

As a tenant you have rights and responsibilities under the Residential Tenancies Act 1987 (the Act). This fact sheet incorporates the changes affected by the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 from 15 April 2019.

Shared Tenancies

Sometimes people choose to rent a property with other people and share the rent. If you live in a shared tenancy situation, you may be classified as:

- A co-tenant;
- A sub-tenant; or
- A boarder or lodger.

*In the Residential Tenancies Act the **landlord** is referred to as the **lessor**.*

The first two categories are all protected by the Residential Tenancies Act, however boarders and lodgers are not.

It is important that you understand which category you fall under as your legal rights and responsibilities will vary depending on which category you fall under. When you move into a property, you should ask who is listed on the tenancy agreement and seek advice about your legal status.

If your agreement is subject to family violence, there are a number of changes that you should be aware of that may change the apportionment of liability in shared tenancies. These changes will affect co-tenants and sub-tenants but not boarders or lodgers. See our Family Violence fact sheets for more information.

CO-TENANT

If you are a co-tenant, your name will be on the tenancy agreement, along with the names of the other tenants in the property. Each tenant is presumed to be jointly liable for all the rights and responsibilities attached to the tenancy agreement, unless the agreement states otherwise. If there is a breach of the tenancy agreement, the lessor can act against any or all of the co-tenants, even if only one person is responsible for the breach.

For example, if one tenant negligently causes damage to the walls of their bedroom, the lessor can still seek damages against all the tenants, rather than just the tenant who caused the damage.

If you wish to leave a co-tenancy, you should negotiate with the lessor to have your name removed from the tenancy agreement. That way, if the other tenants breach the tenancy agreement at a later date, you cannot be held liable. It is important that you ensure all communication with the lessor is in writing. If the lessor refuses to remove you from the lease you should consider seeking advice from your local tenant advocate.

The Act provides that, where 2 or more tenants are jointly liable under the agreement to pay an amount to the lessor and one tenant (the first tenant) pays another tenant's portion of that amount, the first tenant may apply to court for an order that the other tenant repay them. You should make this application as soon as possible, and in any case, within 6 years from the date you paid the other tenant's portion of the amount in dispute. Seek advice on making a claim.

The court has the power to make orders to compensate the first tenant for loss or injury (other than personal injury) caused by the default of the other tenant, in addition to ordering that the first tenant be repaid.

If your co-tenant terminates their interest under the family violence provision, please refer to the Family Violence fact sheets. There is a fact sheet specifically for co-tenants.

SUB-TENANT

If you are a sub-tenant, you are sharing the property with the head tenant. The head tenant is the person who is listed on the tenancy agreement with the lessor, who has agreed to sub-let part of their rented premises under a separate agreement. As a sub-tenant, you have the same rights and responsibilities as a tenant under the Act and are answerable to the head tenant. A sub-tenant has a tenancy agreement with the head tenant rather than with the lessor of the property. The head tenant is required to comply with the provisions of the Act.

Sub-tenants are not jointly liable unless they are all sub-tenants under one tenancy agreement (co-sub-tenants). Sub-tenants are not jointly liable for the actions of their head-tenant.

BOARDER OR LODGER

If you are a boarder or a lodger, you are not covered by the Residential Tenancies Act 1987, but you do have rights under the common law.

It can be difficult to determine whether a person is classed as a boarder, a lodger or a tenant. The factors that are taken into account include the form and wording of the agreement itself, as well as your individual living arrangements.

The following will ordinarily be classed as boarding or lodging situations:

- Hostels where people rent a room and share common facilities with others in the building. Usually in these situations a person will have no say in the running or maintenance of the establishment;
- Where you do not have exclusive possession of any part of the property, for instance, in a property where the owner can enter your room as they please;
- Where meals and/or utilities are provided by the owner or head tenant;
- Where there are house rules such as whether you can have visitors or the time you should arrive home.

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. You can seek advice about a boarding agreement before you sign it. If you want to enforce your rights under a boarding agreement you can apply to the Magistrates Court, usually in the minor cases stream, not the residential tenancy stream.

If you are a boarder or lodger, you are not covered by the Residential Tenancies Act. This means that you don't have the same protections as tenants, such as:

- Your lessor doesn't have to lodge your bond with the Bond Administrator; and
- You can be evicted with 'reasonable notice' or otherwise in accordance with the terms of your boarding agreement, and you don't have the protection of the notice periods in the Act.

Lodging houses are regulated under the *Health Act 1911 (WA)*. A house with more than 6 people paying for accommodation (who aren't the owner's family), is required to be registered with the local council as a lodging house. If you are concerned about safety and health in a lodging house, you can contact the local council, and they may inspect the house. The council can make local laws regulating lodging houses and could take steps to close down an

unregistered lodging house. You can seek advice from Circle Green Community Legal about boarding and lodging issues.

FURTHER HELP – TENANTS ADVICE AND ADVOCACY

Circle Green Community Legal

(08) 6148 3636

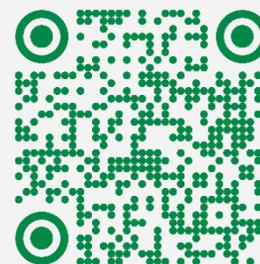
www.circlegreen.org.au

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 fact sheet only contains general information. This fact sheet 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 fact sheet.

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

www.circlegreen.org.au/disclaimer/

© Circle Green Community Legal.