

# RESIDENTIAL TENANCY ACT: CO-TENANCY CHANGES



## FACTSHEET

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## Bond and Condition Reports in 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 allow 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. Agreements with more than one tenant will be known as 'co-tenancies' and the tenants will be called co-tenants. This Fact Sheet sets out the process for managing bond and condition reports when there is a change of tenants in a co-tenancy.

For an overview of these changes, see the Fact Sheet *Introduction to Co-tenancies*.

For information about how someone can be added to or removed from a co-tenancy, see the Fact Sheets *Leaving a Co-tenancy* and *Joining a Co-tenancy*.

### INSPECTIONS

As mentioned above, under changes to the law, co-tenants will be able to be added to, or removed from, a tenancy agreement while the original tenancy agreement with the landlord continues. Because the tenancy is continuing, the usual rules in relation to inspections apply (one in the first month, one in the last month and twice annually in between).

**The landlord is not required to conduct any additional inspections on the change-over of co-tenant(s) and does not need to prepare a new condition report for the premises.** If the landlord chooses to conduct an inspection that coincides with a change-over in tenants, this inspection will count towards the 2 per year limit on inspections.

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### HOW DOES BOND WORK IN A CO-TENANCY?

As the original tenancy agreement with the landlord is continuing, the bond will remain lodged with the ACT Revenue Office (Rental Bonds) for the duration of the tenancy agreement. **The incoming, outgoing, and existing co-tenants will need to make arrangements in relation to bond between themselves.** Essentially, this means that the co-tenants must work out how much should be paid to any outgoing co-tenant, and how much must be paid by any incoming co-tenant. This includes accounting for any damage or unpaid rent the outgoing co-tenant may be responsible for as this could ultimately be deducted from the bond at the end of the tenancy.

The incoming and remaining tenants will also be responsible for notifying Rental Bonds of a change in the person who has an interest in the bond. The process for doing this is outlined further below.

### A CO-TENANT MOVING OUT – GETTING BOND BACK

When a co-tenant leaves, **the remaining co-tenant(s) must pay the leaving co-tenant their share of the bond within 14 days** of them moving out. Alternatively, if there is an incoming co-tenant, the existing co-tenants are able to arrange for the incoming co-tenant to pay the leaving co-tenant their share of the bond. However, the remaining co-tenant(s) can deduct any money owed, for things such as unpaid rent or repairs for damage caused by the leaving co-tenant. If there is a dispute about how much money is to be withheld, the co-tenants can make an application directly to the ACT Civil and Administrative Tribunal (ACAT) for resolution of the dispute (see further below). The remaining co-tenant(s) must then notify Rental Bonds by completing a co-tenant change form advising that the person is leaving and has been paid their share of the bond. Rental Bonds will ensure that the outgoing co-tenant is no longer recorded as having any bond owing.

### A NEW CO-TENANT MOVING IN – PAYING THEIR SHARE OF THE BOND

**An incoming co-tenant must pay the other co-tenant(s) their share of the bond within 14 days of moving in**, and then notify Rental Bonds they have done so by completing a co-tenant change form. In practice, however, the existing co-tenants may ask the incoming tenant to pay their share of the bond directly to the leaving co-tenant. How this is managed may depend on whether any deductions need to be made from the leaving co-tenant's bond. The amount the incoming co-tenant is asked to pay should take into account whether any damage to the property has already occurred, as the incoming co-tenant will now become liable for any damage done to the property by current or former co-tenants.

Once notified that the incoming co-tenant has paid their share of the bond, Rental Bonds will record the new co-tenant as having an interest in the bond. **All co-tenants should keep written records of bond payment as well as the notification from Rental Bonds.**

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### INCOMING TENANT – CONDITION REPORT

**The existing co-tenants must give the incoming co-tenant a copy of the original condition report no later than the day after they move in.** The incoming tenant should ensure that they check the condition report, noting any differences between the current condition of the property and that which was recorded at the start of the tenancy. This is because, at the end of the tenancy, they will be liable for any damage or unpaid rent that has occurred during the tenancy (including any which pre-dated their tenancy). If the incoming tenant has any concerns about the condition of the property, they should raise this with the existing co-tenant(s).

If there is a dispute about how much money the incoming tenant should pay, the co-tenants can make an application to ACAT for resolution of the dispute (see further below).

### CASE STUDY EXAMPLE: JONAH IS MOVING OUT AND AZIMA IS MOVING IN. HOW DO THEY MANAGE THE BOND?

Jonah lives in a share house with Margot and Yuko as co-tenants. They paid a bond at the beginning of their tenancy of \$3600, in equal shares of \$1200 each. Jonah has decided to move out, and he will be replaced in the house by Margot's friend Azima. The landlord and all the housemates have consented in writing to these changes.

A while ago, Jonah damaged the wall in his bedroom while moving furniture. The housemates agree that the significant chips in the wall are not fair wear and tear and will likely be deducted from their bond at the end of the tenancy when everyone moves out.

Before Jonah moves out, he arranges a quote from a painter for patching and painting the damaged wall. The quote is for \$200.

Within 14 days of Jonah moving out, Margot and Yuko pay him \$1000 (his share of the bond less the estimated cost of the damage to the wall).

Margot and Yuko then have two choices:

1. Within 14 days of moving in, Azima pays Margot and Yuko \$1200 as her share of the bond. Margot and Yuko recoup their payment to Jonah and use the additional \$200 to pay for the tradesperson to fix the wall. The housemates notify the ACT Revenue Office that Jonah has moved out and Azima has moved in, so that the official bond record can be updated.

OR

2. Within 14 days of moving in, Azima pays Margot and Yuko \$1000 as her share of the bond (or Margot and Yuko agree to Azima paying this money directly to Jonah). Azima is aware that at the end of the tenancy, when a deduction is made for damage to the property, the \$200 would

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likely be deducted from the bond and that when the bond is paid out, she would receive \$1000, while Margot and Yuko would receive \$1200 each from the total bond (assuming no additional deductions are required). The housemates notify the ACT Revenue Office that Jonah has moved out and Azima has moved in, so that the official bond record can be updated.

### DISPUTES IN RELATION TO BOND

Where co-tenants cannot decide amongst themselves how much bond should be paid, they can apply directly to ACAT for a decision regarding the division of bond. Typically, ACAT will direct the co-tenants to attend mediation first, and if that is not successful, ACAT will then hold a hearing about the dispute where each co-tenant can put forward their position. ACAT will then make a binding decision on how much bond should be paid.

See the Fact Sheet *Disputes in relation to co-tenancies* for further information.

### THE TENANCY IS ENDING AND THE EXISTING CO-TENANTS DON'T MATCH THOSE WHO HAVE A REGISTERED INTEREST IN THE BOND

If a co-tenant paid bond but never formally registered with Rental Bonds, they must alert the other co-tenants and Rental Bonds as soon as possible. At the end of the tenancy, if the names listed with Rental Bonds do not match the existing co-tenants, Rental Bonds may refer the matter to the ACAT for an independent decision. ACAT will determine who is entitled to be paid out a share of the bond and make an order directing Rental Bonds to pay the bond out to the correct person. (See the Fact Sheet *Disputes in relation to co-tenancies* for further 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:** <https://www.actlawsociety.asn.au/for-the-public/legal-help/legal-advice-bureau>

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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.

### 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:** <https://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).