

Shared households

Not all shared household arrangements are the same. When you share a house or flat with other people, it may be a co-tenancy arrangement where all tenants have equal rights, one tenant may be sub-letting from another tenant, or you may have a licence agreement with no tenancy rights at all.

Problems can occur when you share with other tenants, especially if you move into an established 'share house'. There may be doubts about your legal status, and the *Residential Tenancies Act 1997* does not cover the rights and responsibilities of co-tenants in relation to each other, and nor does it regulate licence agreements.

Co-tenancy

Co-tenancy is the most common type of shared housing arrangement. A co-tenancy is created when two or more tenants are named on the lease.

Co-tenants who are named on a tenancy agreement are 'jointly and severally liable' under that agreement. This means that if the landlord suffers loss or damage they can pursue any or all of the co-tenants for the whole amount of their claim.

A co-tenancy does not end until all co-tenants leave the premises and return the keys. If you move out of shared premises (eg a share house) before the end of a tenancy and your name is still on the lease, you may be held liable for any loss or damage that occurs after you leave.

Names on the lease

If you are a co-tenant, you should make sure that the names of all tenants are on the lease, or that the landlord or agent have been informed in writing of any changes since the lease was originally signed. It is a good idea to keep a copy of any correspondence that you have with the landlord or agent as you may need it later as evidence.

If one tenant is leaving and is being replaced by another, you should have the name of the tenant who is leaving taken off the lease and replaced with the name of the new tenant.

➔ You can ask the landlord or agent to inspect the property and fill out a new Condition Report but they don't have to. If they choose not to, it is a good idea to take photos that show the condition of the property to use as evidence if needed.

A Bond Tenant Transfer form should also be completed at this time. Tenant Transfer forms are available from the Residential Tenancies Bond Authority, real estate agents or the Tenants Union of Victoria.

Rent and bills

You will need to develop a system for the payment of rent and bills. Often one person in a shared household will take responsibility for the payment of rent or bills. Problems can arise when that person fails to make a payment or other householders fail to pay their share. If you have paid your share of the rent but someone else has not, the landlord can start proceedings to have all of you evicted if the rent is more than 14 days in arrears: the landlord will not take action only against the individual who has not paid.

Leaving a shared household

You should make an agreement about how much notice must be given if someone wants to leave or is being asked to leave. Once again, the *Residential Tenancies Act 1997* does not cover co-tenants in these situations. If a tenant's name is on a tenancy agreement, that tenant will continue to be responsible under that agreement, even if they are no longer living in the property, until the tenancy ends and everyone leaves or until a new lease is entered into. This is one of the most difficult aspects of sharing a household and tenants should make an agreement about how to deal with these issues at the start of the tenancy.

Sub-tenancy

Sub-tenancy or sub-letting is when one tenant (known as the 'head-tenant') transfers part (but not all) of a tenancy to another person.

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A room may be sub-let, or an entire property may be sub-let for a set period that is less than the duration of the head-tenant's own lease.

Sub-letting arrangements are covered by the *Residential Tenancies Act 1997*: the head-tenant becomes the landlord; the sub-tenant is the tenant. The head-tenant can be held responsible for any loss that the property owner suffers because of the actions of the sub-tenant. At the same time, the head-tenant has the same responsibilities to the sub-tenant that a landlord has.

Factors that *may* indicate a sub-tenancy as opposed to a co-tenancy are as follows:

- > the sub-tenant has 'exclusive possession' of a room or part of the property
- > the rent and/or bond receipts are in the name of one tenant only
- > one tenant collects the rent from the other(s) and pays it to the landlord
- > one tenant is responsible for all dealings with the landlord
- > one tenant moved in before the other(s) and the later tenant(s) paid bond to the first tenant
- > one tenant signed the tenancy agreement with the property owner or agent and the other(s) did not

A tenant must not sub-let all or part of the rented premises without the landlord's written consent. Without the landlord's written consent, the sub-lease is invalid. However, the landlord must not unreasonably withhold consent and a tenant can apply to the Victorian Civil and Administrative Tribunal seeking an order that the premises can be sub-let if they believe that the landlord is being unreasonable. See the **Assignment & sub-letting** fact sheet for more information.

Licence

Legally speaking, to be a tenant you must have 'exclusive possession' of all or part of the rented premises. If you move into an existing household, you may be regarded simply as a licensee, with no tenancy rights under the *Residential Tenancies Act 1997*. If you share a house with the landlord, you are *presumed* to be a licensee. If you rent a room and the door is lockable, you may be regarded as a tenant, but this in itself may not be enough to establish that a tenancy exists.

Licensees are able to have their disputes heard under the *Fair Trading Act 1999* in the Civil Claims List at the Tribunal, but should note that the protections under that Act are not as good as the rights that tenants enjoy under the *Residential Tenancies Act 1997*.

Getting advice

The Tenants Union cannot give advice in shared household disputes because many situations are not covered by the *Residential Tenancies Act 1997*, and we cannot take sides between tenants. One way of resolving disputes is by mediation through the Dispute Settlement Centre ☎ (03) 9603 8370 or ☎ 1800 658 528 (Freecall). However both parties to the dispute must agree to go.

For more information phone the Tenants Union Advice Line on ☎ (03) 9416 2577.