



Occupancy Factsheet

Privacy and 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".

Read on to find out what access is unlawful, and what you can do about it...

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 may 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, they need to be consistent with the Occupancy Principles set out at section 71E of the [Residential Tenancies Act 1997](#). The Occupancy Principles state that:

- **An occupant is entitled to quiet enjoyment of the premises (s71E(d) of the Act)**
- **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) of the Act)**

You should read 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 allow. 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 or 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
- Repairs or construction work in the surrounding area that creates noise/ dust/ smells that make it impossible to sleep

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

Your occupancy agreement should 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
- 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 any changes written down and signed if possible.

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, in a tenancy, it is unreasonable for a landlord to access the premises:

- a) On Sundays; or
- 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, and reasonable regard should be given to the work and other commitments of both parties;
- 24 hours notice to show prospective tenants around in the last 3 weeks of the tenancy;
- 24 hours notice to show prospective purchasers around, if the landlord has notified the tenant in writing of their intention to sell;
- 7 days notice for making or inspecting repairs;
- less than 7 days if urgent repairs, depending on the nature of the repair.

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 rescheduling 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.

Can the grantor require me to leave the premises during access?

Your right to stay in the premises is an important part of your right to quiet enjoyment. After all, how can you enjoy the premises if you aren't in them?

Unless there is a very good reason why you cannot stay in the premises during access, forcing you to leave is almost definitely a breach of your right to quiet enjoyment. Indeed, the Occupancy Principles only give the grantor the right to enter the premises, not to set any other conditions. Any term in your occupancy agreement giving the grantor the power to force you to leave during access is probably inconsistent with the Principles and therefore challengeable. However, in any individual case, the type of access required might make it necessary for you to leave.

If the grantor is showing prospective purchasers or occupants around the premises, they might prefer it if you aren't around at the time. However, there is no reason why you can't be present during these inspections. You might want to be there so that you can watch your belongings. If you would rather leave, that is your choice, but the grantor cannot force you to leave if you would rather stay. If the grantor asks you to leave in these circumstances, you are entitled to refuse.

That said, some types of access might make it necessary, and in your interests, to leave the premises. In some cases, there may be a reasonable purpose for the access which cannot be achieved in your presence. For example, it may be impossible or dangerous for you to be in the premises while repairs or pest control measures are being carried out.

In these circumstances, the grantor has two options. They can either negotiate an agreement with you to leave during access, or they can make an application to the ACT Civil and Administrative Tribunal to resolve the issue. Even if the Tribunal decides that you need to leave, you may still be entitled to compensation for the breach of your quiet enjoyment!

Inspections

The law does not set a specific limit to the number of inspections that a grantor can require. How many inspections are reasonable 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
- The premises are being kept reasonably clean
- 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 on 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 are prepared to negotiate before you sign the agreement, you can limit the number of inspections.

Can you change the locks?

The rules regarding when you can change the locks, or when the owner can change the locks and who pays for this may 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 Tribunal for the question to be resolved (PTO for contact details).

See Occupancy Factsheets: [Having a Dispute?](#) and [Occupancy Principles](#).

What can I do about unlawful access?

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 explaining why the access they've proposed would breach your agreement or the Occupancy Principles, and which parts it would breach. Say that you do not consent to the proposed access. Say that you could apply to the Tribunal for compensation if they go ahead. Sign the letter, date it, and keep a copy.
- Write to the grantor saying that the grantor has accessed in breach of the agreement or Occupancy Principles. Say when this has happened, how it was in breach and what loss this has caused you. Tell them not to access this way again. Say that you are entitled to compensation for loss caused by their breaches. You can ask them for compensation, or say that you will/may apply to the ACT Civil and Administrative Tribunal for compensation if they access unlawfully again. Sign it, date it, and keep a copy.
- If the grantor has a reasonable purpose to access, but the kind of access they want is unreasonable, suggest a different kind of access that you'd be happy with. Make it clear what conditions you would agree to and what you don't agree to, and put it in your letter.
- Make an application to the Tribunal. The tribunal can decide whether access is lawful or not. It can order the grantor not to

access in a certain way. A grantor can be fined up to \$5000 if they breach an order of the Tribunal. The Tribunal can also order the grantor to pay you compensation for loss you've suffered as a result of the grantor's breach. Where there is ongoing interruption to your quiet enjoyment, a reduction in board may be appropriate (see Occupancy Factsheet: [Rent/Board](#)).

- You may decide that the grantor's failure to provide quiet enjoyment and/or reasonable notice before access is so serious that you would like to terminate the agreement. The process for ending an occupancy agreement should be set out in your agreement (See Occupancy Factsheet: [Ending an Occupancy & Eviction](#)). You should seek advice if you want to end your agreement.

See Occupancy Factsheet: [Having a Dispute?](#) for more suggestions.

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 general information 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		