

RESIDENTIAL TENANCY ACT: OCCUPANCY LAW CHANGES



FACT SHEET

Changes to Occupancy Law: Security deposits and condition reports

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.

WHAT ARE THE MAJOR CHANGES TO OCCUPANCY LAW?

The changes:

- more clearly define what an occupancy agreement is and the circumstances in which they may be used
- create mandatory minimum principles for occupancy agreements
- introduce a security deposit framework for occupancy agreements
- introduce enforceable conciliation of occupancy disputes through the ACT Human Rights Commission
- introduce a requirement for smoke alarms to be fitted in occupancy agreement premises
- create specific rules in relation to occupancy agreements in residential parks, and
- create specific rules in relation to education provider occupancy agreements.

A brief overview of these changes is provided below and more detailed factsheets are also available at: <https://justice.act.gov.au/safer-communities-protection-rights/residential-tenancy-and-occupancy-reforms/reforms-tenancy-and-occupancy-reforms>

[This Fact Sheet outlines the new laws in relation to security deposits.](#)

WHAT IS A SECURITY DEPOSIT?

The mandatory principles under the RTA allow a grantor to request that an occupant pay a security deposit in certain circumstances. A security deposit (sometimes referred to as a bond) is an amount of money paid by an occupant under an occupancy agreement which is held in trust until the end of the agreement as surety against unpaid occupancy fees or property damage.

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WHEN CAN A GRANTOR ASK FOR A SECURITY DEPOSIT?

A grantor can only require an occupant to pay a security deposit under an occupancy agreement if:

- the occupancy agreement is in writing; and
- for a term of more than 14 days; and
- the grantor provides the occupant with a condition report.

WHAT IS THE MAXIMUM AMOUNT FOR A SECURITY DEPOSIT?

The maximum amount that an occupant can be required to pay for a security deposit under an occupancy agreement depends on the length of the agreement:

- for an occupancy agreement with **a term of more than 14 days but less than 6 months**: no more than the first **2 weeks of the occupancy fee** under the agreement; or
- for an occupancy agreement with **a term of 6 months or longer**: no more than the first **4 weeks of the occupancy fee** under the agreement.

The amount of the security deposit must be stated in the occupancy agreement.

A grantor also cannot ask for or accept more than one security deposit payment from an occupant under an occupancy agreement.

WHEN DOES THE SECURITY DEPOSIT NEED TO BE LODGED WITH THE ACT OFFICE FOR REVENUE (RENTAL BONDS)?

Once the occupant pays the security deposit to the grantor, the grantor must lodge the security deposit within 14 days of receiving it with the ACT Office for Revenue (Rental Bonds) – this is part of the ACT Government. Security deposits are held on trust for the duration of the occupancy agreement.

HOW IS A SECURITY DEPOSIT LODGED WITH THE ACT OFFICE FOR REVENUE (RENTAL BONDS)?

Security deposits must now be lodged with Rental Bonds. A grantor can lodge the security deposit by registering to use the lodgement portal or by completing a security deposit smart form on the Rental Bonds website (see further below for website details). Once lodged, the payment details will be emailed to the occupant. When the security deposit is lodged, Rental Bonds must also be provided with:

- the name and address of the grantor
- the name, contact phone and email of the occupant(s)
- the weekly occupancy fee

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- the commencement date of the agreement and
- the amount of the security deposit being deposited.

If Rental Bonds approves and accepts the amount of the security deposit, Rental Bonds must give the occupant a receipt for the amount of the security deposit and give both the occupant and the grantor a copy of the written notice lodged with Rental Bonds. Rental Bonds will issue a notice by email to all parties advising them that the security deposit has been received the day after it is lodged.

WHEN CAN A GRANTOR MAKE A CLAIM AGAINST A SECURITY DEPOSIT?

A grantor may only make a claim for certain costs from a security deposit if they are related to breaches of the occupancy agreement. These deductible costs include:

- reasonable costs for repairs and/or restoration works to the premises, facilities, furniture or goods provided under the occupancy agreement (other than fair wear and tear) for damage caused by the occupant
- reasonable costs of securing the premises if the occupant fails to return the keys for the premises to the grantor at the end of the occupancy agreement and
- any occupancy fee or amount owing and payable under the occupancy agreement at the time that the agreement ends.

HOW IS A SECURITY DEPOSIT REFUNDED FROM THE ACT OFFICE FOR REVENUE (RENTAL BONDS)?

Where the grantor has registered for an account with Rental Bonds, the grantor can submit a refund request form by completing the refund request online (no hardcopy form required). Where they do not have an account or where the occupant wants to apply for the refund, the grantor and/or the occupant must fill out a refund request form on the Rental Bonds website (see below for details) and emailing the form to Rental bonds rb@act.gov.au.

Once the occupancy agreement ends, the grantor must provide the occupant with a signed refund request form which proposes one of the following options:

- refund the full amount of the security deposit to the occupant (within 3 days of the occupancy agreement ending) or
- make a deduction from the security deposit (within 10 working days of the occupancy agreement ending).

If the grantor proposes to make a deduction from the security deposit, the occupant may either agree with the grantor's proposed approach and sign the application form or disagree with the grantor's approach and not sign the application form. If the grantor uses the online portal to request the refund the occupant will be notified by email. They can then respond to the refund request via email to Rental Bonds rb@act.gov.au to approve or dispute the claim made.

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Rental Bonds will deposit the security deposit amount payable in accordance with the refund request in the grantor and/or occupant's nominated bank account.

DISPUTES IN RELATION TO SECURITY DEPOSITS

The new security deposit framework under the RTA provides grantors and occupants with greater protections in relation to disputes about security deposits. Disputes about security deposits will be facilitated by Rental Bonds (except in the case of education provider occupancy agreements). An occupant will have an increased capacity to dispute a claim by a grantor for a security deposit as the deposit will be held on trust by Rental Bonds until the dispute is resolved.

See the Fact Sheet *Disputes in relation to occupancy agreements* for more detail.

WHAT IS A CONDITION REPORT AND HOW WILL IT BE USED?

The mandatory principles under the RTA require a grantor to provide a condition report to an occupant.

A grantor must provide a signed condition report to an occupant within one day of the date that the occupant moves into the premises. For example, a prospective occupant may enter into an occupancy agreement on 1 November 2021, but the occupancy agreement may not commence until 1 February 2022. The grantor will be required to provide the occupant with a condition report within one day of the date that the occupant moves into the premises (i.e., not later than 2 February 2022).

The grantor must give the occupant a reasonable opportunity to check the content of the condition report. The occupant is not required to sign the condition report.

If a grantor does not provide a condition report to an occupant detailing the state of repair or general condition of the premises, the state of the premises at the end of the occupancy agreement will be taken to be the same as it was at the beginning of the occupancy agreement (unless there is evidence to suggest otherwise).

RECORDS AND RECEIPTS FOR PAYMENTS MADE UNDER AN OCCUPANCY AGREEMENT

If an occupant pays a grantor an amount of money under an occupancy agreement, the grantor must **keep a written record of all payments received** from the occupant. If asked for by the occupant, the grantor must also give the occupant a copy of the record of payments.

If the amount of money received is **less than \$75**, the grantor must give the occupant a receipt **upon request by the occupant**.

If the amount of money received is **more than \$75**, the grantor **must give the occupant a receipt** (even if the occupant does not request it).

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ARE SOME AGREEMENTS EXEMPT FROM HAVING TO LODGE A SECURITY DEPOSIT?

Yes. Education provider occupancy agreements are exempt from having to lodge a security deposit with the Territory.

See the Fact Sheet *Education provider occupancy agreements* for more information. For all other occupancy agreements, if the grantor requests a security deposit, it must be lodged with the Office for Revenue (Rental Bonds).

MORE INFORMATION AND ASSISTANCE

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

Phone: 6125 2444 **Email:** 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@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 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

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

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/>

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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 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 **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.

ACT Human Rights Commission

Phone: 6205 2222 **Email:** 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.