

## 1.10 Shared Tenancies

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Whilst often being a fun and affordable way to live, shared housing/tenancies can be one of the most complex situations in terms of establishing the rights and obligations of the people involved.

In shared tenancy situations, tenants have different rights and obligations depending on whether they are a head-tenant, a co-tenant, a sub-tenant, a boarder or a lodger. These terms are explained in the sections below. The information provided in these sections is intended to be used as a guide only as it does not cover every situation.

PLEASE NOTE: Tenants Advice Service assists tenants and will not advise in a co-tenancy dispute. For disputes between co-tenants, please call the **Department of Commerce** advice line, **Ph: 1300 30 40 54**. If you are a tertiary student, the housing officer in your student guild may be able to help. Also see chapter [1.12 Community Contacts](#).

**People living in shared housing can have different legal status to each other.**

### Types of shared tenancy situations

People in shared living arrangements are not necessarily covered by the *Residential Tenancies Act WA* (1987). The status of the tenant in a shared house situation will depend on the tenancy agreement and/or the living arrangement. Therefore this section should be read in conjunction with the tenancy agreement (also known as a lease) – see chapter [2.08 The Tenancy Agreement](#). Also refer to the “*How to Figure Out What Tenancy Relationship You Are In*” flowchart attached to the end of this chapter.

A shared tenancy situation can occur in a number of ways:

- Where a group of people enter into a tenancy agreement (written or verbal agreement) with the owner/agent. If there is a written agreement, the group of people may all have their signatures on the agreement. If this is the case, the people will have equal rights and obligations in relation to the tenancy agreement with the owner/agent and with each other. They may all equally liaise with the landlord. These people are referred to as co-tenants.
- When a person/s who has a tenancy agreement with the owner/agent sub-lets a room to share part of the premises with another person (or people). The person/s in this situation is referred to as the head-tenant, and the person/s they have sub-let a room or rooms to are referred to as sub-tenants.
- When the owner lives in the premises and rents part of the premises to another person/s. Depending on the agreement, the person renting from the owner may be a sub-tenant or a boarder/lodger.

### Know Your Legal Status

Your legal rights and obligations may depend greatly upon a range of factors. When moving in, ask who is listed on the tenancy agreement and seek advice about what legal status you will have in relation to your living arrangements. If you are still in doubt about your legal status, you can apply to the Magistrates Court to have your legal status defined.

## What is the legal status of a co-tenant?

If there are a number of tenants who hold (are signatories to) a single tenancy agreement with the owner/agent, you may each be a co-tenant (or joint tenant) and therefore have equal rights and obligations in relation to the tenancy. This is also the case if there is a verbal, rather than written, tenancy agreement with the owner/agent. For example:

- A couple are renting with the rent being paid from a joint account. Each person is also liaising with the landlord from time-to-time. This is likely to be a co-tenancy arrangement.
- Three people are sharing a house and each pays a share of the rent to the landlord and each liaises with the landlord. This could also be a co-tenancy arrangement.

Co-tenants may be held individually (severally) or jointly liable in the event of there being a breach of the tenancy agreement. This means the owner/agent can act against any or all of the co-tenants when there has been a breach of the agreement, even if only one person 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 and seek the entire rent arrears from any of the co-tenants.

If a co-tenant wants to move out of the premises before the others, and the other co-tenants agree to this, it is suggested that you try and negotiate with the owner/agent to have that tenant's name removed from the agreement so that s/he can't be held liable for any breach of the agreement after s/he moves out. Any agreement should be in writing and any change to the written agreement should be signed or initialled by all parties to the agreement. If negotiations fail, seek advice about your options before moving out. Also see chapter [3.13 Writing a Letter to the Owner/Agent](#).

**The Residential Tenancies Act WA (1987) does not cover disputes between co-tenants.**

The *Residential Tenancies Act* is not available for the purpose of dealing with disputes between co-tenants. It is advisable for co-tenants to each seek individual advice with a view to drawing up their own contract in relation to their own living arrangements.

Some disputes of a financial nature which occur between co-tenants, for example, recovering a co-tenant's unpaid proportion of electricity costs, may be dealt with through the Magistrates Court. Disputes between tenants in relation to debts which involve amounts under \$10,000 are heard in the Minor Case Division of the Magistrates Court (the same court as disputes between owners and tenants but not under the Residential Tenancies Act). If the dispute involves more than \$10,000 it will be heard in the General Division of the Magistrates Court. 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. Seek legal advice before commencing any legal action (see chapter [1.12 Community Contacts](#)).

## What is the legal status of a head-tenant?

The head-tenant is a tenant who holds an agreement with the owner/agent and then enters into an agreement with a third person (the sub-tenant) for them to occupy part of the premises. That third person does not have a direct tenancy agreement with the owner/agent, but rather has an agreement with the head-tenant.

For the purposes of the agreement under the *Residential Tenancies Act*, 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 owner/agent to do any necessary repairs. It also means that they can ask their sub-tenants to move out but, like an owner/agent, they must give the appropriate amount of notice (for more information on ending a tenancy, see the various chapters under the heading [4: Ways a Tenancy May be Ended](#)).

If you are the head-tenant, you will need to check the tenancy agreement to see if it allows sub-letting a room to another person. If your tenancy agreement does not contain any provisions for sub-letting then you may only do so with the written consent of the owner/agent. The owner/agent cannot unreasonably refuse permission for you to sub-let and can only charge reasonable expenses which are incidental to them giving the consent (s.49(2)(a)). If you do not get written consent from the owner/agent, they may claim that you are in breach of your tenancy agreement (see chapter [3.08 When the Tenant is in Breach of the Agreement](#)).

If you take the responsibilities of a head-tenant, the owner/agent can hold you liable for damage caused by your sub-tenant, or your sub-tenant can hold you liable to carry out repairs the owner/agent has failed to do. If in doubt, get advice (see chapter [1.12 Community Contacts](#)).

### **What is the legal status of a sub-tenant?**

When moving into 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. As a sub-tenant, you have the same rights and obligations as other tenants under the *Residential Tenancies Act*. A sub-tenant has an agreement with the head-tenant rather than direct with the owner/agent.

### **What is the legal status of a boarder/lodger?**

Boarders and lodgers are not covered by the *Residential Tenancies Act*. The law provides them with little protection, for example, they can be evicted with little notice.

**Boarders and lodgers are NOT protected by the Residential Tenancies Act**

Whether you are a sub-tenant (and have rights under the Act), or you are a boarder or lodger, depends on a range of factors, including the tenancy agreement between you and the owner and your living arrangements. You should always seek advice to clarify your situation and your rights and obligations.

Typical boarding and lodging situations include:

- 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.
- If you are subject to house rules, for example, no visitors after midnight.
- If the landlord keeps overall control of the house, including your room (for example, enters your room without needing your permission).
- If you receive services from your landlord or head-tenant (such as cleaning, washing or providing linen).
- If your landlord provides meals.

See chapter [1.09 Boarders and Lodgers](#).

### **Avoiding problems – Share Housing Tips**

- Sort it out before you move in! Because of the difficulties in determining the legal status of an occupant in a shared housing arrangement, it is suggested that advice be sought prior to entering into such an arrangement.
- It is also recommended that people in shared housing complete their own agreement between themselves, setting out how rent and other costs are to be divided, how domestic chores are to be organised, etc.
- Get any agreements recorded in writing and signed by all parties. Clearly state each person's rights and obligations. Never sign an agreement unless you agree with and understand the terms and conditions. Seek advice before you sign. Ensure that every person who signed the agreement is provided with a copy.
- Think carefully about whose name the different service accounts (phone, electricity, gas, etc) will be in. The person who has their name on the account will be held liable if the account is left unpaid for any reason. It can be a good idea to spread the financial responsibility by getting different housemates to organise different services.

**Even the best of friends sharing rented premises can have tenancy problems.**

### **List of Tenants' Rights Manual chapters referred to in this info sheet:**

- [1.09 Boarders and Lodgers](#)
  - [1.12 Community Contacts](#)
  - [2.08 The Tenancy Agreement](#)
  - [3.08 When the Tenant is in Breach of an Agreement](#)
  - [3.13 Writing a Letter to the Owner/Agent](#)
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- **FLOWCHART ATTACHED:** *"How to Figure Out What Tenancy Relationship You Are In"*

#### **OWNER OR AGENT?**

**It is important to know that whilst you may be dealing directly with the real estate agent about your tenancy, it is the owner who takes on all the landlord responsibilities under the Residential Tenancies Act (1987). If the agent or owner does something wrong and you have to fill out a breach notice or go to court, it is the owner you will list on the forms and notices.**

