

Terminating co-tenancies when not all tenants leave



The Residential Tenancies and Rooming Accommodation Act 2008 (the Act) covers tenants and lessors as well as rooming residents and providers in Queensland. The Act may also apply to you if you rent shared accommodation or have paid bond money for residential accommodation.

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

Who is a co-tenant?

When more than one person is named on a residential tenancy agreement as a tenant, each of those people are co-tenants. Under Queensland tenancy laws co-tenants are *jointly and severally liable*. This means that all co-tenants are legally responsible for the rent and care of the property as a group and as individuals. If rent is unpaid, or damage caused to the property, the lessor/agent can pursue you for payment, as well as anyone else who signed the agreement.

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

Not everyone who lives in a shared tenancy is a co-tenant. Some people may be sub-tenants, boarders, residents or unapproved occupants. See our fact sheet **Share Housing – Your Legal Status** to find out more about when a housemate is a co-tenant, sub-tenant, rooming accommodation resident, boarder or lodger.

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



You want to leave but your co-tenants are staying

As a co-tenant, you will not be able to end your obligations under the co-tenancy by giving the lessor/agent a *RTA Notice of Intention to Leave (Form 13)* or a letter which is only signed by you.

If you leave and your name is still on the lease, you will remain jointly and severally liable for the premises, including unpaid rent or damage.

To end your obligations, you must either:

- A. Get the agreement of all parties in writing;
- B. Give the lessor/agent a *RTA Notice Ending Tenancy Interest (Form 20)* and supporting evidence, if you've experienced domestic or family violence; or
- C. Get an order from the Queensland Civil and Administrative Tribunal (the Tribunal) which terminates your responsibilities as a co-tenant.

These options are outlined below.

You've experienced domestic or family violence and it's not safe to stay

If you can no longer safely continue your *interest* (part) in the tenancy because of domestic violence committed against you, you can give a *RTA Form 20 Notice Ending Tenancy Interest (domestic and family violence)* with supporting evidence to your lessor/agent. Although you are required to provide a minimum of 7 days' notice and pay 7 days rent, you can leave immediately. You can submit this form even if someone other than your co-tenant is committing violence against you. You do not need to discuss this with your co-tenants if there is a risk this may put you in further danger. Review our fact sheet **Domestic and Family Violence (DFV) – You Want to Leave** to find out more about ending tenancies in these circumstances.

What's inside

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Who's who?

A **lessor** is the person who gives a tenant the 'right to occupy' a residential premises. Lessors often employ real estate agents to manage premises on their behalf.

A **provider** is a person who provides rooming accommodation to residents.

Tenants Queensland (TQ) is a specialist community and legal service which has been providing services to and representing the interests of residential renters in Queensland since 1986.

QSTARS is a program providing specialist advice and support to renters, funded by the Qld Government, delivered by TQ.

The **RTA** is the government authority that manages rental bonds, provides forms and information, conducts dispute resolution and investigates complaints of unlawful conduct under tenancy laws.

The Tribunal or **QCAT**, hears and makes binding decisions about residential tenancy disputes.

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Put agreements in writing

Once you know you need to leave you should start discussing the situation with your co-tenants. Find out if they want you to find a replacement housemate or if they want to stay and let you transfer your interests to them.

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

Transferring your interest to co-tenants

Your interest in the co-tenancy can be terminated if all parties to the lease agree to have your interest in the tenancy transferred to the remaining co-tenants on an agreed date. The lessor/agent must also agree to the transfer.

If you ask the lessor/agent to agree to transfer your interests to other tenants this request should be in writing. The lessor/agent must not unreasonably withhold their consent to the transfer. If you have difficulties you can use a RTA Form 16 *Dispute Resolution Request* or the RTA *Online Tenancy Dispute Resolution* web service to apply to the Residential Tenancies Authority (RTA) for free dispute resolution.

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

Any agreement to transfer interest in the tenancy must be put in writing and signed by all parties, including you, any remaining co-tenants on the agreement and the agent/lessor. Everybody should be given a copy. If you have an existing lease agreement you can attach this to this written agreement as evidence the parties have changed.

Other tenancy issues

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

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

Approval for sub-tenants

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

If the new occupant is approved by the lessor/agent they will be a sub-tenant renting from the remaining co-tenants. The remaining co-tenants

will become head tenants and have similar obligations to a lessor: they must provide a written tenancy agreement; lodge any bond money they receive with the RTA and provide rent receipts.

Boarders or lodgers

If there is no written permission from the lessor/agent for the new occupant to live at the property, that occupant replacing you does not have the legal status of co-tenant, they are likely to be a boarder or lodger.

It is still good practice to put any agreement between the co-tenants and the new occupant in writing, such as - the agreed rent, who to pay rent to, costs for shared utilities, and how much notice must be given if they want to leave.

Agents may tell you that you must have everyone living at the property approved by them beforehand, this is not entirely correct. Review your tenancy agreement for any special terms and check the maximum number of occupants allowed to live at the property. If these don't apply, you are allowed to have a boarder or lodger without the lessor/agent's consent. Any bond you receive from a boarder or lodger must be lodged with the RTA.

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

If you think your housemates are being unreasonable and you cannot reach a written agreement to be released from the tenancy, or you cannot find a replacement housemate, you can apply to the Tribunal for an order to terminate your interest in the tenancy.

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

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

If you think the situation cannot be resolved, you may need to apply to the Tribunal for a termination order. There may be a particular ground you can rely on eg termination due to 'excessive hardship'.

If you must leave before you get a Tribunal termination order, inform your co-tenants and the agent/lessor in writing when you will be leaving and give back your keys to your co-tenants. While these acts alone will not end your liabilities under the tenancy agreement, they may help to show that you are not responsible if there is any damage done to the property after you leave. If you are leaving during a fixed term tenancy agreement, you are likely to be responsible for debts arising from your failure to continue paying rent.

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Tribunal termination applications

The Tribunal, also known as QCAT can hear and decide tenancy disputes. To apply for a hearing, you will need to complete a QCAT Form 2 *Application for Minor Civil Dispute Residential Tenancy Dispute*. This form includes a list of tenancy applications that you can make. To obtain a copy of this form, and for instructions about how the Tribunal works visit www.qcat.qld.gov.au.

Ending a tenancy for excessive hardship

If:

- you cannot agree with your co-tenants about ending your responsibilities, and
- you need to quickly end your interest in the tenancy due to circumstances such as excessive financial or personal difficulties.

You can make an urgent application to the Tribunal to request a termination order under section 310 of the Act due to excessive hardship. If you are applying, you are the 'applicant'. The 'respondents' are your co-tenant/s and the lessor/agent (if you have more than one respondent you can include their details on an extra piece of paper).

You will need to attach a copy of the tenancy agreement, and evidence of your hardship.

There is no legislative definition of 'excessive hardship' but the Tribunal *may* make an order for termination for excessive hardship if you are experiencing serious illness, loss of employment, serious financial issues or other issues beyond your control.

Tribunal decisions

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

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

The lessor/agent may seek compensation or make a bond claim if you are leaving during a fixed term agreement, or if you failed to take reasonable steps to try to resolve the situation. Disputes for debts above the bond amount and compensation, are non-urgent matters and the Tribunal may, or may not, decide these matters at the urgent termination hearing. You may need to make a new Tribunal application about these issues at a later date if you cannot reach agreement between the parties.

Getting your bond back

Once your interest under the tenancy agreement has ended, you should also apply to the RTA to get your bond contribution back.

If there is no dispute ie if all parties, including the lessor/agent agree, or you have a Tribunal order, you can either use the RTA Change of Bond Contributors Web Service, or complete and post a Form 6 Change of Bond Contributors with the signatures of all parties to the RTA.

If there is a dispute about the bond, you can apply to the RTA for an online bond refund using your Queensland Digital Identity (QDI) or post a Form 4 *Refund of Rental Bond* to the RTA.

Your co-tenant leaves but you want to stay

If your co-tenant has left and stopped paying rent without reaching any agreement with you, and you want to remain in the property, you must continue to meet the responsibilities under the tenancy agreement. This includes covering all the rent and paying any arrears. If you have been issued a Form 11 *Notice to Remedy Breach for rent arrears*, and you don't pay the outstanding rent, this may lead to eviction and a claim for compensation.

It's a good idea to keep the lessor or agent informed about the situation. You may want to find replacement occupants – a new co-tenant, sub-tenant or lodger.

Make a written record of your efforts to find a new housemate and your communication with the lessor/agent and get permission for new occupants. Your written records can be used as evidence if there is:

- a dispute and the lessor/agent takes action against you to terminate the agreement or
- if there is an action to recover money from you, or
- if you take action to recover your losses from the co-tenant/s who left.

Your co-tenant cannot end their part of or the whole tenancy agreement by sending a Form 13 *Notice of Intention to Leave* to the lessor/agent. If this happens and you want to continue the tenancy, inform the lessor/agent in writing that the notice was not signed by all the co-tenants and is not valid. You can also send the RTA a Form 16 *Dispute Resolution Request* attaching a copy of your tenancy agreement and the response you sent to the lessor/agent.

In some instances, you may find out from the lessor/agent that your co-tenant has left permanently after you receive a *Continuing Interest Notice* from the lessor/agent. This notice is provided to remaining co-tenants, after a co-tenant ends their interest in the tenancy because of domestic violence they have experienced. It should be given to remaining co-tenants no earlier than 7 days and no later than 14 days after the co-tenants tenancy interest ends. The tenancy continues for all remaining co-tenants. You will also need to 'top up' the bond within 1 month of receiving the notice.

You want to leave

If you need to end the tenancy agreement (for example because you can't cover the full rent or cannot top up the bond and you can't find a replacement co-tenant), you may need to apply to the Tribunal for a termination order on the grounds of excessive hardship. This could be particularly relevant if you are on a fixed term agreement, because

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the lessor/agent may seek more compensation for ending a fixed term agreement than if you ended a periodic tenancy (where you only have to give two weeks' notice). See Tribunal Termination Applications above for more information about applying for a termination order for excessive hardship.

Recovering any losses

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

If your former co-tenant contributed to the bond you can take action to claim their share of the bond to recover money owed to you. You can ask them to sign a Form 6 *Change of Bond Contributors* to sign over their share of the bond to you. The lessor/agent will also need to sign this form.

If your former co-tenant does not agree to sign over their share of the bond, you could apply to the RTA for an online bond refund or post a *Refund of Rental Bond* (Form 4) to the RTA to claim their share, or ask the RTA to keep the full bond and put it in your name. If there is a dispute you cannot resolve you may need to apply to the RTA for dispute resolution and it remains unresolved, to the Tribunal for a non-urgent hearing.

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

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

I'm still owed money

If your co-tenant did not contribute to the bond or the bond is not enough to cover your financial loss caused by their actions, you can take further action against them to recover your loss by applying to the Tribunal using a Form 3 *Application for Minor Civil Dispute – minor debt*. Other than bond issues, disputes between co-tenants are not considered Residential Tenancy Disputes (which are disputes between the lessor/agent and the tenant/s). You need to know how much you are claiming and have evidence that the losses were caused by your co-tenant.

Tenancy Facts

Tenancy facts information for renters are available at www.qstars.org.au

Tenancy Facts include:

- Renting in Queensland
- Starting a tenancy
- Rental bonds
- Rent and other charges
- Entry and privacy
- Repairs and maintenance
- You want to leave
- Lessor ends the tenancy
- Resolving tenancy disputes
- Tenancy databases

Further help

Tenants Queensland

Tenants Queensland (TQ) is a specialist community and legal service which has been providing services to and representing the interests of residential renters in Queensland since 1986. QSTARS is managed by TQ and delivered in collaboration with partner organisations.

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

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.

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

The Queensland Civil and Administrative Tribunal (QCAT or the Tribunal)

To find your local Tribunal (except for Brisbane QCAT sits in the local Magistrates Court) or get QCAT forms visit www.qcat.qld.gov.au or call QCAT on 1300 753 228

Translating and Interpreting Service (TIS)

If you need an interpreter let us know when you call, or call the TIS translating and interpreting service on 131 450 so they can help you contact our service.

Disclaimer: This factsheet provides information only and is not intended to provide legal advice.