



Occupancy TIPS

Occupancy Agreements

Are you being asked to sign an occupancy agreement?

Never heard of one before?

Want to know what it is?

The new law

In March 2005, a new type of rental agreement was created in the ACT. The new rental agreements are called "occupancy agreements". Laws about what occupancy agreements are, who they apply to, and what rights occupants have, are set out in the *Residential Tenancies Act* (RTA).

Occupancy agreements give some legal protection to people in the ACT who do not, or cannot, have leases or residential tenancy agreements. Yet, while occupancy agreements apply to many types of accommodation, they do not apply to all kinds of accommodation. Occupancy agreements *do not* operate in retirement villages, or in Federally funded supported accommodation such as nursing homes and hostels for the aged or people with disabilities (section 4 of the RTA). However, occupancy agreements can operate in ACT government supported accommodation for the aged and people with disabilities (for example SAAP services).

Where there is an occupancy agreement, the person who pays money to stay in the room or premises is called "the occupant".

The person who owns the premises or room is called "the grantor". This terminology is new and different to how other types of renting relationships are described. For example, in a residential tenancy agreement (also called a lease), the person who pays money to stay in the premises is called "the tenant" and the person who owns the premises is called the "landlord" or the "lessor".

Do I have an occupancy agreement?

Occupancy agreements apply automatically to;

- certain types of premises, and/ or
- boarders and lodgers.

Types of premises

Section 6F of the RTA lists the types of premises that are presumed to have occupancy agreements. They are;

- a caravan or mobile home in a mobile home park; or
- a hotel or motel; or
- premises used for a club; or
- premises on the campus of an educational institution

This includes people renting in caravan or mobile home parks, hotels, and the many Halls and Colleges that are a part of student accommodation.

Boarders and Lodgers

Section 6E states that boarders and lodgers have occupancy agreements no matter what kinds of premises they live in.

The definition of “boarder and lodger” and what makes them different from a “tenant” is unclear. However, one important legal principle is whether or not the owner of the property maintains ‘control’ over the property. If the owner maintains control, then the person is more likely to be a boarder/ lodger. If the owner gives up control of the premises, then the person is more likely to be a tenant. What will be evidence of ‘control’ will depend on the circumstances. Examples of factors that might indicate control by the owner include;

- *the owner keeps a key to visit for the purposes of maintaining control of the premises (more than emergency, convenience or administrative reasons)*
- *the owner provides services (such as food, cleaning, frequent maintenance of facilities or items such as furniture, supervision),*
- *the owner has control of the external door,*
- *the owner has control of any communal areas,*
- *the owner (or someone employed by the owner) resides in the premises,*
- *the intention of the parties at the time of contract is that the person be a boarder or lodger. The intention might be demonstrated by conversations or receipts talking about board/ lodging etc*
- *the person cannot exclude the owner from the premises (they cannot exercise exclusive possession),*
- *the premises are advertised as a boarding house.*

However, no one of these factors will be conclusive evidence that the owner intended to maintain control and that the person is therefore a boarder/ lodger. All the circumstances will need to be taken into account.

If you are unsure whether or not you are a boarder/ lodger, call the Tenant's Advice Service on 6247 2011 for more information.

What are occupancy agreements?

An occupancy agreement is a contract between the grantor (person who gives the

right to occupy) and an occupant (the person who is given a right to occupy). Section 71C (1) of the RTA says that an agreement is an occupancy agreement if;

- a person (the *grantor*) gives someone else (the *occupant*) a right to occupy stated premises; and
- the premises are for the occupant to use as a home (whether or not with other people); and
- the right is given for value; and
- the agreement is not a residential tenancy agreement.

The right to occupy may or may not be exclusive. This means that an occupant may or may not have their own key to lock the premises and prevent the grantor from entering.

Also, the occupancy agreement may or may not be given with a right to use facilities, furniture or goods.

An occupancy agreement can be express or implied. The agreement can be in writing, oral or, partly in writing and partly oral. If there is a verbal agreement, clues about what kind of agreement was intended can be found in conversations, receipts for rent, how the premises was advertised etc.

However, wherever possible, it is best to have your agreement in writing. Indeed, Occupancy Principle (c) states that *“if the occupancy continues for more than 6 weeks, occupants are entitled to the certainty of having the occupancy agreement in writing”*. So if you intend to stay for a while, you are entitled to ask that the occupancy agreement is put in writing.

House Rules

The occupancy agreement may also include House Rules or a Handbook as part of the agreement. The House Rules or Handbook may include a lot of information, including rules for communal areas and occupant responsibilities. The House Rules and any Handbook form an important part of an occupancy agreement, and breaking these

rules might lead to serious consequences such as eviction.

In order to ensure that only serious breaches of the House Rules lead to eviction, it is worth negotiating with the grantor that only very important and 'reasonable' rules make up the House Rules. For example, reasonable house rules would only extend so far as they relate to the health and safety of residents. Other rules such as how often you should do the washing up would be better off in an informal understanding and not included in your occupancy agreement!

Can a tenant become an occupant?

If you have already signed a lease and your landlord is now trying to change your residential tenancy agreement into an occupancy agreement, then be aware that the landlord generally cannot do this. Please contact the Tenant's Advice Service on 6247 2011 for further legal advice.

What are the differences between an occupancy agreement and a lease?

Occupancy agreements are not leases, and the minimum conditions under the standard residential tenancy terms do not apply to occupancy agreements. If you have a choice about whether to enter an occupancy agreement or a lease, there are some important differences that you should be aware of. Those important differences include:

Fees. Grantors can charge pre-contractual fees such as a "laundry fees" or a "holding fees", and can require a reasonable amount for bond. These fees cannot be charged in a lease, and the maximum amount of bond that can be levied from a tenant is the equivalent of 4 weeks rent.

Eviction. A grantor must advise an occupant of the grounds upon which they can be evicted. A landlord however, also must follow strict rules to evict a tenant, and the whole process **must** be conducted through the Residential Tenancies Tribunal.

Notice to leave. How much notice you are entitled to before being asked to leave is different depending on whether you are an occupant or a tenant.

Unless there are special circumstances, a landlord ending (or terminating) a tenancy agreement requires the tenant to be given 6 months notice. On the other hand, an occupancy agreement only requires a grantor to give occupants "reasonable notice". Reasonable notice, depending on the circumstances, could be only a matter of days.

Access to the premises

If you are a tenant, there are clear legal rules and guidelines about the maximum number of inspections and their timing. If you are an occupant, the number of inspections and their timing will be set out in the occupancy agreement. A grantor's access to the premises must be "reasonable". What is "reasonable" will depend on the circumstances.

How can an occupancy agreement be changed?

An occupancy agreement is a contract. If the contract specifies a date when the agreement will end, then it ends on that date. After the contract has ended, a new contract might be offered. The terms and conditions of the new contract that the grantor offers can be different from the conditions in the old contract.

For example, the rent may be increased, or new fees can be introduced etc. Sometimes there are also changes in the House Rules, or Handbook. If you sign the new contract, you have agreed to the new occupancy

agreement including any new terms and conditions.

However, except as permitted in the contract, it is not OK for the grantor to change the occupancy agreement before it ends. For the grantor to be able to change the terms and conditions part way through requires the consent of both parties. That is, both the grantor and the occupant need to agree to the changes. If the occupant does not agree to the changes (to either the agreement or the house rules), but the grantor goes ahead anyway, then the grantor has breached the agreement. The occupant might then be able to seek compensation or some other order from the Residential Tenancies Tribunal.

**This is a summary of your rights and responsibilities.
If you have a specific problem, you should seek more detailed advice.**

Tenants' Advice Service 6247 2011 free legal advice and information for all ACT tenants

Tenants' Union (ACT)	6247 1026	collective strength through membership
.....	www.tenantsact.org.au	
Welfare Rights and Legal Centre	6247 2177	free legal advice and assistance for low income tenants
.....	www.welfare-rightsact.org	
Office of Rental Bonds	6207 1178	bond lodgement, return and inquiries
.....	www.rgo.act.gov.au	
Residential Tenancies Tribunal	6217 4260	dispute resolution and enforcement of tenancy legislation
.....	www.courts.act.gov.au/	
Office of Fair Trading	6207 0400	complaints against real estate agents
.....	www.fairtrading.act.gov.au	
Housing Review Committee	6207 1507	appeals against ACT Housing decisions