



Occupancy Factsheet

Occupancy Agreements

Do you live on campus at uni, or in a motel, club or caravan park?

Are you living in the same house as the owner, or does the owner provide food or services?

Have you been offered an occupancy agreement?

Read on to find out whether you have an occupancy agreement or not, and what it means...

If you pay for your accommodation, you have rights. However, what rights and responsibilities you have will depend on what type of agreement you have with the owner of the property.

The two main types of renting agreements in the ACT are tenancies and occupancies. **If you have a written agreement that says it is a residential tenancy agreement, then you are a tenant.** If you don't, then whether you have a tenancy or an occupancy agreement depends on what type of premises you live in and what terms you have agreed to. For information on tenancies, look at [Tenancy Factsheets](#) on www.tenantsact.org.au.

Occupancy agreements give some legal protection to people in the ACT who do not have tenancy agreements. Yet 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 *Residential Tenancies Act*). However, occupancy agreements can operate in ACT government supported accommodation for the aged and

people with disabilities (for example supported accommodation assistance program 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". By comparison, in a 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".

The laws on tenancies and occupancies are both in the [Residential Tenancies Act 1997](#) (The Act). The ACT Civil and Administrative Tribunal (the Tribunal) makes decisions on both tenancies and occupancies. The Tenants' Union advises both tenants and occupants.

DO I HAVE AN OCCUPANCY AGREEMENT?

Occupancy agreements **only apply** to:

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

Types of premises

Section 6F of the Act lists the types of premises that are presumed to have occupancy agreements, rather than tenancy 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.

If you live in this kind of accommodation, you can still be a tenant if you have a written agreement that says it is a residential tenancy agreement OR your employer has provided the accommodation. (Otherwise, anyone who lives in that kind of accommodation is an occupant.)

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. One important legal principle in defining a boarder or lodger 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 an occupant. 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 (or someone employed by the owner) lives in the premises
- 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 keeps a key to visit for the purposes of maintaining control of the premises (more than emergency, convenience or administrative reasons)
- the intention of the parties at the time of entering into the agreement is that the person be an occupant, 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 maintains control and that the person is therefore an occupant. It is not just a matter of what the agreement is called, or what type of agreement the owner intended. All the circumstances will need to be taken into account. Only the ACT Civil and Administrative Tribunal (ACAT) can decide for certain what type of agreement you have.

If you are unsure whether or not you are an occupant, call the Tenants' Advice Service.

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 [Residential Tenancies Act](#) 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,

section 71E of the Act sets out Occupancy Principles that all occupancy agreements have to be consistent with. 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. Breaking these rules might lead to serious consequences such as eviction.

In order to ensure that only serious breaches 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 cannot do this. Contact the Tenants' Advice Service for further advice.

WHAT ARE THE DIFFERENCES BETWEEN AN OCCUPANCY AGREEMENT AND A TENANCY AGREEMENT?

Tenancies have 100 terms and conditions that apply to them automatically, even if you are not aware of them and haven't signed them. Occupancies do not have standard

terms, so most of your rights and obligations depend on the terms you sign. Any terms you agree to must be consistent with certain Occupancy Principles (see our Occupancy Factsheet: [Occupancy Principles](#)).

If you have a choice about whether to enter an occupancy or a tenancy, there are some other important differences that you should be aware of. Those important differences include:

Fees. Grantors can charge fees such as "laundry fees" or "holding fees", and can also require a reasonable amount for bond. These fees cannot be charged in a tenancy, and the maximum amount of bond that can be charged to a tenant is the equivalent of 4 weeks rent. In an occupancy, the bond doesn't have to be lodged with the Office of Rental Bonds, but it does in a tenancy.

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

Notice to leave. If your agreement doesn't have an end date, the amount of notice you have to be given if the owner wants you to move out depends on whether you are an occupant or a tenant.

Unless there are special circumstances, a landlord ending (or terminating) an ongoing tenancy agreement has to give the tenant 26 weeks' notice. On the other hand, an ongoing occupancy agreement only requires a grantor to give an occupant "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 may 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 the grantor offers can be different from the conditions in the old contract. For example, the rent may be increased, or new fees may 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. An occupant cannot be made to sign any additional terms or any changes to the agreement, but if they do sign them freely then they have agreed to them and are obliged to follow them.

If the grantor tries to make changes that are inconsistent with the contract, and the occupant does not agree to the changes,

then the occupant's rights do not change. Only the terms that the grantor and occupant both agreed to apply. If the grantor acts on the basis of the changes, eg, they charge a new fee or stop providing a service, then the grantor has breached the agreement. The occupant might then be able to seek an order for compensation and/or orders requiring the grantor to follow the agreement from the ACT Civil and Administrative Tribunal.

If you are unsure what terms apply to you, call the Tenants' Advice Service.

What if the terms are ambiguous?

If you have a written occupancy agreement or House Rules, what the terms mean may not always be clear. If there are inconsistencies between different terms, or multiple interpretations of one term, then the interpretation that benefits the person who didn't write the terms should apply. This principle is called 'contra proferentum'.

If you think your terms are ambiguous, seek advice from the Tenants' Advice Service.

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 for all ACT renters (tenants and occupants)

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