

RESIDENTIAL TENANCY ACT: CO-TENANCY CHANGES



FACTSHEET

Joining 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 adding a new person to a co-tenancy.

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

For information about how someone can be removed from a co-tenancy, see the Fact Sheet *Leaving a Co-tenancy*.

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.

JOINING A CO-TENANCY

For a person to join an existing tenancy agreement and become a new co-tenant, 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.

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REQUESTING CONSENT

Before a new tenant can move in, one of the existing co-tenants must seek consent in writing from **the landlord and any other co-tenants**, giving them a minimum of **14 days' notice** before the proposed new tenant's moving-in day.

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

If the landlord and the other co-tenants **do not respond within 14 days**, they are **taken to have consented**, and the incoming co-tenant can move in on the proposed move-in date (or any other day that everyone agrees to).

CONSENT OBTAINED

If the landlord and each co-tenant provides explicit consent, the incoming co-tenant can move into the share house on the agreed move-in date. There is no need to create a new tenancy agreement – the existing agreement continues with the incoming co-tenant becoming a party to the agreement. It is up to the parties to the agreement as to how they want to record the addition of the new tenant. For example, they may choose just to keep a copy of the correspondence seeking and providing consent as evidence of the new tenant being added or they may choose to amend the names on the existing tenancy agreements and provide a copy to the other parties to the agreement.

The landlord does not need to prepare a new condition report or organise any extra inspections. However, the existing co-tenants must provide the new co-tenant with a copy of the condition report for the premises and make arrangements to change the registered interest in the bond. See the Fact Sheet *Bond and Condition Reports in Co-tenancies* for further information.

REFUSING CONSENT: EXISTING CO-TENANTS

Existing co-tenants can refuse consent to a new co-tenant for any legal reason. This is because the law recognises that a person should have a say in who they live with and should not be forced to live with someone if they do not want to.

REFUSING CONSENT: LANDLORDS

A landlord can only refuse permission for someone to move in if it is reasonable for them to do so. It is expected that landlords will only withhold consent when there are genuine objective reasons (e.g. overcrowding, or not being able to meet the lease requirements), rather than personal preferences. If a landlord does want to refuse consent, they must write both to the existing co-tenant and the person seeking to move in to tell them of their refusal and the reasons for their refusal.

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APPLYING TO ACAT IF THE LANDLORD REFUSES CONSENT

If the other co-tenant(s) consent but the landlord does not, the housemate seeking consent can apply for an ACAT order to approve the incoming co-tenant moving in. This is known as a '**declaration application**' (see the Fact Sheet *Disputes in Relation to Co-tenancies* for more information).

The incoming co-tenant will be able to move in from the date of the ACAT application and becomes a co-tenant from that date. They will need to pay rent and bond from this date and will also need to be given a copy of the condition report. This is to ensure that the proposed new tenant has somewhere to live while the ACAT matter is being decided.

ACAT will consider if the landlord has acted reasonably in refusing consent. If ACAT decides that the landlord's refusal of consent was reasonable, **the incoming co-tenant will cease to be a co-tenant and must leave within 21 days.** If ACAT decides that the landlord's refusal of consent was unreasonable, the incoming co-tenant can **continue living in the property as a co-tenant.** There are certain things that ACAT must consider when determining if the landlord's refusal of consent was reasonable (see the Fact Sheet *Disputes in Relation to Co-tenancies* for more information).

Note: the law provides procedural protections for landlords in the event that a housemate applies to ACAT, thereby making the new person a co-tenant, and then withdraws the application (which would technically prevent ACAT from deciding the matter). In that event, the landlord can apply for an order that the new person must stop being a co-tenant and leave the property.

CASE STUDY EXAMPLE: APARNA WANTS TO MOVE INTO THE SHARE HOUSE

Rafael, Mai, and Rami are co-tenants, and James is their landlord. The housemates would all like Aparna to join the tenancy. Any one of Rafael, Mai, or Rami may seek consent from the others and from James, so Rafael takes on that task. Rafael seeks consent in writing for Aparna to join the tenancy, giving the others at least 14 days to respond before she proposes to move in.

Mai and Rami can refuse consent for any lawful reason, but they reply in writing within 14 days to confirm their consent.

James must not unreasonably refuse consent. He wishes to refuse consent. He provides his refusal and reasons in writing (as he is required to do). He says that his reason is he is worried about overcrowding in the property.

Rafael, Mai, and Rami disagree that the property would be overcrowded as it has four bedrooms and two bathrooms. As Mai and Rami have both consented, Rafael applies to ACAT for an order that James' refusal was unreasonable. ACAT must consider if the property would be overcrowded with Aparna as a co-tenant.

Aparna becomes a co-tenant and can move in on the day Rafael makes the application to ACAT.

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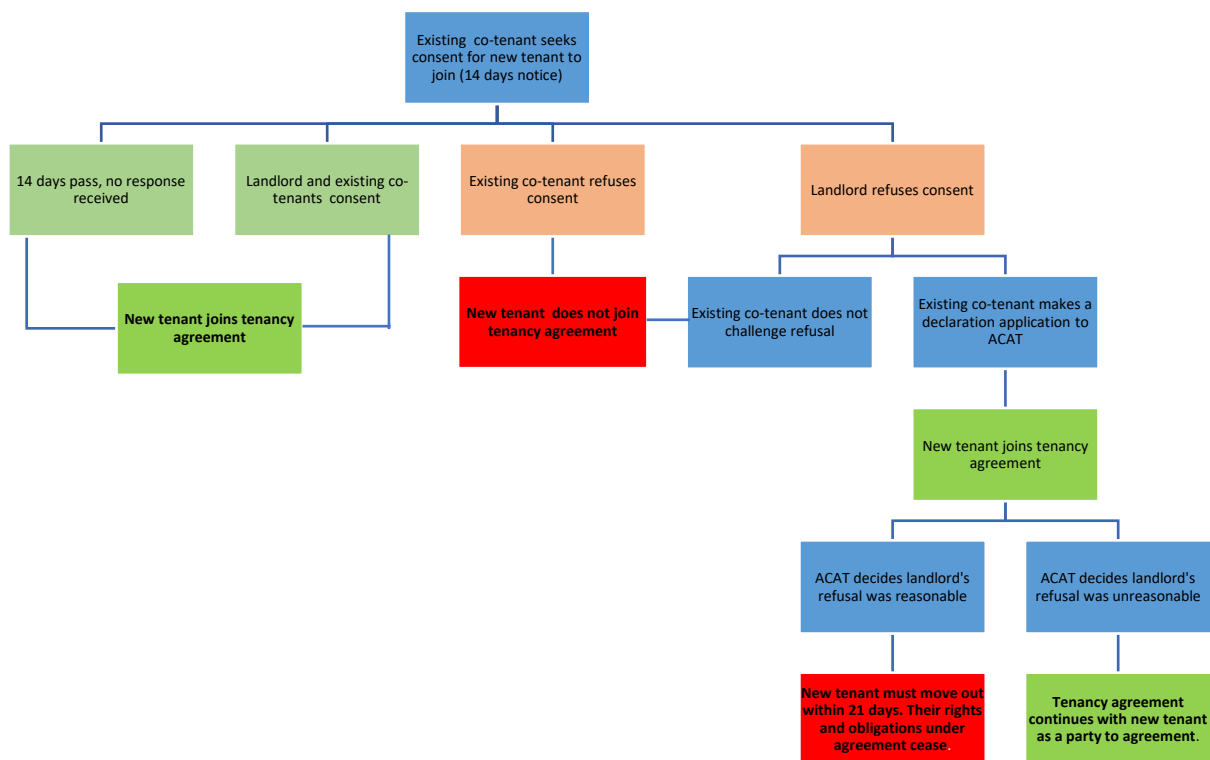


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If ACAT considers that James' refusal was reasonable, it may order that Aparna is to stop being a party to the residential tenancy agreement, and Aparna will have to leave the property within 21 days of the order.

If ACAT considers that James' refusal was unreasonable, it can make a declaration to this effect. In this case, ACAT orders that James was unreasonable to refuse, having regard to the size of the property and the number of bedrooms and bathrooms. Aparna will remain a co-tenant.

FLOW CHART EXAMPLE



ARE THE RULES DIFFERENT IN RELATION TO SOCIAL HOUSING AND CRISIS ACCOMMODATION?

Yes. The rules are slightly different if you are in social housing or crisis accommodation. A new person can only move in as a co-tenant to a social housing or declared crisis accommodation property if the other co-tenants and the landlord consent. An existing co-tenant will not be able to challenge the landlord's refusal of consent in ACAT.

If the landlord and tenant do agree, then the new person becomes a co-tenant on the day agreed between the existing tenant, the incoming tenant and the landlord.

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MOVING IN WITHOUT THE LANDLORD'S CONSENT

If an individual (other than a domestic partner or child) moves into a property without following this consent process (e.g. if they move in without letting the landlord know), the existing co-tenant(s) will be in breach of the agreement, and the landlord will have a ground to seek to terminate the lease. The person moving in will have no rights as a tenant under the law.

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. In practice, this means that the incoming, outgoing and existing co-tenants will need to make arrangements in relation to bond between themselves.

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 on the day they join the tenancy.

See the Fact Sheet *Bond and Condition Reports in 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/>

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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/>

The Conflict Resolution Service (**CRS**) provides professional mediation and facilitation services so that parties to disputes can talk through the issues and their options in a structured environment. CRS has experience resolving residential tenancy disputes and in some circumstances its services may be offered free (for tenants affected by the COVID-19 pandemic or for tenants in public housing).

ACT Revenue Office (Rental Bonds)

Phone: 6207 0028 **Email:** rb@act.gov.au **Website:** 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.

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.