

Boarder and Lodgers

Boarders and Lodgers are a type of renter who pay rent for the right to live in a property but are not covered by the *Residential Tenancies Act 1987*.

Although Boarders and Lodgers are not covered by the Residential Tenancies Act, they do have rights under common law.

If you are a boarder or lodger, your rights and responsibilities are set out in the boarding agreement between you and your lessor. This agreement may be written or verbal. It will usually be a legally enforceable contract. It is much easier to protect your rights if you have a written boarding agreement.

WHAT IS A BOARDER OR LODGER?

The terms 'boarder' and 'lodger' are often used in place of the other. The difference between the two terms is not as important as it may have been in the past.

A lodger is someone who pays for accommodation and occupies a room within another person's home. A boarder also resides in another person's home but is supplied with food and/or other services.

As a boarder or lodger your landlord grants you a license to be a guest in their home.

AM I A BOARDER OR LODGER?

In some situations, it can be difficult to know if you are a tenant, sub-tenant, boarder or lodger. There are some factors to take into account when figuring out if you are a boarder or lodger. This includes the form of the agreement, wording of the agreement (if it is written) and your individual living circumstances.

Some factors that may point to you being a boarder or lodger:

- If your landlord lives in the home with you, it is likely that you are a boarder or lodger. (Your landlord does not have to be the owner of the house; your landlord is the person you pay rent to and who allows you to live in the house. Sometimes this person is called the 'head-tenant,' but they may still be acting as your landlord in your agreement.)
- If your landlord can enter your room or the common areas as they please.
- If your landlord provides services such as meals, linen or cleaning.

- If there are house rules that control what you can do in the home (for example, no guests allowed, no noise after a certain time, or you must be home by a certain time each night).
- If the property is a hostel where people rent a room and share common facilities with others in the building.

Even if your written agreement says that you are a boarder or lodger, this does not necessarily mean that you are. It will depend on the living arrangements and how much control the landlord keeps over the property.

Only the Court can ultimately decide if you are a boarder or lodger. If you are unsure, you can seek legal advice about what kind of agreement you may have.

HOW CAN I END MY AGREEMENT

To determine how much notice you would need to provide your landlord, the first place to look is your agreement. Your agreement might provide the length of notice you need to give before moving out.

You may be able to terminate your agreement if the landlord has breached the agreement.

If you have no prior agreement about how to end the agreement, then you may be able to terminate your agreement by providing 'reasonable notice.'

What is 'Reasonable Notice'

As a guide, 'reasonable notice' is likely how often you pay rent. For example, if you pay rent weekly then 1 week's notice would likely be reasonable. If you pay fortnightly, then you should provide 2 weeks' notice, and so on.

If you do not provide reasonable notice before leaving the property, your landlord may seek compensation from you, such as rent. If this happens, you should seek legal advice.

HOW CAN MY LANDLORD END MY AGREEMENT

Your landlord may be able to terminate your agreement where you have breached the contract. This may include being behind in rent, breaching house rules, or damaging the property. You should first check your written agreement to see if your landlord can terminate for breach and how much notice they need to give you.

If you have no previous agreement about how to end the agreement, then your landlord may be able to terminate your agreement by providing 'reasonable notice.'

If you are evicted from the property without reasonable notice, you may be able to seek compensation, you should seek legal advice before making any claims.

If you stay on the property without the landlord's permission, you could be considered a trespasser.

HOW CAN I GET MY BOND BACK?

If you are a boarder or lodger, your landlord does not need to lodge your bond with the Bond Administrator.

When you leave the property, you should:

- conduct your final clean,
- take photos/videos of the property, and
- note any outstanding issues.

If the landlord is claiming money from your bond, it is helpful if you have photos and a condition report of the property from when you first moved in and when you moved out. You may not be entitled to your bond if the room was damaged or not clean, or if you owe money for rent or other bills.

If you have a written agreement, check what it says about the bond, including any cleaning requirements before you leave and any time frame for return of your bond.

You can negotiate with your landlord and come to agreement about how much bond will be returned to you.

WHAT IF THE LANDLORD IS NOT AGREEING TO RETURN MY BOND?

If your landlord says that they will not return the bond to you or are claiming money for things that you do not agree with, you may be able to apply to Court to recover the bond money.

To make a claim to recover your bond you would need to file a minor case application in the Magistrates Court. This application is for contractual disputes under \$10,000. The application can be quite expensive, so it is worth getting legal advice before making a claim. You can read the [fact sheets](#) on Minor Case claims on the Magistrates Court website for further information about the process.

If you make a residential tenancies application and the Court finds that you are a boarder or lodger and not a tenant, they might not hear your dispute.

At Court, you will need to show that:

- You and the landlord entered into a contract for occupancy of the property and you are a boarder or lodger
- Your agreement with the landlord included a term about payment of bond (For example, any texts or emails discussing payment, which describe the amount paid as 'bond')

- You actually paid this amount (i.e: bank statements)
- There was agreement that the money would be returned at the end of the agreement, unless used to cover costs
- The amount of the bond, minus any costs, has not been returned to you and you are entitled to it

WHAT HAPPENS TO MY ITEMS THAT WERE LEFT AT THE PROPERTY?

You should try to make arrangements to collect your belongings as soon as possible. It may be a good idea to have a friend or family member help you and go to the property if there have been issues with your landlord during the agreement.

You may have a civil claim:

- If you have asked for your belongings to be returned and your landlord refuses or does not answer after a reasonable time, or
- If your landlord sells or disposes of your belongings.

You should seek further advice from your local community legal centre about whether you may have a civil claim against your landlord before making any applications.

HOW CAN I SETTLE DISPUTES WITH MY LANDLORD?

If you have a dispute with your landlord, you can seek legal advice on your options.

You can also contact Consumer Protection to raise a complaint about the landlord's conduct.

FURTHER HELP – TENANTS ADVICE AND ADVOCACY

Circle Green Community Legal

(08) 6148 3636

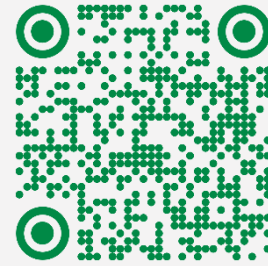
www.circlegreen.org.au

Department of Energy, Mines, Industry Regulation, and Safety Consumer Protection for consumer and tenancy related matters

commerce.wa.gov.au/consumer-protection | 1300 304 054

To find a tenant advocate in your area,
visit our website or use the QR code →

<https://circlegreen.org.au/resource/find-a-tenant-advocate>



Disclaimer:

This factsheet only contains general information. This factsheet is not legal advice and should not be relied on as a substitute for legal advice. You may wish to seek advice from a lawyer regarding your own particular circumstances. We are not responsible for any consequences arising from your use of, or reliance on, the information contained in this factsheet.

Further information about our disclaimer and your use of this factsheet can be found here:

<https://circlegreen.org.au/disclaimer/>

© Circle Green Community Legal.