

Share Housing - Your legal status



The *Residential Tenancies and Rooming Accommodation Act 2008* (the Act) covers tenants and lessors as well as residents and providers in Queensland. This law may apply to you if you rent shared accommodation. The Act applies to all bond money that is paid for residential accommodation, including share accommodation.

This factsheet will help you if you live in a share house and you are trying to work out your legal status under your agreement. It is important to know what your rights and responsibilities are and what actions you need to take, for example, to move out without liability or to get repairs done.

Each type of renter has different rights and responsibilities under the Act and some are not covered at all.

What type of renter am I?

Co-tenancy, sub-tenancy and rooming accommodation agreements are covered under the Act. However, boarders and lodgers are not, except in relation to bond payments.

The following types of renters are covered by the Act

A tenant

A tenant is defined as the person 'to whom the right to occupy a residential premises under a residential tenancy agreement is given'. You may be named as the tenant on the tenancy agreement. You will be asked to pay rent to the agent or lessor.

A Co-tenant

If you are a co-tenant, both you and your other co-tenants will have signed a tenancy agreement and be named as tenants. Co-tenants have *joint and severable liability*, which means that each tenant may be held liable for the whole tenancy individually or all the co-tenants may be held liable jointly for rent and any damage.

You will all pay rent to the agent or lessor.



A Sub-tenant

Sub-tenants are not named as tenants on the tenancy agreement. Written permission from the lessor/agent for the tenant/s to sub-let is required. However, sometimes a sub-tenancy will exist even when that agreement is not in writing because there is evidence that the lessor/agent knows and agrees to the sub-tenancy. For example, a person filled out an application form for the agent. Sub-tenants might pay rent to the tenant/s or the agent/lessor.

When there is a sub-tenant, the tenant/s named on the tenancy agreement is referred to as the head-tenant. The head tenant has the same rights and responsibilities to the sub-tenant that the lessor has to the head-tenant.

A rooming accommodation resident (resident)

A resident is a person who rents one or more rooms as their only place of residence and who is not the provider or a relative of the provider. A resident will share facilities such as the kitchen and bathroom with other people. To be a resident there must be four or more rooms, including your own, available for rent. However, if the provider of the accommodation does not live on site, you will be a resident regardless of how many rooms there are.

The provider of the rooming accommodation is required to put the agreement in writing but if this has not been done, it is still an agreement.

Usually, rent is paid to the accommodation provider but sometimes there is a caretaker. There are often house rules which you must follow.

If you rent a room in a large purpose-built student accommodation you are likely to be a resident although that is not the case for on-campus accommodation.

If you live in rooming accommodation but you have been provided with a Residential Tenancies Authority (RTA) General Tenancy Agreement (Form 18), you will have the same rights as a tenant – it implies that your lessor has agreed to provide these more substantial rights.

What's inside

- **Types of renters that are not covered by the Act**
- **Put your agreement with co-tenants or as a lodger in writing**
- **Tips for things in agreements**
- **Tips for happy share houses**
- **Sample agreement between co-tenants**

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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Whilst the law requires that lessors put tenancy agreements and agreements to sub-let in writing, they may still be valid even if they are implied, oral or only partly in writing.

The following types of renters are not covered by the Act

A Boarder or Lodger

You will be a lodger if you rent a room only (and share facilities) from someone who lives in the property and there are three or less rooms available for rent. A boarder may also receive meals food as part of their rental agreement.

There are often house rules and rent will be paid to the accommodation provider.

If you are a boarder or lodger you are not covered by the Act with the exception of any bond you pay. The Act states that the bond must be lodged with the RTA within 10 days of receiving it. The Act carries a penalty for not lodging the bond with the RTA. If you are a lodger, it is helpful if you put your agreement in writing so that everyone knows what is required of them. At the end of your tenancy, 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.

Still not sure?

It can be difficult to determine if and how you are covered by tenancy laws, especially if you live in a share house. If you are still not sure what type of renter you are, seek further advice.

If you are having a dispute over what type of renter you are, you can also apply directly to Queensland Civil and Administrative Tribunal (QCAT) for a determination. You will need to complete a Form 2, found on the QCAT website and apply under section 418 of the Act. The Tribunal will then be able to decide if you are a tenant, sub-tenant, a rooming accommodation resident or if you are not covered. They can also decide if your agreement is for a fixed period of time or not.

Put your agreement with co-tenants or as a lodger in writing

Whilst it's not required by law, it is good practice to have an agreement between you and your housemates about how the house operates and how you live together.

Co-tenants

If you're a co-tenant, setting out what's expected of each other regarding the cleaning and shared bills or how disputes will be resolved can be

helpful. This would be separate to the tenancy agreement between all the co-tenants and the lessor.

See the sample agreement at the end of this factsheet.

Boarders and Lodgers

If you are a lodger it's even more important to set out the terms of your accommodation in writing because the legal rules which apply depend on the circumstances. By putting your agreement in writing the rules will be clear to both parties and cannot be changed or forgotten along the way.

Below is a list of things you might consider discussing with the person you are lodging with before putting them in writing.

Tips for things in agreements

- Names of the parties and their contact details
- The relationship or agreement between the parties is (for example, 'X agrees that Y can rent a room as a lodger', or 'X and Y are co-tenants and have equal shared responsibility for the tenancy')
- Whether the agreement is periodic (e.g. week to week) or a fixed term (e.g. a three month lease)
- (For lodgers) How much notice you have to give if you want to leave and how you give it.
- RENT
 - How will rent be paid and how often?
 - (Co-tenants) Is the rent paid by each person or is collected and paid by one person?
- Shared service charges
 - How will services (e.g. electricity, internet, phone) be paid for?
- Are they included in the rent?
- Will they be a shared expense?
- Whose name will the accounts be in and how will this person recover money from the others?
- Guests and visitors
 - Is it necessary to give notice about visitors? How much notice?
 - Can visitors stay overnight?
 - How long or frequently can someone stay before they have to contribute to the household funds?
- Use of shared amenities and responsibility for tasks.

Tips for happy share houses

Your share house is going to work better in an environment that is safe, happy and secure. Here are some tips for ensuring that living in a share house runs as smoothly as possible.

- Choose your housemates wisely
- Set ground rules early
- Draw up a roster for cleaning and other jobs
- Establish a clear process for paying rent, groceries, and other household bills
- Keep the lines of communication open

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Sample agreement between co-tenants

Here's a sample agreement which you could put in place between you and your co-tenants (extracts from 'Crowded House Legal Guide to Share housing Tenants' Union of ACT').

The following conditions apply to sharing the premises at (address): _____

All tenants indicated below agree to: _____

Rent

Each provides _____ (amount) rent per week/fortnight/month (circle) to _____ (the landlord)

The rent will be paid via (please circle): Collected from the house

delivered to the agent

paid to a bank account

Bills

We agree to:

- Pay an equal share of utility (power, gas and water) bills
- Keep a log of all phone calls I make and pay for those phone calls
- Pay an equal share of any additional services (e.g. washing machine rental, cleaning service, Pay TV)
- Pay all bills before the due date. I will pay these bills to:
 - Power _____ (name)
 - Phone _____ (name)
 - Gas _____ (name)
 - Water _____ (name)
 - Internet _____ (name) – if the same as phone, write 'as phone'

Chores

We agree to:

- Rotate dishwashing duties and ensure the dishes are done every _____ days
- Do my fair share of the household cleaning. This includes:
 - Doing the gardening: _____ (who will be responsible and EXACTLY WHAT THIS INCLUDES i.e. mowing the lawn once a month)
 - Cleaning the bathroom and toilet once a week/fortnight: _____
 - Vacuuming common areas once a week/fortnight: _____
- Share grocery shopping/buy our own food/other (circle ONE). If other, please specify: _____
- Share cooking/cook own food/other (circle ONE). If other, please specify: _____

Step by step for resolving disputes – agreeing to resolve disputes by communicating openly to sort issues out or using mediation or dispute resolution services.

Parties agree that if we want to make changes to the agreement that parties will negotiate around rent liabilities/finding replacement tenants and resolution of any shared bond issues.

Signed by: _____ (co-tenant 1) _____ (co-tenant 2) _____ (co-tenant 3)

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.

Further information:

Queensland Human Rights Commission (QHRC)

1300 130 670
www.qhrc.qld.gov.au

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