

FACT SHEET

Share homes, co-tenancies and sub-letting

Sharing a home with other people can make renting a more affordable option for tenants. The *Residential Tenancies Act 1994* (the Act) includes provisions which directly affect people sharing rented homes. Tenants in share home arrangements must be aware of their legal responsibilities and recognise the rights of the lessor. Lessors in turn have responsibilities in managing share households.

What living arrangements can be made under the Act?

The Act acknowledges that people share rented homes in a number of legal arrangements. These include:

- **co-tenancies** - where all the occupants of the home are named on the agreement as tenants;
- **sub-letting** - where one or more occupants are named on a tenancy agreement and those tenants then establish a sub-tenancy agreement with other occupants either verbally or in writing for the right to occupy part or all of the home;
- **boarding and lodging** - where an owner/manager retains control over the tenant's use of the premises. This may include where the owner/manager provides services such as meals, cleaning and laundry or where the owner/manager offers each individual occupant a separate agreement for a right to occupy separate parts of the home.

The rights and responsibilities of the parties will depend on which of the above legal arrangements applies. In some cases, it is difficult to categorise the arrangement and the Small Claims Tribunal may have to determine the issue.

There are some general principles which apply:

- Co-tenants named together on the tenancy agreement as tenants are jointly and individually responsible for the rent and home. This means that each tenant may be liable for the lessor's losses individually or together.
- A sub-tenancy agreement is with the head tenant and not with the lessor/agent. There is a distinct and

separate agreement between the head tenant and the lessor/agent. There is no direct agreement between the sub-tenant and the lessor/agent. Only the parties named in an agreement are liable for losses caused under that agreement. However, the sub-tenant may be liable to the head tenant if the head tenant incurs a loss as a result of a breach of the agreement by the sub-tenant.

- Boarders and lodgers are not covered by the general provisions of the Act describing rights and responsibilities; however, the bond provisions do apply. Bonds must be lodged with the RTA and the relevant forms must be completed.

Tenancy agreements

The tenancy agreement must state the names of co-tenants in a rented home.

In the case of a sub-tenancy, a written tenancy agreement must be completed naming the head tenant(s) as the lessor and naming the sub-tenant(s) as tenant(s). The sub-tenancy agreement must comply with the Act and the standard terms. The length of the term of the sub-tenancy must not exceed the length of the term of the head tenancy agreement.

There are no requirements under the Act governing the form of agreements covering boarders and lodgers.

Lessor's permission

The lessor has the right to know and approve of the people residing in the rented home. The lessor must be consulted about changes and may ask prospective co-tenants or sub-tenants to complete an application for rental form. Approval from the lessor must be given in writing.

Disputes may occur when the lessor discovers that there are people living in the rented home who were not named on the agreement and who have not been approved. This may have occurred because the membership of a share home has changed over time. It is essential that the lessor be notified each time a change occurs. The Act

states that the lessor must not unreasonably refuse permission to sub-let or transfer the agreement from one person to another. Tenants or occupants of a share home can apply to the RTA's Dispute Resolution Service if they believe the lessor has acted unreasonably in refusing to sub-let or transfer the agreement.

Bond

The lessor/agent must give a receipt for the bond money. Tenants can ask for the receipt to show the name of each co-tenant and the amount paid by each.

All rental bonds must be lodged with the RTA within 10 days of being received, together with a *Bond Lodgement* (Form 2). This applies to bonds for share homes, sub-lettings, boarding houses and lodging arrangements. The Form 2 must state the names of all people contributing to the bond, and must be signed by them. Also, state the amount of bond money paid by each co-tenant. This becomes important at the end of the tenancy when parties are involved in negotiating the bond refund.

In the case of a sub-letting, the head tenant can ask for a bond from the sub-tenant. The bond must be receipted and then lodged with the RTA by the head tenant. The head tenant and sub-tenant must lodge the bond money with the RTA, together with a completed and signed Form 2.

Bonds taken in boarding and lodging arrangements must be lodged with the RTA in the same way as all other bonds.

Failure to comply with these requirements is an offence. Lessors and head tenants may be prosecuted by the RTA for failing to lodge bonds of tenants, sub-tenants, boarders and lodgers.

Changes in co-tenancy

Where bond has been paid and membership of the share home subsequently changes, co-tenants can pass bond money between themselves from an incoming to an outgoing tenant by completing a *Change of Shared Bond Arrangement* (Form 6). This should be lodged with the RTA when at least one of the original co-tenants remains in the home.

A Form 6 should be signed by the tenants and the lessor. Approval for changes must be sought from the lessor. But remember, the lessor can not unreasonably refuse the transfer from one co-tenant to another.

In the event that all the co-tenants leave the home and a transfer to a new household occurs, the existing bond should be claimed with a *Refund of Rental Bond* (Form 4) and the new bond lodged with a Form 2. Alternatively, a *Transfer of Bond* (Form 3) may be used with the lessor's approval. Bonds involving a bond loan from Housing Queensland require their approval for transfer.

When individual tenancies in a share home or a sub-tenancy end, individual parties can claim their bond by completing a *Refund of Rental Bond* (Form 4). Contact the RTA for more details.

Before any person vacates a share home, it is useful to discuss costs for cleaning, damage or unpaid rent. Costs may be apportioned so that the departing tenant makes a contribution for any moneys owing for which they are responsible. It is also helpful if the departing tenant leaves a forwarding address.

Further information

The *Residential Tenancies Act 1994* is the primary source material on the law and takes precedence over this Fact Sheet should there be any inconsistency between the Act and this Fact Sheet.

For more information about the *Residential Tenancies Act 1994*, contact the RTA. Contact details are at the bottom of this Fact Sheet.

Accessing RTA forms

The RTA's approved forms can be obtained by:

- visiting the RTA's website at www.rta.qld.gov.au and following the links to "e-Forms"
- calling the RTA's forms distribution service on **1300 136 939**
- faxing a *Request for Forms* to (07) 3216 2258, or
- posting a *Request for Forms* to PO Box 517, Virginia Qld 4034.

A selection of the most commonly used forms is also available at Australia Post offices around Queensland.

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