

# RESIDENTIAL TENANCY ACT: OCCUPANCY CHANGES



## FACT SHEET

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## Changes to Occupancy Law: Mandatory Occupancy Principles

### BACKGROUND

Occupancy Laws in the ACT changed 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 grantor and occupant depend on the *Residential Tenancies Act 1997* (the RTA) and on the individual occupancy agreement. You should always check your agreement as a starting point.

### WHY ARE THE OCCUPANCY PRINCIPLES MANDATORY?

Amendments to the RTA have improved protections for occupants by introducing new occupancy principles and by making the existing and new occupancy principles a mandatory part of every occupancy agreement.

Prior to 3 March 2021, the occupancy principles set out under the RTA were not mandatory and as a result, there was less certainty about the minimum requirements that were owed by a grantor to an occupant under an occupancy agreement. Making the principles mandatory will assist to ensure that there are essential, basic, minimum protections provided to all occupants.

### WHAT ARE THE MANDATORY OCCUPANCY PRINCIPLES?

The mandatory occupancy principles form the minimum terms of an occupancy agreement. The principles cover:

#### State of the premises

Premises provided under an occupancy agreement must be reasonably clean, in a reasonable state of repair, and reasonably secure. This principle ensures that occupancy premises meet a habitable standard.

#### Occupancy agreement in writing if term is longer than 6 weeks

An occupancy agreement must be in writing if the agreement is for a term longer than six weeks. Where an occupancy agreement is for a term shorter than six weeks and is not in writing, a grantor must still provide an occupant with written information about the agreement (i.e., through a leaflet or through a poster in a highly visible place in a common area). The occupancy principles still apply to agreements that are less than 6 weeks in length.

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Providing agreements in writing helps ensure that both landlord and grantor are clear on their rights and obligations under the agreement.

### Receipts for certain payments

A grantor is required to provide written receipts to an occupant for certain payments made under an occupancy agreement. See the Fact Sheet *Security deposits and condition reports* for further information.

### Condition reports

A grantor must provide a condition report to an occupant within one day of the date that the occupant moves into the premises. See the Fact Sheet *Security deposits and condition reports* for further information.

### Security deposits

The principles:

- outline the circumstances in which a grantor may require the payment of a security deposit
- limit the amount of a security deposit that may be required
- require that any security deposit charged be lodged with the Territory and
- set out the circumstances in which deductions may be made from a security deposit.

See the Fact Sheet *Security deposits and condition reports* for further information.

### Occupancy rules

A rule (i.e., a House Rule) under an occupancy agreement must be reasonable and proportionate to the outcome that the rule is trying to achieve. Similarly, the penalties or consequences (i.e., a loss of a privilege or a restriction to the occupant's access to shared services) for breaching an occupancy rule (other than termination of the agreement) must be reasonable and proportionate to the seriousness of the breach of the rule and must not impose unreasonable hardship on the occupant.

### Information about occupancy rules, fees, charges, and penalties

A grantor cannot impose occupancy rules, fees, charges (i.e., utility costs), or penalties under an occupancy agreement unless information about the rules, fees, charges, or penalties are included in the occupancy agreement. This includes information about the frequency of any charges and the method for calculating how the fee or charge is calculated. For example, the grantor might let the occupant know that the occupancy fee is charged weekly, the Wi-Fi access fee is charged monthly, and the electricity is charged quarterly. The grantor may also advise the occupant that the electricity charge is calculated by dividing the bill between the 4 residents who live at the property.

A grantor must provide an occupant with **reasonable notice about imposing a penalty for the breach of an occupancy rule** under the occupancy agreement. The amount of time that is considered reasonable will depend on the nature of the rule and the breach. For example, a short notice period might be reasonable in circumstances where an occupant breaches a rule which interferes with the safety of another occupant.

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A grantor must also provide an occupant with **8 weeks' written notice** about:

- changing an existing rule under the occupancy agreement
- increasing an existing fee charge or penalty payable under the occupancy agreement or
- introducing a new rule, fee, charge, or penalty under the occupancy agreement.

If the occupant is not comfortable with the proposed changes to rules, fees, charges, or penalties and wants to terminate the agreement as a consequence, **the occupant can give the grantor 2 weeks written notice of their intention to leave** (so long as this notice is given to the grantor before the end of the grantor's (8 week) notice period).

### Occupants' obligations on the occupancy premises

Each occupant in a premises has obligations towards others on the premises, irrespective of whether the occupants are parties to the same occupancy agreement. This means that an occupant must not behave in a way that impacts the rights of other persons (including another occupant or staff) to live and work in the premises in a safe environment, free from harassment or intimidation. This occupancy principle provides grantors with a ground to remove an occupant from a premises, or relocate them within the premises, if they are interfering with the rights of another occupant.

### Occupants' access to occupancy premises

A grantor should provide an occupant with quiet enjoyment of the premises.

An occupant should be provided with **24-hour access** to the occupant's part of the premises (for example, their bedroom) and a toilet and bathroom.

The occupant should also be given **reasonable access to the shared facilities** having regard to the occupant's circumstances. For example, rules restricting access to other shared facilities, such as the kitchen, games room, or outdoor areas outside to certain hours, may be considered reasonable as the noise from using these facilities may interfere with the quiet enjoyment of other occupants (eg before 6am or after 9pm). Despite this, a grantor is still required to consider the needs of an individual occupant prior to restricting access to shared facilities. For example, despite a general rule limiting access to kitchen facilities during the night, an individual may still need access to food or medication during the night for medical or religious reasons and the rules would need to accommodate this.

### Entry by Grantor to Occupancy Premises

An occupancy agreement must state the circumstances in which a grantor may enter the premises and, for each circumstance, the kind and period of the notice that the grantor will give before entering the premises (or if it is not practicable to give notice before entering the premises, the notice must be given after access has occurred).

The kind and period of the notice must be reasonable and proportionate to the outcome sought by the grantor in entering the premises. For example, a grantor in a boarding house may advise the occupant that the occupant's room will be cleaned every Monday morning.

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The grantor may also access the premises (without notice) to confirm whether the premises has been abandoned. However, this may only occur if the following prior conditions have been met:

- the occupant has not paid the occupancy fee under the agreement for the last 3 consecutive payment periods and
- the grantor has taken all reasonable steps to contact the occupant and
- the grantor reasonably believes the occupant has abandoned the premises.

In addition, if the grantor wants to confirm if the premises has been abandoned, they must not enter the premises on a Sunday, on a public holiday or before 8 am or after 6pm.

### Information about Dispute Resolution Processes

A grantor is required to provide an occupant with information about dispute resolution processes that apply to the occupancy agreement, including any internal dispute resolution processes that may apply. A grantor is also required to provide the occupant with contact details for:

- the Legal Aid Commission
- the Human Rights Commission
- at least 1 community dispute resolution provider and
- the ACT Civil and Administrative Tribunal (ACAT).

This is so the occupant is aware of options to have disputes resolved and so that the occupant can access legal advice.

A grantor is also required to provide the occupant with their contact details so that the occupant has an address for service in the event of a dispute.

### Termination of occupancy agreement

An occupancy agreement must state the grounds on which the agreement may be terminated and must also provide reasonable notice periods for the exercise of those grounds. The grounds for termination listed in the occupancy agreement must also be reasonable, having regard to the nature of the occupancy. This occupancy principle seeks to protect an occupant from having their occupancy agreement arbitrarily or unreasonably terminated. This principle also protects occupants from a grantor terminating their agreement in retaliation to the occupant exercising their rights under the agreement.

An occupancy agreement can only be terminated if:

- the grantor and occupant agree to it ending; or
- it is terminated in accordance with a ground for termination listed in the occupancy agreement (and the correct notice period listed in the agreement has been given); or
- either the grantor or occupant have breached an occupancy principle or the occupancy agreement and the breach justifies the termination of the agreement.

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Although a grantor can terminate an occupancy agreement without needing to go to ACAT, ACAT may issue a warrant for the eviction of an occupant from premises if the Tribunal has made an order to vacate the premises and the occupant has failed to comply with the order.

### Condition of Premises at the End of the Occupancy

At the end of the occupancy agreement, an occupant must ensure that the premises are substantially in the same state of cleanliness and condition that the premises were in at the start of the occupancy (allowing for fair wear and tear). The premises must also be reasonably secure.

For site-only residential park occupancy agreements, an occupant must ensure that the residential park (excluding the occupant's home) is substantially in the same state of cleanliness and condition that the residential park was in at the start of the occupancy.

### Vacating Occupancy Premises

An occupant must vacate the premises at the end of the occupancy agreement.

## CAN AN OCCUPANCY AGREEMENT CONTAIN TERMS IN ADDITION TO THE MANDATORY PRINCIPLES?

Yes. In addition to the mandatory occupancy principles, an occupancy agreement may contain rules about occupying the premises (known as 'House Rules') as well as additional terms. The mandatory occupancy principles provide enough flexibility to be adapted to the specific needs of each type of occupancy agreement while still providing a minimum level of protection for occupants. However, any rule or additional term under an occupancy agreement that is inconsistent with the mandatory occupancy principles, the RTA, or another territory law will be void.

## ARE THERE EXEMPTIONS TO THE MANDATORY OCCUPANCY PRINCIPLES?

The mandatory occupancy principles (and other changes to the RTA) apply to education provider occupancy agreements from 30 January 2022. However, there are some exemptions or alterations to the occupancy principles for these agreements. These include:

- the addition of termination clauses specific to a university context, such as a student ceasing enrolment with the university
- clarification that the currently existing university requirements including disciplinary rules and medical leave rules established under statute will not be displaced by the occupancy principles in the event of any inconsistency between the university requirements and the occupancy principles and
- a requirement that occupants attempt to resolve any dispute with their grantor via the university's dispute resolution procedures (so long this can be done within a reasonable timeframe) before being able to take occupancy disputes to the ACT Civil and Administrative Tribunal (ACAT).

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See the Fact Sheet *Education Provider Occupancy Agreements* for more detail.

### MORE INFORMATION AND ASSISTANCE

Australian National University Students Association Legal Service (ANUSA Legal Service)

**Phone:** 6125 2444 **Email:** [sa.admin@anu.edu.au](mailto:sa.admin@anu.edu.au) **Website:** <https://anusa.com.au/services/legal/>

Legal advice from this service is free and confidential. The service is only available to currently enrolled ANU students.

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 occupants 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 occupants and grantors.

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)

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The Rental Bonds Portal allows grantors to lodge occupancy agreement security deposits and request refunds online. It also has template forms for condition reports, security deposit refunds, 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.

### ACT Human Rights Commission

**Phone:** 6205 2222

**Email:** [HRCIntake@act.gov.au](mailto:HRCIntake@act.gov.au)

**Website:** <https://hrc.act.gov.au/occupancy-disputes/>

The Commission can accept complaints about occupancy disputes arising from occupancy agreements. They will try to resolve matters informally through a conciliation process.

### 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).