

Tenancy in the ACT: A General Guide

Entering a tenancy in the ACT can involve substantial responsibilities.

Make sure you protect your interests by being aware of your rights as well as responsibilities.

Become an equal partner in the landlord/tenant relationship.

What does the law say?

The *Residential Tenancies Act 1997* (RTA) regulates residential renting arrangements including private, public and community tenancies in the ACT.

This legislation provides a framework of basic protections for tenants that can't be taken away.

The RTA sets out 'standard tenancy terms' (STTs) that apply to all tenancy arrangements, and are generally provided as the lease or tenancy agreement. All tenancy agreements are deemed to contain the STTs, so they will always apply, whether they are provided in the agreement or not.

It is in your interest to understand these protections and rights so that you can enjoy your home, and get proper value for the rent you pay.

Tenancy disputes can be resolved in the ACT Civil and Administrative Tribunal (ACAT). Any party to a tenancy agreement – tenant or landlord – can apply to have their matter heard by ACAT.

Who is a tenant?

A tenant is a person who has a right of occupation under a residential tenancy agreement (s 6, RTA). Essentially, a tenant is someone who exchanges rent payments for accommodation.

Some rental arrangements including caravan parks, student accommodation and boarding and lodging situations are treated differently and are exempted from the rules that apply for tenants. If you are in one of these rental situations you may still be covered by the RTA as an occupant. For details about these protections see our [Occupancy Tips](#) or contact the Tenants Advice Service (TAS).

NOTE: This leaflet concerns tenancy arrangements only.

What is a tenancy agreement?

A tenancy agreement is a legally binding document. It is an agreement for a tenancy between the landlord (or their agent) and the tenant.

A tenancy agreement can be completely in writing, completely oral, or a combination of both. If you don't have something in writing you are still protected by the STTs. However, it is advisable to have a written agreement for your own protection in case of dispute.

You can download a free copy of the standard tenancy agreement via the Tenants' Union website (www.tenantsact.org.au), or one can be forwarded free of charge from the Tenants' Union office. They are usually provided by the landlord or agent. It is a good idea to know what is in the standard agreement.

What is in a tenancy agreement?

Read your tenancy agreement carefully, noting the length of the tenancy, the amount of rent to be paid and the time and method of payment, and any special conditions.

Section 9 of the RTA provides that a term of a tenancy agreement is void if it is inconsistent with the RTA.

If a term is inconsistent with the STTs, it will be valid **only** if endorsed by the ACAT. So if your tenancy agreement contains any term that contradicts the STTs (eg, a requirement to have the carpets cleaned at the end of the lease), the term will not be enforceable UNLESS you and the landlord apply jointly to the ACAT to have it endorsed. The exception to this are "posting clauses", dealt with in Section 8 of the RTA, which

do not require endorsement.

If, at the time of signing the tenancy agreement, the landlord agrees to make repairs or provide a facility, this agreement should be provided in writing. If this is not provided, write immediately to the landlord or agent confirming the agreement (include details of work as well as the date, and keep a copy).

NEVER sign anything if you are not sure of its meaning and if you do not agree with it. Contact TAS if you require assistance.

ACT Government Information - The 'Renting Book'

Before the commencement of the tenancy agreement the agent or landlord must provide (or advise you of how to obtain) a copy of the Office of Fair Trading booklet, "The Renting Book". This booklet is a general guide to rights and responsibilities of tenants, landlords and real estate agents. It is available from the Office of Regulatory Services website:

<http://www.ors.act.gov.au/>

Or call 6207 0400.

What is the length of a tenancy agreement?

A tenancy agreement will either be for an initial fixed length or on a periodic basis.

A **fixed term** tenancy agreement states that the tenancy commences on a certain date, continues for a specified length of time (usually 6 or 12 months) with the fixed term ending on a particular date. If the tenant does nothing and stays on at the end of the fixed term, the tenancy automatically becomes a **periodic tenancy**. A periodic tenancy agreement may also exist where the parties create a tenancy but do not specify a term, such as in public housing.

The parties can agree to sign a new fixed term tenancy agreement. However your landlord *cannot* make you 'renew' a tenancy agreement or sign a new agreement at the end of the fixed term. Don't be forced or intimidated into signing anything you don't want to. Just because you don't do what the landlord wants you to do doesn't mean he or she can automatically evict you.

Be clear about who is on the tenancy agreement. The financial responsibility for a tenancy usually rests with the tenants named in the tenancy agreement. This continues during the fixed term even if you move out of the house. If you sign a fixed term tenancy agreement, it can be expensive if you move out early (see [Tenancy Tips: Ending a](#)

[Tenancy and Breaking a Lease](#). If you are entering into a shared tenancy see our booklet "[Crowded House - A Legal to Share Housing in the ACT](#)").

Check any special conditions carefully. Be sure they are consistent with the standard terms.

Are there any up front charges?

By law, only the bond and rent in advance can be charged on entering a tenancy (RTA s 15, and STT cl 24). **The amount of bond cannot exceed four week's rent (cl 16), and the amount of rent in advance cannot exceed one calendar month (cl 28).**

Other charges, such as key money, inspection fees, tenancy agreement preparation costs and the like are **illegal** (RTA s 15 (1) and STT cl 24).

What is a bond?

A bond is a form of security, paid by the tenant to the landlord or their agent, and then lodged at the Office of Rental Bonds.

A landlord does not have to ask a tenant for a bond, but if there is one, it cannot be more than 4 weeks' rent. It is a once only payment which can't be increased or 'topped up'. However if the same parties later sign a new agreement and the original bond is refunded, the landlord can ask for a whole new bond.

When you pay a bond, the landlord is obliged by law to give you a receipt. All tenants contributing to the bond should complete a Bond Lodgement form, which the landlord must send, with the bond money, to the Office of Regulatory Services (Rental Bonds). A landlord has 2 weeks to do this, a Real Estate Agent has 4 weeks. A landlord and or their Agent can face penalties if the Bond money is not lodged within that time frame.

What is a Condition of Premises Report?

The landlord (or agent) is obliged to give you 2 copies of a completed 'Condition of Premises Report' (also referred to as an 'inventory') within 1 day of moving in. You must return a copy of this form within 2 weeks, indicating your agreement or disagreement with the report or parts of the report (STT 22). The report details the state of repair of the property and lists rooms and fittings.

Check the report very carefully and write down details of any marks on the walls, stains on the carpet, faulty equipment, damage etc. The report will be used as evidence at the end of the tenancy if there are any disputes. **It is best to be thorough** and take photographs (even video) of the condition of the premises when you move in.

If the landlord/agent doesn't give you a report to fill in, then do one of your own as soon as possible after moving in. If you don't agree with their condition report make sure you have made your own observations clear in the copy you are returning to them.

VERY IMPORANT - Keep a copy of everything for your own records!

What are my rights as a tenant?

Many of your rights as a tenant are discussed throughout this leaflet, and other Tenancy Tips. You have the right:

- To enjoyment of the premises without interference from the landlord or agent;
- To privacy in your home with access only in accordance with the Standard Terms;
- To have the premises fit to live in;
- To have repairs done in a timely manner;
- To receive receipts for all payments made to the landlord or their agents;
- To receive 8 weeks notice of any rent increase, and receive no more than one rent increase every 12 months;
- To have a rent increase reviewed to determine if it is excessive;
- To have tenancy disputes resolved through an independent third party - the ACAT;
- To not be forced to leave the premises except by order of the ACAT for a valid legal reason, AND (if you are facing eviction) to have the Tribunal consider the hardship the eviction would cause to you or any other person.

What are my responsibilities as a tenant?

You have certain responsibilities as a tenant which are placed on you by legislation and by the tenancy agreement which you sign. Your responsibilities include:

- To pay the rent as agreed;
- To take care of the premises and not cause a nuisance or annoyance to your neighbours;
- Not to use the premises for an illegal purpose and to observe the valid terms of the tenancy agreement;
- To allow the landlord or agent reasonable access to the premises in accordance with the standard terms and the RTA;
- To repair any damage negligently or

intentionally caused by you, your guests, pets or persons under your control (eg children, sub-tenants) or compensate the owner for the loss incurred; and

- To notify the landlord of the need for repairs or maintenance.

How do I get my bond back?

At the end of your tenancy, you should arrange with your landlord/agent a time for a final inspection to complete another Condition Report and to note any changes in the condition of the property. If there is a dispute, this report and the one completed at the beginning of your tenancy gives you evidence of exactly what damage, if any, there was.

For more detail about bond see, [Tenancy Tips: Bond](#).

What about leaving early or eviction?

See [Tenancy Tips: Ending and Tenancy & Breaking a Lease and Eviction in the ACT](#). If these don't answer your particular query, then contact TAS for help.

Discrimination

Discrimination in letting out accommodation in the ACT is unlawful under the *Discrimination Act 1991* (this Act covers discrimination on the grounds of sex, sexuality, transsexuality, marital status, status as a parent or carer, pregnancy, race, age, religious or political conviction, physical impairment, illness or intellectual disability).

If you believe you are being discriminated against in applying for a tenancy or in your tenancy, you should seek specific advice, you can contact the ACT Human Rights Commission on 6205 2222 (<http://www.hrc.act.gov.au/>) or the Disability Discrimination Legal Service on 6247 2018 on Tuesday 9.30am to 1pm and Thursday 2.30pm to 4.30pm.

This is a summary of your rights and responsibilities.

If you have a specific problem, you should seek more detailed advice.

See details on the back of this leaflet

Tenants' Union ACT (TUACTION)

TUACTION represents the interests of all ACT tenants, including tenants of private rental housing, social housing tenants, boarders and lodgers, and residential park residents. It is a community legal centre specialising in residential tenancies law accredited by the National Association of Community Legal Centres.

Tenants' Advice Service

The Tenants' Advice Service (TAS) is operated by the Tenants' Union ACT and provides free advice, information, advocacy and referral services for all ACT tenants and occupants. It is funded from interest earned on rental bonds lodged with the Office of Rental Bonds.

You can contact TAS on **6247 2011**
9.30 am to 1.00 pm, Monday to Friday and Tuesday 4.30pm to 8pm.

For general tenancy information or publications contact:

6247 1026

or go to:

www.tenantsact.org.au

Other leaflets in the Tenancy Tips series include:

- Access & Privacy • Bond • Defending an Eviction • Ending a Tenancy & Breaking a Lease • Eviction in the ACT • Evidence Checklist for the ACT Civil and Administrative Tribunal • Making a Complaint about your Real Estate Agent • Rent Arrears • Rent: Increases and Reductions • Rent Increases: Is my increase excessive? • Repairs • Sale of Premises • Tenancy Databases

Leaflets for people renting who are not tenants:

- Occupancy Agreements • Occupancy Rights • Paying Board • Quiet Enjoyment & Access • Maintenance, Repairs and Essential Services • Having a Dispute? • Ending an Occupancy Agreement & Eviction

Other work by the TUACTION:

- providing training in tenancy law, advocacy, and community education
- developing publications and resources on tenants' rights and obligations (including the website)
- advocating for the reform of policies and laws affecting tenants
- conducting strategic litigation to advance the interests of tenants.

Tenants' Advice Service 6247 2011 free legal advice for all ACT tenants (& others renting their homes)

Tenants' Union (ACT)6247 1026 www.tenantsact.org.au	publications, information, workshops, law reform general information and news on tenancy/renting issues free legal advice and assistance for low income tenants
Welfare Rights and Legal Centre6247 2177 www.welfareact.org	
Office of Regulatory Services (Bonds)6207 1178 (Fair Trading)6207 0400 www.ors.act.gov.au	bond lodgement, return and inquiries complaints against real estate agents
ACT Civil and Administrative Tribunal6207 1740 www.acat.act.gov.au	dispute resolution and enforcement of tenancy legislation
Housing ACT information line6207 1150 www.dhcs.act.gov.au/hcs	ACT public housing enquiries