

RESIDENTIAL TENANCY ACT: CO-TENANCY CHANGES



FACTSHEET

Leaving a Co-tenancy

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 removing someone from 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 a co-tenancy, see the Fact Sheet *Joining a Co-tenancy*.

LEAVING A CO-TENANCY

The changes to the RTA create a new process for leaving a co-tenancy. For a person to leave an existing tenancy agreement, they require the consent of the other co-tenant(s) and the landlord. The RTA creates a process for obtaining consent which is outlined further below. The RTA also creates other pathways for ending a tenancy agreement (for example by providing a notice of intention to vacate), however, this fact sheet primarily addresses the pathways for leaving a co-tenancy created by the new laws.

REQUESTING CONSENT

A leaving co-tenant must seek the consent of their fellow co-tenant(s) and their landlord, giving them at least **21 days' written notice** of their intention to leave. They will need a response from each co-tenant and the landlord.

A landlord must not require or accept any money for consenting to a request for a person to leave a co-tenancy.

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The consent process will differ depending on whether the tenancy agreement is fixed term (e.g. the lease is for a set amount of time) or periodic (without a fixed term).

REFUSING CONSENT: FIXED TERM TENANCY

If a co-tenant wishes to leave during a fixed term agreement, the landlord and other co-tenant(s) can refuse consent for any lawful reason, whether it is reasonable or not. This is because fixed term agreements are designed to give both the landlords and tenants the certainty that the tenancy agreement (including all the parties who originally entered the agreement) will be in place for the duration of the fixed term. The changes to co-tenancy laws are not designed to undermine the certainty that a fixed term agreement creates. However, if consent is refused, the outgoing co-tenant can apply to the ACT Civil and Administrative Tribunal (ACAT) for an order allowing them to leave and end their obligations under the agreement (i.e. to allow them to leave and stop paying rent).

If the other co-tenant(s) or landlord refuse consent, the outgoing co-tenant can still move out in practice. However, the outgoing co-tenant will remain legally liable for their obligations under the agreement for the remainder of the fixed term. This means they must keep paying rent and will remain jointly responsible for any property damage that occurs to the property. However, if this occurs, the other parties to the agreement (the landlord and remaining co-tenants) are under an obligation to 'mitigate loss.' This means that they must take action to limit the amount of money that the leaving co-tenant has to pay because they decided to leave the agreement. In practice, this means the remaining co-tenants may need to act to find a replacement co-tenant or decide to accept the extra cost associated with the outgoing tenant leaving. If a new tenant is found (and the landlord consents) and is joined to the agreement, the leaving co-tenant's obligations under the agreement can end.

If the landlord or other co-tenants **do not reply within 21 days of receiving notice** of the outgoing co-tenant's intention to leave, they are **taken to have consented**.

REFUSING CONSENT: PERIODIC TENANCY

If a co-tenant wishes to leave during a periodic agreement, the landlord and remaining co-tenant(s) can only refuse consent if it is reasonable for them to do so and they obtain an ACAT order allowing them to refuse consent. They must apply to ACAT **within 21 days of receiving notice** of the outgoing co-tenant's intention to leave. ACAT will then grant an order if they decide that the refusal of consent is reasonable.

If ACAT grants an order refusing consent, the outgoing co-tenant can still move out in practice. However, they would also need to provide a notice of intention to vacate providing 21 days' notice. Legally this would terminate the entire tenancy agreement for all the remaining co-tenants. The landlord and the remaining co-tenants would need to sign a new agreement (and undertake a new condition report, make arrangements in relation to bond, etc.) if they want the tenancy to continue without the outgoing co-tenant. In practice, a departing co-tenant may wish to discuss these options with the remaining co-tenants and the landlord early to decide whether it would be better to issue a

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notice of intention to vacate (ending the tenancy agreement for all parties) or if it is better to seek the consent of the other parties for the leaving co-tenant to move out and allow the agreement to continue for the remaining co-tenants.

If the landlord or other co-tenants **do not respond to the request for consent and apply to ACAT within 21 days** of receiving notice of the outgoing co-tenant's intention to leave, they are **taken to have consented**.

CONSENT OR ACAT ORDER OBTAINED

If everyone consents, or the outgoing co-tenant obtains an ACAT order allowing them to leave, the outgoing co-tenant's rights and obligations under the agreement end on the day they gave notice (i.e. the day they indicated would be their proposed leaving day, or another day agreed upon by the parties or ordered by ACAT). After this day, they will no longer have to pay rent and will no longer be responsible for any damage to the property. The tenancy agreement will continue between the landlord and the remaining co-tenants. The leaving tenant and outgoing tenant will need to make arrangements in relation to bond (see further below).

CASE STUDY EXAMPLE: KELLY WANTS TO MOVE OUT OF HER SHARE HOUSE

Peter, Saffron, and Kelly are co-tenants, and Jasper is their landlord. They have a fixed term tenancy with 8 months still remaining in the fixed term. Kelly would like to leave the tenancy as she would like to accept a job in Queensland. Kelly seeks consent in writing from Peter, Saffron, and Jasper, giving them 21 days' notice in writing before the date that she would like to move out.

Any one of Peter, Saffron or Jasper may refuse consent for any lawful reason, and Peter chooses to exercise this right (while the others consent). Peter refuses because he is concerned that he will not be able to afford an increase in his rent if he and Saffron can't find a replacement tenant for Kelly.

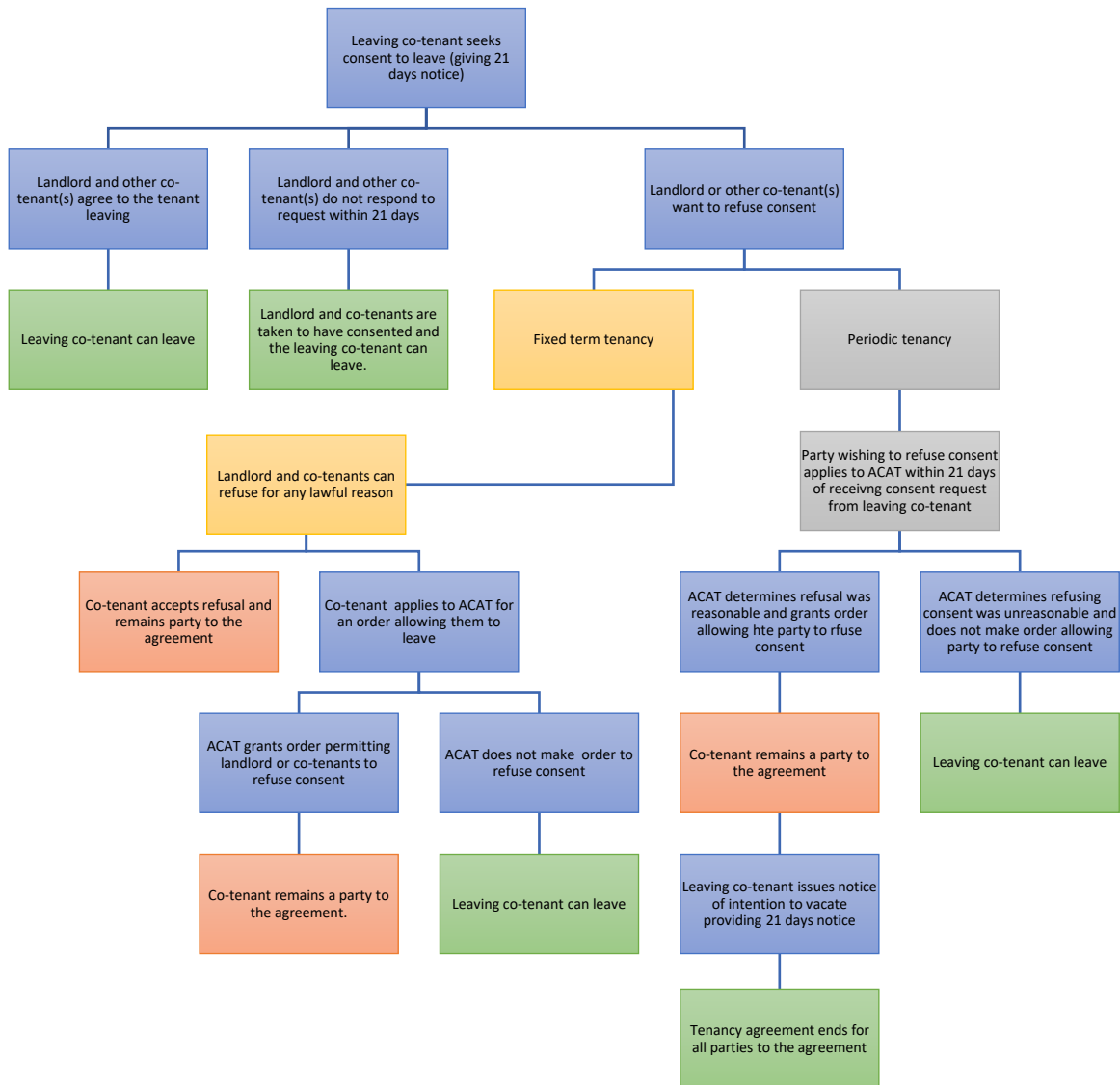
Kelly applies to the ACAT for an order that she may leave the tenancy. ACAT directs everyone to attend mediation, and the parties voluntarily come to an agreement that they will consent following a pathway similar to a 'break lease clause' situation, meaning that Kelly will cover the rent for a period, giving Peter and Saffron time to find a new tenant.

FLOW CHART EXAMPLE

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HOW DOES BOND WORK IN A CO-TENANCY?

Under the recent changes to the RTA, 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 by completing a co-tenant change request form and submitting to rb@act.gov.au.

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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 Factsheet '*Bond and Co-tenancies*' for further detail.

MORE INFORMATION AND ASSISTANCE

Tenancy Advice Service (Division of Legal Aid ACT)

Phone: 1300 402 512 **Email:** TAS@legalaidact.org.au **Website:** www.legalaidact.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

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

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 **Website:** <https://www.revenue.act.gov.au/rental-bonds>

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

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ACT Civil and Administrative Tribunal (ACAT)

Phone: 6207 1740

Email: tribunal@act.gov.au

Website: 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.