

share housing & the law





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Throughout this guide you will see 'hyperlinks' in blue. In the web-based version of this booklet (at www.taswa.org), clicking on these links will take you to another section, or to the relevant section of the TAS Tenants' Rights Manual. Although you can't 'click' on the links in the printed version, they will let you know where else you can get related information. See [page 27 for how to access other information from Tenants Advice Service](#). That's an example of a 'hyperlink' by the way!





Share Housing and the Law is a publication of Tenants Advice Service. This booklet is for people currently living in share housing, or thinking about it. Besides the fun and drama of share housing, you may not be aware that it can create some very complicated legal situations. The aim of this booklet is to inform you about:

- ★ your rights and responsibilities in share housing;
- ★ how to avoid some of the difficulties in share housing;
- ★ what to do if problems arise; and
- ★ where you can get help.

The law which applies to rental housing in WA (the **Residential Tenancies Act**) does not cover disputes between co-tenants, nor does it apply to boarders and lodgers. This means that some of the messy stuff that can occur in share housing will be outside the usual laws relating to tenants.



Tenants Advice Service Inc. (TAS) is a community legal service funded to assist tenants. It may be a conflict of interest for TAS to take the side of one tenant against another - this means we often cannot provide advice to tenants living in shared housing. We are generally able to assist sub-tenants in dispute with a head-tenant, but are unable to assist head-tenants who are in dispute with their sub-tenants. We are also unable to assist in co-tenant disputes. This booklet contains information which may help you determine if we can assist you. We may be able to provide general tenancy information unrelated to a dispute between tenants. Other groups listed at the back of this guide may be able to provide additional help.



Remember: This booklet should not be relied upon as a substitute for legal advice.



About share housing

★ **Not all share houses are the same.** Sometimes one housemate will clearly control the house, taking charge of collecting the rent and organising repairs; or all the housemates could be on an equal footing, sharing the job of taking the rent to the real estate agency or landlord, paying the bills and cleaning the house; or sometimes it might be a combination of the two.

★ **Different people want different things in a share house.** Living in a contented household can mean finding people who have similar ideas about cleanliness and domestic arrangements. If the differences are too great, it may be difficult to continue living together.

★ **Share housing isn't for everybody.** It can require a high level of negotiation and compromise. If you have very specific needs in your housing which others may find difficult to put up with, a share house may not be an option for you. If you also like to have a lot of peace and quiet or space away from other people, it may make more sense to live alone, or live with people with similar needs.

★ **Even the best of friends can have tenancy problems.** Share housing is a particular kind of situation, where you may see someone very frequently, and in all kinds of moods. Share housing can be a great way to make friends, but can also put a lot of strain on existing friendships.



If you have decided to live in share housing, you have the choice of moving into an existing household, or setting up a new one. Prior to looking for somewhere to live you should think carefully about what you need and want in your housing. Think about how many people you want to live with and how much you're prepared to pay each week.

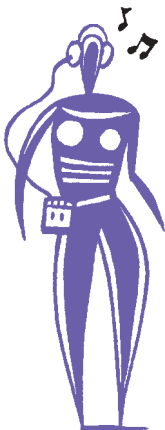
There are many things to sort out, and costs to cover in a new tenancy. [For more information see the other TAS booklets 'Guide to Renting in WA' and 'Tenants & the Law in WA'.](#)

Share housing stories



Bert moves into the house Ernie has already been living in. The only name on the tenancy agreement is Ernie's (Ernie is the head-tenant and Bert is a sub-tenant). Bert pays his rent to Ernie (who is supposed to give Bert receipts), who in turn is supposed to pay his rent to Oscar the landlord. Unfortunately Ernie spends this money on drugs and choc milk, and Oscar terminates the tenancy agreement on the basis of rent arrears. **Bert needs to find somewhere to live, even though he has done nothing wrong.**

Jarrah, Mungbean and Daisy start a new household together, and all their names are on the tenancy agreement (they are co-tenants). After their year long (fixed term) tenancy finishes they decide not to renew the lease, as Jarrah and Mungbean are moving to Byron Bay, and Daisy is riding around Australia on her Kawasaki motorbike. Unfortunately Daisy had been working on the Kawasaki in her bedroom and had spilt oil all over the floor and left tyre marks on the wall from doing trick stunts. This means the landlord will not pay out the bond. **All co-tenants are liable for the damage done by Daisy.**



Marcie has just arrived from Singapore to study in Perth. She moves into the furnished sleep-out of a house which has already been rented by Charlie Brown and Peppermint Patty for three years (they are co-tenants in relation to each other). They charge Marcie \$150 a week board, including meals and laundry. Marcie's habits (including playing death metal CDs loudly at 3 am) cause conflict in the house, so Charlie and Patty (head-tenants in relation to Marcie) tell her to leave within a week. **Because Marcie is a boarder she is not covered by the Residential Tenancies Act.**



Starting a household from scratch

If you are setting up a new share household, it's best to assume it won't last forever. If possible, try to get an initial lease for a short time frame (3 or 6 months), as ending the lease before the end-date can be very expensive. You can be liable for advertising costs and rent until new tenants are found or the lease expires. Even after new tenants are found, real estate agents may be able to charge a break of lease fee.

For more information see [Tenants Rights Manual 4.2: How to End a Fixed Term Tenancy](#)

Drafting a simple written agreement with your new housemates when you first move in can prevent disputes later on when everyone is relying on their memory of the issues discussed and agreed on months earlier. If issues arise during the tenancy which lead to a change in the terms of the agreement, all tenants should initial and date the changes.

The agreement could include how rent and other costs are to be divided, how domestic chores are to be organised, and anything else you want to be clear about. This agreement between tenants should be consistent with the tenancy agreement with the owner (the lease), which is a legally binding document. You could attach a photocopy of the lease to your share household agreement, or include aspects of it in your own document, such as the amount of notice to vacate required.

Opposite is an example of the kind of agreement you could have with other tenants. For a blank form, contact TAS.



Never sign an agreement unless you understand and agree with the terms and conditions. If unsure seek legal advice before you sign. You must also be aware that the agreement you sign may be a legal document and may be used in legal proceedings if an unresolved dispute goes to court.



SHARE HOUSEHOLD AGREEMENT

The following conditions apply to sharing the premises at 21 Gumleaf Terrace, Beaconsfield. All tenants indicated below agree that they will:

RENT

* Each provide \$140 rent per fortnight to Mavis Petunia the owner (collected from the house).

BILLS

* Pay an equal share of utility (Power, Gas & Water) bills.

* Keep a log of all phone calls I make and pay for those.

* Pay an equal share of washing machine rental (\$15 per month).

* Pay all bills before the due date: Power to Daisy, Phone to Jarrah, Gas to Mungbean, Water to Mavis Petunia

Ensure that everyone who signs an agreement gets a copy.

CHORES

* Rotate dishwashing duties, and ensure dishes do not accumulate for more than 3 days.

* Do my fair share of other household cleaning: Jarrah to do all gardening (including mowing the lawn once a month), Mungbean to clean the bathroom and toilet once a fortnight, Daisy to vacuum common areas once a week.

* Share grocery shopping: Jarrah to do vegie market shop, Mungbean to do organic and health food shop, Daisy to do supermarket shop.

OTHER CONDITIONS

* Take phone messages and pass them on.

* Not enter other housemates' bedrooms without their consent.

* Take full responsibility for the care of my pet, including any damage done by it.

* Treat the house, and the property of other housemates, with appropriate care.

* Provide my housemates with 21 days notice of my intention to leave the house, and to cover the cost of advertising in the West Australian on 2 Saturdays.

* Remove all my property, and leave my room in a clean state.

* Participate in cleaning the whole house prior to inspections and at the end of the lease.

I endeavour to openly discuss any difficulties in the household, including any variation on my behalf from the above conditions.

Jarrah Tree Signed: _____ Date: _____

Mungbean Sprout Signed: _____ Date: _____

Daisy Chain Signed: _____ Date: _____



Different roles in a share house



Depending on the type of arrangements in the house, you will have a different 'legal status'. You could be a co-tenant, a head-tenant, a sub-tenant or a boarder/lodger. Your household status is very important as it determines your legal rights and responsibilities in the household, for example, whether you can be evicted by another tenant or whether you are legally responsible to the landlord.



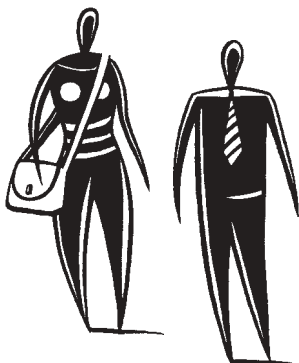
Co-tenants

★ If a number of tenants have their names on the tenancy agreement (lease), they may each be a co-tenant (or joint tenant) and therefore have equal rights and obligations in relation to the tenancy.

★ All co-tenants are legally responsible for paying the rent and looking after the place, and each co-tenant has a direct relationship with the owner.

★ The owner can act against any co-tenant when there has been a breach of the agreement even if only one co-tenant is responsible for the problem. For example, if the rent is in arrears because one person in the property has not paid their share, the owner can still commence the process for termination against all tenants.

The Residential Tenancies Act does not cover disputes between co-tenants and the Act is therefore not available for the purpose of dealing with disputes between co-tenants.





Head-Tenants

★ A **head-tenant** is a person (or people) who signs a tenancy agreement and then **sub-lets** rooms in the house or flat to one or more other people (who are **sub-tenants**).

★ A head-tenant's name is on the tenancy agreement with the owner, while sub-tenants have no direct relationship with the owner.

★ Head-tenants have the rights and responsibilities of a landlord in relation to their sub-tenants. This means, for example, that they are responsible for collecting the rent and getting the landlord/agent to do any necessary repairs. It also means they can ask their sub-tenants to move out but must give the appropriate amount of notice. [See page 16.](#)

A tenant should have written permission from the owner or their agent to sub-let the premises to another person. Otherwise the owner may claim they are in breach of their tenancy agreement.



Sub-tenants

★ A sub-tenant has an agreement with the head-tenant rather than direct with the landlord/agent.

★ As a sub-tenant, you have the same rights and responsibilities as other tenants under the Residential Tenancies Act, and the head-tenant has the rights and responsibilities of a landlord.

When moving in to a share house, if your name is not on the tenancy agreement, and you pay your rent to another tenant, it is likely you are a sub-tenant. Check with the other tenants that the landlord has agreed that you can move in, otherwise this could be a serious breach resulting in you all looking for somewhere else to live.



Different roles (continued)



Boarders & lodgers

★ If the landlord keeps overall control of the house including your room then you are likely to be a boarder or a lodger. Typical lodging situations are hostels and boarding houses, where you rent a room and can use common facilities but generally have no say in the overall running of the establishment. You might also be considered a boarder or lodger if you rent a room in an owner-occupied house, or in a place run by a head-tenant (the person with their name on the lease) who takes full responsibility for the house (for example providing furniture, paying all bills etc).

★ If you receive services from your landlord or head-tenant such as cleaning, washing or providing linen, this may mean you are a lodger. However, it is not necessary to receive these services to be classified as a lodger.

★ If your landlord provides meals, you would be classified as a boarder with the same rights (or lack of them) as a lodger.

★ Boarders and lodgers are not covered by the Residential Tenancies Act and have virtually no protection under the law. For example, they can be evicted with very little notice and do not have the right to apply under this Act to protect their housing.

★ **But: You may in fact be a sub-tenant rather than a lodger or boarder and be covered by the Residential Tenancies Act.** If in doubt, you can apply to the Small Disputes Division of the Local Court to have your legal status defined. If you have been recognised as a tenant, the landlord or head-tenant must abide by the Residential Tenancies Act.

For more information see [Tenants Rights Manual 1.8: Boarders and Lodgers](#)

Share housing tips



Figure out how chores will be divided in the house. This is a common area of tension in share housing. Starting a roster at the beginning of the household might stop things getting messy (in the house and in your relationships). Stick it on the fridge where everyone can see it!



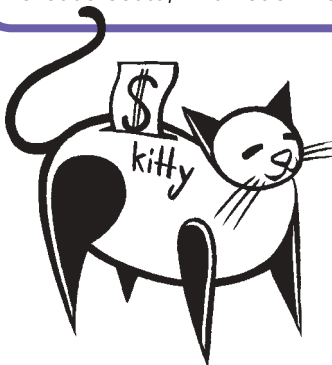
Some households have locks on all bedroom doors, to prevent housemates entering each others rooms. If you want this you should discuss it with the landlord, or negotiate it prior to commencing the tenancy.



Establish a 'kitty' for shared grocery items. The system you have for shopping and cooking will affect how much you all put in i.e. if you want to share everything, or mostly buy separate food, etc. Putting in around \$30 per person per week can contribute to the cost of basic foods and other necessities.



A prepayment system is available for most bills - this allows you to pay a certain amount off regularly, so that bills don't come all at once. It is also possible to get separate numbers for housemates to call out on. Each housemate has a pin number they use before making a call, and the account comes itemised for each number. Although this can save confusion, it can also increase costs, with each housemate paying a line rental.



A major point of conflict in a share house is often about paying bills. It is vital to decide when you move in who is to be responsible for paying bills and how the bills are to be divided.



Getting your tenancy role clear

It will help to avoid problems if you have a clear understanding of the relationships in the house from the beginning. Below are some suggestions for ensuring that you have the legal standing you want in the household:

★ If you want to be co-tenants and share all legal responsibilities of the household, make sure all tenants sign the lease. When one tenant moves out and a new tenant wants to move in this needs to be negotiated with the landlord.

★ If you sign the lease and then get housemates in to share the rent but want to keep control of the house (which would include looking for new housemates when someone moves out, dealing with the landlord, organising the rent to be paid on time), you should make it clear to your housemates from the beginning that you are the head-tenant. You should give your housemates rent receipts when they pay you their rent.

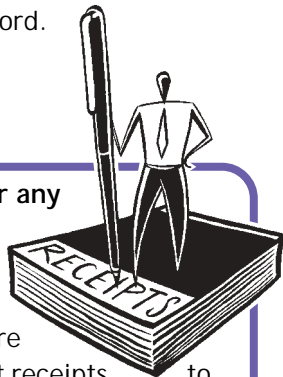
★ If you are a head-tenant taking a person into an existing household, they may be either a sub-tenant or a boarder/lodger, depending on the arrangement. Sub-tenants have legal rights and obligations under the Residential Tenancies Act, and the head-tenant has the same responsibilities as a landlord.

Share housing tips



Always ask for or give receipts for any rent or bond paid to, or by,

housemates. If you are co-tenants paying rent to your landlord or agent, always get receipts. If you are the head-tenant, you should give rent receipts to your housemates when they pay their rent. If you are a sub-tenant paying your rent to the head-tenant, make sure they give you receipts, and keep them somewhere safe. This will ensure that if confusion arises about who's paid, you can prove you have paid your share.





★ If you are interested in living in a share house where every housemate has equal rights and equal power, you may prefer to treat your housemates as co-tenants. Remember, however, that unless everyone has their name on the tenancy agreement, it may be difficult to prove you are all co-tenants if it comes to a question of liability for rent or damage, or the right to terminate the agreement.

★ If you're moving into a house or flat, ask who is on the lease, suss out the sorts of expectations your potential housemates have of you, and find out whether you are to be a co-tenant, a sub-tenant or a boarder/lodger. If you particularly want to be a co-tenant, you should ask to have your name added to the lease; if you want to confirm that you are a sub-tenant, ask for a written agreement with the head-tenant confirming your status. This might sound like a lot of trouble, but if things start to go wrong in the share house or you're suddenly given two weeks notice to leave, you'll be glad you did it.

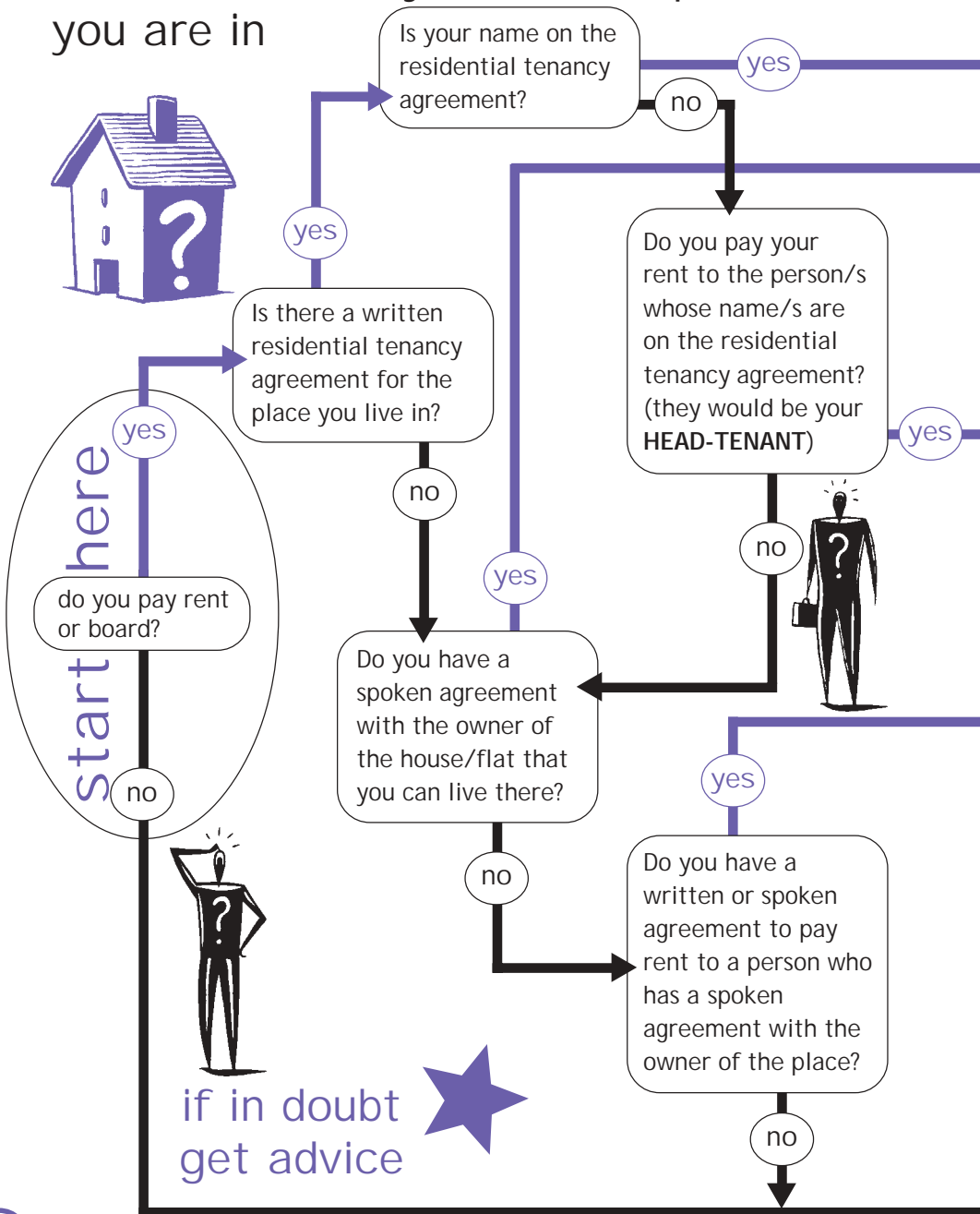
Buy a big diary or exercise book so you can write down when bills are due, and who has paid their share. It's also a good idea to tally local phone calls as you make them and note down the details of any STD calls to make it easier to figure out who owes what.

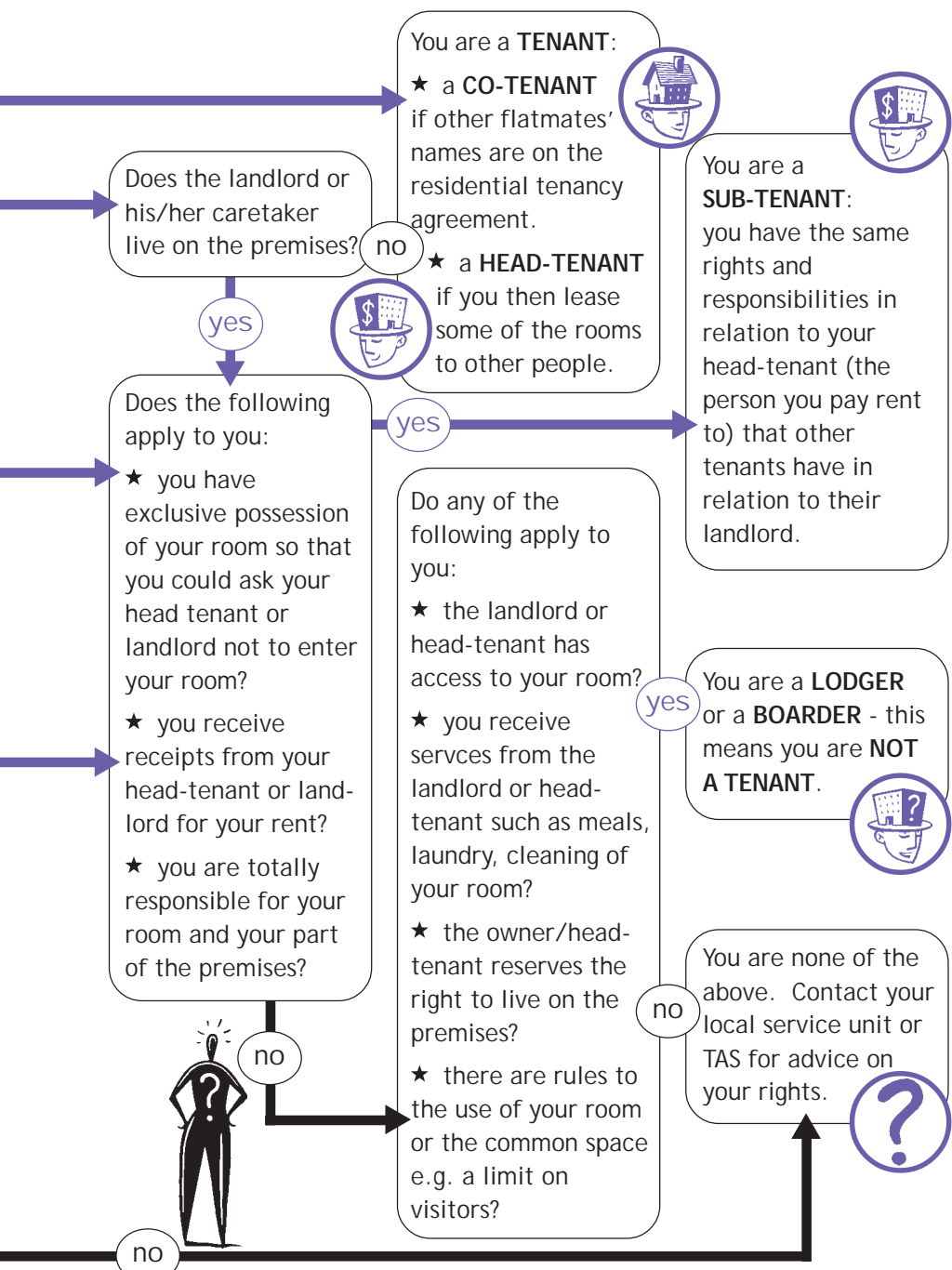


Think carefully about whose name different accounts will be in. The person who has their name on the account will be held liable by the service provider for payment of the bill and may have trouble getting access to future services if the bill is unpaid for any reason. It's a good idea for different housemates to organise different services in order to spread the financial responsibility around. That way no one person will be left with responsibility for all the bills if things go wrong in the house.



How to figure out what tenancy relationship you are in







Ending a tenancy

The legal situation regarding ending a tenancy varies depending on whether you have a periodic (ongoing) or fixed term (with a defined end date) agreement. The legal situation, and the rights and responsibilities of the various people in the share house, regarding moving out or being evicted, varies according to whether they are a co-tenant, head-tenant, sub-tenant, or boarder/lodger.



Periodic agreement

- ★ The landlord must give you 60 days written notice of termination for a no-cause eviction (i.e. you haven't breached the lease), or 30 days if the place has been sold, and it is part of the contract of sale that the new owners get vacant possession.
- ★ You must give the landlord 21 days notice if you want to leave.

For more information see [Tenants Rights Manual 4.1: Ending a Periodic Tenancy](#)

Fixed term agreement

- ★ The agreement will terminate at the end of the fixed term. The landlord cannot make you leave during the fixed term unless you have seriously or persistently breached the lease, and they go through the correct process under the Residential Tenancies Act. Even if the house is sold, the tenancy agreement transfers to the new owners until the end of the fixed term.
- ★ Tenants can only end a fixed term tenancy under special circumstances, and it may be costly.
- ★ If you stay in the house after the fixed term of the agreement has expired, and the owner continues to accept rent, your lease may 'roll over' into a periodic agreement.

For more information see [Tenants Rights Manual 4.2: Ending a Fixed Term Tenancy](#)



But:

★ If you have breached the lease either during the fixed-term or periodic agreement, the landlord may have grounds to terminate the agreement. Examples of a breach are if you are behind in rent, or have seriously damaged the property.

★ If you receive a breach or termination notice you do not have to leave the premises. If this situation occurs, get more information about your rights.

★ **No tenant can be forcibly removed from the premises without a court order from a Magistrate.**

For more information see: [Tenants Rights Manual 4.7: Evictions, 3.1A: Rent arrears, 3.7: When the tenant is in breach of the agreement](#)

The head-tenant - sub-tenant relationship directly copies that between a landlord and a tenant. This means a head-tenant must give their sub-tenants the same notice as the landlord is required to give them (as explained above). So, when a head-tenant gets the news that the landlord is terminating the tenancy, they must pass the notice on to their sub-tenant/s straightaway - and this notice should be in writing on the correct form. The same situation applies if the head-tenant wants a sub-tenant to leave.



All tenants, whatever their position in the household, should be aware of the conditions of the tenancy agreement with the owner. This includes little things (like not using blu-tak on the walls) as well as the amount of notice required to end the tenancy.



Scenario 1

You want to leave and . . .

(a) ... you're a co-tenant or head-tenant



It can be tricky if you want to move out of a shared tenancy, but the remaining occupants want to stay. There is no set period of notice that you are required to give co-tenants if you are moving out **but** if your name is on the lease you are legally liable for rent until your name is removed.



If you want to move out:

- ★ Inform your housemates and get their agreement
- ★ Negotiate with the owner to have your name removed from the lease, so you can't be held liable for anything that happens after you move out
- ★ Or ask your landlord and your former housemates to end the agreement and for a new agreement to be signed between them.
- ★ If negotiations fail, seek advice

Remember: The landlord's permission is required for you to leave the tenancy agreement, or for any one else to enter the house as a tenant. Don't move out first and hope things will be alright. If you do not legally remove yourself from the tenancy agreement, you could end up being chased by the landlord or real estate agent for any rent owing. You could also be placed on a "bad tenant" database, which may make it difficult to rent a place in the future. See [Tenants Rights Manual 1.11: Tenant Databases](#)

(b) ... you're a sub-tenant



A head-tenant/sub-tenant relationship is treated in the same way as a landlord/tenant relationship under the Residential Tenancies Act. This means you have to give 21 days written notice to your head-tenant if you want to leave and you have a periodic tenancy. Sub-tenants don't usually enter into fixed-term tenancies with a head-tenant, but if you have you could be liable for certain costs if you want to leave before the fixed term ends. This can include paying rent until a new tenant is found and any advertising costs involved.



If your head-tenant has breached the agreement with you in some way (for example, by invading your privacy or failing to get repairs done), you should contact TAS for advice about how to resolve the problem or terminate the agreement.

See [Tenants Rights Manual 4.4: Ending the Tenancy when the Owner Breaches the Agreement](#)

(c) ... you're a boarder or a lodger

Boarders and lodgers do not generally need to give much notice before moving out. The situation will depend on the agreement you have with the landlord or head-tenant, either written or verbal. Check with your landlord or head-tenant.



When you leave a share-house, make sure that your name is removed from any telephone, electricity or gas accounts. If you don't, you could be held responsible for any bills that come in after you leave and may have difficulty getting services connected later if your housemates leave any unpaid accounts.



Give your old housemates your new address and contact details, so they can get in touch with you and forward your mail. Make sure you inform the bank, car licensing authority, and other places you get important mail from, that you have moved. Australia Post also has a mail re-direction service for a charge.





Scenario 2

A housemate moves out leaving you to pay all the rent and...

(a) ... you're a co-tenant



Co-tenants are said to be individually and jointly liable for the rent. What this means is that if a housemate leaves and you continue to occupy the rented premises, then you are responsible for all the rent until a new tenant moves in or the tenancy agreement ends. The departing co-tenant is also legally liable until their name is removed from the tenancy agreement. You need to have a new tenant approved by the landlord before they move in.

If you are left paying all the rent yourself, you could try to get compensation from your previous co-tenant. However, taking court action can be difficult, time-consuming and expensive. **Note:** TAS cannot assist in disputes between co-tenants, and these matters are not covered by the Residential Tenancies Act. You should get further advice from Department of Consumer and Employment Protection or a Legal Practitioner. [See Scenario 1\(a\)](#) for more information on the liability of co-tenants.

(b) ... you're a head-tenant



If a sub-tenant leaves without giving correct notice (21 days under a periodic tenancy), the head-tenant/s may pursue compensation for loss of rent through the Small Disputes Division of the Local Court in the same way that a landlord can if a tenant abandons their lease. **Note:** TAS cannot assist head-tenants in dispute with their sub-tenants. You should get further advice from Department of Consumer and Employment Protection, Real Estate Industry WA, Legal Aid or a Legal Practitioner.

(c) ... you're a sub-tenant



If your head-tenant walks out and has no intention of returning, the names on the residential tenancy agreement will no longer match the tenants actually living in the house. The problem is



that you, as a sub-tenant, do not have a legal relationship with the landlord.

Let the landlord or agent know that the head-tenant has left - put it in writing and keep a copy of the letter. You and the landlord may decide to sign a new tenancy agreement to formally recognise you as the tenant. However, in the absence of a formal agreement, if the landlord does not object to you occupying the premises and accepts rent from you, you are automatically in a periodic tenancy, with the rights of a tenant under the Residential Tenancies Act.

(d) ... you're a boarder/lodger

As a boarder or lodger you are only responsible for the cost of your room, and any services included in this cost. This means that if another boarder or lodger moves out, you may not be affected. But if your landlord or head-tenant wants to cover costs they can increase your board with very little notice.



However if you are a boarder or lodger with a head-tenant, and the head-tenant leaves, the situation is similar to the scenario above. With the head-tenant gone, you have very few rights in relation to your landlord unless they decide to recognise you as a tenant and agree to you staying there. See [Scenario 2\(c\)](#) above.



Although disputes between co-tenants are not covered by the Residential Tenancies Act, some disputes of a financial nature which occur between co-tenants, for example, recovering a co-tenant's unpaid proportion of energy costs, may be dealt with through the general division of the Local Court or the Small Claims Tribunal. The Court will look at a number of factors including the agreed arrangements to determine whether or not a co-tenant is liable for the amount claimed. See [page 27 and 28](#) for where to get legal advice.





Scenario 3

You want one of your housemates to leave and . . .

(a) ... they are a co-tenant



If a housemate's name is on the lease then you cannot force them to leave.

- ★ Try to discuss the problem and come to an agreement for one or more tenants to leave.
- ★ If this doesn't work, you can get help with mediation (from Department of Consumer and Employment Protection, or Citizens Advice Bureau: [see page 27](#)).
- ★ If anyone agrees to leave, the landlord should be informed of the situation, and a new tenancy agreement covering the remaining co-tenants or new tenants should be established ([see Scenario 1\(a\)](#)).
- ★ If the problem can't be resolved, the other option is to end the tenancy. This means everyone moves out, which can be very traumatic and could be expensive if the fixed term of the lease has not yet expired ([see page 16](#)).



If there are difficulties in your household, the first conversation about these issues shouldn't include asking someone to leave. Try to resolve things before taking this kind of action. Remember housing is a basic human need and right, and nobody wants to be forced from their home.

(b) ... they are a head-tenant



If you are a sub-tenant and you want your head-tenant to move out, you're going to have a tough time unless they agree. The whole point about being a head-tenant is that they can choose who they want to live with, not the other way around. However, if the head-tenant has breached the Residential Tenancies Act, for example, by harassing you, not organising for repairs to be done or not giving you rent receipts when you've asked for them, then you have the right to take them to court. The Magistrate can order the head-tenant to stop breaching the Act, but they can't order the head-tenant to move out when the complaint is made by a sub-tenant.



(c) ... they are a sub-tenant

If you are a head-tenant you must abide by the Residential Tenancies Act. If there is a breach by the sub-tenant, there is a process to follow - see [Tenants Rights Manual 3.7: Breach by Tenant](#). If the sub-tenant is not in breach you must still follow correct process. Section 64 of the Act provides for termination of a periodic tenancy without reason with 60 days notice. However TAS does not support the use of this process as it is fundamentally unfair.



It is illegal to try to lock your housemate out without the authority of a Magistrate - and you could face a fine if you try it.

You can never ask a sub-tenant to leave simply because they have asserted their legitimate rights, for example, by asking you as head-tenant to organise for repairs to be done or requesting receipts for

rent. If the court decides that the notice of termination is a 'pay back' to a tenant for seeking their rights in the house, the application for eviction may not be granted.

See [Tenants Rights Manual 4.7: Evictions \(Retaliatory Evictions\)](#)

(d) ... they are a boarder or a lodger

Boarders and lodgers are not protected by the Residential Tenancies Act, so the required notice specified in the Act does not apply. Whatever agreement (written or verbal) that was made when they moved in will apply.



It is often difficult to know whether a housemate is a lodger or a sub-tenant. They could apply to the Small Disputes Division of the Local Court to be recognised as a tenant if their status is in doubt.

Generally, it is safer (and fairer!) to treat your housemate as a sub-tenant and give the appropriate notice required under the Residential Tenancies Act.



The information in this scenario also lets you know your rights if your housemates try to kick you out.



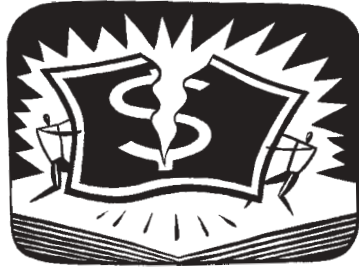
Bond issues

Getting your bond back at the end of your tenancy can be one of the most difficult aspects of share housing. This is why it's very important that you are clear about your rights regarding the bond and make sure you do the necessary paperwork when you move in. You may still have difficulties recovering the bond but at least you will be in a better position if things go wrong.

See [Tenants Rights Manual 2.9: the Security Bond](#), and [Chapter 5: Bond Recovery](#)

The bond paid by tenants at the start of a tenancy should be no more than 4 weeks rent (except under special circumstances). Under the Residential Tenancies Act, the security bond must be lodged in a joint account (in the names of the owner and tenant/s) at the beginning of the tenancy with:

- ★ a recognised financial institution (for example, bank or building society);
- ★ the Bond Administrator at the Department of Consumer and Employment Protection; or
- ★ a Tenancy Bond trust account (an account used by real estate agents).



You should be informed of how and where the bond is lodged, and will need to sign a 'Lodgement of Security Bond Form' or 'Record of Payment Form'. All those paying bond should have their names on these forms.

At the end of the tenancy, the landlord can claim part or all of the bond if you have damaged the place or are behind in rent. If the landlord makes no claim on the bond, it should be paid in full to the tenants. A 'Joint Application for Disposal of Security Bond Form' needs to be signed by the landlord and the tenants listed on the Lodgement form, for the bond to be released. You and the owner/agent should negotiate bond deductions and agree on how much money each person will get before the form is signed. Never sign the form until the amounts are filled in. The bond money can



be released when all parties agree on how the bond should be repaid and the form is completed. If you dispute the landlord's claim, you can apply to the Small Disputes Division of the Local Court to decide the matter.

Remember:

- ★ Never sign a blank or incomplete form.
- ★ Do not sign the form unless you agree with how much bond you or the owner are to be paid.
- ★ Do not sign anything under pressure.
- ★ Always get a copy of what you sign.
- ★ If you don't understand something, check it out before you sign.
- ★ You can get your bond money back without signing the form by applying to the court.

[See Tenants Rights Manual 5.2: Applying to the Local Court for a Bond Disposal Order, and 2.9: The Security Bond](#)

In share houses, housemates often come and go without a new tenancy agreement being drawn up. What usually happens is that the tenant moving in pays the share of the bond of the tenant moving out, either to that person or to the people whose names are on the lease. If you do this, you should always get a receipt for any money paid. You should also arrange to have the names changed on the bond registration by completing a 'Variation of Security Bond Money' form available from the Department of Consumer and Employment Protection or TAS.

If the original signatories to the bond have moved out and you have no proof that you have paid your share of the bond, you have very little chance of getting your bond back. Your best chance is if your landlord agrees to apply to court along with you for the bond to be released to you.





Bond issues (continued)

Co-tenants



Disputes can arise in share houses about how the bond should be divided. For example, if one housemate causes all the damage that results in money being taken out of the bond by the landlord, all housemates will lose bond money not just the guilty one. The only option you have in this situation is to try to come to an agreement with your housemate to pay the lost bond to you as a debt – or, if this doesn't work, to take them to the Local Court to try to get the money back. However, going to court can be expensive and time-consuming and you will need to decide if the amount is worth the time and cost involved. Mediation might help you reach an agreement without having to go to court. [See page 27](#) for where you can access mediation. Students can also get help from their University Housing Service or Guild.

A co-tenant may not cash a bond cheque made out in the names of all the tenants without the authority of the other parties. If a housemate does cash the cheque without the authority of the others, they could be charged with fraud.

Sub-tenants



If you are a sub-tenant, your bond should be lodged in a special account ([see page 24](#)) by the head-tenant. However, it is common for head-tenants not to lodge their sub-tenants' bonds and then decide for themselves whether to return the money at the end of the tenancy, even though this is unlawful under the Residential Tenancies Act. This is why it's very important to get a receipt from the head-tenant for your bond when you first give it to them. Then if there is a dispute when you are moving out, you have proof that bond was paid.

Boarders and lodgers



A bond paid by a boarder or lodger does not have to be lodged in a special account. Your only option if your landlord unfairly keeps the bond would be to try to recover the money as a debt through the Local Court. Whatever you do, make sure you get a receipt when you pay the bond – at least then you have evidence if there is a problem getting it back.

Going to court is usually a last resort action if there is a dispute that can't be settled - it is usually better to try and resolve the problem before going to court. You can apply to the court if you have a dispute with the owner of your place, and they have indicated they will not do what you ask. The same applies if you are a sub-tenant in dispute with your head-tenant. You should go to the court if you want to take action against the owner/head-tenant, or if the owner/head-tenant takes action against you. TAS can give further advice about going to court, but not if you are a landlord/owner/agent, or if you are a head-tenant or a co-tenant in dispute with another tenant.

For more information see [Tenants Rights Manual Chapter 6: Going to Court](#)



Need more information about share housing and tenancy law?

Contact Tenants Advice Service or your local service unit (see over the page) for more information about tenancy and your legal rights. We can mail out TAS booklets and information sheets (referred to through-out this booklet) to you free of charge. **But:** we may not be able to assist you further if you are in dispute with another tenant.



TAS Advice Line

Metro line
(08) 9221 0088
Country Line
1800 621 888


www.taswa.org

TAS publications and Frequently Asked Questions about tenancy are available on-line. Follow the links from **Share Housing & the Law**

to find the extra information you need.



Other options

 **Citizens Advice Bureau**
9221 5711
Legal advice, mediation & dispute resolution.

 **Department of Consumer & Employment Protection**
1300 304 054
Complaints investigations, mediation & information about tenancy issues.

Legal Aid WA
1300 650 579
www.legalaid.wa.gov.au
Legal information & advice.

your local tenancy support agency

Community Legal and Advocacy Centre

Birmingham Centre
24 Parry Street
FREMANTLE WA 6160
Phone: (08) 9432 9790
Fax: (08) 9432 9794

Geraldton Resource Centre

180 Marine Terrace
(PO Box 159)
GERALDTON WA 6530
Phone: (08) 9964 3533
Fax: (08) 9964 3439
TTY: (08) 9964 5822
Email: greg@grc.asn.au

Goldfields Community Legal Centre

23 Maritana Street
(PO Box 1560)
KALGOORLIE WA 6430
Phone: (08) 9021 1888
Fax: (08) 9021 1877
Email: gclc@wn.com.au

Gosnells Community Legal Centre

Unit 1/ 2209 Albany Hwy
(PO Box 226)
GOSNELLS WA 6110
Phone: (08) 9398 1455,
(08) 9398 1466

Kimberley Community Legal Services

PO Box 622
Kununurra WA 6743
Phone: (08) 9169 3100
Fax: (08) 9169 3200

Midland Information, Debt and Legal Advice Service (MIDLAS)

Midland Junction
Lotteries House
Gt Eastern Hwy (Cnr
Helena St)
MIDLAND WA 6056
Phone: (08) 9250 2123
Fax: (08) 9274 4115

Northern Suburbs Community Legal Centre

10 Cobbler Place
MIRRABOOKA WA 6061
Phone: (08) 9440 1663
TTY: (08) 9440 1680
Fax: (08) 9440 1669
Email:
nsclegal@iinet.net.au

Pilbara Community Legal Service-Hedland

Lotteries House,
2 Leake Street
(PO Box 2506)
SOUTH HEDLAND
WA 6722
Phone: (08) 9140 1613
Fax: (08) 9140 1633

Pilbara Community Legal Service-Roebourne

51 Hampden Street
(PO Box 269)
ROEBOURNE WA 6718
Phone: (08) 9182 1169

Southern Communities Advocacy Legal Education Services Inc. (SCALES)

Ground Floor, Lotteries
House
Civic Boulevard
ROCKINGHAM WA 6168
Phone: (08) 9528 6077

Sussex Street Community Law Service

29 Sussex Street
(Locked Bag No. 2)
EAST VICTORIA PARK
WA 6101
Phone: (08) 9470 2676
Fax: (08) 9470 1805
Email: sscls@sscls.asn.au

Tenant Advocate (South West)

40 Charles Street
(PO Box 860)
BUNBURY WA 6230
Phone: (08) 9791 1877
Freecall: 1800 222 213
Fax: (08) 9791 3287

Welfare Rights and Advocacy Service

98 Edward Street
PERTH WA 6000
Phone: (08) 9328 1751,
(08) 9328 6982

TAS Advice Line

Metro line (08) 9221 0088
Country Line 1800 621 888

contact