

## Occupancy Agreements from 3 March 2021 onwards

On 3 March 2021, changes to the *Residential Tenancies Act 1997* ('the Act') that significantly affect the rights and responsibilities of occupants under an occupancy agreement came into effect.

Changes to the Act applying to education provider occupancy agreements (discussed later in this factsheet) commenced on 30 January 2022.

### Why is the concept of an 'occupancy agreement' important?

Most arrangements where a person pays money to live on a property as their home will either be:

- (a) a residential tenancy agreement (between a 'tenant' and a 'lessor'); or
- (b) an occupancy agreement (between an 'occupant' and a 'grantor').

The distinction is important because the rights and responsibilities arising from these two arrangements are different.

This factsheet does not cover situations where no money is paid for the right to live at the property (such as a 'couch-surfing' arrangement), or the property is not intended to be a 'home' (such as renting a property for a holiday). This is because these arrangements are neither residential tenancy agreements nor occupancy agreements.

### What's the difference between a residential tenancy agreement and an occupancy agreement?

The following situations are likely to be occupancy agreements:

1. **Landlord is also a resident:** where the 'landlord' is living with the 'tenant', unless the

contract explicitly says it's a residential tenancy agreement;

2. **Shared accommodation:** where the agreement is to exclusively occupy a sleeping space with access to shared facilities or the provision of domestic services, and the agreement explicitly says it's an 'occupancy agreement'. Common examples are university dormitories and boarding houses;
3. **Crisis accommodation;**
4. **Housing Support Programs:** where accommodation is provided through a program funded by the ACT Government for people who are homeless or at risk of homelessness, or people who will receive welfare or health support or services when using the accommodation (e.g. alcohol and drug services);
5. **Club membership:** where the arrangement arises because of a membership in a club;
6. **Caravan parks.**

If your arrangement doesn't fit within the above categories, or it explicitly says it's a 'residential tenancy agreement', then it is likely to be a residential tenancy agreement.

If you're unsure what type of arrangement you're in, contact the **Tenancy Advice Service** for free and confidential advice on **1300 402 512** or [TAS@legalaidact.org.au](mailto:TAS@legalaidact.org.au).

## Occupancy Agreements from 3 March 2021 onwards

### The rights and obligations of an occupant under an occupancy agreement

Occupancy agreements give the parties greater flexibility in determining the rules of the arrangement than residential tenancy agreements.

Despite this greater flexibility, there are a set of 'occupancy principles' that establish the minimum set of rights and obligations of an occupant. Any clause in an occupancy agreement that is inconsistent with an occupancy principle is void.

The below is a summary of the occupancy principles.

#### *Premises must be clean, safe and secure*

The grantor must provide premises that are reasonably clean, in a reasonable state of repair and reasonably secure;

#### *Reasonable and proportionate rules*

Any occupancy rules, and the consequences for breaking them, must be in writing and 'reasonable and proportionate' to the outcome they're designed to achieve.

#### *Occupancy agreement to be in writing*

While occupancy agreements can be oral only, if the total length of the occupancy agreement is longer than 6 weeks, then the grantor has an obligation to ensure the occupancy agreement is in writing.

#### *Security deposits*

Any 'security deposit' the occupant is required to pay must be in writing, lodged with the ACT Revenue Office and capped at the following rates:

- (a) if the occupancy agreement is for longer than 6 months – 4 weeks' worth of occupancy fees; or
- (b) if the occupancy agreement is for less than 6 months and more than 14 days – 2 weeks' worth of occupancy fees; or
- (c) if the occupancy agreement is for less than 14 days – no security deposit is payable.

#### *Quiet enjoyment*

Occupants are entitled to 'quiet enjoyment' and 24 hour access to their premises and bathrooms, and access at reasonable times to shared facilities.

#### *Limited intrusion into the premises*

A grantor is only entitled to enter an occupant's premises to carry out repairs or for other 'reasonable purposes'.

#### *Fees and charges payable are transparent*

Any fees or charges payable under the occupancy agreement (e.g. utilities) must state the frequency of the fee and how such calculations are worked out.

#### *Condition report*

On the first day an occupant takes possession of the premises, the grantor must give a condition report to the occupant as well as a reasonable opportunity to check it.

#### *8 weeks' notice of changes to the occupancy agreement*

The grantor must give 8 weeks' notice to changes to the occupancy agreement (such as fees payable or 'house rules').

## Occupancy Agreements from 3 March 2021 onwards

### *Termination of occupancy agreement provisions*

The occupancy agreement must state under what circumstances the occupancy agreement may be terminated, and provide a reasonable period of notice that must be given by a party before the agreement is terminated.

### *Dispute resolution details*

The grantor must provide the occupant with the details of any internal dispute resolution process that applies to the agreement, and the contact details for:

- (a) the grantor; and
- (b) at least 1 community dispute resolution service provider; and
- (c) the Human Rights Commission; and
- (d) Legal Aid ACT; and
- (e) The ACT Civil and Administrative Tribunal ('ACAT').

### *Receipts*

Written receipts must be provided by the grantor to the occupant for payments over \$75, or if the occupant requests a receipt.

### **Obligations on occupants**

An occupant must not behave in a way that detracts from the rights of others (including another occupant) to live and work in the premises in a safe environment, free from harassment or intimidation.

An occupant must vacate the premises when the agreement ends. If this does not occur, the grantor

can commence proceedings in the ACAT seeking a warrant for the occupant's eviction.

An occupant must also, at the end of the occupancy agreement, leave the premises:

- (a) in substantially the same state of cleanliness the premises were in at the start of the occupancy agreement;
- (b) in substantially the same condition the premises were in at the start of the occupancy agreement (allowing for fair wear and tear); and
- (c) ensure the premises is reasonably secure.

A failure to do so can result in deductions from the occupant's security deposit.

### **Terminating an occupancy agreement**

There are five ways in which an occupancy agreement can be terminated:

- (a) By agreement between the occupant and the grantor;
- (b) If the termination is allowed under the occupancy agreement and reasonable notice has been given;
- (c) There has been a serious breach of the occupancy agreement justifying termination;
- (d) The grantor has given notice to change one of the rules of the occupancy agreement, and the occupant has given 2 weeks' notice of an intention to terminate the occupancy agreement; or
- (e) The occupancy agreement is abandoned by the occupant, which generally occurs when

## Occupancy Agreements from 3 March 2021 onwards

an occupant misses three consecutive payments and is not contactable.

### Rights and obligations under an education provider occupancy agreement

A number of the mandatory minimum occupancy principles described above differ, or do not apply, if you are in an education provider occupancy agreement.

#### *What is an education provider occupancy agreement?*

An education provider occupancy agreement is an agreement to live in a residential facility that is on the campus of, associated with, or provided under an agreement with a university. An agreement for student accommodation managed by a private operator will only be an education provider occupancy agreement if the accommodation has a formal connection with the university.

#### *Differences between education provider occupancy agreements and other occupancy agreements*

Many of the mandatory minimum occupancy principles still apply to education provider occupancy agreements. However, there are four principles that operate differently in education provider occupancy agreements:

- (a) **Security deposits:** a security deposit paid for education provider occupancy agreements does not need to be lodged with the Office of Rental Bonds.
- (b) **Reasonable and proportionate occupancy rules:** a penalty or consequence imposed for a breach of an occupancy rule does **not** need to be reasonable and proportionate if the penalty or consequences flows from a **university requirement** (meaning a statute,

rule or policy about student discipline or medical leave authorised by the university).

- (c) **Termination:** an agreement can allow a party to terminate without it being reasonable in the circumstances having regard to the nature of the occupancy if the termination is under a university requirement (defined above).
- (d) **Dispute resolution:** an application to ACAT can only be made if the dispute is unable to be resolved through a university dispute resolution process in a reasonable time. A complaint can still be made to the ACT Human Rights Commission before an attempt is made to resolve the dispute through a university dispute resolution procedure.

If you have any questions arising out of the information provided in this factsheet, contact the **Tenancy Advice Service** for free and confidential advice at:

1300 402 512 or [TAS@legalaidact.org.au](mailto:TAS@legalaidact.org.au)

Updated: 8 February 2022