



Occupancy *TIPS*

Quiet Enjoyment & Access

As an occupant you have a right to privacy and the quiet enjoyment of your home.

Your grantor has certain rights of access, but it's definitely not "open house".

The law in the ACT

All occupants have a right to privacy and to the quiet enjoyment of their home. This is balanced against the grantor's right to reasonable access to inspect and maintain the premises. When and how a grantor can access the premises will be set out in your occupancy agreement and the House Rules (if you have them). If the type of access that the grantor is requesting is outside the agreement or the House Rules, you are entitled to refuse it.

And even when the occupancy agreement spells out the conditions for access, if the conditions are inconsistent with the Occupancy Principles in the *Residential Tenancies Act (RTA)*, you are also entitled to refuse access. The Occupancy Principles state that:

- **An occupant is entitled to quiet enjoyment of the premises (s71E(d) RTA); and**
- **A grantor is entitled to enter the premises at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes (s71E(1)(e) RTA)**

You should study your occupancy agreement carefully before you sign it to see what access your grantor will have, and whether it is reasonable and consistent with the principles. It might not be!

What is "quiet enjoyment"?

What is quiet enjoyment will depend very much on the circumstances of each case and what your agreement and house rules have permitted. However, some possible examples of the grantor interfering with quiet enjoyment include:

- Repeated interference without justification,
- Interference with doors, windows, locks, personal items stored in your room or in the communal areas,
- Interference with power supply, water, gas, electricity or any other service provided by the grantor,
- Attempts to force occupants to leave through noise, harassment or threats,
- Attempts to restrict the number/timing of guests and visitors,
- Entering the premises for an inspection or repairs without giving notice or not on grounds set out in the Occupancy Agreement or house rules,
- Maintenance in the surrounding area that creates noise/ dust/ smells that make it impossible to sleep.

If you feel that your right to quiet enjoyment has been breached, you *may* have grounds for compensation. To ask for compensation you will need to take the matter to the Residential Tenancies Tribunal (RTT). The RTT may make an order requiring payment of compensation for the period of time your quiet enjoyment was disrupted (see Occupancy Tips: *Paying Board* and Occupancy Tips: *Having a Dispute?*). However before

embarking on this course of action, you should seek specific legal advice.

What are reasonable purposes for which the grantor can enter my room/ home?

Your occupancy agreement will spell out on what grounds the grantor can enter your room or home. While the grantor can decide what those grounds should be, the Occupancy Principles state that access to premises must be for "reasonable purposes" only. What purposes are reasonable will depend on the circumstances of each case. But as a guideline, access for reasonable purposes might include;

- To inspect the property,
- To carry out repairs,
- To show the property to prospective occupants,
- For health and safety reasons where it affects other occupants, or
- To carry out the requirements of public authorities.

If you are thinking of signing an occupancy agreement, try to negotiate reasonable access for reasonable purposes. Remember that what is reasonable should be what is reasonable to BOTH parties! Have the changes written down and signed if possible. If the occupancy agreement provides for access that is unreasonable, it might be possible to challenge it by applying to the Residential Tenancies Tribunal (RTT).

What are "reasonable times" for access?

The occupancy principles also require that a grantor can only enter premises at a "reasonable time". While there are no clear rules about what are "reasonable times", there are some general guidelines that are helpful to keep in mind. For example, unreasonable times for landlords to access premises have been taken to mean;

- a) On Sundays,
- b) On public holidays, or
- c) Before 8am and after 6pm

... *other than* for carrying out urgent repairs, for health and safety reasons, or with the consent of the tenant.

So before signing an occupancy agreement, be prepared to assert what you think are reasonable times for the grantor to enter your room/ home, and under what circumstances. If the agreement specifies an inconvenient time, try to negotiate a mutually convenient time.

How much notice does the grantor need to give?

With one exception, the law does not require any particular amount of notice to be given to occupants. The exception is for occupants who own their own mobile home or caravan and only rent the site. For these types of occupants, the law says the grantor may only enter the home or caravan "with reasonable notice".

However, it makes sense for all occupants to negotiate their agreements so that the grantor gives reasonable notice of their intention to access the premises. What is reasonable will depend on the circumstances and reason for access. As a guide, the following notice periods have been used for landlords;

- 7 days notice in writing for regular inspections;
- 24 hours notice to show prospective tenants around if tenancy will end in less than 24 days;
- 24 hours notice to show prospective tenants around at any time, if the notice was in writing;
- 7 days notice for making or inspecting repairs;
- less than 7 days if urgent repairs, depending on the nature of the repair;
- Many agreements also specify that reasonable regard should be given to the work and other commitments of both parties.

Some examples of notice that might be unreasonable include;

- No notice!
- Not giving a specific time saying “they will let themselves in”
- Giving a time period such as “between 9am and 5pm”
- Giving enough notice, but then re-scheduling at the last minute for another time with less than reasonable notice.

No matter what kind of occupancy you have, it is worth negotiating what is “reasonable notice” before you sign an occupancy agreement. Be prepared to assert your opinion about what is reasonable.

Remember, you are entitled to your privacy!

Inspections

The law does not set any limit to the number of inspections that a grantor can require. However, if you are prepared to negotiate before you sign the agreement, you can limit the number of inspections. As before, what is a reasonable number of inspections will depend on the circumstances. The purpose of inspections is to view the condition of the premises to ensure that;

- The premises are being reasonably cared for, and
- The premises are being kept reasonably clean, and
- To ascertain if there is any need for repairs.

The number of inspections that will be reasonable to achieve these purposes will therefore be different depending upon the accommodation setting.

However, this does not mean that you have to keep the premises in perfect condition, or that you have to put up with frequent inspections that serve no purpose. If you think that unreasonable requirements are being imposed on you, write a letter to the grantor. If

the letter does not settle the matter, you can apply to the Residential Tenancies Tribunal to resolve the dispute.

Can you change the locks?

The rules regarding when you can change the locks, and/ or when the owner can change locks and who pays for this will be set out in your occupancy agreement. If the agreement doesn’t say anything about locks and you feel that you need to change the locks to prevent unauthorised access or because the premises are not secure enough, you could;

- Negotiate with the grantor, or
- Apply to the Residential Tenancies Tribunal for the question to be resolved (see contact details below).

Problems?

If you believe that the grantor is abusing your right to privacy and quiet enjoyment, or that their access is not reasonable, there are several options for action. They are:

- Write to the grantor asking them to stop the offending behaviour, referring to their obligations under your occupancy agreement and the Occupancy Principles. Be sure to keep a copy of the letter (signed and dated) as evidence in case stronger action is required at a later stage, or
- In serious cases, you may pursue legal action to protect your quiet enjoyment and privacy. A grantor who is interfering with an occupant’s privacy or enjoyment of the property is in breach the agreement or the Occupancy Principles. The Residential Tenancies Tribunal has the power to restrain any action in breach and to order compensation for any loss caused by a breach, or
- You may decide that the grantor’s failure to provide quiet enjoyment and/or

reasonable notice of entry is so serious that you would like to terminate the agreement. The process for ending an occupancy agreement will be set out in your agreement (for more detail see our Occupancy TIP sheet: *Ending an Occupancy Agreement & Eviction*). You should seek specific legal advice before taking this step.

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

Tenants' Advice Service 6247 2011	free legal advice and information for all ACT tenants
Tenants' Union (ACT)6247 1026 www.tenantsact.org.au	collective strength through membership general information and news on tenancy/renting issues free legal advice and assistance for low income tenants
Welfare Rights and Legal Centre6247 2177 www.welfarerightsact.org	
Office of Rental Bonds6207 1178 www.rgo.act.gov.au	bond lodgement, return and inquiries
Residential Tenancies Tribunal6217 4260 www.courts.act.gov.au/	dispute resolution and enforcement of tenancy legislation
Office of Fair Trading6207 0400 www.fairtrading.act.gov.au	complaints against real estate agents
Housing Review Committee6207 1507	appeals against ACT Housing decisions
Housing ACT Website www.dhcs.act.gov.au	Housing ACT policies, general information