



Occupancy *TIPS*

Paying Board

*Having trouble paying your board or rent?
Is there a dispute about how much is owing?
Are you getting what you paid for?
Has the amount you pay been increased..
again??!*

*Before you panic, understand your rights and
your obligations.*

Board - what is it?

As an occupant you pay full board in return for the use and enjoyment of the premises and facilities. Your occupancy agreement should set out how much you are required to pay for board (sometimes called rent). Generally, the agreement will also set out how board will be paid and when payment is due. This can be weekly, fortnightly or even monthly.

If there are no details in your agreement, or you do not have a written agreement, you can rely on whatever has been the accepted practice and period of payment. However, if an occupancy agreement continues for longer than 6 weeks, the *Residential Tenancies Act 1997* (RTA) states that the occupant is entitled to the certainty of having the agreement in writing. So if you are going to stay a while, you can ask to have this information written down.

Paying Board - things you should know

Board in advance

Board is generally payable in advance. This means that you pay a set amount of

board (or rent) up front, on or before the day you move into the premises.

The grantor does not have to ask for board in advance. But if the grantor has asked, it is worth trying to negotiate a reasonable amount. Depending on the circumstances, paying more than 4 weeks board in advance is generally considered unreasonable. If the grantor is requiring you to pay more than 4 weeks, then you should consider seeking legal advice.

It is also important to take into account how much board in advance you have paid when you give notice to end your occupancy. Otherwise you may find you have paid too much!

For example, Jing is about to move into a home-stay. The board for the home-stay is \$100 to be paid every Friday. Jing also needs to pay board 2 weeks in advance. That means that on the Friday Jing moves in, she pays \$300. In other words, one week's board + two weeks "board in advance". Every Friday from then on, Jing pays \$100.

After a few months Jing decides to move out. Jing only needs to give one week's notice. Jing gives notice on a Friday. Jing does not pay any board for that week because it is covered by the "board in advance". Jing is still owed \$100.

Keeping receipts

Your agreement should set out how board is to be paid. Unless board is paid directly into a bank account, the grantor should provide occupants with receipts. Receipts can be hand-written, but if they are, make sure they include important information such as;

- your name,
- the date,
- the amount and
- the fact that the payment was for board/lodgings.

Keep all receipts in a safe place!

Falling behind ...

What do you do if you fall into 'arrears'?

You are in 'arrears' when you are behind in your payments because you have not paid board on the due date, or you have paid less than you need to. This will almost certainly be a breach of your occupancy agreement. Check your occupancy agreement to see what the consequences are if you pay late, or don't pay at all.

NOTE: DO NOT WITHHOLD BOARD in an attempt to make the grantor do repairs. You leave yourself vulnerable to eviction if you do this.

What if I don't agree that I am in arrears?

Mistakes and misunderstandings can occur. Check your board receipts to see if a mistake has been made. If you make payments into a special bank account, ask the grantor for a bank statement listing all your payments.

Double-checking may stop the problem in its tracks.

What should I do if I am in arrears?

If you cannot make a payment, contact the grantor *as soon as possible* and inform them when you can pay off the arrears.

If you aren't able to pay off the arrears in one payment, contact the grantor to explain the situation. You may be able to reach an agreement to pay off the amount over time, for example you could offer to pay an extra amount per week. BUT remember not to offer more than you can afford, as this will inevitably lead to problems.

Make such an offer in writing. Sign, date and keep a copy. This will be useful even if the offer is not accepted, as the letter can be

used as evidence that you have tried to fix the problem.

Can I be evicted?

Being behind in your board payments will almost certainly be a breach of your occupancy agreement. Breach of the agreement can lead to eviction.

The grantor may not accept any offer you have made to catch up. Even if you have caught up, the grantor may still want you to leave. Grantors do not need a court order to evict an occupant.

However before a grantor can evict an occupant, grantors must follow any procedures that are set out in the Occupancy Agreement and House Rules. The Occupancy Principles also require that grantors use reasonable dispute resolution processes (for more information see *Occupancy Tips: Having a Dispute?*). If the grantor does not follow the agreement or the Occupancy Principles, then it is the grantor that could be in breach.

If you do not think you are in arrears but the grantor is threatening you with eviction, or you think they are being unreasonable about accepting your offer to pay back the arrears, then you could lodge an application with the Residential Tenancies Tribunal (RTT). The RTT will be able to hear the dispute and make a decision about eviction. Even if you have already left the premises, you can still lodge an application because it is possible for the RTT to compel the grantor to give back the room to you.

What orders can the Tribunal make?

The Tribunal has 4 options:

- To dismiss the grantor's application - for example, on the basis that there were no arrears or that the arrears have been made up;
- To end your occupancy unconditionally on a specified day - it could be that very day;
- To end your occupancy unconditionally but give you time to move out;
- To reinstate your occupancy and compel the grantor to give back the premises to the occupant.

If your occupancy ends on valid grounds and you do not vacate by the due date, you are trespassing and the police have the power to remove you.

Increasing the board

The Occupancy Principles state that occupants must be given at least 8 weeks notice of any increase in board.

What if you do not receive 8 weeks notice?

If the grantor does not give you at least 8 weeks notice, then you can challenge the increase by applying to the RTT.

It is advisable to write to the grantor as early as possible stating that you do not intend to pay the increase because you were not given enough notice. Be sure to keep a copy of the letter as evidence, in case there are legal proceedings at a later stage.

If you and the grantor disagree about when you should start paying the increased amount, you can make an application to the RTT to resolve the issue. The RTT can:

- determine *whether* the notice to increase board was served properly (ie according to the occupancy agreement),
- determine *when* proper notice was served,
- state the date upon which the increase in board is to take effect, and
- require that any overpayment in board that you might have made to the grantor be repaid to you.

How much of an increase is reasonable?

There are no legal limits on how much the grantor can increase the board under an occupancy agreement. The only limits on how much the board can be increased are the limits that are agreed to in the occupancy agreement itself. It is therefore worth negotiating and limiting possible rental increases.

Tenants are able to challenge 'excessive' rent increases. This can be used as a guide for occupants. What is considered 'excessive' is dependent on a complex formula involving the index number. The index number is the rental housing component of the Consumer Price Index (CPI) for Canberra. These figures are available from ABS, or the Tenant's Union Website: www.tenantsact.org.au.

Generally, rental rate increases need to be proportionate to increases in the index number. If the rental rate increase is raised out of proportion with increases in the index number (ie if the increase is more than 20% higher than the increase in the increase number), then the increase is presumed to be "excessive" unless other reasons justify it. Other reasons that justify significant increases include;

- Previous increases,
- Landlord's costs in relation to the premises,
- Value of the fixtures, goods or services supplied by the landlord,
- State of repair of the premises,
- Rental rates for comparable premises,
- Value of any work performed or improvements made by the tenant with the landlord's consent.

So, if possible, it is worth working out what a reasonable increase might be and including this in the occupancy agreement. The increase in board could be limited by using a formula. For example, not more than a certain percentage of the previous board. Alternatively, you could consider negotiating to have a clause included in your occupancy agreement that mirrors the limitations in rental rate increases for tenants under the RTA. For more information see Tenancy Tips: *Rent Increases: formula and figures*. This tip sheet is available from the Tenant's Union Website: www.tenantsact.org.au.

How often is it reasonable for increases to be made?

Again there are no specific laws regulating how often board increases can be made. However, using tenancy agreements as an example of reasonable practices, rent is not increased more often than every 12 months. Try to have this limitation on the frequency of board increases included in your occupancy agreement.

Reductions in board

When can you have the board reduced?

As an occupant you pay full board in return for the use and enjoyment of the premises and facilities. However, there are occasions where, through no fault of your own, the use and enjoyment of the premises or the facilities are diminished. This could involve:

- the loss of any appliance, furniture, facility or service supplied by the grantor,
- the loss of the use of part of or all of the premises by the occupant, or
- interference with the quiet enjoyment of the property by the occupant. Interference may include your right to use the property in reasonable peace, comfort and privacy.

Loss of these services and facilities in these ways could be a breach of your occupancy

agreement. You should not be paying for something you aren't getting!

If this occurs, you should write to the grantor, advising them of the problem as soon as possible. Request that the problem be rectified within an appropriate timeframe and that you be compensated for breach of the occupancy agreement. Keep a copy of the letter.

If you do not receive a satisfactory response you can apply to the RTT to resolve the dispute. The RTT may order compensation for any breach of the occupancy agreement. There are no rules or formulas to determine how much you should be compensated. Each case is different, but you need to be able to demonstrate the extent to which the breach has affected your use and enjoyment of the premises. For more information, see Occupancy Tips: *Having a Dispute?*

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
.....www.tenantsact.org.au

Welfare Rights and Legal Centre6247 2177
.....www.welfareact.org

Office of Rental Bonds6207 1178
.....www.rgo.act.gov.au

Residential Tenancies Tribunal6217 4260
.....www.courts.act.gov.au/

Office of Fair Trading6207 0400
.....www.fairtrading.act.gov.au

Housing Review Committee6207 1507
Housing ACT Website www.dhcs.act.gov.au

collective strength through membership
general renting/tenancy information and news
free legal advice and assistance for low income tenants

bond lodgement, return and inquiries

dispute resolution and enforcement of tenancy legislation

complaints against real estate agents

appeals against ACT Housing decisions
Housing ACT policies, general information