

# RESIDENTIAL TENANCY ACT: CO-TENANCY CHANGES



## FACTSHEET

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## Disputes in relation to 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 for the remaining tenants. Agreements with more than one tenant will be known as 'co-tenancies' and the tenants will be called co-tenants. See the Fact Sheet *Introduction to Co-tenancies* for further information.

As these changes may lead to disputes between landlords and tenants or between the co-tenants themselves about if, and when, a person should be added to or removed from a tenancy agreement, the new laws also give the ACT Civil and Administrative Tribunal (ACAT) the power to decide disputes relating to co-tenancies. This Fact Sheet outlines dispute resolution processes if disputes do arise.

### WHAT IS ACAT?

ACAT is an independent body which decides disputes in accordance with the law. ACAT aims to resolve matters in a quick, informal, and inexpensive way. See below for ACAT's website and contact details.

### WHO CAN GO TO ACAT?

Both landlords and co-tenants can apply to ACAT to resolve a tenancy dispute. Depending on the nature of the dispute, either the landlord or co-tenant(s) can apply to resolve a dispute between the landlord and the co-tenants.

Under the new laws, co-tenants will also be able to apply to ACAT to **resolve a dispute between co-tenants** (so long as the dispute is related to the tenancy agreement).

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### WHAT KINDS OF DISPUTES BETWEEN CO-TENANTS AND LANDLORDS CAN GO TO ACAT?

Under the new laws, a co-tenant will be required to seek the consent of the landlord and any other co-tenant(s) to add or remove a co-tenant from the tenancy agreement. When a change of tenant occurs, the incoming, outgoing and existing tenants will also be expected to make arrangements in relation to bond amongst themselves without the landlord needing to be involved.

Sometimes disputes may arise between landlords and tenants or between tenants themselves in relation to changes to co-tenants or in relation to bond. Where possible, it is generally best to try to resolve disputes informally with the person you are having the dispute with. However, if a dispute can't be resolved in this way, it is possible to take the dispute to ACAT.

In addition to existing reasons a tenancy dispute can be taken to ACAT (e.g. disputes about rent, repairs, anti-social behaviour, or property damage), disputes relating to co-tenancies that may be taken to ACAT are:

- A **co-tenant** can apply to ACAT for:
  - resolution of a **dispute between co-tenants** in relation to the tenancy agreement (for example a dispute in relation to bond)
  - an order allowing them to **refuse consent to a co-tenant who wants to leave** a periodic tenancy (however, see the Fact Sheet *Leaving a co-tenancy* for more information on how a leaving co-tenant could bring the tenancy to an end by issuing a notice of intention to vacate)
  - an order that an **existing co-tenant must stop being party to the tenancy agreement** by a certain date (no less than three weeks after the order is made)
  - an **order allowing them to stop being a party to the tenancy agreement** (if their fellow co-tenants or landlord do not consent to them leaving)
  - an **order declaring that their landlord's refusal to consent to a new co-tenant joining the co-tenancy was unreasonable**
  - **any other order related** to those above which ACAT considers appropriate (for example orders related to outstanding rent, utilities payments or property damage).
- A **landlord** can apply to ACAT for:
  - an order **allowing them to refuse consent for a person to join or leave a co-tenancy**
  - an **order for a new co-tenant to stop being a co-tenant** if an existing co-tenant made a declaration application (an application challenging the landlord's refusal to consent to a new co-tenant) and then discontinues the application or if ACAT has not otherwise made a decision in relation to a declaration application.

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### WHAT WILL ACAT CONSIDER WHEN MAKING A DECISION?

If ACAT is asked to declare that a landlord's refusal of consent to a new person becoming a co-tenant was unreasonable, ACAT **must** consider the following matters:

- whether the property could become **overcrowded** if a new person was added
- whether the proposed new co-tenant is included on a **tenancy database** (a 'tenancy blacklist')
- whether the person **meets the requirements and purpose of the tenancy agreement**
  - for example, if the purpose of the tenancy is to provide affordable housing, ACAT may consider if the person's income falls within the required income threshold to be eligible for affordable housing
- if the tenancy is related to someone's employment, **whether the new person would be living in the tenancy as part of their employment arrangements.**

ACAT is also able to consider other relevant matters. What is 'reasonable' is considered an objective test, and ACAT will look for justifiable reasons for withholding consent, rather than the landlord's personal preference.

### IS THERE A COST?

An application fee will usually apply, although, in some circumstances, applicants may be exempt from fees or fees may be waived due to financial hardship.

Information on ACAT fees can be found at [www.acat.act.gov.au/fees-and-forms/acat-fees](http://www.acat.act.gov.au/fees-and-forms/acat-fees).

### IS IT NECESSARY TO HIRE A LAWYER?

ACAT is less formal than a court, so formal legal representation is not necessary. However, it may be beneficial to seek legal advice before going to ACAT. Information on representation at ACAT can be found on ACAT's website at <https://www.acat.act.gov.au/what-to-expect/representation-and-advice>.

See below for more information on where to get further information or assistance.

### WHAT CAN ACAT DO?

ACAT will usually list disputes about co-tenancies for a final hearing (usually on a Thursday) or for a conference. The parties to the dispute will receive a letter from ACAT telling them the date, time and other information about the hearing or the conference (called a listing notice).

At a hearing, each party will have the opportunity to give and hear evidence and present their position. ACAT will make a decision based on the law and make one or more of the orders listed above.

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Less urgent matters or disputes about the bond or compensation will be listed for an initial conference. The purpose of the conference is for the parties to try to resolve the dispute between them, without the need for a formal hearing. If an agreement is reached, ACAT can make orders reflecting the agreement. If an agreement is not reached, the matter will be scheduled for a hearing before a different member on a future date.

## MORE INFORMATION AND ASSISTANCE

### Tenancy Advice Service (Division of Legal Aid ACT)

**Phone:** 1300 402 512 **Email:** [TAS@legalaidact.org.au](mailto:TAS@legalaidact.org.au) **Website:** [www.legalaidact.org.au/tasact](http://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](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 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:** [www.revenue.act.gov.au/rental-bonds](http://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](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).