Legal status of people in share housing

People in share housing usually have their own bedroom and share the rest of the premises. Your rights and obligations will depend on your legal status. You may be:

- a co-tenant
- a head-tenant
- a sub-tenant, or
- a boarder or lodger.

Co-tenants, head-tenants and sub-tenants have rights and obligations under the Residential Tenancies Act 2010. Boarders and lodgers do not – see Factsheet 14: Boarders and lodgers.

**Co-tenant** Your name and the names of other tenant/s are on the tenancy agreement for the premises. You share rights and obligations with the other co-tenant/s.

**Head-tenant** You are a tenant (your name is on the tenancy agreement for the premises), you live at the premises and sub-let part of the premises to another person under a separate written agreement. That person is a sub-tenant.

You are a landlord in relation to the sub-tenant. For information about your rights and obligations as a head-tenant, contact NSW Fair Trading on 133 220 or see www.fairtrading.nsw.gov.au.

**Sub-tenant** You are sharing with a tenant (their name is on the tenancy agreement for the premises) who has sub-let part of the premises to you under a separate written agreement. That person is a sub-tenant.

You have the rights and obligations of a tenant in relation to the head-tenant – they are your landlord.

**Boarder or lodger** You are a boarder or lodger if you rent part of the premises from:

- a tenant who also lives there, or
- the owner of the premises, who also lives there and they keep control over the whole premises (including the part you rent). They are your landlord.

**None of the above** If none of the above applies to you, contact your local Tenants Advice and Advocacy Service (TAAS) to discuss your situation.

Changing occupants – transfer or sub-letting

A tenant may transfer their tenancy under the tenancy agreement, or sub-let part of the premises, to another person with the landlord’s written consent. If at least one original tenant on the tenancy agreement remains, the landlord must not unreasonably withhold consent.

If the landlord withholds consent, you can apply to the NSW Civil and Administrative Tribunal (NCAT) for an order that allows the transfer or sub-letting. NCAT will decide if the landlord’s withholding consent is unreasonable.

The landlord may withhold consent however, on some specific grounds (e.g. to comply with planning laws).


Rent receipts

Whatever your tenancy status, you should get a receipt when you pay rent – unless you pay into a bank account.

Bond money

Also see Factsheet 03: Bond.

**Change of co-tenants** If the tenants on the bond lodgement form change, fill in a ‘Change of Shared Tenancy Arrangement’ form (from NSW Fair Trading – NSWFT). Have it signed by the person/s moving out, the person/s moving in and the landlord/agent. Return the form to NSWFT.

Even if you do not fill in a form, get a receipt from whoever you paid the bond to.

If you can, get a statutory declaration from the person who has moved out, stating that they got their bond back. This may help you claim back your bond if the tenancy agreement ends while you live at the premises.

**Bond claim by former co-tenant** On request, the remaining tenant/s must pay back a former co-tenant’s bond – less any rent owed or other reasonable costs – within 14 days of the request.

If the former co-tenant’s liabilities exceed the amount of bond they paid, or they were excluded from the premises by a final apprehended violence order, the above does not apply.

If a former co-tenant disagrees about how the bond is paid out to them, they can apply to NCAT to have the matter resolved. They must apply within 6 months after the bond is paid out.
**Sub-tenant** The head-tenant must deposit your bond money with NSWFT. They must also give you a receipt – unless details of the payment are recorded in your tenancy agreement.

**Boarder or lodger** Encourage the landlord to deposit your bond money with NSWFT (they are not required to). In any case, get a receipt for any bond money you pay.

**Other occupants want you to leave**

**Co-tenant** A co-tenant can apply to NCAT for a termination order to end the tenancy of another co-tenant. NCAT will consider the ‘special circumstances’ of the case and decide whether to make the order.

**Sub-tenant** The head-tenant must give you a 90-day termination notice during a periodic agreement, or a 30-day termination notice at any time before the end of a fixed-term agreement. See Factsheet 10: Landlord ends agreement.

**Boarder or lodger** The landlord should give you ‘reasonable’ notice to vacate the premises (e.g. if you pay rent weekly, they should give you at least 7 days notice).

**You want to leave**

See Factsheet 09: You want to leave for how to give a termination notice.

**Co-tenant** If all co-tenants are leaving, they must jointly give the landlord a 21-day termination notice during a periodic agreement, or a 14-day termination notice before the end of a fixed-term agreement.

If one co-tenant is leaving, they can end their own tenancy under a periodic agreement by giving a 21-day termination notice to the landlord and each other co-tenant. Once they vacate the premises by the date in the notice, they are no longer a tenant under the agreement.

**Sub-tenant** You must give the head-tenant a 21-day termination notice under a periodic agreement, or a 14-day termination notice before the end of a fixed-term agreement.

**Boarder or lodger** You should give the landlord ‘reasonable’ notice (e.g. if you pay rent weekly, give them at least 7 days notice). Put your notice in writing and keep a copy.

**Paying bills**

If you have a contract with a phone, power, TV or internet service or supplier, you must ensure the bills are paid.

If someone does not pay their share of the bills – except for electricity bills – you can take action in a Local Court to get the money back. See the chamber registrar at a Local Court, or contact a Community Legal Centre for advice.

**Resolving disputes**

**Co-tenant** Except as mentioned above, NCAT cannot deal with disputes between co-tenants. Try mediation through a Community Justice Centre.

**Sub-tenant** You can apply to NCAT to resolve certain kinds of disputes with your head-tenant. Contact your local TAAS for advice.

**Boarder or lodger** Contact your local TAAS for advice about resolving a dispute with your landlord.

**Contacts and further information**

- Sample share housing agreement: [www.tenants.org.au/share-housing-agreement](http://www.tenants.org.au/share-housing-agreement)
- Community Legal Centres: phone 02 9212 7333, [www.clcnsw.org.au](http://www.clcnsw.org.au)
- Community Justice Centres: free call 1800 990 777

**January 2014**

For free tenancy advice, call your local Tenants Advice and Advocacy Service:

**SYDNEY:**
- Eastern 9386 9147
- Inner 9698 5975
- Inner West 9559 2899
- Northern 8198 8650
- Southern 9787 4679
- South West 4628 1678
- Western 8833 0933

**REGIONAL:**
- Blue Mountains 4782 4155
- Central Coast 4353 5515
- Hunter 4969 7666
- Illawarra Sth Coast 4274 3475
- Mid Coast 6583 9866
- Northern Rivers 6621 1022
- Northwest NSW 1800 836 268
- Southwest NSW 1300 483 786

**ABORIGINAL:**
- Sydney 9698 0873
- West NSW 6884 0969
- South NSW 1800 672 185
- North NSW 1800 248 913

**WEBSITE**: [tenants.org.au](http://tenants.org.au)

**NSW FAIR TRADING**: 13 32 20

This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia. ©Tenants’ Union of NSW.