

1.09 Boarders and Lodgers

In general terms anyone who has a residential tenancy agreement is entitled to the protection of the *Residential Tenancies Act WA (1987)*. The Act defines a “residential tenancy agreement” as:

“Any agreement, whether express or implied [written or verbal], under which any person [the owner] grants to any other person for valuable consideration [for example, rent] the right to occupy, whether exclusively or otherwise, any residential premises, or part of residential premises, for the purpose of residence.”

However, the *Residential Tenancies Act* does not apply to any residential situation where the resident is a boarder or lodger (RTA, section 5(2)(d)). In some cases, boarders and lodgers may have signed a “license to occupy premises”. This is NOT necessarily the same as a tenancy agreement. See chapter [2.08 The Tenancy Agreement](#) for more information. Boarders and lodgers are NOT protected by the *Residential Tenancies Act (1987)*.

Are boarders and lodgers the same as tenants?

No! Not everyone who pays money for the right to occupy is a tenant. For example, a person who stays in a hotel room pays money for the right to occupy a room but is not a tenant. Such a person is referred to legally as a “licensee” rather than as a “tenant” (*The Macquarie Easy Guide to Australian Law, 1987*).

The general difference between a tenant and “licensee” is that a tenant has an exclusive right to occupy, whereas a licensee does not. For example, in boarding or lodging arrangements, the owner may have the right to enter your room (and does not have to give notice as would be the case if you were a tenant). Another example is that unlike tenants, boarders and lodgers can be evicted from the premises with very little notice. Only tenants have rights as prescribed by the *Residential Tenancies Act*.

It can sometimes be difficult to determine whether there is a license or a tenancy, but the distinction is very important since tenants have far greater legal rights than licensees.

Who is considered to be a “boarder” or “lodger”?

It is not always easy to determine the difference between boarders, lodgers and tenants. Many factors may be relevant and it is important that all these factors are considered. 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.
- If you pay for an accommodation “package” including such things as food, heating and cleaning (for example, a homestay situation).

Who is a “lodger”?

Generally speaking, a “lodger” is someone who occupies part of premises but whose occupation/residency is still under the control of the owner. For example, the owner may live at the premises. Even when the owner does not live at the premises, the occupier/resident may still be classified as a lodger if the owner retains control of the outer door of the building, or if s/he provides other services such as cleaning the room or making the bed (Bradbrook, McCallum and Moore, 1983, *Residential Tenancy Law and Practice – Victoria and South Australia*, Ch. 4).

It can be difficult to determine whether a person is a “boarder” or a “lodger”.

Who is a “boarder”?

A “boarder” is someone who apart from being a lodger, also receives meals. There may be an issue as to whether the amount of food a person receives is enough for the person to be classified as a boarder. It has been said that “board” lies somewhere between an early morning cup of tea, and bed and breakfast.

However, the question to ask is probably whether the food received is “not so trifling in value or in amount as to be negligible”. Further, it is important to remember that, even if the food received is insufficient for the person to be classified as a boarder, s/he may still be a “lodger” and therefore not covered by the Act (Bradbrook, McCallum and Moore, 1983, *Residential Tenancy Law and Practice – Victoria and South Australia*, Ch. 4).

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Some useful questions

The definitions of a “lodger” and “boarder” are not settled or definite and applying them to a person’s situation may often be difficult. In attempting to determine whether or not a person is a lodger or a boarder, there are some useful questions which can be asked:

- Does the person have a key to the front door?
- Can the tenant come and go as they please?
- Is the tenant subject to any rules while at the premises?
- Does the agreement provide for a daily rate of charge, rather than weekly or fortnightly amounts?
- Is the term of the agreement for a fixed term, periodic or purely at the will of the owner?
- Are other parts of the agreement of the kind typically found in a tenancy agreement (for example, obligation of the occupier to insure the premises, or a term which grants quiet enjoyment to the occupier)?
- Does the occupier have exclusive use of a bathroom and toilet?
- Does the agreement refer to a “tenancy”, “rent”, “board” etc.?
- Is the tenant provided any linen, food or other services by the owner?

- What is the character of the premises, and the purpose/s for which occupation is made available (for example, is it a women's refuge, a hostel?)
- Are the premises registered as a boarding house with the Local Council?
- Is the person expected to pay the same amount of bond as a tenant?

This list is not comprehensive and the answer to any of them will not necessarily mean that a person is or is not a boarder or a lodger!

Resolving Disputes

It is usually advisable to first try and resolve a dispute by dealing directly with the other party. One of the agencies listed in chapter [1.12 Community Contacts](#) may be able to help you resolve a dispute. If you and the other party cannot resolve the dispute, it is suggested you seek advice on your situation and your options for taking action.

You can apply to the Magistrates Court to have your legal status defined.

Taking a dispute to Court

If you can prove your status as that of a tenant, rather than as boarder or lodger, you will be covered by the *Residential Tenancies Act* and may wish to pursue a claim through the courts against the landlord. See chapter [3.09 When the Owner is in Breach of the Agreement](#) for more information. However, if a tenant makes a claim under the *Residential Tenancies Act* and the court rules that the tenant is a boarder or lodger, their application will be dismissed.

Another option is to pursue your claim through the court regardless, as it is up to another party in the court hearing to raise the issue of whether or not the person is actually a boarder and lodger and to prove this to the court on the balance of probabilities. However, if you think you may be a boarder or lodger, it is best to seek advice before commencing proceedings.

You are likely to have some sort of legal remedy even if you are a boarder or lodger and it is important to check this out. Contact The Department of Commerce (website: www.commerce.wa.gov.au or phone 1300 30 40 64).

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

- [1.12 Community Contacts](#)
- [2.08 The Tenancy Agreement](#)
- [3.09 When the Owner is in Breach of the Agreement](#)