tear".
- Complete and sign the Exit Condition Report and provide a copy to the lessor/agent who must inspect the premises and return a copy to the tenants within 3 business days.
- Tenants should keep a copy of the Exit Condition Report for their own records.
- Tenants can take photos of the property when moving out and gather other evidence.
- If the tenant is liable for water costs make a note of the water meter reading on the Exit Condition Report.
- Use an RTA Form 4 to apply to the RTA for a Bond Refund.
- Advise the RTA of the applicants address so that they can be notified of any disputes.





PART 3

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL





3.1 What is QCAT?

The Queensland Civil and Administrative Tribunal (QCAT) is an independent tribunal that can hear a range of minor civil matters, including residential tenancy disputes. The tribunal aims to provide an accessible, inexpensive process for parties seeking a final decision to resolve a tenancy dispute.

QCAT matters are usually heard in the local Magistrates Court hearing rooms closest to the rental premises, or can be heard at the QCAT central registry in Queen St, Brisbane.

In QCAT parties represent themselves but they can take a support person or advocate to the hearing with them. Parties can also apply to attend by telephone, or seek permission to have someone represent them, if they are unable to attend the hearing in person.

The QCAT website at www.qcat.qld.gov.au provides information about the QCAT hearing process for residential tenancy matters, and includes links to relevant [forms](#) including the [Form 2 - Application for a Minor Civil Dispute – Residential Tenancy Dispute](#).



3.2 The QCAT Application

To apply to QCAT for a tenancy hearing the Applicant needs to complete a [QCAT Form 2 - Application for Minor Civil Dispute - Residential Tenancy Dispute](#), attach supporting documents, copy their application and then lodge the required numbers of copies with QCAT.

QCAT charge a [filing fee](#) to apply for a residential tenancy hearing.

If the Applicant is in financial hardship, or is on a low income, QCAT can waive the fee. The Applicant will need to fill in a [QCAT Form 49 Application For Waiver of Fees Due To Financial Hardship](#) and attach a copy of their health care card or pension card as evidence of their financial hardship.

When QCAT receives an application they will send all parties a Notice of Hearing. This notice will state the date, time and location of the hearing. If the person is named as a Respondent they will also receive a copy of the application that has been lodged against them.

If parties receive notice of a QCAT hearing it is important to attend the hearing to present evidence and let QCAT know what decision they think QCAT should make.

When applying to QCAT for a residential tenancy hearing remember to:

- read the instructions carefully
- answer all relevant questions and provide as much information as possible
- include the contact details of all parties
- provide any supporting documents in their original format or, if a statement is attached in Affidavit format this must be witnessed by a Justice of the Peace, Commissioner of Declarations or a solicitor.
- sign and date the form
- lodge the required number of copies of the application with QCAT (one for QCAT and one for each Applicant and each Respondent named in the application).
- Pay the required filing fee or complete a [QCAT Form 49 Application of wavier of fees by reason of financial hardship](#).
- If an interpreter is required make a written request to QCAT and note this on the QCAT application.
- If the applicant wants to attend the hearing by telephone fill in an [Application for Attendance at Hearing, Compulsory Conference or Mediation by Remote Conferencing](#).





3.3 Preparing for the QCAT hearing

The aim of the hearing is to ask QCAT to make a final decision about the tenancy dispute. Therefore it is strongly recommended that the tenant attends the hearing.

The parties are required to bring any evidence they intend to rely on to the hearing (or attach to the application if they are the Applicant). Parties should also provide copies of their evidence to the Tribunal and the other parties. Where possible this should happen prior to the hearing.

Documents parties may use to support an application may include:

- A copy of the tenancy agreement;
- A copy of the RTA Notice of Unresolved Dispute;
- Receipts, quotes and invoices;
- Copies of Entry and Exit condition reports;
- Copies of RTA notices;
- [Affidavits](#) from witnesses;
- Queensland Police Service reports ;
- Copy of any protection order;
- Email correspondence;
- Letters regarding the tenancy matter which may include letters from a DV support service;
- Photographs; and
- Bank statements as evidence of financial hardship.



3.4 Attending a hearing by telephone

When a matter is listed for a hearing, the parties are expected to attend the tribunal in person to present their case. If a tenant cannot attend in person, before the hearing date they may apply for permission to attend by telephone by completing the [application for attendance at hearing by remote conferencing](#) or [complete the online application to attend a proceeding by telephone](#).





3.5 Adjournments

If QCAT list a hearing at a time that a party is unable to attend, they can request to adjourn (postpone) the hearing. However, they will need to have a good reason for not being able to attend (such as being in hospital) otherwise the tribunal may continue with the hearing and make a decision without them.



3.6 Interpreter service

If the tenant requires an interpreter, QCAT can source one and the service is generally free, however in some jurisdictions QCAT can decide whether or not payment is needed for the cost of the interpreter. This can be confirmed with the tribunal.

If a tenant sources their own interpreter, ensure the interpreter is accredited under the National Accreditation Authority for Translators and Interpreters and inform QCAT.

Requests for interpreters should be made as soon as possible before the hearing date. This interpreter request can also be noted on the [QCAT Form 2 Application for minor civil dispute-residential tenancy dispute](#).



3.7 Assistance for people with a hearing impairment

QCAT hearing rooms are equipped with hearing loops to assist those with a hearing aid. If this service is required or the tenant has a hearing impairment but do not have a hearing aid, please advise the QCAT registry via QCATOperationsSupport@justice.qld.gov.au.



3.8 Wheelchair access

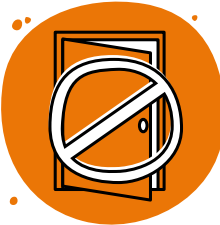
All floors within the tribunal are wheelchair accessible and a wheelchair is available if required. Information about disability parking is available on QCAT's [contact information](#) page.





3.9 Security at the hearing

If a tenant requires additional security and safety while attending a hearing, it is best to put this request in writing to QCAT prior to the hearing date.



3.10 Closed Hearing

QCAT hearings are generally open to the public; however, a private hearing must occur if:

- a tribunal application is made under section 245 (Injury to domestic associate), or section 321 (Application by tenant's domestic associate for termination for damage or injury); or
- a cotenant is a domestic associate and applies under section 312 (Application by cotenant for termination for damage or injury); or
- the domestic associate of the tenant applies under section 323 (Application for interim order about damage or injury).

If an application is made to the tribunal in circumstances involving domestic violence, the applicant may request a closed hearing by completing and submitting a [QCAT Form 40 – Application for miscellaneous matters](#).



3.11 What happens at the hearing?

At the commencement of the hearing, the QCAT members or adjudicators responsible for deciding the case, will make introductions and ask all parties to introduce themselves. Information on protocols for hearings is provided in [Practice Direction 2014/1 – Hearing Protocols](#).

Matters may be heard by an adjudicator or a panel of JP's depending on the complexity of the matter.

The parties and witnesses may be required to swear an oath or make an affirmation at the beginning of proceedings, promising to tell the whole truth in the evidence given to the tribunal in the statements to follow. Each party to the matter may:

- ask questions;
- be asked questions by the members or adjudicators;
- the tribunal may allow the parties to ask each other questions or to challenge evidence given, however generally the parties are to address the adjudicator;
- it is preferable for witnesses to also attend the hearing, however, a sworn affidavit providing evidence in this way will be sufficient testimony if there is a sound reason as to why witnesses are unable to attend the hearing.





3.12 After the hearing

A decision may be provided at the end of the hearing however if the tribunal needs more time to consider the matter or to gather more information the tribunal may reserve its decision and all parties will receive QCAT's decision at a later date.



3.13 Re-openings

Reopening a matter will only be considered in special circumstances. QCAT will only consider reopening a matter if a party did not appear at the final hearing and has a reasonable excuse for not attending, or a party would suffer substantial injustice if the matter was not reopened because significant new evidence has emerged that was not previously available.

An application to reopen proceedings must be lodged within 28 days from the date the tenant was provided with notice of the QCAT decision.

To apply to reopen a matter, the applicant will need to complete and lodge a [QCAT Form 43 - Application for reopening, correction, renewal or amendment](#). This form may incur a filing fee.

If applying for a Reopening the applicant needs to attach evidence regarding why they were unable to attend the hearing. It is also useful to mention any evidence that, if the matter is re-heard, may change the original decision that was made by the tribunal.

If parties are applying for a Reopening they may also want to apply for a Stay or Interim order to stop the original decision being enforced prior to the matter being reheard in QCAT.



3.14 Appeals

There are limited grounds to appeal a QCAT decision. Parties must first apply to QCAT to seek permission to appeal the decision and set out their reason for an appeal. Strict time limits apply to appeal a decision.

QCAT's Internal Appeal Tribunal determines appeals. Parties must complete a [QCAT Form 39 – Application for Leave to Appeal or Appeal](#), to apply to QCAT to seek leave (permission) to appeal a decision.

You can only appeal QCAT residential tenancy decisions if there has been an error in:

- a question of law
- a question of fact, or
- a question of mixed law and fact.

When the Internal Appeal Tribunal hears an appeal a new hearing may take place, which will consider the original information and evidence presented. New information and evidence may only be presented if the Internal Appeal Tribunal grants permission.





PART 4

THE MAGISTRATES COURT AND TENANCY LAW





4.1 Applications in the Magistrates Court

If a tenant has applied for a [Protection Order](#) or a variation to a DVO and also has a tenancy application in QCAT, it may be possible for the applicant to have both matters heard in the Magistrates Court at the same time. This is set out under [s139](#) of the [Domestic and Family Violence Protection Act 2012 \(Qld\)](#). **It is important to remember: the tenancy matter and the DVO matter will be heard in the Magistrates Court nearest the rental property in dispute.**

If a person makes an application to a Magistrates Court for a protection order, or a variation of a domestic violence order, the person may also make an application under the Act using one of the following provisions:

- [s245](#) as a domestic associate to be recognised as a tenant or co-tenant instead of the perpetrator and to prevent a database listing. Ideally, there would also be a request for an ouster order under [s63](#) of the [Domestic and Family Violence Protection Act 2012 \(Qld\)](#);
- [S321](#) as a domestic associate to terminate the tenancy due damage or injury by the tenant; or
- [S323](#) as a domestic associate of the tenant or occupant of the premises for an interim order restraining the tenant from causing further damage or injury.

The above applications may be made by attaching a [QCAT Form 2](#) application to the [Form DVO1](#) and lodging both applications at the local Magistrates Court. Alternately, if an applicant has already applied to QCAT for a residential tenancy hearing the applicant can make a note of this on the Magistrates Court Form DVO1 and can apply to the court to have their QCAT matter transferred to the Magistrates Court, so both their DV and tenancy matter will be heard at the same time. Applicants may need to speak to their staff in the registry office to work out the preferred process used in their local registry.





4.2 Adjournments

Parties are required to appear in court unless ordered otherwise. If you need to change the date set by the court for any reason, an application for an adjournment to reschedule can be made by contacting the registry. If the application for an adjournment is refused and a party fails to appear on the set date, the magistrate will make an order in their absence.

To apply for an adjournment contact the magistrate's court and apply in writing at least three business days before the hearing date set by the court - courthouse.brisbane@justice.qld.gov.au (Brisbane) Provide details the reasons for the adjournment, propose a new date/s and attach any supporting documentation if possible. For other courthouse information visit www.courts.qld.gov.au.



4.3 Magistrate Court forms

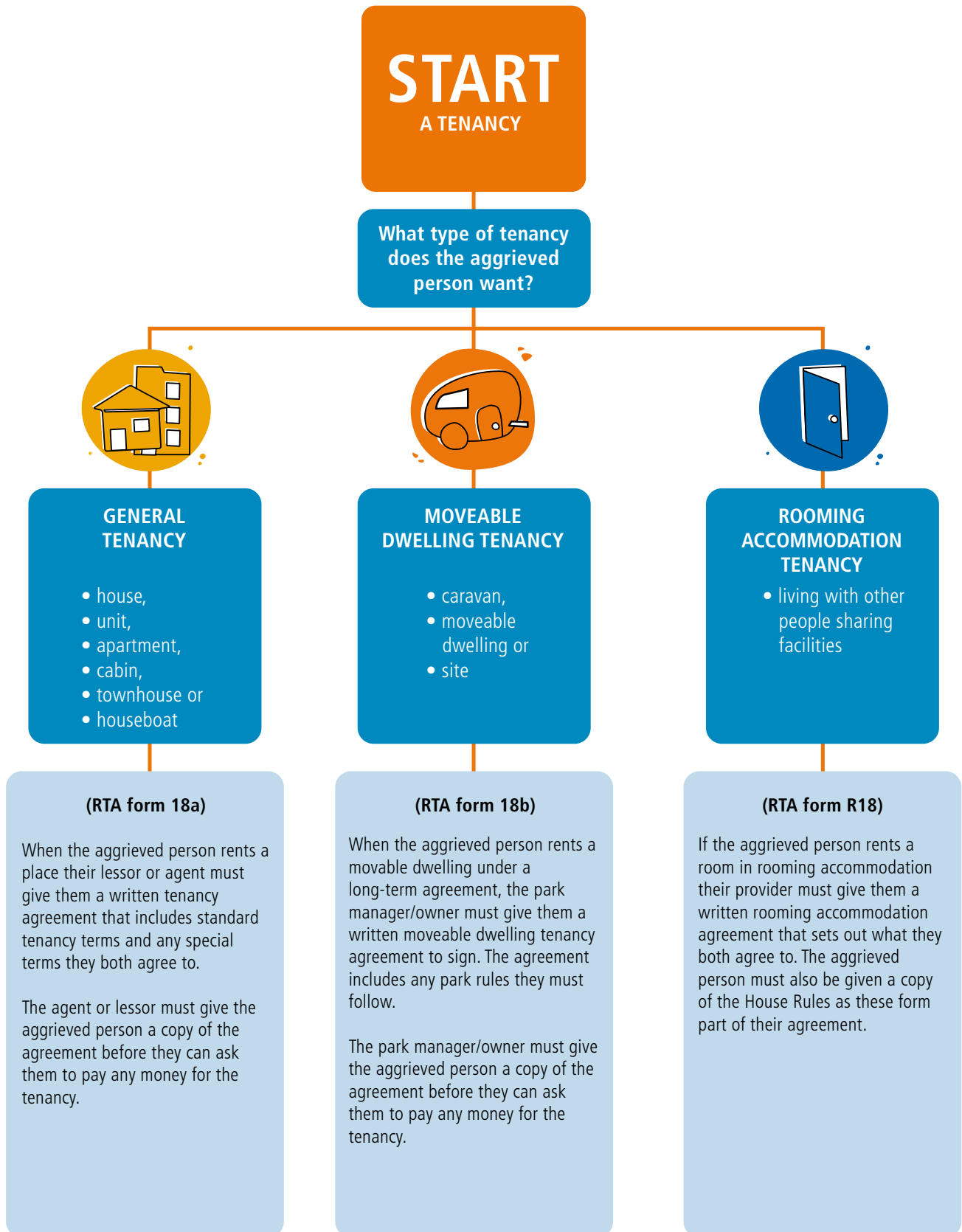
- Application for a protection order: Form [DV01 – Application for protection order](#)
- Guide to completing an application for a protection order: Form [DV01A – Guide to completing an application for protection order](#)
- Application to vary a domestic violence order : [Form DV04 – Application to vary a domestic violence order](#)
- Court Safety Form (Requesting extra safety measures at court) – [Form DV01B – Safety form](#)

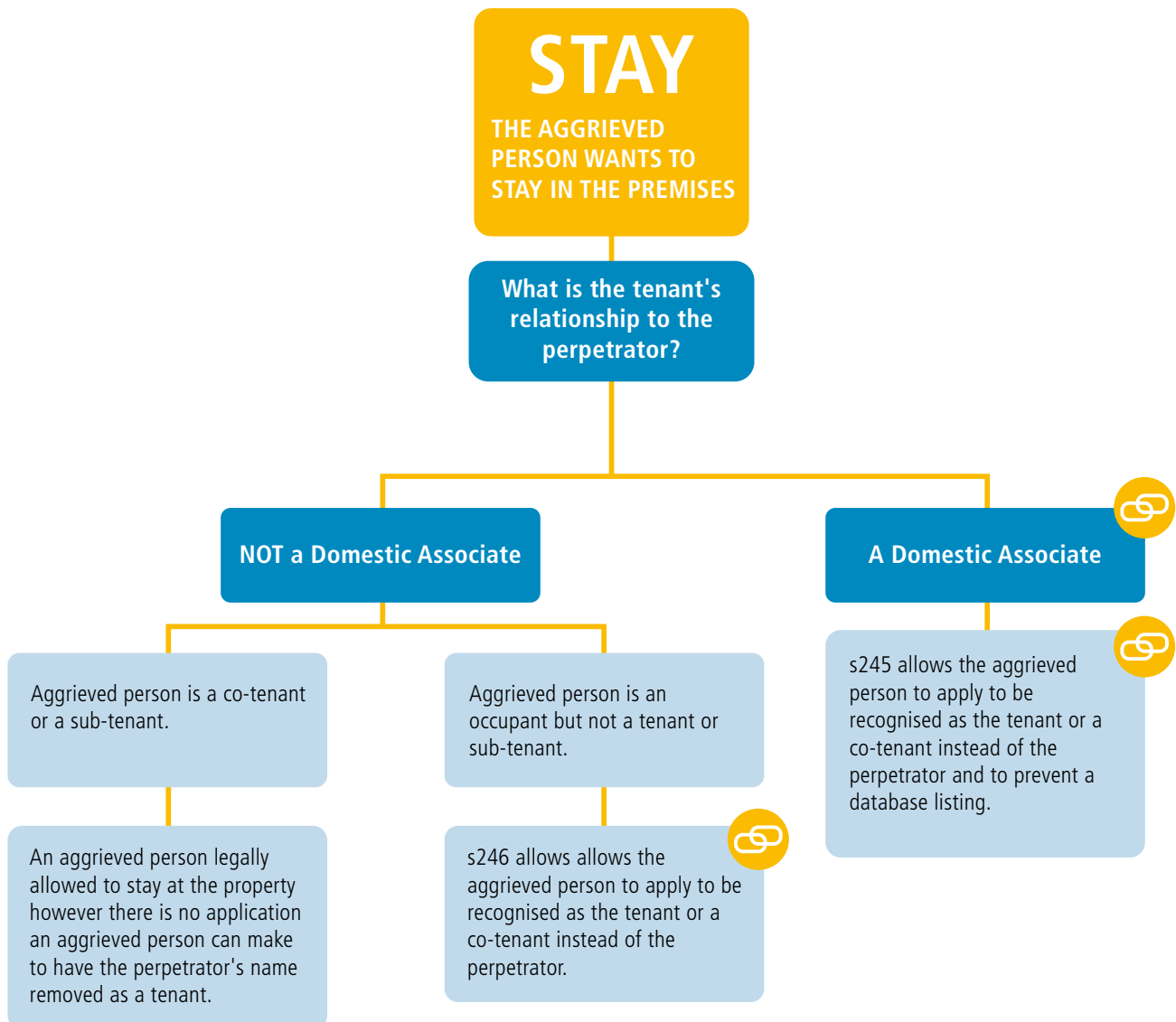


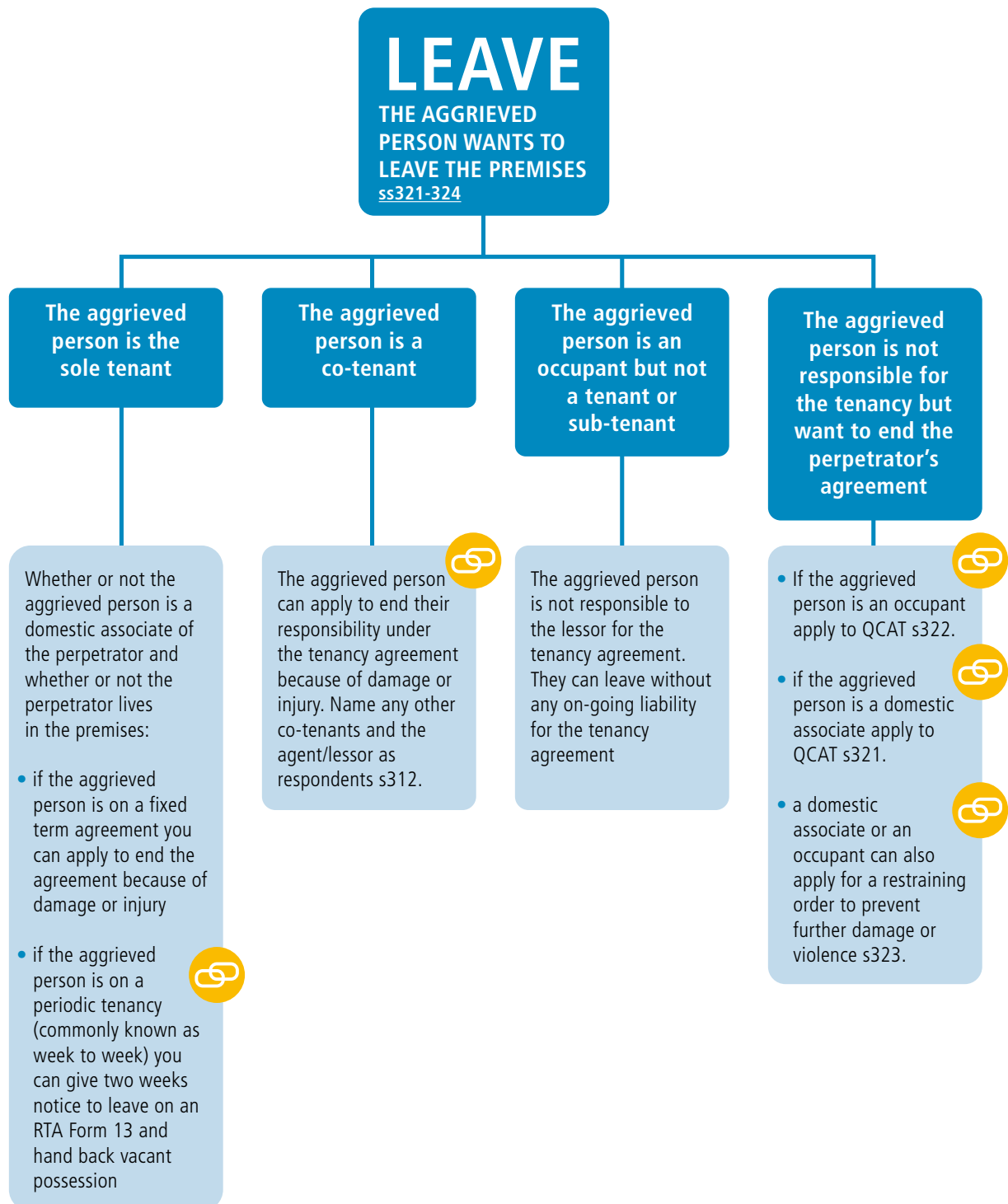


APPENDIX









Sample Letter to Propose Mutual Termination Agreement

(Insert tenant/s name/s)

(Insert tenant/s postal address)

(Insert date)

(Insert lessor/ agent's name)

(Insert lessor/ agent's address)

Dear (insert lessor/ agent's name),

RE: Mutual Termination of Tenancy

We request that our tenancy at [insert address] ('the Premises') be mutually terminated due to:

Explain the reason/s that you want to terminate early. Important to mention:

- the change of circumstances that was not apparent when you signed the lease;
- how having to continue with the tenancy agreement would put you in a position of excessive hardship;
- attach copies of any relevant evidence

Due to these circumstances, I/we request that you and the lessor consider allowing me/us to terminate the agreement early. Please forward this correspondence onto the owner of the property for their consideration.

As this situation is already placing stress on me/and my family, I/we would appreciate if you could please respond to this letter by [insert date]. If we cannot agree, I/we may proceed to apply to QCAT (Queensland Civil and Administrative Tribunal) for a termination of the tenancy due to our [insert applicable reason].

Please feel free to contact me via phone/email should you wish to discuss the matter further.

Yours faithfully,

[Tenant to sign here]

[Tenant's Name]



Sample Mutual Termination Agreement

1. I/we, the undersigned, hereby agree to terminate the tenancy at [insert address] by Mutual Agreement and the tenants will have no further liability for rent after the agreement ends.
2. The tenancy will terminate on [insert date].
3. The tenants agree to hand back vacant possession of the property and return all keys on the termination date stated above.

OR

2. and 3. The parties agree the fixed term lease will become periodic and the tenants will provide two weeks' Notice of Intention to Leave to the lessor to advise when they will vacate the property.
4. The tenant/s agree they will meet the obligations at the end of the tenancy and will hand back the property in a clean condition, as required under section 188(4) of the Residential Tenancies and Rooming Accommodation Act 2008 (Qld).
5. The lessor agrees the tenant/s will not be responsible for any rent after vacate date and will not be liable to pay any advertising or re-letting costs.

OR

5. The tenant/s agree they will compensate the lessor, in consideration of entering into this agreement, the following:
 - Advertising costs of \$xxxx
 - Re-letting costs of \$xxxx
 - Agreed amount of rent of \$xxxx

The agreed amount of compensation will be paid to the lessor on [insert date].

[Insert Name of Tenant]

[Insert Name of Tenant 2]

[Signature of Tenant]

[Signature of Tenant]

[Insert date]

[Insert date]

[Insert Name of Lessor]

[Signature of Lessor]

[Insert date]



Sample Break Lease Letter

(Insert tenant/s name/s)

(Insert tenant/s postal address)

(Insert date)

(Insert lessor/ agent's name)

(Insert lessor/ agent's address)

Dear (insert lessor/ agent's name),

RE: Tenancy at (insert address of rental property)

Choose one from the following 3 paragraphs:

As you are/the lessor is aware, I/we have recently issued my/our Form 13 Notice of Intention to Leave ("Form 13") for my/our tenancy at (insert address of rental property). The Form 13 is due to expire on (insert hand over date).

OR

As you are/the lessor is aware, I/we have issued my/our Form 13 Notice of Intention to Leave ("Form 13") for my/our tenancy at (insert address of rental property). The Form 13 expired on (insert hand over date).

OR

I/we intend to terminate my/our tenancy at (insert address of rental property). Please find attached Form 13 Notice of Intention to Leave ("Form 13"). You will note the Form 13 is due to expire on (insert hand over date).

In accordance with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) ("the Act"), I/we intend to leave/ have left the premises, as far as possible, in the same condition delivered to me/us at the start of my/our tenancy, with fair wear and tear excepted.

As I/we have terminated my/our fixed term lease early, I/we understand that I am/we are liable to compensate you/the lessor for you/ their reasonable losses.

I/we bring to your attention the provisions of s362(3) of the Act, which states that you/the lessor must take all reasonable steps to minimise your/ the lessor's losses, otherwise you/they are not entitled to receive compensation for any loss/ expense that could have been avoided by taking such steps.

Sample Break Lease Letter CONT

If alleging that the lessor/agent is not mitigating loss, insert the following paragraph:

I/we note that (cross out which one does not apply AND/OR insert your own):

- You have advertised the property at a higher rental amount
- You have yet to advertise the property
- You advertised the property (insert number of days/weeks/month) after I/we gave you the Form 13
- You have rejected (insert amount of applicants) applicants who have applied for a tenancy at the property
- (insert other)

As such, I/we believe that you are/the lessor is not mitigating your/the lessor's losses.

I/we will not hesitate to dispute any compensation claims made against me/us that are in breach of s362(3) of the Act.

I/we request that (cross out which one does not apply AND/OR insert your own):

- you advertise the property immediately
- you immediately advertise the property at the same amount as my/our current rent
- (insert other)

Please note that I/we have already paid you/the lessor (cross out which one does not apply AND/OR insert your own):

- a relet fee of (insert amount of relet fee)
- advertising fees of (insert amount of advertising fees)
- (insert other)

I/we note that I am/we are not liable to continue paying rent weekly/fortnightly/monthly after the tenancy agreement has terminated, although I/we understand that I am/we are liable to pay for the lessor's reasonable losses. If there is any outstanding amount of reasonable compensation, I/we will make arrangements to pay this once it has been quantified.

Please do not hesitate to contact me on (insert phone number) should you wish to discuss the matter further.

Yours faithfully,

(insert tenant's name)

(tenant to sign)



Guide to filling in QCAT form 2 Application for minor civil dispute – Residential Tenancy Dispute

QCAT can hear residential tenancy or rooming accommodation disputes that are covered under the [Residential Tenancies and Rooming Accommodation Act 2008 \(Qld\) \(the Act\)](#).

The Tenants Queensland website includes a series of [short videos](#) to assist people when they need to go to QCAT for a residential tenancy hearing. The videos show the steps tenants can take to solve a tenancy dispute, or apply to QCAT for a hearing and a final decision.

The Applicant will need to provide a completed and signed the [QCAT Form 2 Application for Minor Civil Dispute – residential tenancy dispute](#), include attachments and supporting statements or evidence. Additional copies will need to be provided for each party including the Applicant; QCAT will serve all the parties the QCAT application along with a Notice of Hearing.

Copies of the Application must be lodged at the local [Magistrates Court](#) (closest to the rental premises) that hears QCAT matters, or at the central [QCAT](#) registry in Queen St Brisbane.

The Applicant will need to pay a QCAT filing fee. This fee will depend on the amount of money that is being claimed in the application. See the [QCAT website](#) for a full list of fees (these change each year).

If the Applicant is low income and cannot afford to pay the QCAT filing fee they can fill in a [QCAT Form 49 Application for waiver of fees by reason of financial hardship](#). They need to attach evidence as proof of low income, such as a copy of a pension or health care card, or a statement regarding current financial difficulties.

PAGE 1 The Applicant's Details

The Applicant is the person applying to QCAT for a hearing. Include their details on Page 1. If other tenants are named on the tenancy agreement, they need to be included as Respondents on page 2, if they are not also an Applicant in the matter.

PART A APPLICANT'S DETAILS

Applicant type: *(please tick one)*

<input checked="" type="checkbox"/> Tenant	<input type="checkbox"/> Lessor (landlord)	<input type="checkbox"/> Agent for lessor or provider*
<input type="checkbox"/> Resident	<input type="checkbox"/> Provider (rooming accommodation)	

Applicant details: *(for multiple applicants attach details on a separate sheet)*

Name

Ms Anne Applicant

Address

2 Market Street, Brisbane (this form is sent to the Respondents so they will see your contact details)

Postcode
4001

Contacts

Preferred phone number	Alternative number	Email

* An agent can only make this application if the agent is authorised in writing in a separate letter or in the residential tenancy agreement to stand in the lessor or provider's place in a proceeding under s 206 or s 248 of the *Residential Tenancies and Rooming Accommodation Act 2008*.



PAGE 2 The Rental Property

Include the tenancy details here. State the address and information about the rental bond.

If you don't know the bond details bond contributors can call the RTA on 1300 366 311 to get their bond number and verify the amount of bond being held by the RTA.

Applicants can also attach a copy of the tenancy agreement to the application (if they have a copy).

PAGE 2 The Respondent's Details

The Respondent/s is the other party; usually the lessor or agent. Other co-tenants must also be listed as Respondents (if they are not named as Applicants).

Insert an extra piece of paper if you need to list contact details for additional respondents.

Most tenants only have contact details for the Agent who stand in the place of the lessor. However the Applicant can name both the lessor and agent if they wish.

If seeking an order to remove a tenancy database listing the Applicant should name both the listing agent and the database company (eg:TICA) as Respondents.

Urgent or Non-urgent Applications

Tick a box to say whether the application is an Urgent application or Non-urgent application. See the Appendix (pages 8 to 10) for a list of all Urgent and non-urgent applications.

PART A RENTAL PROPERTY	
Address of rental property	
1 Old Rental Address, Some Suburb	
Queensland	Postcode
Type of agreement: <input type="checkbox"/> Fixed term (e.g. 6 months) <input type="checkbox"/> Periodic (e.g. week to week)	
Rental bond number	Rental bond amount
Applicant can call RTA on 1300 366 311 to get info	\$
Is rental bond currently held by the Residential Tenancies Authority (RTA)?	
<input type="checkbox"/> Yes	<input type="checkbox"/> No
The RTA can only pay funds to the value of the rental bond held.	

PART A RESPONDENT'S DETAILS	
Respondent type (please tick one)	
<input type="checkbox"/> Tenant	<input type="checkbox"/> Lessor (landlord) <input checked="" type="checkbox"/> Agent for lessor or provider*
<input type="checkbox"/> Resident	<input type="checkbox"/> Provider (rooming accommodation)
Respondent details: (for multiple respondents attach details on a separate sheet)	
Name	
Old Real Estate Agent	
Address	
2 Property Management Way (add an extra sheet of paper to list contact details for additional Respondents)	
Rentville, QLD	Postcode
Contacts	
Preferred phone number	Alternative number Email
* An agent can only be nominated as the respondent if the applicant is a tenant or resident, and the agent is authorised in writing by a separate letter or in the residential tenancy agreement to stand in the lessor or provider's place in a proceeding under s 206 or s 248 of the Residential Tenancies and Rooming Accommodation Act 2008.	

PART B URGENT OR NON-URGENT	
Is this an urgent or non-urgent application under the <i>Residential Tenancies and Rooming Accommodation Act 2008</i> ? (refer to Appendix 1 of the attached guide for a list of urgent and non-urgent applications under the Act)	
<input checked="" type="checkbox"/> Urgent application	Go to Part C
<input type="checkbox"/> Non-urgent application	You can only make a non-urgent application if you have a Notice of Unresolved Dispute from the Residential Tenancies Authority.
	Conciliation number on Notice of Unresolved Dispute
	OR if dispute is Non-urgent tick box & write RTA Conciliation number there

Urgent applications are defined in s415 of the Residential Tenancies and Rooming Accommodation Act 2008. QCAT prioritise hearings for Urgent applications. Urgent QCAT applications include applications to terminate a tenancy or dispute a tenancy database listing.

For non-urgent applications (such as bond or compensation disputes) parties must first apply to the RTA using a Form 16 and seek conciliation of the dispute before they can apply to QCAT for a hearing. The RTA will send out a Notice of Unresolved Dispute, which includes a conciliation number, if they are unable to assist the parties resolve the dispute, this number is to be included in the application.

Non-urgent tenancy matters may include bond disputes, compensation claims, disputes about service charges or water bills, or general disputes about the agreement.

PAGE 3 The Order and Reasons Details - Part C

What section of the Act are you applying under? Write the section number here.

Look at the Appendix (pages 8 to 10) at the end of the Form 2 for a list of all urgent and non-urgent QCAT applications. Seek advice if you don't know which section to use.

PART C ORDER AND REASONS DETAILS	
What order/s do you want the tribunal to make? <i>(Refer to Appendix 1 of the attached guide for the sections of the Residential Tenancies and Rooming Accommodation Act 2008 and the type of orders that can be made)</i> <i>(If the space below is insufficient, please attach additional pages)</i>	
Section of Act:	<input type="text" value="s 312"/> <input type="button" value="Go to Appendix 1"/>
What order do you want the tribunal to make?	
<input type="text" value="I am seeking an order to terminate the General Tenancy Agreement, under s 312, because the co-tenant has caused damage to the property and/or injury to me."/>	
<input type="text"/>	
<input type="text"/>	
<input type="text"/>	
Total amount of claim:	<input type="text"/>

State here what order you want QCAT to make at the hearing. This will relate to the section you have applied under.

The section number will depend on:

- the type of tenancy dispute,
- the order being requested
- the type of tenancy (eg: general tenancy or rooming accommodation) and
- if the person applying for the hearing is a tenant, resident, co-tenant, occupant or domestic associate.

For example an application under s312 to terminate a co-tenancy due to damage or injury by a co-tenant can state this here. An application to QCAT for a non-urgent bond dispute hearing under sections 137 and section 429 (general dispute) could state "I met all my obligations as a tenant and am seeking an order that my bond of \$ XXXX.XX be refunded to me.

If seeking a monetary amount write the amount in the box (such as the bond amount). In the box below the Applicant can list any compensation they are seeking. List the item being claimed and the amount. The Applicant will also need to attach supporting evidence such as photos and receipts as proof to justify these claims.

If the Applicant has issued or received any tenancy notices and they are relevant to the matter in dispute, they can be listed in the space provided.

<p>What are your reasons for seeking the above order/s?</p> <p>You must explain why you are asking for the orders by providing as much detail as possible. If you do not provide this information your application may be dismissed or may not be able to be heard the first time it is listed for hearing.</p>
I have been renting the property in Some Suburb with my former partner for 8 months. We are both named on the lease as co-tenants. We have a fixed term agreement until XXXX date (see the attached Tenancy Agreement). My former partner threatened me/damaged property on XXXX date. The police were called and advised me to leave the property.
I moved out of the property on XXXX date due to concerns for my personal safety.
I have applied for/been granted a domestic violence protection order (see attached DVO).
A condition of the protection order is that the co-tenant is prohibited from entering/remaining in the rental property.
I am no longer able to live in the rental property due to threats of further violence.
I am currently in a refuge/staying with friends/in temporary housing.
The co-tenant has moved out of the property and I am unable to contact them.
I seek an order to have the tenancy terminated from XXXX date.

PAGE 4 - What are your reasons for seeking the above orders?



The Applicant should state the reasons for the orders they are seeking. The reasons should be detailed enough so that the other party can understand what the dispute is about. The Applicant can also refer to attached supporting evidence, which should be clearly labeled.

An Applicant may provide evidence by attaching a statement or an [Affidavit](#) to the application. They can flag their evidence by writing "see attached Affidavit or Statement". Depending on the type of tenancy dispute evidence may include relevant letters, emails, photos, receipts or tenancy forms. It is always a good idea to keep statements brief (1-2 pages). If the matter is complex (such as a bond dispute) number the paragraphs and refer to relevant evidence that should be attached.

If someone is unable to attend a QCAT hearing to put forward their evidence in person, they may provide evidence in an Affidavit, which should be attached to the application. Additionally, the person should be available to attend the hearing by teleconference if the Tribunal wishes to ask them question about their evidence.

If an interpreter is needed at the hearing let QCAT know in advance. Tick this box. It is also a good idea to make a written request. Liaise with QCAT to see if they can provide an interpreter as requested. Applicants or Respondents may also need to organise their own interpreter support.

All Applicants need to sign and date the application here. If there is more than one Applicant the second Applicant can sign the form in the space below.

PART D INTERPRETER	
Is an interpreter required? <i>The assistance of an interpreter is subject to approval by the Tribunal.</i>	
<input type="checkbox"/> Yes (please specify language)	<input type="checkbox"/> No
SIGN AND DATE HERE	
The information in this application is true to the best of my knowledge.	
	
Applicant/s sign here	Date
If more than one applicant is named all must sign the application.	

