

The *Residential Tenancies and Rooming Accommodation Act 2008* (the Act) is the law that covers tenants and lessors as well as residents and rooming providers in Queensland, including share accommodation.

This factsheet explains the process if you want to change your living arrangements after an act of domestic violence (DV) was committed against you, by someone else living in the property or by a domestic associate (whether or not your domestic associate lives in the property). A domestic associate is any person who is in a spousal or intimate partner relationship, family relationship or informal care relationship.

You have options to **STAY** and have the tenancy transferred into your name and have the perpetrator's name removed, or to **LEAVE**.

STAY

YOU WANT TO STAY IN THE PREMISES

What is your relationship to the perpetrator?

A Domestic Associate

You can apply to be recognised as the tenant or a co-tenant instead of the perpetrator and to prevent a database listing

NOT a Domestic Associate

You are an occupant but not a tenant or sub-tenant

You can apply to be recognised as the tenant or a co-tenant instead of the perpetrator

You are a co-tenant or a sub-tenant

You are legally allowed to stay at the property however there is no application you can make to have the perpetrator's name removed as a tenant

You are the sole tenant

You have a right to leave where you no longer feel safe to continue to occupy the premises. You can give 7 days' notice by providing an RTA Form 20 Notice Ending Tenancy Interest, plus supporting evidence of DV such as

- Protection Order
- Police Protection Notice
- Family Law Court Order

An RTA DFV Report Form that can be signed by an authorised person

You are the co-tenant

You have a right to leave where you no longer feel safe to continue to occupy the premises. You can give 7 days' notice by providing an RTA Form 20 Notice Ending Tenancy Interest, plus supporting evidence of DV. The tenancy will continue for remaining co-tenants.

You are an occupant but not a tenant or sub-tenant

You are not responsible to the lessor for the tenancy agreement. You can leave without any on-going liability for the tenancy agreement

You are not responsible for the tenancy but want to end the perpetrator's agreement

- + If you are an occupant apply to QCAT under s322
- + If you are a domestic associate apply to QCAT under s321
- + A domestic associate or an occupant can also apply for a restraining order to prevent further damage or violence

You must pay rent until the end of the 7-day NET period. You are not responsible for paying any additional costs to the lessor for ending the agreement early, re-letting fees or costs relating to goods left on the premises.

LEAVE

YOU WANT TO LEAVE THE PREMISES

I want to STAY in the property

If you are a tenant and also a domestic associate who has experienced DV, you may want to stay in the property. If you feel safe and know that you can fulfill the obligations of a tenant - to pay the rent and look after the premises, you can take steps to stay in the premises.

Can I change the locks?

A **tenant** may change the locks without getting the agreement of the lessor/agent if it's necessary to protect yourself or an occupant from DV. You must engage a locksmith or other qualified tradesperson to change the lock and give the lessor/agent a copy of the key for the changed lock.

If there are body corporate by-laws about keys, such as in unit complexes, you need to comply with these by-laws. Check the by-laws which should have been provided with your tenancy agreement when you moved in.

As a **rooming resident**, you can request that the rooming provider change or repair a lock to protect you from DV. The provider must change the lock.

The lessor/agent/ provider must not give a key for the new lock to anyone else without your agreement. Penalties apply if the lessor/agent/ provider breaches this.

I am a Domestic Associate and want to stay in a rental property

Under section 245 of the Act, you may apply to the Queensland Civil and Administrative Tribunal (QCAT) for an order recognising you as a tenant or co-tenant instead of your domestic associate because of domestic violence committed against you.

Tribunal proceedings

When deciding an application for a domestic associate to stay, the Tribunal must take into account the following:

- ❖ whether you have applied for a protection order
- ❖ if an application for a protection order was made, whether an order was made or is still in force

- ❖ if a protection order was made whether a condition of the order prohibits your domestic associate from entering or remaining on the premises, and
- ❖ anything else the Tribunal considers relevant.

If you do not have a protection order, you can provide the Tribunal with relevant evidence of DV, such as a letter or affidavit from a support worker or health practitioner.

The Tribunal must allow the lessor/agent/provider an opportunity to be heard, so you must name them as a respondent on your application. The lessor/agent/provider will want to ensure that the person proposing to stay in the rental property can afford to pay the rent and fulfill the obligations of a tenant/resident.

You can also request that the Tribunal make orders about the bond or to prevent a tenancy database listing.

I am an occupant but not a tenant or co-tenant or domestic associate

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

- ❖ serious damage to the premises or
- ❖ injury to you or someone else occupying, or allowed, on the premises.

You can make an application to the Tribunal under section 246 of the Act for an order to be recognised as a tenant or co-tenant, instead of the tenant or co-tenant who perpetrated the violence.

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

Can I install security features?

You can only attach fixtures or make structural changes to the premises if you have a written agreement with your lessor/agent/provider. You do not need the lessor/agent/provider's approval if the security device can be easily removed and is not attached to the premises.

Some domestic and family violence support services can assist you to access additional safety and security features to support you to remain safely in your home. If you are a victim of a violent crime, Victim Assist Queensland may provide financial assistance to improve the security of the property.

Your lessor/agent/provider must not be unreasonable in refusing permission to attach a fixture or make a structural change. You should make sure that any agreements about adding fixtures, or making structural changes to the premises are in writing, and should state:

- ❖ what the agreed fixture or changes will be
- ❖ whether or not you can remove the fixture when you leave
- ❖ whether you are entitled to any compensation if you leave the fixture or any updates in place when you move out, or
- ❖ whether you are responsible for repairs of any damage caused by the removal of the fixture.

If you have a dispute with the lessor/agent/provider about a proposed fixture or structural change, you can apply to the Residential Tenancies Authority's (RTA) free dispute resolution service for assistance to resolve the dispute. If the RTA is unable to help solve the problem, you can then apply to the Tribunal for an order.

Domestic and Family Violence Protection Act 2012 (Qld)

The *Domestic and Family Violence Protection Act 2012 (Qld)* (DFVP Act) allows parties to apply to the Magistrates Court for a protection order using a Form DV1 Protection Order Application Form. An order will be made if the Court is satisfied that it is necessary or desirable to protect an aggrieved person from DV.

The Magistrates Court can include conditions in the order that prohibit a party from remaining at, entering or even approaching the premises. This is known as an ouster order. An ouster order can be requested by completing question 11 of the Form DV1. These conditions can be imposed regardless of

any tenancy agreement that the respondent is listed under.

If the parties to a protection order share a rental property, any tenancy matter can be heard by the Magistrates Court at the same hearing of the protection order application. To apply for both matters to be heard at the same hearing, you can complete a QCAT Form 2 Application for Minor Civil Dispute - Residential Tenancy Dispute, and file it along with the Form DV1.

Alternatively, you can apply to have your tenancy matter heard separately at QCAT.

I want to leave

You have a right to leave and end your interest in the tenancy if you believe you can no longer safely continue to occupy the premises because of DV committed against you.

Ending the tenancy or rooming agreement

You can end your interest in the tenancy/rooming agreement by giving the lessor/provider a minimum of 7 days' notice in the correct form - Notice Ending Tenancy Interest* (NET) or Notice Ending Residency Interest* (NER) to your lessor/agent/provider, along with supporting evidence of the DV.

A tenant or resident may choose to leave immediately after providing the notice and paying the 7 days rent.

You will need to provide documents as evidence of the DV. You can choose to provide a copy or allow your lessor or provider to inspect copies of documents.

Alternatively, you may make an urgent application to the Tribunal for a termination order or an order ending your interest in the agreement because of DV committed against you.

What evidence can be used to end the tenancy or rooming agreement?

To end your tenancy/rooming agreement, you will need to provide evidence with the NET or NER. The following are considered acceptable forms of evidence:

- ❖ A Protection Order or Temporary Protection Order
- ❖ A Police Protection Notice
- ❖ An interstate order or injunction for personal protection under the Family Law Act 1975 (Cth)
- ❖ An injunction for personal protection under the Family Law Act 1975 (Cth)
- ❖ An RTA Form Domestic and Family Violence Report* signed by one of the following:
 - A health practitioner including medical, midwifery, nursing, occupational therapy, psychology
 - A social worker, eligible for membership of the Australian Association of Social Workers
 - A refuge or crisis worker
 - A DFV support worker or case manager
 - An Aboriginal and Torres Strait Islander medical service
 - A solicitor.

Note*: All forms can be found on the RTA website

Is this evidence confidential?

To ensure your safety and privacy, the lessor/agent/provider must keep all your evidence confidential. You can allow them to inspect copies of documents, but you're not obliged to give them a copy.

- ❖ Your lessor/agent or provider must not copy your evidence unless you agree
- ❖ Your NET/NER form and any other information relating to the DV must be kept securely
- ❖ Your lessor/agent/provider must not provide any information to anyone about the DV – unless it's between the agent/lessor/provider or an employee or for obtaining legal advice or for a tribunal hearing or required by a law
- ❖ Penalties apply for breaching these confidentiality requirements.

I am a co-tenant or resident and want to leave.

As a co-tenant/resident you can also give a NET/NER with supporting evidence of the DV with 7 days' notice.

OR

You can apply to the Tribunal to terminate your tenancy because of DV committed against you by another person, including a co-tenant or co-resident.

What happens to the remaining co-tenants?

The lessor/agent/provider must give written notice to each remaining tenant/resident informing them that you are no longer on the agreement. This 'continuing interest notice'* must be given 7-14 days' notice after your tenancy ends.

The agreement continues for all remaining tenants and residents under the same terms.

The lessor/agent/provider will also advise the remaining tenants and residents that they have at least one month to top up the bond.

What if my lessor disputes?

The lessor/agent/provider cannot dispute that you are in circumstances of DV. If the lessor/agent/provider believe that your NET/NER and supporting evidence does not comply with the requirements under the Act, they can dispute it at the Tribunal. They must tell you that they intend to apply to the Tribunal to have the notice set aside and file their application within 7 days of receiving the NET/NER.

The Tribunal will consider whether the NET/NER and supporting evidence complies with requirements under the Act. The Tribunal will not consider any issues about the DV or whether you believe that you could no longer safely continue to occupy the premises.

What are my obligations?

You must pay rent until the end of the 7-day NET/NER period, or until you have handed over

vacant possession of the premises to the lessor/agent/provider, whichever is the later of the two dates.

You are not responsible for paying any additional costs to the lessor/agent/provider for ending the agreement and breaking the lease, re-letting fees or costs relating to goods left on the premises.

Can I get my bond refunded?

You can apply for your bond refund after you have vacated the premises using a Form 4a RTA Bond Refund for Persons Experiencing Domestic Violence. If your claim is made jointly with the lessor/agent/provider, the bond will be refunded in the way directed on the refund form.

If you make a claim for the bond for yourself, the RTA will notify the lessor/agent/provider about your claim. They will not inform any of the co-

contributors to the bond such as remaining co-tenant/s. The lessor/agent/provider can put in a Notice of Claim on your bond, and this will trigger a dispute. You will be invited to participate in a conciliation with the lessor/agent/provider to reach a resolution of the dispute.

If the dispute proceeds to the Tribunal because the dispute cannot be resolved, the Tribunal order must not penalise you for any damage caused by DV against you.

Damage

When you are a tenant or resident who has experienced DV, you are not responsible for damage caused to the premises or inclusions by DV. It will help to have evidence that the damage is related to DV such as a police report, domestic violence order or other documents.

Further help

Queensland Statewide Tenant Advice and Referral Services (QSTARS)

QSTARS provides specialist tenancy advice, advocacy support and referral for Queensland renters.

Contact QSTARS for tenancy advice on:

1300 744 263

Open Mon – Friday 9am – 5pm
(extended hours to 7pm on Tuesdays and Wednesdays)

Visit www.qstars.org.au for more information and to access tenancy fact sheets and videos.

Tenants Queensland

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

For administration issues contact TQ on 07 3832 9447 or visit www.tenantsqld.org.au

Residential Tenancies Authority (RTA)

The RTA is the government authority. RTA tenancy forms are available online at www.rta.qld.gov.au or call 1300 366 311

Women's Legal Service

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

www.wlsq.org.au

DV Connect

1800 811 811

www.dvconnect.org

Legal Aid

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

1300 651 188

www.legalaid.qld.gov.au