

# RESIDENTIAL TENANCY ACT: CO-TENANCY CHANGES



## FACTSHEET

## Introduction to Co-Tenancies

### BACKGROUND

Rental laws in the ACT are changing on 3 March 2021.

This Fact Sheet is designed to help you understand the changes. The information in this Fact Sheet is not legal advice. You should seek legal advice if in doubt about your individual circumstances.

The rights and obligations of the landlord and tenant depend on the *Residential Tenancies Act 1997* (the RTA) and on the individual residential tenancy agreement (including whether it is for a fixed term or periodic). You should always check your agreement as a starting point.

### WHAT ARE THE CHANGES TO THE LAW?

Changes have been made to the RTA to modernise tenancy law and to make it more adaptable to share house living arrangements. The changes:

- introduce the legal concept of a 'co-tenant'
- create the ability for tenants to be added to or removed from a tenancy agreement (with consent from the other parties to the agreement) without the agreement coming to an end
- create a framework for managing the transfers of interest in the bond when housemates move in and out during a co-tenancy, and
- set out how ACAT can be used to resolve disputes between co-tenants or disputes between the landlord and co-tenants, if any problems arise that can't be resolved between them.

This Fact Sheet provides a brief introduction to the concept of a co-tenancy. Additional Fact Sheets are available to help you understand other aspects of the law in relation to co-tenancies. See the [Justice and Community Safety Directorate website](#) for more information.

### WILL EXISTING RESIDENTIAL TENANCY AGREEMENTS BE AFFECTED?

Yes. All tenancy agreements, including fixed term tenancies signed before 3 March 2021 will be affected by these changes from 3 March 2021.

### WHAT IS A CO-TENANCY?

A co-tenancy is where there is a tenancy agreement with more than one tenant listed on the agreement. Each tenant will be known as a 'co-tenant'. For example, co-tenancies include share houses as well as couples living together where both members of the couple are on the tenancy agreement.

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### HOW DOES SOMEONE BECOME A CO-TENANT?

A person is a co-tenant if they are one of two or more people subject to the same tenancy agreement.

Someone becomes a co-tenant if:

- they are part of a couple or group who each sign the lease, or
- they join an existing tenancy agreement and follow the correct process to join as a co-tenant (see further below, 'Moving into a share house as a new co-tenant').

### WHEN IS SOMEONE NOT A CO-TENANT?

It is possible for a person to live in a share house without being a co-tenant, as the law also recognises other types of arrangements. In particular, they could be a head tenant, sub-tenant or have a 'bare licence' to live in the property.

It is **important for both landlords and tenants to know the legal status of the tenancy** at the start of any tenancy agreement, as this can significantly affect their legal rights and obligations.

### WHAT ARE THE RIGHTS AND RESPONSIBILITIES OF A CO-TENANT?

In a co-tenancy, all co-tenants have the same rights and obligations under the agreement towards the landlord. This means that all the co-tenants have the security and stability that comes with having the legal right to live in the property: a co-tenant can't be made to leave the property unless the lease allows it. They also have the right to 'exclusive possession' and 'quiet enjoyment' of the property. This means that the tenants can decide who they want to allow to come to the property without interference from the landlord (except in circumstances where the lease creates a specific right to access, such as for the purpose of repairs or inspections). However, being a tenant also comes with responsibilities and all co-tenants are equally responsible for the property under the law. **If one co-tenant breaches the agreement, the other co-tenants are liable to the landlord for the breach.** For example, if one co-tenant stops paying rent or damages the property, the landlord may seek to have the other co-tenants pay the outstanding rent or pay for the property damage.

### HOW CAN SOMEONE BE ADDED TO OR REMOVED FROM A CO-TENANCY?

People will only be able to move in or out of a co-tenancy if they obtain consent from the other co-tenants and the landlord to do so. There are rules about whether the landlord and other housemates can refuse consent. In short:

- **Leaving a co-tenancy**
  - Any of the co-tenants or the landlord can refuse a person moving out **during a fixed term tenancy**.

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- The co-tenants or the landlord can only refuse a person moving out during a **periodic tenancy** if this is reasonable and if they obtain an order endorsing the refusal from the ACT Civil and Administrative Tribunal (ACAT).
- **Joining a co-tenancy**
  - Any of the co-tenants can refuse a new person moving in.
  - The landlord can only refuse a new person moving in if this is reasonable.
- If the co-tenants and/or the landlord disagree about a person moving in or out, the dispute may be taken to ACAT for an independent decision.
- If the consent processes are properly followed, then people can move in and out of the share house without terminating the tenancy agreement with the landlord. The original agreement is treated as continuing, just with different tenants.

See the Fact Sheets *Leaving a Co-tenancy*, *Joining a Co-tenancy*, and *Disputes in Relation to Co-tenancies* for more information.

## HOW DOES THE PAYMENT OF BOND HAPPEN IN A CO-TENANCY?

When a co-tenant leaves or a new co-tenant moves into a co-tenancy, the original tenancy agreement continues, meaning the bond does not need to be refunded. However, the registered interests in the bond (the people listed as having paid bond with the ACT Revenue Office (Rental Bonds)) will need to be updated. The incoming and outgoing tenants will be responsible for ensuring this occurs and transferring bond payments as appropriate.

This also means that the landlord does not need to prepare a new condition report, and the landlord is not required to organise any extra inspections, although an incoming tenant will still need to be given a copy of the original condition report.

See the Fact Sheet *Bond and Co-tenancies* for more information.

## MORE INFORMATION AND ASSISTANCE

Tenancy Advice Service (Division of Legal Aid ACT)

**Phone:** 1300 402 512 **Email:** [TAS@legallaidact.org.au](mailto:TAS@legallaidact.org.au) **Website:** [www.legallaidact.org.au/tasact](http://www.legallaidact.org.au/tasact)

Legal advice from this service is free and confidential. It is not means-tested (the service is available to all tenants regardless of income).

Legal Advice Bureau (Open between 12:30pm and 2pm on weekdays)

**Phone:** 6274 0300

**Website:** [www.actlawsociety.asn.au/for-the-public/legal-help/legal-advice-bureau](http://www.actlawsociety.asn.au/for-the-public/legal-help/legal-advice-bureau)

The Legal Advice Bureau at the Law Society is a free and confidential service and can provide advice in 15-minute consultation sessions to both tenants and landlords.

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### Canberra Community Law

**Phone:** (02) 6218 7900 **Email:** [info@canberracommunitylaw.org.au](mailto:info@canberracommunitylaw.org.au)

**Website:** <https://www.canberracommunitylaw.org.au/>

If you are a tenant in public housing (from Housing ACT), or a tenant or occupant in crisis accommodation or social housing, or living in a residential park (long stay caravan park), Canberra Community Law can provide you with free and confidential legal advice.

### Conflict Resolution Service

**Phone:** (02) 61890590 **Website:** <https://crs.org.au/>

Conflict Resolution Service (CRS) is a nationally accredited mediation service that resolves conflict professionally, competently and compassionately. CRS have experience working with neighbours, landlords and residential tenants to provide a safe, structured, and confidential environment for discussion between parties.

### ACT Revenue Office (Rental Bonds)

**Phone:** 6207 0028 **Email:** [rb@act.gov.au](mailto:rb@act.gov.au) **Website:** [www.revenue.act.gov.au/rental-bonds](http://www.revenue.act.gov.au/rental-bonds)

The Rental Bonds Portal allows tenants and landlords to lodge bond and request refunds online. It also has template forms for condition reports, bond refund, updating details and more.

### ACT Civil and Administrative Tribunal (ACAT)

**Phone:** 6207 1740 **Email:** [tribunal@act.gov.au](mailto:tribunal@act.gov.au) **Website:** [www.acat.act.gov.au/](http://www.acat.act.gov.au/)

Please note that the Tribunal can assist with questions about its procedures, but it cannot give legal advice on individual situations.

### Legislation

You can access the *Residential Tenancies Act 1997* and other ACT legislation on the ACT Legislation Register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au).