

Share housing

People in share housing are generally covered by the *Residential Tenancies Act 2010* and Regulation. This factsheet explains some legal issues for people sharing housing in NSW.

Legal status of people in share housing

People in share housing usually have their own bedroom and share the rest of the premises. Your rights and obligations will depend on your legal status. You may be:

- a co-tenant
- a head-tenant
- a sub-tenant, or
- a boarder or lodger.

Co-tenants, head-tenants and sub-tenants have rights and obligations under the *Residential Tenancies Act 2010*. Boarders and lodgers do not – see Factsheet 14: *Boarders and lodgers*.

Co-tenant Your name and the names of other tenant/s are on the tenancy agreement for the premises. You share rights and obligations with the other co-tenant/s.

Head-tenant You are a tenant (your name is on the tenancy agreement for the premises), you live at the premises and sub-let part of the premises to another person under a separate written agreement. That person is a sub-tenant.

You are a landlord in relation to the sub-tenant. For information about your rights and obligations as a head-tenant, contact NSW Fair Trading on 133 220 or see www.fairtrading.nsw.gov.au.

Sub-tenant You are sharing with a tenant (their name is on the tenancy agreement for the premises) who has sub-let part of the premises to you under a separate written agreement. That person is a head-tenant.

You have the rights and obligations of a tenant in relation to the head-tenant – they are your landlord.

Boarder or lodger You are a boarder or lodger if you rent part of the premises from:

- a tenant who also lives there, or
- the owner of the premises, who also lives there

and they keep control over the whole premises (including the part you rent). They are your landlord.

None of the above If none of the above applies to you, contact your local Tenants Advice and Advocacy Service (TAAS) to discuss your situation.

Changing occupants – transfer or sub-letting

A tenant may transfer their tenancy under the tenancy agreement, or sub-let part of the premises, to another

person with the landlord's written consent. If at least one original tenant on the tenancy agreement remains, the landlord must not unreasonably withhold consent.

If the landlord withholds consent, you can apply to the NSW Civil and Administrative Tribunal (NCAT) for an order that allows the transfer or sub-letting. NCAT will decide if the landlord's withholding consent is unreasonable.

The landlord may withhold consent however, on some specific grounds (e.g. to comply with planning laws).

See Factsheet 18: *Transfer and sub-letting* for further information. You can download a sample sub-letting agreement at www.tenants.org.au/share-housing-agreement.

Rent receipts

Whatever your tenancy status, you should get a receipt when you pay rent – unless you pay into a bank account.

Bond money

Also see Factsheet 03: *Bond*.

Change of co-tenants If the tenants on the bond lodgement form change, fill in a 'Change of Shared Tenancy Arrangement' form (from NSW Fair Trading – NSWFT). Have it signed by the person/s moving out, the person/s moving in and the landlord/agent. Return the form to NSWFT.

Even if you do not fill in a form, get a receipt from whoever you paid the bond to.

If you can, get a statutory declaration from the person who has moved out, stating that they got their bond back. This may help you claim back your bond if the tenancy agreement ends while you live at the premises.

Bond claim by former co-tenant On request, the remaining tenant/s must pay back a former co-tenant's bond – less any rent owed or other reasonable costs – within 14 days of the request.

If the former co-tenant's liabilities exceed the amount of bond they paid, or they were excluded from the premises by a final apprehended violence order, the above does not apply.

If a former co-tenant disagrees about how the bond is paid out to them, they can apply to NCAT to have the matter resolved. They must apply within 6 months after the bond is paid out.

TENANTS RIGHTS FACTSHEET 15: Share housing

Sub-tenant The head-tenant must deposit your bond money with NSWFT. They must also give you a receipt – unless details of the payment are recorded in your tenancy agreement.

Boarder or lodger Encourage the landlord to deposit your bond money with NSWFT (they are not required to). In any case, get a receipt for any bond money you pay.

Other occupants want you to leave

Co-tenant A co-tenant can apply to NCAT for a termination order to end the tenancy of another co-tenant. NCAT will consider the 'special circumstances' of the case and decide whether to make the order.

Sub-tenant The head-tenant must give you a 90-day termination notice during a periodic agreement, or a 30-day termination notice at any time before the end of a fixed-term agreement. See Factsheet 10: *Landlord ends agreement*.

Boarder or lodger The landlord should give you 'reasonable' notice to vacate the premises (e.g. if you pay rent weekly, they should give you at least 7 days notice).

You want to leave

See Factsheet 09: *You want to leave* for how to give a termination notice.

Co-tenant If all co-tenants are leaving, they must jointly give the landlord a 21-day termination notice during a periodic agreement, or a 14-day termination notice before the end of a fixed-term agreement.

If one co-tenant is leaving, they can end their own tenancy under a periodic agreement by giving a 21-day termination notice to the landlord and each other co-tenant. Once they vacate the premises by the date in the notice, they are no longer a tenant under the agreement.

Sub-tenant You must give the head-tenant a 21-day termination notice under a periodic agreement, or a 14-day termination notice before the end of a fixed-term agreement.

Boarder or lodger You should give the landlord 'reasonable' notice (e.g. if you pay rent weekly, give them at least 7 days notice). Put your notice in writing and keep a copy.

Paying bills

If you have a contract with a phone, power, TV or internet service or supplier, you must ensure the bills are paid.

If someone does not pay their share of the bills – except for electricity bills – you can take action in a Local Court to get the money back. See the chamber registrar at a Local Court, or contact a Community Legal Centre for advice.

Resolving disputes

Co-tenant Except as mentioned above, NCAT cannot deal with disputes between co-tenants. Try mediation through a Community Justice Centre.

Sub-tenant You can apply to NCAT to resolve certain kinds of disputes with your head-tenant. Contact your local TAAS for advice.

Boarder or lodger Contact your local TAAS for advice about resolving a dispute with your landlord.

Contacts and further information

- Sample share housing agreement: www.tenants.org.au/share-housing-agreement
- *The Share Housing Survival Guide*: www.sharehousing.org
- NSW Fair Trading / Fair Trading Centres: phone 133 220, www.fairtrading.nsw.gov.au
- Local Courts: phone 02 8688 7777, www.lawlink.nsw.gov.au/lc
- Community Legal Centres: phone 02 9212 7333, www.clcnsw.org.au
- Community Justice Centres: free call 1800 990 777
- LawAccess NSW: phone 1300 888 529, www.lawaccess.nsw.gov.au

January 2014

For free tenancy advice, call your local Tenants Advice and Advocacy Service:

SYDNEY:

• Eastern	9386 9147
• Inner	9698 5975
• Inner West	9559 2899
• Northern	8198 8650
• Southern	9787 4679
• South West	4628 1678
• Western	8833 0933

REGIONAL:

• Blue Mountains	4704 0201
• Central Coast	4353 5515
• Hunter	4969 7666
• Illawarra Sth Coast	4274 3475
• Mid Coast	6583 9866
• Northern Rivers	6621 1022
• Northwest NSW	1800 836 268
• Southwest NSW	1300 483 786

ABORIGINAL:

• Sydney	9833 3314
• West NSW	6884 0969
• South NSW	1800 672 185
• North NSW	1800 248 913

WEBSITE: tenants.org.au

NSW FAIR TRADING: 13 32 20

This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia. ©Tenants' Union of NSW

