

TYPES of OCCUPANTS

Whenever there is more than one person living in a Housing ACT property there may be a question regarding their legal status.

TENANTS

Tenants have rights and responsibilities, including:

- A responsibility to pay the correct amount of rent on time;
- A responsibility to maintain the property in a clean and orderly state and to submit to reasonable requests for property inspections; and
- A right to exclusive possession and quiet enjoyment of the property.

Sole tenant

Any person whose name is on a tenancy agreement with Housing ACT is a tenant. If there is only one name on the agreement, that person is the sole tenant.

Joint tenants

If there are multiple names on the agreement, those people are joint tenants (unless the agreement says otherwise). Joint tenants have 'joint and several' liability, meaning that the tenants undertake to comply with the agreement both individually and as a group. The main effect of this is that Housing ACT can pursue any one joint tenant for any and all debts arising out of the tenancy, even where the debt results entirely from the actions of another tenant.

Note that putting someone on your rebate does not make them a tenant. Generally, only people who have signed the original tenancy agreement are

considered as tenants. Other people on your rebate are classed as 'residents'.

In a joint tenancy one of the joint tenants can, where there is a periodic tenancy, terminate the tenancy without the consent of the other joint tenants provided that all notice requirements are strictly complied with. This means that they need to give the lessor/landlord three weeks' notice in writing, specifying the date when the tenancy will end, along with a correct description of the premises and the parties to the agreement.

Housing ACT tenants in this situation face a risk that Housing ACT will try to end the tenancy if the remaining tenants and/or residents are not eligible for the size and type of the property they are in. If you face this situation you should seek legal advice as soon as possible. See also **Death of Tenant** (WRLC Fact Sheet 8).

GUESTS

Tenants have the right to have guests stay in their homes. This might be a friend, a member of your family, a visitor from overseas or anyone else you invite to stay with you on a temporary basis. You do not have an obligation to tell Housing ACT about your guest, and you are not required

to pay any extra rent because you have a guest. This is simply part of the fair use of the premises for 'residential purposes'.

RESIDENTS

If you receive a rent rebate from Housing ACT, you have an obligation to tell Housing ACT about anyone who is a resident in your home. You must also notify Housing ACT of his or her income. This is because the amount of your rent rebate is based on your household income. See **Rent and Rent Rebates** (WRLC Fact Sheet 5).

Remember that as a tenant, you are responsible for any rent payable by residents in your home. If your resident doesn't pay their share of the rent, you will have to pay it for them. If the rent account goes into arrears because not all of the rent is being paid, you could face eviction proceedings.

At what point does a guest become a resident?

This is not entirely clear, but there is a distinction between a person who stays as a guest for a short while and someone who starts living or residing at the premises. One important point to remember is: the longer a person is staying with you the more likely it is that they will be regarded as a resident — so



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simply calling someone a 'guest' may not be enough to avoid extra rent being payable. Someone may start off as a guest but then stay longer than expected. The test is the intention of the people involved.

Factors that will be taken into account in determining the parties' intention are:

- How long has the person resided at your home?
- Why are they residing at your home?
- Is it intended that the person will keep living there? If yes, why?
- Is the person giving your address as their mailing address?
- What are the domestic arrangements? For example, are household responsibilities shared? Are bills shared?
- Are any bills in the name of the person staying there?

The best course of action is to tell Housing ACT about the person if you are in any doubt. If you do not and Housing ACT finds out about the person and considers the person to be a resident, you risk getting a large arrears debt once their income is included in

the rebate calculation and the new rebate is backdated. If you cannot pay the arrears, you may face eviction proceedings.

Also do not forget that a resident may be deemed to have an income if Housing ACT believes such an income is 'reasonably available' to that person, even if they are not actually receiving that income. For example, a person may choose not to claim a Centrelink benefit that they are entitled to, but Housing ACT can still deem the amount of that benefit to be the person's income and adjust the rebate accordingly.

DECISIONS ABOUT TENANCY STATUS

Decisions about whether people are occupants, tenants, guests or residents, a refusal to offer a new tenancy or a decision to end a tenancy because the household changes can all be challenged, either by internal appeal to Housing ACT or in the Residential Tenancies Tribunal. See **The Appeals Process** (WRLC Fact Sheet 9).



Disclaimer

This fact sheet contains general information available at the time of printing. It does not constitute legal advice. If you have a specific legal problem, please contact the Welfare Rights and Legal Centre's advice line on 6247 2177. The Welfare Rights and Legal Centre is entirely independent of Housing ACT. All assistance is free.

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