

## Shared Tenancies

As a tenant you have rights and responsibilities under the *Residential Tenancies Act 1987* (the Act). This fact sheet explains the law in Western Australia about the different types of shared tenancies and incorporates the changes made to the Act, which came into effect on 1 July 2013. Please note that while changes were made to the Act effective 1 July 2013, some of the old laws may still apply to you. If, for example, you entered into a lease prior to 1 July 2013, the old laws may still be valid. Accordingly we strongly encourage you to get appropriate legal/tenancy advice from your local tenancy service concerning the application of the new laws.

Sometimes people choose to rent a property together with others, and share the rent. The different categories are:

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

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

The first two categories are all protected by the provisions of the 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 where you fall. When you move into a property, you should ask who is listed on the tenancy agreement and seek advice as to your legal status.

### 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.<sup>1</sup> 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.<sup>2</sup>

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.

<sup>1</sup> It is common for Tenancy Agreements to contain a term that co-tenants are bound "jointly and severally".

<sup>2</sup> If the Tenancy Agreement does not contain a joint and several term and the lessor claims against some, but not all of the co-tenants, the court may stay proceedings until all the other co-tenants are added as defendants. If the Tenancy Agreement does contain a joint and several term then the lessor is entitled to claim against any of the co-tenants (and the court cannot stay proceedings even if the lessor does not claim against all of them).

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.

## SUB-TENANT

If you are a sub-tenant, you are sharing the property with the head tenant (the person who is listed on the tenancy agreement with the lessor), who has agreed to sub-let you a part of their rented premises under a separate agreement. You have the rights and responsibilities of 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).<sup>3</sup> Sub-tenants are not jointly liable for the actions of their head-tenant.

## BOARDER OR LODGER

It can be difficult to determine whether a person is classed as a boarder, a lodger or a tenant. 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.

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 situation:

- 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 landlord. 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:

- your landlord doesn't have to lodge your bond with the Bond Administrator,
- 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*. 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 call the Tenancy WA advice line for advice about boarding and lodging issues.

<sup>3</sup> This is unlikely to be the case in the majority of circumstances, but it is not impossible.

## FURTHER HELP – TENANTS’ ADVICE AND ADVOCACY

Tenancy WA provides state wide telephone advice services and referrals.

Metro: (08) 9221 0088 • Country: 1800 621 888 (free call) • [www.tenancywa.org.au](http://www.tenancywa.org.au)

Department of Commerce 1300 304 054

### METROPOLITAN COMMUNITY LEGAL CENTRES

#### **Fremantle CLC (Western Suburbs)**

9432 9790 [www.fremantle.wa.gov.au](http://www.fremantle.wa.gov.au)

#### **Gosnells CLC (South Eastern Suburbs)**

9398 1455 [www.gosclc.com.au](http://www.gosclc.com.au)

#### **MIDLAS (Eastern Suburbs)**

9250 2123 [www.midlas.org.au](http://www.midlas.org.au)

#### **Northern Suburbs CLC (Northern Suburbs)**

9440 1663 [www.nsclc.org.au](http://www.nsclc.org.au)

#### **SCALES (South Western Suburbs)**

9550 0400 [www.law.murdoch.edu.au/scales](http://www.law.murdoch.edu.au/scales)

#### **Sussex Street CLS (South Central Suburbs)**

6253 9500 [www.sscls.asn.au](http://www.sscls.asn.au)

#### **Welfare Rights & Advocacy Service (North Central Suburbs)**

9328 1751 [www.wraswa.org.au](http://www.wraswa.org.au)

### REGIONAL COMMUNITY LEGAL CENTRES

#### **Albany CLC (Great Southern)**

9842 8566 [www.albanyclc.com.au](http://www.albanyclc.com.au)

#### **AccordWest (South West)**

9729 9000 [www.accordwest.com.au](http://www.accordwest.com.au)

#### **Geraldton Resource Centre (Mid-West/Gascoyne)**

9938 0600 [www.grc.asn.au](http://www.grc.asn.au)

#### **Goldfields CLC (Goldfields)**

9021 1888 [www.gclc.com.au](http://www.gclc.com.au)

#### **Kimberley CLS (Kimberley)**

9169 3100

#### **Peel CLS (Peel)**

9581 4511 [www.peelcls.com.au](http://www.peelcls.com.au)

#### **Pilbara CLC (Pilbara)**

Karratha - 9185 5899

Newman - 9175 0148

Roebourne - 9182 1169

South Hedland - 9140 1613

[www.pcls.net.au](http://www.pcls.net.au)

#### **Wheatbelt CLC (Wheatbelt)**

9622 5200 [www.wheatbeltclc.com.au](http://www.wheatbeltclc.com.au)

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