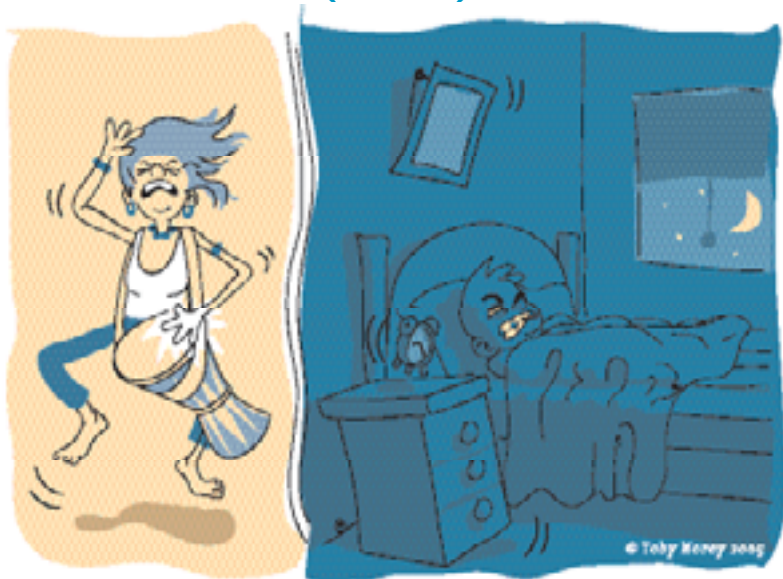


THE SHARE HOUSING SURVIVAL GUIDE (NSW)



Second Edition

A joint project between the University of Sydney Student's
Representative Council & Redfern Legal Centre

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NOTE TO READERS

This information applies to people who live in, or are affected by, the law as it applies in NSW, Australia.

While every effort has been made to ensure the information in this guide is as up-to-date and accurate as possible, the law is complex and readers are advised to seek expert advice when faced with a specific problem. This publication is intended as a guide to the law and should not be used as a substitute for legal advice.

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INTRODUCTION

WELCOME TO THE SHARE HOUSING SURVIVAL GUIDE

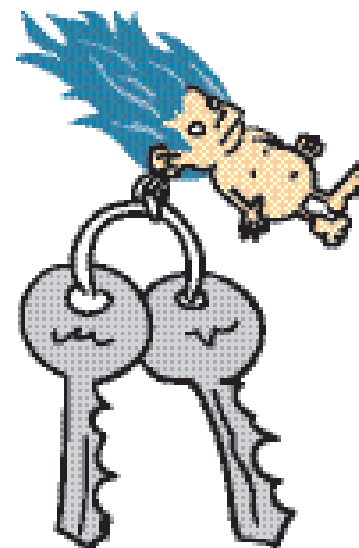
As rents go up and the average income remain relatively low, more and more people are choosing to share houses and flats in order to keep costs down. At the time of the 2001 census, around 195,000 persons lived in share housing in NSW. Unfortunately, the increasing popularity of share housing has not been matched by developments in the law. While tenants' rights are protected (to a certain extent) by the *Residential Tenancies Act 1987*, the situation between flatmates in share households remains a grey area of the law.

Not all share houses are the same. Sometimes one flatmate will clearly control the house, taking charge of collecting the rent and organising repairs; or all the flatmates could be on an equal footing, sharing the job of taking the rent to the real estate agency or landlord, paying the bills and cleaning the house; or sometimes it might be a combination of the two. Depending on the type of arrangements in the house, you will have a different 'legal status' that is, you may be a co-tenant, head-tenant, sub-tenant or boarder/lodger. Your household status is very important as it determines your legal rights and responsibilities, for example, whether you can be evicted by another tenant or whether you are legally responsible to the landlord.

For this reason, if you are thinking about moving into a share house, whether it is your first or just another in a long line of houses or flats, it's vital that you are aware of the legal stuff as well as how to deal with problems common in share housing. These problems range from legal wrangles with flatmates and landlords, to arguments about the

washing-up, and relationships within the house. This book is designed to give you some ideas about how to handle these problems before they cause the break-up of your house.

This guide gives a very broad outline of tenancy rights, but is not intended as a comprehensive manual on tenancy. For more information on tenancy issues, contact the Tenants' Union Hotline or your local Tenants' Advice and Advocacy Service (see Contact Points). All landlords and real estate agents are also obliged to give new tenants a copy of *The Renting Guide*, which is published by the Office of Fair Trading and provides basic information about tenancy rights and obligations. If you don't have a copy, ask your real estate agent for one or contact the Tenancy Service in the Office of Fair Trading (see Contact Points).





LOOKING FOR A PLACE

So you've decided to try living in a share house. The first question you need to ask yourself is: do I want to establish my own share house with friends, or do I want to move into an already established house? If you're not sure, it's a good idea to talk to other people who are already living in share housing. As a general rule, it is much more expensive to set up a share house than it is to move into an already established house.

You should also think carefully about what you *need* in a house, and then make a list of what you *want*. For example, being close to public transport may be a necessity, while a bath with lion-claw feet would probably be a bit of a luxury. Think about how many people you want to live with and how much you're prepared to pay each week. When you've established what you're looking for, you can begin looking for available places.

Tip: It's a good idea to check out notice boards in community centres, cafes and shops in the area you want to live in for share housing advertisements. Also the internet now provides a number of websites advertising for flatmates, such as www.flatmates.com.au and www.domain.com.au.

DIFFERENT TYPES OF HOUSING

Most share housing is in the private rental market - that is, the houses are owned by individual property owners and leased at market rent. However, share housing is also available in a very limited way in public and community housing. Whether or not you have a written tenancy agreement, tenants in private rental, public housing and community housing are all covered by the *Residential Tenancies Act 1987*.

Private rental

The private rental market includes properties advertised through Real Estate agents and private landlords. Most newspa-

pers have 'To Let' and 'Share Accommodation' sections for places in the private rental market. Check out local community papers as well as daily papers like the *Sydney Morning Herald*. Internet sites such as www.domain.com.au, www.realestate.com.au and www.flatmates.com.au provide a quick method of checking out specific suburbs or general areas.

There are also agencies which charge a fee to find a place for you. This may be a good option if you're too busy to look for a place yourself, but not so good an option if you want to keep expenses down. You can also get listings of places to rent from real estate agencies.

If you are a young person thinking about moving into a share house for the first time, talk to a counsellor at your school or a youth worker at your local youth centre (if there is one nearby) about where you can find places to live. Check notice boards at your youth centre also.

If you are a tertiary student, there may be an accommodation officer at your college, university or TAFE campus. They will be able to give you a listing of share houses in the area and other assistance finding accommodation. Contact the students' representative organisations at your institution for more information.

University Colleges and Homestays

University students should be cautious when choosing from the many and varied accommodation options available to them. Universities often maintain a listing for enrolled students of accommodation close to campuses, but because there is little or no vetting of the list you will need to check out the suitability of advertised vacancies. You should be prepared to question the provider of the accommodation as to the nature of what is being offered.

Some vacancies may be advertised as 'Homestay' - a term that can mean different things to different

people. For some international students the term may imply an opportunity to stay with a family and learn more about Australia. The reality may be a tiny room at an exorbitant price with little contact with those living in the house.

Female students should be careful of visiting homestay vacancies by themselves. It is often good to take a friend along to get another opinion. Be cautious of anyone putting pressure on you to make a decision immediately. Ask for time to think about your decision, and discuss the advantages and disadvantages with a friend.

Accommodation providers may also advertise as being 'student friendly'. Remember that you will not just need to live in the house but also study there as well. Ask yourself whether the environment is going to be at all conducive to study.

Universities are moving more and more into the accommodation market themselves - offering

accommodation that is owned and operated by the University. This is usually self-catered furnished accommodation, often with a shared bathroom, living room, kitchen and laundry. You may be required to vacate the accommodation during university holidays and many of these accommodation arrangements do not afford you the rights of a tenant.

Be wary of private accommodation associating itself with a University. With both private and University accommodation seek advice on your rights as a tenant either before signing up or if you run into a problem. Do not accept on face value information from providers of accommodation that you do not have legal protections under the *Residential Tenancies Act* - seek advice from your local Tenants Advice and Advocacy Service (see Contact Points).

Department of Housing

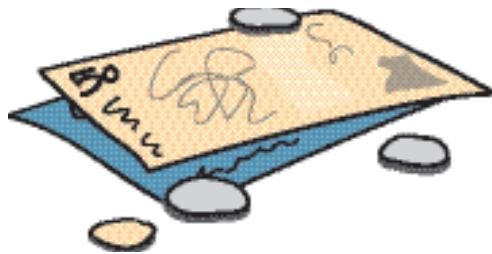
If you and a friend or group of friends are eligible for public housing, you can apply for share

housing through the Department of Housing. Most people sharing Department accommodation are family or partners but all applications from prospective co-tenants will be accepted and assessed for eligibility according to Department guidelines. The Departments' policies can be viewed at www.housing.nsw.gov.au. Generally applicants must be at least 18 years of age, but sometimes younger people can apply at the discretion of the Department. Other criteria on which applications are decided include residence in NSW, immigration status, financial circumstances and your ability to successfully maintain a tenancy. Applications can be made for different types of premises depending on housing needs, for example, two bedroom share accommodation could be sought by a person and their carer, on the grounds that this arrangement was necessary for medical reasons.

Department of Housing waiting lists for accommodation are very long, so if you are eligible you

will have to be prepared to wait some time for a place to come up. Contact the Department for full information about making an application (see Contact Points). Before you move in with someone already living in public housing, it is necessary that they get the permission of the Department. If they don't and you move in, the tenant will be in breach of their residential tenancy agreement and could be evicted. They could also be charged with rental subsidy fraud, leaving them with a large debt, as rent is calculated according to the gross income of all adults in a household.

The Department of Housing is exempt from the section of the *Residential Tenancies Act* which gives occupants the right to apply to be recognised as a tenant when the original tenant dies or leaves the premises. If you have been



living in public housing and the tenant dies or leaves, you should contact a tenants' advice service as soon as possible for advice about applying to become the tenant under the Department's 'Succession of tenancy' policy (see Contact Points).

Community housing

In your search for a share house you may also come across community share houses. Community housing is a low-income alternative to public housing, providing affordable housing for specific groups of tenants (for example, young people, people with disabilities, people of a particular ethnic background, students etc.) and emphasising tenant participation in the management of the housing.

There are two types of community housing: housing associations and housing co-operatives. Housing associations are generally managed by housing or welfare organisations and often provide additional living support for the tenants. For example,

people living in community share houses for young people may have access to a support or youth worker. Houses are run differently depending on the different needs of the different groups. In most community share houses, it is common practice for each tenant to have their own residential tenancy agreement with the managing organisation. For information on housing associations, call the NSW Federation of Housing Association on (02) 9281 7144.

Housing co-ops are managed by the tenants themselves and are designed for people who want to have some control over their housing but cannot (or do not want to) buy their own place. Generally other support services are not provided. Although in theory it may be great that your landlord is a board of tenants, some problems can arise from this blurring of the landlord and tenant role - and arguments between tenants in a co-op can have an effect on the overall management of the co-op. Despite this blurring of roles,

co-op tenants are covered by the *Residential Tenancies Act* and can apply to the Consumer, Trader and Tenancy Tribunal if there has been a breach of their tenancy agreement. For the purposes of the *Act*, the co-op as a whole is recognised as the landlord and individual members as the tenants.

If you decide you want to live in a co-op share house, you would need to apply to become a member of the co-op and show that you respect the principles of co-op housing (which include sharing responsibility for administration of the co-op and respecting the rights of other tenants). You would also need to meet their eligibility guidelines depending on the type of co-op, for example, a low-income co-op would require that the majority of tenants were on a low-income. If you are thinking about moving into a co-op, it's worth talking to other members about how the house works to decide if this is the best option. For more information about co-ops, contact ARCH (the Association to

Resource Co-operative Housing) on (02) 9361 6834.

Renting warehouses

These days, more and more people in the inner-city are choosing to live in warehouse spaces as opposed to standard houses or flats. The problem is that often this involves signing a commercial lease rather than a residential tenancy agreement, which means you are not covered by the *Residential Tenancies Act*.

However, despite what the landlord/agent says, if you are using the premises predominantly as your residence, you have the right to have a residential tenancy agreement regardless of the original function of the building. If the agent refuses, you should ask to have it recorded on the lease that the premises are being used for residential purposes. This will help your case if you have problems with your landlord and want to apply to the Consumer, Trader and Tenancy Tribunal to resolve the matter. If the premises are zoned for residential use, this

strengthens the argument that you should be given a residential tenancy agreement. You can contact the local council for information on the zoning.

For more information about signing a commercial lease and problems with warehouse tenancies, contact your local community legal centre or tenancy advice service (see Contact Points).

ESTABLISHING A SHARE HOUSE

If you decide to set up a share house with friends, it's important to sit down together and decide what sort of place you're looking for. This is also your chance to ensure that you really want to move into a house with these people. Your best-friend-from-school may turn out to be a flatmate-from-hell; if you become irritated with your friend now, chances are it will get worse when you live together. A friendship break-up can tear a house apart and is a traumatic and expensive lesson for newcomers to share housing.

Looking for a house or flat to rent can be an exhausting experience. If you rush it, chances are you'll end up with a place you hate, so take your time. You may want to use the rental checklist below to assess each place. Ignore the patter of the real estate agent. Whilst there are general rules which should stop the agent from making misleading or deceiving statements, disciplinary action is more likely for provable conduct, such as trust account mistakes. Misleading and deceptive conduct by oral statement are difficult to prove if denied. Instead, if you have a friend who is an experienced renter, it is safer to ask them to help you check the place out.

Rental Checklist

The premises

- If it is a strata building, are there any peculiar by-laws?
- Are repairs needed?
 - Do the oven/stove elements/shower/toilet work?
 - Are there any signs of cockroaches or rats?
 - Is there damp or mould on ceilings and walls?
 - Do any walls or rooms need painting? Will the landlord either arrange this or give you money or a reduction in rent to organise the painting yourself?
 - Will the landlord carry out any necessary repairs before you move in? Do you have this in writing? If not, note on the condition report what repairs were agreed to.
- If the house is furnished:
 - Do the washing machine, fridge etc. work?
 - Will the landlord store items of furniture you do not want?
- Is the house/flat close to public transport, friends, shops, work and uni or TAFE?
- Is it on a busy road, near a noisy factory, school, rail lines or under an airport flight path? If so, can you live with the noise?
- What is the parking like? Is there a garage? If you plan to park on the street, call the local council first and check that they offer resident permits. Don't assume they do, especially for residents of new strata buildings.
- Is there adequate security - are there locks on the windows and doors, and/or bars on windows?

- Can you keep pets in the house? If the landlord consents, get it in writing, or confirm your agreement in writing to them and keep a copy.

The rent

- What is the weekly rent?
- How often do you have to pay? (Generally you have to pay two weeks in advance, but if your rent is over \$300 per week you may have to pay a month in advance.)

- What day is your rent due - is it due the day BEFORE you get paid?
- How is it paid - does the landlord collect it, do you pay at the agent's office or do you put the money directly into the landlord's/agent's bank account?

Check the tenancy agreement for details and watch out for third party providers who often charge sneaky fees. Read the fine print.

If you like the place, do your own research on the area. Don't trust the Real Estate Agent when they say that the crime rates are low, or that parking is easy to find. Talk to the neighbours/people who live in or know the area and ring the local council for further information.

If you decide that the place is right for you and your friends, you will probably be asked to sign an Application for Tenancy form, and pay a reservation fee. If your application is approved, the reservation fee becomes the rent for the first week of the tenancy. If you don't get the place, the money should be returned to you in full. If you decide not to rent the place, the landlord can ask you to pay part of the reservation fee for rent lost while you reserved the premises.

The condition report

When you sign the tenancy agreement, you must also be given two copies of the condition report to complete as part of the agreement

- one to return to your landlord and one for you to keep. It is very important to fill this out in as much detail as possible so you have proof of the condition of the place if the landlord tries to keep the bond at the end of the tenancy or claims compensation for damage to the premises. The landlord/agent will already have made an assessment of the premises which will be noted on the report. You can state whether or not you agree and add more detail if you need to. If repairs are needed write to the landlord/agent asking for the repairs to be done and get their consent in writing. There is a section at the back of your condition report where you should list the repairs that you have been promised.

If the landlord doesn't give you a condition report, complete one yourself and get a witness to sign it.

Inspecting the premises

It's a good idea to get all the tenants together and do a thorough inspection of the place.

Pay special attention to:

- locks and security - defects; lack of security; keys?
- stove - cleanliness of the oven, grill and stove top; are all the elements and the oven working?
- blinds, curtains - are they clean, damaged, working?
- cupboards - are any doors or shelves damaged? are they clean?
- walls - is there any damage to the paint? are there hooks and nails - how many?
- carpets - are they clean, marked, stained or damaged?
- floor/skirting boards - are they clean, damaged?
- vermin - are there signs of rats/cockroaches or other vermin?
- light fittings - are they clean? are globes provided?
- bathroom - condition of toilet, bath, shower, basin, floor - are they clean, damaged, scratched?
- heaters - are they working?
- exhaust fan - is it clean inside?

does it work?

- cobwebs - are there any, inside and out?
- lawns and yard - is the lawn mowed? are there weeds in the garden?
- driveway/carport - are there oil stains? what is the state of the surface?
- windows - are any broken? Any cracked?



Erm... yes, the great thing about this flat is the...um...easy access to international transport

The more detailed you make your condition report, the easier it will be to make sure you leave the place in the same condition when you move out. If you can, it's also a good idea to take photos of any damage already there when you moved in, particularly stains on the carpet, broken windows etc. This will be helpful if the landlord tries to claim the bond on the grounds that the carpet needs to be cleaned or repairs done. The more evidence you have in this situation, the better. You have seven days to complete the condition report and return it to the landlord/agent. Keep it in a safe place with your copy of the residential tenancy agreement.

PROBLEMS BEING ACCEPTED FOR A TENANCY

Sometimes it can be difficult getting a place because you don't fit the landlord's idea of who a 'good' tenant is. This section looks at a few of these situations and what you may be able to do if you have problems.

Young People

In NSW it is possible for a person under the age of 18 years to sign a residential tenancy agreement. This is because the *Minors (Property and Contracts) Act 1970* makes such a contract binding if it is to the benefit of the young person and they understood that it was legally binding when they agreed to it. However, if you and your friends are young, and on Centrelink benefits or receiving student assistance, you may find that the landlord/agent demands a parent or older person with a job to act as a guarantor. (A guarantor is a person who agrees to pay if you do not.)

Despite what the landlord says, it's actually illegal to ask for a guarantor for a residential lease in NSW. This means that even if a guarantee is given, it is worthless because it cannot be enforced. The best approach is to offer to supply referees (for example, a teacher, older person, or friend with a job) who can reassure your prospective landlord that you are a 'responsible person'. A referee

cannot be held liable if you don't pay the rent.

Centrelink benefits

If a prospective landlord/agent expresses doubts about your ability to pay the rent because you are on Centrelink benefits, you could argue that at least you are guaranteed a regular fortnightly income! Most landlords/agents should realise that Centrelink payments, including rent assistance, are sufficient to cover a reasonable rent in a share house.

Discrimination

If you believe that you have been refused a tenancy because of your race, religion, ethnicity, gender, sexuality, marital status, family status, disability or age, you can make a complaint to the Anti-Discrimination Board (ADB) or the Human Rights and Equal Opportunity Commission (HREOC). You have six months to make a complaint to the ADB and 12 months to make a complaint to HREOC.

Unfortunately, it is difficult to prove that the reason you failed to get a particular tenancy was due to discrimination, as landlords/agents do not have to provide reasons for rejecting applications.

Telephone the ADB or HREOC to get up to date advice about where to lodge a complaint and the length of time it will take to sort out the problem. Staff at the ADB can assist you to put your complaints in writing. You can also contact your local community legal centre (www.nswclc.org.au) for legal advice.

Bad tenancy record

If a real estate agent tells you that your application for a tenancy has been rejected because of your 'bad tenancy record', it may be that your name is on a list held by a tenancy reference organisation. These are private companies which run data bases of 'bad tenants', for example, tenants who leave a place owing money for rent, but also tenants who may merely have been taken to the Tribunal for rent arrears -

or have taken their landlord to the Tribunal! Landlords and real estate agents provide the names of tenants to these companies who then release the information to other landlords/agents for a fee.

There are two different sets of laws which give some rights to tenants: the *Commonwealth Privacy Act* and the Rules of Conduct for real estate agents.

Commonwealth Privacy Act 1988

From 21 December 2002, the *Commonwealth Privacy Act 1988* has applied to tenant database operators. *The Privacy Act* provides some regulations and a complaints process.

The Privacy Act requires businesses to operate according to the National Privacy Principles (NPPs) set out in the Act. This means that tenant database operators must take reasonable steps to tell tenants:

- who they are and how to contact them

- why the information is being collected
- tell you to whom they will pass on personal information
- tell you any consequences of not providing information
- give you access to information about yourself
- correct any information that is not correct, complete or up to date - if you disagree with the information, they must make a note on the database that you dispute the information
- fees for getting information should not be excessive.

If you believe a database operator has breached the privacy principles, you can make a complaint to the Federal Privacy Commissioner. The Commissioner will investigate the complaint and take court action to stop the database operator from breaching the *Privacy Act*.

How do I know I am listed?

Most people find out they are listed when they find that their applications for a tenancy are constantly rejected. If you were put on a

database before 21 December 2002, the tenant database operator does not have to inform you of the listing, or give you access to or correct the information, until the information is passed on to a database member, such as a real estate agent. If an agent has rejected your tenancy application, ask them if it is because you are on a database, and if so, what database. Real estate agents often have the name of the database operator in windows or on walls of their offices, or on their tenancy application forms. *The Privacy Act* requires database operators to take reasonable steps to inform you of your listing made after 21 December 2002. However, be cautious, as *The Privacy Act* does not require a database operator to try to inform you of a listing if you have been informed of the possibilities, purposes etc and consented in writing otherwise. The cunning database operator has provided the subscriber Real estate agents with application for tenancy forms that satisfy this principle.

You can write to the database operators to check if you are listed. If you are listed, ensure that your information is accurate, complete and up to date. The database operator must provide you with reasons if they deny you access or refuse to correct information.

Some tenant database operators invite tenants to check if they are listed by calling a 1900 phone number at \$4.50 per minute or paying for a 'once-off' membership to the database operator. Avoid these money-making tactics if possible. The best method is to request the details of the listing in writing. The fee cannot exceed \$8.80.

How do I make a complaint about a listing?

Write to the database operator and ask that the listed information be corrected or removed, give them 30 days' to respond. Keep a copy of all your letters. If you are unhappy with the response, complain to the Federal Privacy Commissioner. Forms

for complaints are available from the Office of the Federal Privacy Commissioner's website and from your local Tenants Advice and Advocacy Service. If a database listing causes you hardship, or if you cannot get a quick, satisfactory solution with a database operator contact the Tenants Union of NSW (see Contacts).

Rules of Conduct

In NSW, real estate agents must comply with the Rules of Conduct under the *Property, Stock and Business Agents Act 2002*. From 15 September 2004, one of these Rules relates to agents' use of tenant databases. The Rule restricts the circumstances in which an agent may list you on a database, and sets out requirements that databases must meet before agents may use them to make listings.

Restrictions on Listings

Under the Rules of Conduct, an agent may list you only in the following circumstances:

- you were a tenant under a residential tenancy agreement,

- the tenancy has ended,
- the agent notified you of the proposed listing, and gave you an opportunity to respond, AND
- the reason for the listing is allowed by the Rules of Conduct.

If you are listed and any of these circumstances do not apply to you, you can make a complaint about the agent who listed you.

The Rules of Conduct allows only five reasons for listing. These are:

- you owe money because of rent arrears,
- you owe money because of intentional or reckless damage to the premises,
- you have failed to pay money as ordered by the Consumer, Trader and Tenancy Tribunal,
- the tenancy was terminated by the Tribunal because you seriously or persistently breached the tenancy agreement, OR
- the tenancy was terminated for serious injury or damage.

If you are listed for some other reason, you can make a complaint about the agent who listed you.

Requirements for Tenant Database Operators

Under the Rules of Conduct, agents may list only on tenant databases that comply with the following requirements:

- all persons listed on the database must be allowed free access to their listing.
- if a listed person claims that the listing is inaccurate, incomplete or out of date, the listing must be amended or, if the agent disputes the claim, the person's objection must be noted on the database.
- if a person is listed because of a debt, and the person pays the debt within 3 months, the listing must be removed within 7 days.
- if a person is listed for a debt, and then pays the debt after 3 months, the listing must be changed within 7 days to show that the debt has been paid, and be removed within 3 years of the date of listing.
- if a person is listed for a reason other than a debt, the listing must be removed within 3 years of the date of listing.

If you are listed on a database that does not comply with any of these requirements, you can make a complaint about the agent who listed you.

You should make any complaints about agents to the NSW Office of Fair Trading. The Office of Fair Trading can take disciplinary action against agents who breach the Rules of Conduct, including suspending the agent's licence.

The rules of conduct do not allow you to apply to the Consumer, Trader and Tenancy Tribunal for orders relating to the listing. Complaints under the Rules of Conduct go to the Office of Fair Trading, and the Office decides what, if any, action they may take against the agent. The Office cannot order that the agent pay you compensation.

If you believe that your application for a tenancy has been rejected due to information given out by a tenant database organisation, contact the Tenants' Union of NSW for advice (see Contacts).

Remember, there are many different database operators and not all agents and landlords will have access to the same database... so keep trying!

MOVING INTO AN ALREADY ESTABLISHED SHARE HOUSE

If you decide to move into an already established share house, it's a good idea to ask friends if they know of any places as well as checking the share accommodation section in the newspaper, ads on local notice boards and websites. In most cases, phone



numbers will be given in share accommodation ads so you can phone to make initial enquiries and check that the room hasn't already gone. On the phone, ask the essential questions from your list of needs and wants. If you like the sound of a place, you'll then need to go round to meet the flatmates and check out the room. This can be a bit scary even if you're a super-confident person!

When looking at your room, take time to check that it is comfortable and has everything you need, for example, does it have power points, does it get any sunlight, is it noisy, dark, damp? Again, it's a good idea to draw up a list of needs and wants beforehand so you don't miss anything and take a friend who can ask the questions you might forget.

Question time

Inevitably there will be a moment where you and the flatmates sit down to discuss rent, kitty and other arrangements. At this point it really helps to have done a bit of preparation and worked out the

questions you want to ask about the household and how it is run.

These questions may sound very picky but it's the only way to decide whether you really are compatible with the rest of the household. And it's always better to find out the worst now rather than later. Often the people in the house will be just as uncomfortable with the interviewing process as you are, and will appreciate you going through these sorts of issues - after all, they want to choose the most compatible flatmate as well.

You should also ask about the legal arrangements in the house. Is your name going to be on the lease? If not, who is on the lease? Who will you be paying bond (see the bond section) and rent to? Who deals with the landlord? Depending on the answers, you could be a co-tenant, a sub-tenant or a boarder or lodger and this will determine your legal rights and responsibilities in the house. Head-tenants, co-tenants and sub-tenants are covered by the *Residential*

Tenancies Act, whilst boarders and lodgers are not and as a result have virtually no rights in relation to their housing. For full details about these different see *What is My Legal Position?*.

After the interview

After the interview, the people in the house/flat will usually tell you they'll be in touch: if they never ring back, it's a good indication that you weren't high on the compatibility rating. Just keep looking, you'll find something! Consider each offer carefully. If you accept, then you will need to make your moving plans and get your money organised. This is discussed in the next chapter.

Sample questions to ask when meeting potential flatmates

- Does everyone buy their food together and if so, how much do they put into the kitty every week?
- What foods do they like/not like? eg, Is it a vegetarian household?
- What are the arrangements with phone, electricity and gas bills and bonds?
- What do the other flatmates do? Are they students, unemployed, workers?
- Do people smoke in the house?
- Is there a cleaning roster?
- Is it OK to have friends/partners over?
- Do they do any drugs (and if so, which ones)?
- What are their politics?
- Do they like Basement Jaxx, Britany Spears, the Beatles or Beethoven?
- Is anyone religious/anti-religion?
- Do people mind loud music?
- What are the neighbours like?
- Is the landlord/real estate agent OK?
- What are people's viewpoints on sexuality?



MOVING IN & MONEY STUFF

Whether you are setting up a house with friends or moving into an already established place, it's going to be pretty expensive to begin with. The immediate costs will be bond (usually four weeks rent - it may be more if the place is furnished by the landlord), two weeks rent in advance and possibly a share of the electricity, gas and phone connections. Plus moving costs. Then there are the ongoing weekly expenses. Some costs are listed below so you have an idea of what you're getting yourself in for before you take the plunge.

CONNECTION OF SERVICES

If you are setting up a place you will definitely have to pay for service connections. If you are moving into an already established flat, you may have to pay the outgoing tenant for their share of the connection fees. This will depend on the arrangements in the house. If you do have to pay, be sure to get receipts and ensure that the receipts specify what the payment is for.

The following is an estimate of costs for connection of services in the Sydney area. Costs may vary in other parts of NSW.

Electricity:

Energy Australia - A \$200 bond is required which will be refundable when you leave as long as you have no electricity bills owing.

Integral Energy - A \$180 bond is required - and you'll get the money back when you leave the place, as long as you have no electricity bills owing. You can ask for an extension of time to pay the deposit.

AGL - If you connect your electricity with AGL there is no bond required. If you want to change from Energy Australia there is no charge, however if you are changing from Integral Energy there is a start off fee of \$38.20.

There may be extra charges if you want your electricity connected on the weekend or after 2p.m. (weekdays) - check the price before you ask for electricity to

be connected at these times.

Gas:

AGL - \$100 bond (refundable) plus \$22.45 establishment fee (non refundable). Again you can ask for an extension of time to pay the deposit.

Phone:

Telstra and Optus - If you are moving into a new house where a technician is required to install the line there is a \$209 fee. A landlord is not required to pay for this cost (unless you were told that it was connected) as it not a basic requirement such as electricity. However you should try and negotiate with your Landlord to pay for all or part of this cost. Contact you local tenancy service if you are having problems negotiating with your landlord. (see Contact Points).

If there is a phone line already installed, then the connection will cost \$59.

As there are so many new options now available (call waiting, message

bank, multiple numbers on the one line which can be billed separately) you are well advised to shop around - make sure you specify that you are seeking information for a share house though.

WEEKLY EXPENSES

Below is an estimate of weekly expenses for a room in a low-budget share house.

| Item | Weekly cost |
|---|--------------------|
| Rent | \$110 - 150 |
| Kitty (inc. basic food) | \$30 - 40 |
| Electricity/gas (bills come in four times a year) | \$10 - 15 |
| Water usage (bills come in four times a year) | \$5 - 10 |
| Phone (bills monthly or quarterly) | \$ 10 - 15 |
| TOTAL | \$165 - 230 |

Don't forget other expenses such as travel, study expenses, and going out!

WHERE TO GET HELP WITH MONEY

If you are having trouble paying these initial costs or meeting ongoing expenses, there are places you can go for help:

Department of Housing

The Department of Housing has a rental assistance scheme which provides emergency financial assistance to help those people eligible to enter or cope in the private rental market.

To be eligible for Rentstart, clients must:

- Be eligible for public housing
- Have limited cash assets, generally less than \$1000
- Be able to sustain a tenancy in the private rental market.

Generally, Rentstart assistance will contribute up to 75% of the cost of rental bond.

People in severe financial and housing circumstances may be eligible for Rentstart Plus and provided with:

- Up to full bond
- Up to 2 weeks advance rent (3 weeks for furnished accommodation), or
- Up to 4 weeks rent arrears
- Up to 4 weeks rent in temporary accommodation.

Assistance is generally limited to once in a 12-month period and cannot be given to clients moving into, between or leaving public or community housing managed properties unless the client is facing eviction which is not the result of a breach of their tenancy agreement.

Phone your local Department of Housing office for more information (see Contact Points), or check out their policies online at www.housing.nsw.gov.au.

The Supported Accommodation Assistance Program

The Supported Accommodation Assistance Program (SAAP) run by the Department of Family

and Community Services funds community organisations and local councils to provide supported accommodation and related support services for people who are homeless and in crisis and for women escaping domestic violence. Information and referrals are available from the Homeless Persons Information Centre, the Domestic Violence 24-hour phone line and the Emergency Youth Accommodation Line. (see Contact Points).

Centrelink benefits - Rent Assistance

If you pay rent, get a pension, allowance, Abstudy or benefit and do not have dependent children you may be able to get Rent Assistance in addition to the payment. To claim you'll need to show Centrelink a copy of your lease with your name on it. Otherwise get a 'Rent Certificate' form from Centrelink and take it to get the Agent or Landlord to verify you are renting and what you are paying.

The maximum amount of Rent

Assistance payable depends on a range of factors. Most students get the maximum 'Sharers' rate of Rent Assistance. Sharing generally means you share the use of common areas such as a kitchen or bathroom. If you are 'Single', ie. you have the exclusive use of a kitchen, bathroom and bedroom, or a 'Border or Lodger' you can get a higher amount of Rent Assistance.

To get the maximum amount you must be paying an amount of rent above the threshold Centrelink considers to be minimum rent. Most people in Sydney pay well above this threshold so you'll probably get the maximum amount.

Rent Assistance is not paid if you:

- pay rent to a government housing authority, although in some situations sub-tenants may qualify for Rent Assistance;
- reside in a Commonwealth funded nursing home or hostel; or
- are a single disability support pensioner under 21, without

dependents, living with parents; or

- are under 25, single and live with your parents; or
- get Austudy Payment

Phone your local Centrelink office to find out whether you are eligible for Rent Assistance or check out their policies online at www.centrelink.gov.au.

Tip: Tell Centrelink if you move or your rent changes.

Energy Accounts Payment Assistance Scheme

The EAPA Scheme is operated by the Department of Energy, Utilities and Sustainability to provide emergency help with electricity or gas bills. Under the scheme, charities such as the Smith Family, St Vincent de Paul and the Salvation Army can provide electricity vouchers to people in need, so contact one of these organisations if you need help. The scheme is means-tested, taking into account the whole

household income, and is only available to the account holder. Generally vouchers are only given to people on Centrelink benefits or on a low income. The customer can forward the EAPA voucher together with the balance of the bill to the electricity or gas supplier. The supplier will credit the value of the voucher towards the account. For more information, contact the Department of Energy, Utilities and Sustainability (see Contact Points).

Emergency Relief

Emergency Relief is funded by the Commonwealth Government and is available through more than 300 community organisations across NSW, including charities (the Smith Family, St Vincent de Paul etc.), Aboriginal organisations and neighbourhood centres. Under the scheme, emergency assistance can be provided in the form of food vouchers, prescription vouchers, petrol vouchers, assistance with rent/accommodation, part payment of utility account/s, material assistance such as food parcels or clothing,

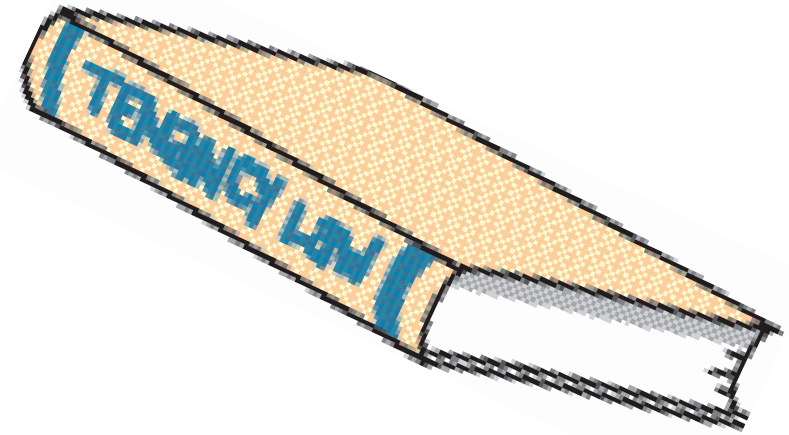
and sometimes cash. Guidelines for eligibility and maximum amounts given are determined by each organisation. Contact the Emergency Relief Co-ordinator in the Department of Family and Community Services for more information (see Contact Points).

Tertiary Student Assistance

If you're a tertiary student contact the students' association on your campus for information about financial assistance for students. Some Students' Representative Councils also give interest free loans.

Financial Counsellor

Financial counsellors can help you assess your financial situation and support you while you make decisions about it. Contact a financial counselling service like Creditline, or a financial counselling referral service like Credit Helpline for a local service (see Contact Points).



THE LEGAL SITUATION

WHAT IS MY LEGAL POSITION?

The legal position of people living in share housing is often not clear and will depend on the particular circumstances of every house. There are three different relationships possible between flatmates.

1. Co-tenancy

Legally, this is where two or more tenants sign the residential tenancy agreement (usually called a lease). As the lease is the agreement between the landlord and

tenants, each of these co-tenants is both jointly and individually responsible for paying the rent and bond and for any damage to the house. This means that any one of these co-tenants can be held wholly liable for any debt owed to the landlord.

Even if your name is not written on the lease, you may still be recognised as a co-tenant if it can be proved that you have taken on the legal responsibilities of a tenant. One way this could happen is if the original tenants have moved out, no-one in the house has their name on the agreement now, and

the landlord has been told this and still accepts rent from you.

If your name is not on the lease, generally the issue will be whether you are a sub-tenant or a boarder or lodger.

2. Head-tenant/sub-tenant

In this situation the sub-tenant enters a written or oral agreement with the head-tenant (the person whose name is on the lease) to have exclusive use of a room and to share other facilities equally. The head-tenant must have the landlord's permission to sub-let and the landlord can refuse to allow sub-letting even though the landlord has no reasonable grounds for doing so.

The relationship of a sub-tenant with a head-tenant is legally identical to a tenant with a landlord, that is, you pay rent to the head-tenant and they must give you rent receipts and ensure repairs are carried out etc. It also means they can issue you with a notice of termination if they want you to move out - and you can take

them to the Tribunal if they fail to meet their responsibilities as head-tenant in the household.

As a sub-tenant, you do not have a direct relationship with the owner of the property or real estate agent. This means that if the landlord gives your head-tenant notice of a rent increase or termination, the head-tenant must in turn give you notice in writing. The notice period will begin from the date you receive written notice from your head-tenant.

Often in share households flatmates don't lock their rooms but bedrooms are recognised as private spaces which the other flatmates do not enter without permission. If this is the understanding in the household, you have what is known as 'exclusive possession' of your room. This could be used as evidence to prove you are a sub-tenant if there is a dispute about your tenancy status.

3. Boarder or lodger

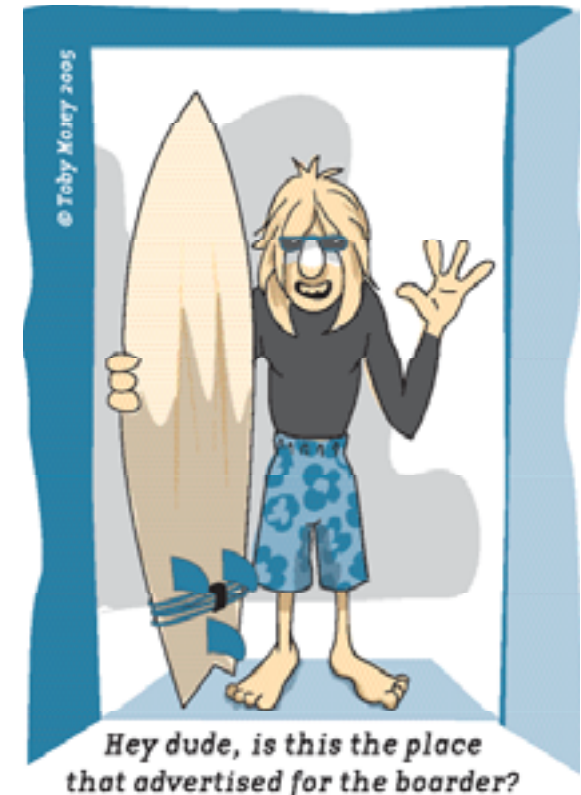
If the landlord keeps overall control of the house, including your room, then you are likely to be a boarder or a lodger. The most typical situation is of course hostels and boarding houses, where you rent a room and can use common facilities but generally have no say in the overall running of the establishment. You might also be considered a boarder or lodger if you rent a room in an owner-occupied house, or in a place run by a head-tenant who takes full responsibility for the house (for example providing furniture, paying all bills etc).

If you receive services from your landlord such as cleaning, washing or providing linen, this may mean you are a lodger. However, it is not necessary to receive these services to be classified as a lodger.

If your landlord provides meals, you would be

classified as a boarder with the same rights (or lack of them) as a lodger.

Boarders and lodgers are not covered by the *Residential Tenancies Act* and have virtually no protection under the law. For example, they can be evicted with very little notice and do not have the right to apply to the Consumer, Trader and Tenancy Tribunal to protect their housing. However, though boarders and lodgers are specifically excluded



from the *Residential Tenancies Act*, the *Act* does not actually define what a boarder or a lodger is. Consequently, some residents of boarding houses and share houses have been able to establish before the Tribunal they were tenants and gain the protection of the *Act*. If you are unsure of your tenancy status please contact your local tenancy service (see Contact Points).

YOUR RIGHTS AND RESPONSIBILITIES AS A TENANT

The following is a broad outline of the legal rights and responsibilities of a tenant under the *Residential Tenancies Act 1987*. This is not intended to be a comprehensive guide on tenancy. For fact sheets and sample letters check out www.tenants.org.au. If you are experiencing problems with your landlord, real estate agent or head-tenant, contact the Tenants Union Hotline, your local tenants advice service or the Tenancy Service of the Office of Fair Trading (see Contact Points).

These rights apply to you if you are a tenant in a share house. If you are a boarder or lodger, you are not covered by the *Act* and should contact your local tenants service for advice if you are having problems with your landlord.

Your Rights as a Tenant

- to have the bond lodged at the Rental Bond Board
- to have privacy without interference from the landlord
- for the premises to be in a reasonable condition, clean and fit to live in at the start of the tenancy
- for the premises to have reasonable security and locks
- for repairs to be carried out in a reasonable time
- to be reimbursed for any urgent repairs paid for by you up to a maximum of \$500 - keep all receipts and seek advice before spending money!
- to be given a copy of the residential tenancy agreement, condition report and renting guide
- to be given rent receipts

- to be given the appropriate notice of visits by, or for, the landlord, for example, two days notice for repairs or maintenance, seven days notice for an inspection by the landlord
- to be given 60 days written notice of a rent increase if you are on a continuing agreement
- to be given the required notice of termination in writing of the tenancy:
 - if you are on a fixed term agreement - 14 days notice in writing asking you to leave at the end of the fixed-term agreement
 - if you are on a continuing agreement, that is, the fixed-term has already ended - 60 days notice in writing, or 30 days notice in writing if the place has been sold with vacant possession
 - if you have breached the agreement - 14 days notice in writing
- for the landlord to apply to the CTTT before eviction, if you do not move out
- to apply to the Consumer, Trader and Tenancy for assistance if the landlord has breached the agreement

- to be notified of any change of name and address of your landlord/agent

Your Responsibilities as a Tenant

- to keep the premises in reasonable condition, including the garden
- to fix any damage caused by you or your guests
- to pay rent on time
- to let the landlord/agent know of any repairs or maintenance that are needed
- to ask the landlord/agent for permission to sub-let the premises or part of the premises before you sub-let
- to ask the landlord/agent for permission to assign your rights under the lease to another person before you assign
- to ask the landlord/agent for permission to have a pet in the premises
- to give the landlord/agent a copy of the completed condition report within seven days of moving in

- not to alter the premises or make additions without the landlord's/agent's written permission
- to give the required notice in writing when you decide to leave:
 - if you are in a fixed-term agreement - 14 days notice in writing that you intend to leave at the end of the fixed term
 - if you are in a continuing agreement - 21 days notice in writing
- to leave the premises in the same condition (except for normal wear and tear) as when you first moved in
- not to alter, remove or add a lock or security device without the landlord's permission
- not to use the premises for illegal purposes
- not to interfere with the peace, comfort or privacy of neighbours
- not to let anyone else on the premises breach the agreement



TIPS FOR AVOIDING LEGAL PROBLEMS

Your rights and responsibilities in a share household depend on your legal status, that is, whether you are a tenant, sub-tenant, boarder or lodger. If a dispute arises and you are not sure what your status is and therefore what your rights are you can apply to the Consumer, Trader and Tenancy Tribunal for a decision on the matter. However, it will help to

avoid problems if you have a clear understanding of the relationships in the house from the beginning. Below are some suggestions for ensuring that you have the legal standing you want in the household:

- If you want to be co-tenants and share all legal responsibilities of the household, make sure all tenants sign the lease. When one tenant moves out and a new tenant wants to move in, make arrangements with your landlord/agent for assignment of the lease
- If you sign the lease and then get flatmates in to share the rent but want to keep control of the house (which would include looking for new flatmates when someone moves out, dealing with the landlord, organising the rent to be paid on time), you should make it clear to your flatmates from the beginning that you are the head-tenant. You should give your flatmates rent receipts when they pay you their rent.
- If you are a head-tenant taking a person into an existing household, it can be dangerous to assume they are a boarder/lodger without rights under the *Residential Tenancies Act*. The new flatmate may be able to prove that they are in fact a sub-tenant, and take you to the Tribunal if you have not treated them according to the law. Anyway, it is a much fairer arrangement to treat a flatmate as a sub-tenant, which gives them some legal rights in relation to their housing.
- If you are interested in living in a share house where every flatmate has equal rights and equal power, you may prefer to treat your flatmates as co-tenants. Remember, however, that unless everyone has their name on the tenancy agreement, it may be difficult to prove you are all co-tenants if it comes to a question of liability for rent or damage, or the right to terminate the agreement.

- If you're moving into a house or flat, ask who is on the lease, suss out the sorts of expectations your potential flatmates have of you, and find out whether you are to be a co-tenant, a sub-tenant or a boarder/lodger. If you particularly want to be a co-tenant, you should ask to have your name added to the lease; if you want to confirm that you are a sub-tenant, ask for a written agreement with the head-tenant confirming your status. This might sound like a lot of trouble, but if things start to go wrong in the share house or you're suddenly given two weeks notice to leave, you'll be glad you did it.

THE DIFFERENT TENANCY RELATIONSHIPS - PROS AND CONS

Co-tenancy

Pros

- No-one in the house can kick you out - you all have to agree to end the lease.

- Everyone on the lease is equal - no-one has the right to 'boss' the others.
- You all have the same rights in relation to the landlord.

Cons

- If there is disagreement between co-tenants about ending the lease, the dispute can't be resolved by the Consumer, Trader and Tenancy - you've got to work it out yourselves.
- You are directly responsible to the landlord, and may be individually or jointly liable for any damage to the house or any debts.

Head-tenant over Sub-tenant

Pros

- You alone deal with the landlord and can decide what happens in the tenancy, e.g. you can ask to get repairs done, you can decide to terminate the agreement, and so on.

- You get to choose your flatmates.
- You can ask flatmates to leave.
- In the case of a dispute with a sub-tenant, you can apply to Consumer, Trader and Tenancy Tribunal for a solution, e.g. an order for a sub-tenant to pay outstanding rent or be evicted.

Cons

- You are liable for the payment of rent, the state of the premises, and for any damage caused by your sub-tenants.
- You have to find flatmates, otherwise you will be liable for the entire rent.
- Legally, you cannot insist that your sub-tenants help you cover the rent if there are empty rooms in the house.
- You must follow the requirements of the *Residential Tenancies Act*, e.g. if you want a sub-tenant to leave, you must give them the required notice in writing.

Sub-tenant

Pros

- You have the protection of the *Residential Tenancies Act* if you have a problem with your head-tenant, e.g. a head-tenant cannot throw you out without giving correct notice.
- You have the right to expect people will not come into your room without permission.

Cons

- You have to abide by the *Residential Tenancies Act*, e.g. you must give your head-tenant 21 days notice if you want to leave (or 14 days notice if you do not want to continue a fixed term agreement or if they have breached the agreement).
- Your head-tenant can ask you to leave (but must give you 60 days notice, or 14 days notice at the end of the fixed term agreement or you have breached the agreement).

Boarder/Lodger

Pros

- Your arrangement is flexible; you can move out with very little notice.
- You're not responsible for the actions or debts of the other flatmates.

Cons

- You can be asked to leave with very little notice.
- You have few possibilities of enforcing any agreement with an owner or head-tenant.
- You don't have the right to control what happens with your room.

Head-tenant over Boarder/Lodger

Pros

- There are few laws covering boarders and lodgers which means you can put up the rent or ask them to leave at any time with very little notice.

Cons

- Because matters cannot be dealt with in the Consumer, Trader and Tenancy Tribunal it can be very hard to recover outstanding debts from a boarder/lodger, or to resolve disputes, e.g. if a boarder damages your property. Claims for debt damages would have to be taken to the local court.
- The boarder/lodger does not have to give much notice if they want to move out - and you will have to foot the bill for future rent if they just up and leave.

GOING TO THE CONSUMER, TRADER AND TENANCY TRIBUNAL

If you are a tenant (or think you may be a tenant) and you're having problems with your landlord/agent or head-tenant, you can apply to the Consumer, Trader and Tenancy Tribunal to have the matter resolved. The Tribunal sits at various locations in Sydney and throughout the State. It was

set up to provide cheap and informal resolutions to disputes between landlords and tenants. Unfortunately it cannot deal with disputes between co-tenants - you will have to try a community justice centre for help with those issues (see Contact Points).

If you make an application to the Tribunal, you will need to provide evidence of your claims. For example, if your landlord failed to carry out repairs over a period of time, you should have copies of letters asking for the repairs to be done, photographs of the problem or statements from witnesses who can confirm your claims.

Before going on to a hearing, you will be given the chance to reach a negotiated settlement with your landlord. This will involve both you and your landlord presenting your evidence and trying to come to an agreement on the matter. A mediator can be provided to assist negotiations if desired.

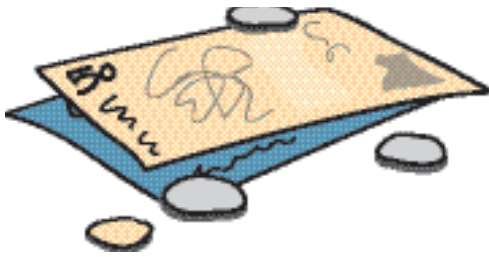
If you can't reach agreement, you go on to an informal or formal

hearing. Most people choose an immediate informal hearing. Only one Tribunal member hears the case and usually there is no legal representation (so there isn't too much legal jargon or legal fees after a small application fee). If you choose a formal hearing, then witnesses can give sworn statements, and the case proceeds a little more like a court.

One problem is that real estate agents often represent their landlords and can be quite experienced in presenting evidence. If you are planning to take a case to the Tribunal, be sure to consult the Tenants Union Hotline or your local tenants service for advice about what you need to do to prepare (see Contact Points).

If your landlord has applied to the Tribunal, make sure you turn up for the hearing. Even if you have no written evidence in support of your case, it is important that you take the opportunity to defend yourself and explain what happened. Your explanation may be accepted on the day, particu-

larly if your landlord has shonky evidence or is difficult to deal with. Your circumstances will generally be taken into account and it may be possible to get more time to move out or to negotiate a settlement.



THE BOND

Getting your bond back at the end of your tenancy can be one of the most difficult aspects of share housing. This is why it's very important that you are clear about your rights regarding the bond and make sure you do the necessary paperwork when you move in. You may still have difficulties recovering the bond but at least you will be in a better position if things go wrong.

Co-tenants

In a co-tenancy the rental bond will usually be paid to the landlord by all the tenants and lodged with the Rental Bond Board (RBB) under all the names. You should receive a receipt from the RBB giving you your rental bond number within 14 days of paying the bond. If you don't, contact the RBB and they will follow it up with the landlord.

At the end of the tenancy, if you have not damaged the place and do not owe any rent you can claim your bond directly from the RBB or if you have damaged the place or are behind in rent the landlord can claim part or all of the bond. If you dispute their claim, you can apply to Consumer, Trader and Tenancy Tribunal to decide the matter. Contact your local tenant's service for advice about what you need to do (see Contact Points).

If the landlord makes no claim on the bond, it should be paid in full to the tenants. In order for

the RBB to release the bond, it will need authority from all the tenants registered with the bond - or if this is not possible, a statutory declaration from the current tenants in the house stating that they are legally entitled to the bond.

Problems can arise in share houses if there is a dispute between flatmates about how the bond should be divided. The difficulty is that the Rental Bond Board and the Consumer, Trader and Tenancy Tribunal can only deal with bond disputes between landlords and tenants, or head-tenants and sub-tenants, and cannot assist with problems between co-tenants. For example, if one of your flatmates causes all the damage that results in money being taken out of the bond by the landlord, you will all lose your bond money not just the guilty tenant's share. The only option you have in this situation is to try to come to an agreement with your flatmate to pay the lost bond to you as a debt - or if this doesn't work, take them to the Local Court to try to get the

money back. However, going to court can be expensive and time-consuming and you will need to decide if the amount is worth the time and cost involved. Mediation with a community justice centre might help you reach an agreement without having to go to court (see Contact Points).

A co-tenant may not cash a bond cheque made out in the names of all the tenants without the authority of the other parties. If a flatmate does cash the cheque without the authority of the others, they could be charged with fraud. However, when it comes to getting your share of the bond back in this situation, again you would have to take your flatmate to the Local Court to try to recover the money as a debt.

Sub-tenants

If you are a sub-tenant, your bond should be lodged with the Rental Bond Board by the head-tenant. Unfortunately, it is quite common for head-tenants not to lodge their sub-tenants' bonds and then decide

for themselves whether to return the money at the end of the tenancy. This is why it's very important to get a receipt from the head-tenant for your bond when you first give it to them. Then if there is a dispute when you are moving out, you have proof that bond was paid and can apply to the Consumer, Trader and Tenancy Tribunal for help if necessary.

Tell your head-tenant that this is what you are going to do if this becomes necessary - and it might encourage them to return the bond without actually having to go to the Tribunal. If you do apply to the Tribunal, the matter can also be referred to the Rental Bond Board and your head-tenant (like any landlord) could be prosecuted and fined for failing to lodge the bond - as well as having to return the bond to you if the Tribunal finds in your favour.

Boarders and lodgers

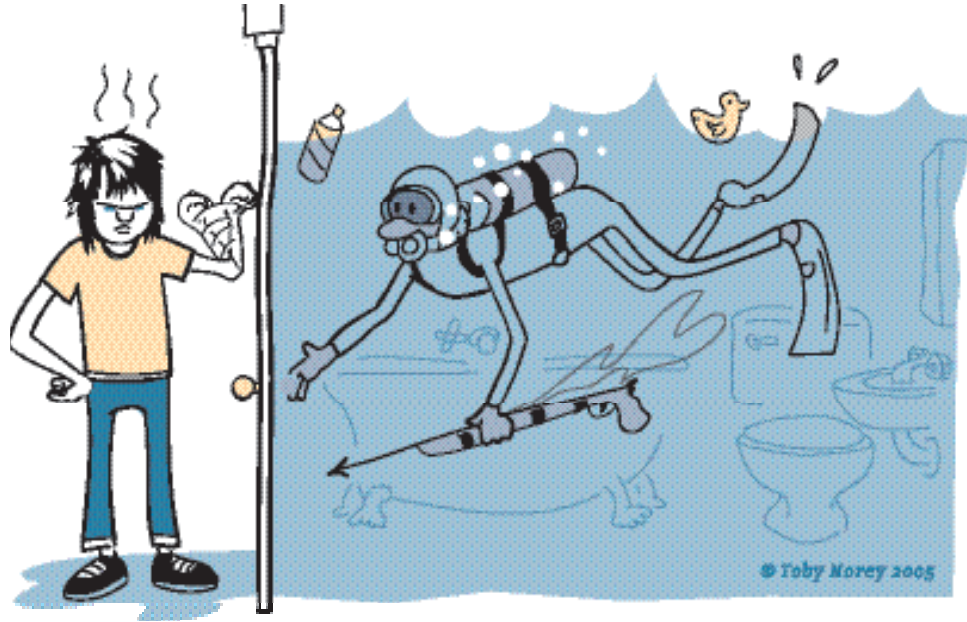
A bond paid by a boarder or lodger does not have to be lodged with the Rental Bond Board and, as there is no landlord-tenant relationship, the Consumer Trader and Tenancy Tribunal cannot help if you have a problem getting the bond back at the end of the tenancy. Your only option if your landlord unfairly keeps the bond would be to try to recover the money as a debt through the Local Court, or in certain circumstances the General (Consumer) Division of the Consumer, Trader and Tenancy Tribunal. Whatever you do, make sure you get a receipt when you pay the bond - at least then you have evidence if there is a problem getting it back. You should also try asking your landlord/head-tenant to lodge the bond with the Rental Bond Board at the start of the agreement. Often they will be quite happy to do this even though they are not required to.

One tenant in, one tenant out, tenancy agreement the same.

In share houses, flatmates often come and go without a new tenancy agreement being drawn up. What usually happens is that the tenant moving in pays the share of the bond of the tenant moving out, either to that person or to the people whose names are on the lease. If you do this, you should always get a receipt for any money paid. You should also arrange to have the names changed on the bond registration at the RBB. You can do this easily by completing a 'Change of Shared Tenancy Arrangement' form available from the Rental Bond Board (see Contact Points) or a Commonwealth Bank. The form must be signed by the person moving out and the person moving in, as well as the remaining occupants and the landlord.

Another common but less formal method is for the person leaving to give you a signed letter saying that you have paid their share of the bond and it now belongs you. This letter will have to be shown to the Rental Bond Board when you claim the bond at the end of the tenancy.

If the original signatories to the bond have moved out and you have no proof that you have paid your share of the bond, you will have to sign a statutory declaration (available from newsagents) that you are legally entitled to the bond in order for it to be returned to you. A letter from the landlord or agent saying that they have been receiving rent from you and recognise you as a tenant will also help to convince the Rental Bond Board that the bond is yours. Consult the Rental Bond Board for further information (see Contact Points).



LIVING IN A SHARE HOUSE

DAY-TO-DAY LIVING ARRANGEMENTS

Living in a share house can be a great way to reduce the costs of renting, make friends and generally share the world of domesticity. But it rarely just happens like that. As experienced sharers will tell you, sometimes a few house rules are needed to keep things running smoothly. Just how structured (or unstructured) the living arrangements will be generally depends on the particular group of people. Before you move in it's important to find out what the situation is and decide whether you think you will fit in.

Living arrangements are never set in stone and will change as flatmates come and go or just with the different stages in the year. For example, things may fall apart a bit during holidays, or in a student house, around exams. It sounds corny, but communication is often the key to a successful and happy share household.

Generally, current tenancy laws fail to deal with share housing arrangements, which is all the more reason why you should put effort into making things work. Everyone in the house needs to be clear about what is going on and committed to ensuring that the house functions in a fair and just manner for everyone concerned. This need not be a difficult task, but it should be discussed and agreed on from the outset.

Share houses can be organised in many different ways from total independence to the happy family. The main issues to work out at the beginning will be the payment of rent, food and kitty arrangements, storage space, household chores and bills.

Paying the rent

The golden rule is to always ask for or give receipts for any rent or bond paid to, or by, flatmates.

- If you are co-tenants paying rent to your landlord or agent, always get receipts.

- If you are the head-tenant, you should give rent receipts to your flatmates when they pay their rent. If they pay you bond at the beginning of the tenancy, you should give them a receipt and lodge it with the Rental Bond Board.
- If you are a sub-tenant paying your rent to the head-tenant, make sure they give you receipts, and keep them somewhere safe. This will ensure that if confusion arises about who's paid, you can prove you have paid your share.
- If you pay a tenant who is leaving their share of the bond when you move in, make sure you get a receipt so you can claim your share of the refunded bond when it comes time to go. Alternatively, you could arrange with the Rental Bond Board for the bond to be transferred to your name by filling out a change of shared tenancy form.

A Golden Rule of Share Housing

Always get a receipt for any rent or bond paid by flatmates.

Food and kitty

Share households vary enormously in the way they purchase food, cleaning products and other household items. Some households leave spending to an honour system or to monitoring receipts. Another common system is for all

flatmates to contribute a certain amount of money per week into a 'kitty'. These days a standard kitty seems to be around \$30 - 40 per person per week to cover basic foods and other necessities. This arrangement works best when combined with co-operative cooking and shopping. A smaller kitty might cover only basic food stuffs such as butter, milk, bread and cleaning products, with individual flatmates buying their own food for main meals etc.



Whaddaya say we sort out a cleaning roster, guys?

Generally, the kitty should only be used to cover the cost of common food that every-one will use. It is not for emergency loans, nor for cigarettes or alcohol, and is best restricted to major meal foods rather than that favourite snack which the rest of the house detests. While the quickest way to disrupt domestic bliss is to abuse the kitty system, it's also important to realise that everyone has different ideas about what is a vital household purchase; it doesn't help to become obsessive about how the kitty is spent.

Chores

Like it or not there are certain tasks which have to be done for a household to continue functioning. The toilet is not self-cleaning, the garbage has to go out eventually and disposable plates are not the answer to the washing-up saga. Floors, bathrooms and lawns also need looking after.

Many households find that a roster for certain tasks, especially cooking and washing-up, is the best way to ensure that chores are completed fairly. Others find that a more flexible honour system is sufficient. Some households employ a system where people put down a tick every time they do the washing-up or some other chore.

Again it's necessary to realise that if you want the advantages of having flatmates, you will have to do your share in the upkeep of the household. If you find that one or more of your flatmates is failing in their duties, it is not unreasonable to remind them politely that the jobs have to be done. However, rude notes left under people's doors are probably unproductive. If you feel there is a problem developing, it's a good idea to get together and discuss it before things get out of hand. Try not to let this discussion turn into a hunt for someone to blame.

Basically, living in a contented household means finding people who have similar ideas about cleanliness and domestic arrangements. If the differences are too great, it may be difficult to continue living together.

Paying the bills

A major point of conflict in a share house is often about paying bills. It is vital to decide when you move in who is to be responsible for paying bills and how the bills are to be divided.

Generally, bills such as gas, electricity and water are divided equally between all members of the household. However, if one person has an appliance which uses a lot of electricity, water or gas, then maybe they should pay extra. If you are having services connected, it's important to think carefully about whose name the account will be in. The person who has their name on the account will be held liable by the service provider for payment of the bill and may have trouble getting access to future services if the bill is unpaid for any reason. It's a good idea for different flatmates to organise different services in order to spread the financial responsibility around. In this way no one person will be left with responsibility for all the bills if things should go wrong in the house.

Water bills

In most parts of NSW tenants now have to pay for water usage; this will be included as a condition of your lease. Your landlord/agent will be sent the water bill and they should give you a copy so you can check the amount. If not, ask to see the bill before paying - and don't pay the service charge as this is your landlord's responsibility. (The different charges are listed separately on the bill.) Water bills usually come quarterly, and should not be too expensive. If you are finding it difficult to pay, you should discuss the problem with your landlord. Don't ignore the debt and hope it will go away.

If you are under the old system of water rates, the only water you have to pay for is 'excess water' use. This amount will also be listed on the water bill.

Tip: Buy a big diary or exercise book so you can write down when bills are due, and who has paid their share. It is also a good idea to tally local phone calls as you make them and note down the details of any STD or ISD calls. Even though STD and international calls are itemised on your account, it helps to record who made the call so that when you get the phone bill you don't spend hours puzzling over who rang Medlow Bath at 2 am for 37 minutes. This book can also double as the phone message book.

Electricity, gas, phone and internet bills

Bills for electricity, gas, phone, and internet usually arrive either every month or three months. Often these can be quite large and flatmates on tight budgets can

sometimes have difficulties paying their share all in one hit - which is why these bills cause so many problems. There are ways to reduce the problem. For example, you could all decide to put some money away every week for bills, so that when one arrives you have some money saved to cover it. Alternatively, you could arrange a pre-payment plan with these services. Pre-payment means that you pay a certain amount each week or month, which gets credited to your account. When the bill is issued, the credit is taken off and you only have to pay the remainder.

In the following section is a brief outline of options offered by Sydney services. Phone your local office for more information

ENERGY AUSTRALIA AND INTEGRAL ENERGY

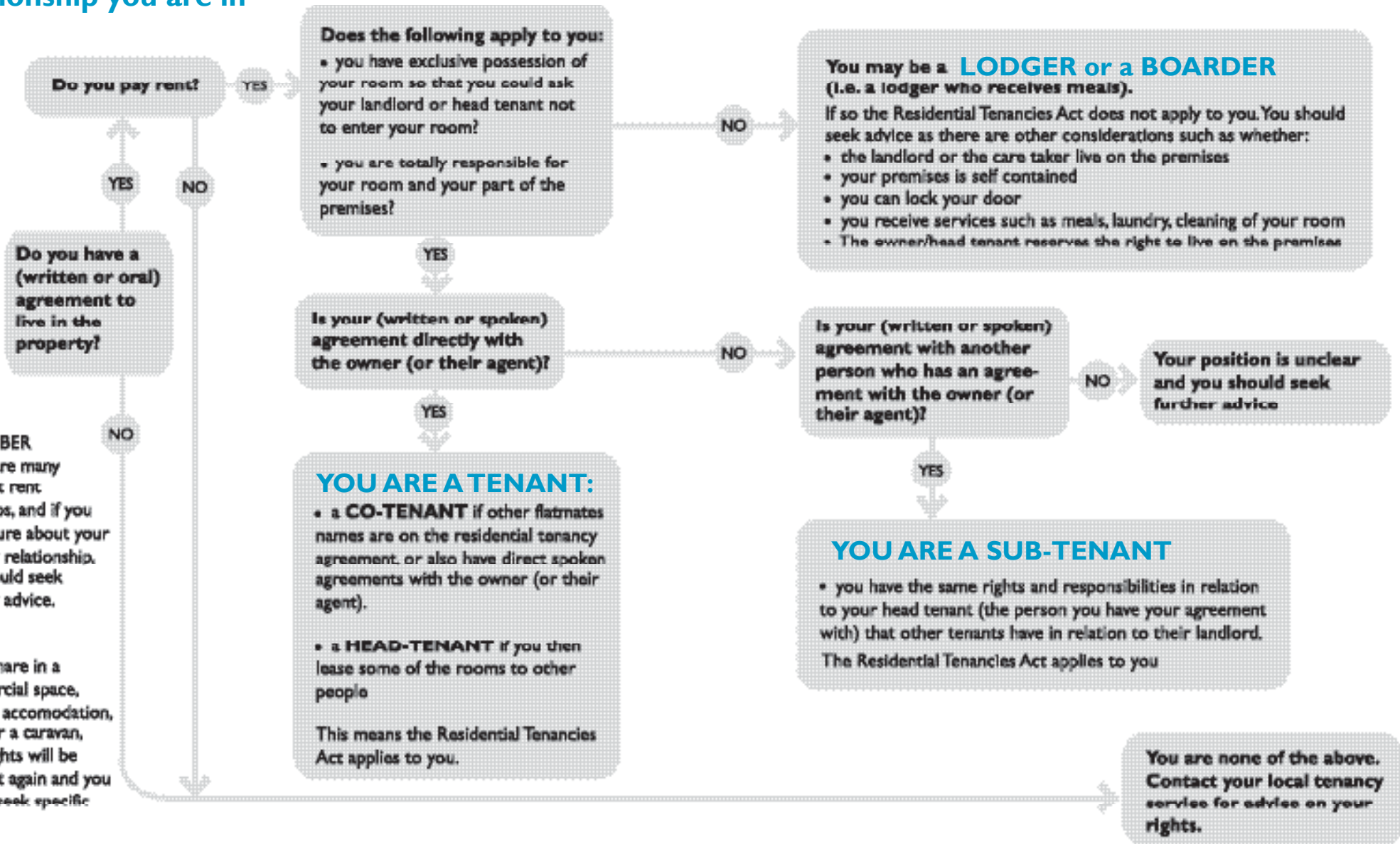
- You can pay whenever you like and as much as you like, to contribute towards your bill as long as the bill is paid before it is due.

How to figure out what tenancy relationship you are in

START HERE

REMEMBER
There are many different rent scenarios, and if you are unsure about your tenancy relationship, you should seek tenancy advice.

If you share in a commercial space, student accommodation, a pub or a caravan, your rights will be different again and you should seek specific advice.



- If you know that you are going to be unable to pay a bill on time, you can negotiate an installment plan to pay it off over an extended period of time.
- If you are on Centrelink benefits you can nominate an amount to be forwarded to Integral Energy (only) before you receive your fortnightly payment.

AGL GAS COMPANY

- Advance payment plans can be requested.
- Negotiate extensions before the due date. Whether you get it or not depends on your circumstances and payment history.

TELSTRA

- Telstra offers a Budget Payment Card which allows you to make regular payments to build up credit against your bill.
- Telstra will usually give extensions on the due date for payment of quarterly bills. For example, they may ask that half the bill be paid by the due date

and the rest paid over the next couple of weeks. For sums over \$1000 it can be harder to get an extension. It is likely that Telstra would recommend an STD and ISD bar on your phone until the bill is paid off.

- Instead of getting the bills four times a year, you can request monthly phone bills. However, you cannot get extensions on monthly bills.

TIP: There are stories about non-account holders changing STD and ISD bars then running up a huge bill and leaving the account holder to pay. A safeguard against huge phone bills is to have a permanent STD and/or ISD bar on your phone. You should write to Telstra to request this and insist that the bar can only be removed if authorised in writing by the person who holds the account. If the account is in your name, you are liable. Always keep a copy of your correspondence with Telstra. Telstra also has a prepaid card which may be utilised for international and mobile calls.

- Telstra has a scheme where for outbound calls a person enters a code before entering in the number and other flatmates have different codes. This means that each person will receive a separate bill. This is a good idea for share houses, but make sure you check if this system incurs an additional charge.

OPTUS

- There are no pre-payment plans however you can go to the post office and pay bits each week or month to build credit against your bill.
- Monthly bills are issued for sums over \$50. A quarterly bill is sent where the sum is less than \$50. Extensions may be granted if you are having difficulty paying the bill, but make sure you apply before the bill is due, as late fees are applicable if you haven't paid within 45 days of the due date and you haven't called to let Optus know.



What happens if a flatmate won't pay a bill?

If a flatmate won't pay bills or leaves without paying bills, your options are limited. Problems like this between flatmates are not covered by the *Residential Tenancies Act* so you cannot apply to the Tribunal for help.

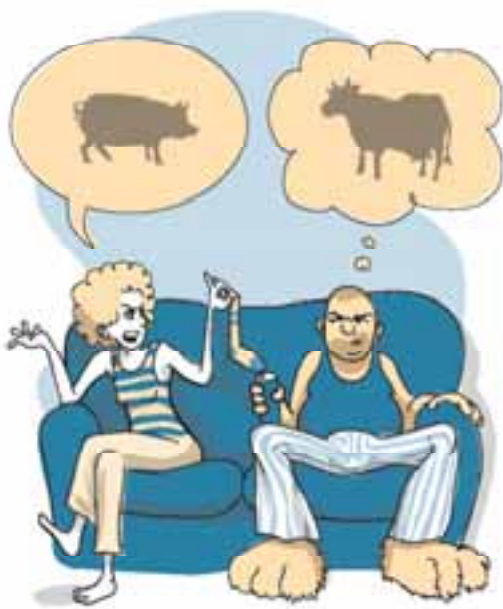
It is best if possible to try to work it out between yourselves. Mediation in a community justice centre might help if you can't get anywhere on your own. (see Contact Points). If your flatmate is leaving, you might be able to come to an agreement to keep all or part of their bond to cover the bills. However, legally you do not have the right to use bond money without their permission to cover anything but rent arrears and damage to the house. This is because the bond is part of the tenancy agreement and does not cover household bills.

If you cannot reach agreement, the only option is to sue through the Local Court to recover the money. This can be time-consuming.

ing and expensive, for example, it costs between \$63 - 220 to lodge a claim to recover a debt (known as a 'statement of liquidated claim'). A Local Court chamber magistrate or community legal centre can give you advice about what you need to do. Sometimes you might have to decide it is cheaper and less traumatic to write the debt off, rather than going to court.

CONFLICT IN SHARE HOUSES

Living with a bunch of other people is never going to be hassle-free. Even in the best share houses, relationship problems can arise. Later in this guide there is a section on moving out which explains the legal issues when a share house breaks up. However, it's best to do what you can to avoid problems *before* the house falls apart.



#Tilly Kasey 2013

Each flatmate needs to make every effort to have respect for others and be tolerant of differences in the household. Try not to engage in clearly annoying behaviour - it's highly likely that one of your flatmates will object if you start shouting or playing loud music at 3am on a Tuesday morning. It's also not a good idea to have numerous friends to stay without checking it out with your flatmates first. If you're in a filthy mood, try not to take it out on the others - go for a walk instead.

Unfortunately, despite the best intentions and efforts, arguments will occur. These might be between two flatmates who have excessively different politics; or between a couple who are in the middle of a messy break-up; or between one flatmate who wants to buy a dog and the rest of the household who absolutely do not want a dog around. Share house relationship problems can quickly escalate into full-scale conflict. And it's hard to keep your temper when you have to see the other person every day over the breakfast table.

How to deal with non-violent conflict

If problems do develop in the household, you and your flatmates should think about going to a community justice centre (CJC) for free help. These organisations provide mediation services to assist people in dispute. You and your flatmates will be able to discuss the problem in the presence of a mediator, who will then help you come to a resolution. Both parties have to be

willing to participate in order for mediation to work, but if flatmates want to keep the house together there's a good chance you will be able to find a solution to the problem. There are CJsCs in a number of areas in NSW. See Contact Points for the central CJC phone number.

Dealing with conflict in share houses

1. If you're in conflict with a flatmate, and assuming there is no threat of physical violence, deal with them face-to-face if possible. This is always better than sending letters and messages, banging on walls, throwing things, or talking to other flatmates about them.
2. Plan to talk to your flatmate at an appropriate time and allow enough time to do it. Don't start when they are about to go to work, or you've had a terrible day or just before you have to cook dinner. It only adds to the frustration. Find a place where you can both sit comfortably and quietly for a while.

3. Think beforehand about what you want to say. It's important to state clearly what the problem is and how you feel about it.
4. Don't blame your flatmate for everything or begin with your opinion of what should be done. Avoid judgemental or accusing statements, e.g. 'You're a demanding/lazy person ...'. This will only make it harder for them to take on what you're saying.
5. Don't interpret their behaviour. That is, don't say 'You're not doing the washing-up just to piss me off'. Instead say 'When you don't do the washing-up, I get angry because it means I have to do it all'.
6. Give your flatmate a chance to tell their side of the story and what they think has been happening to cause the trouble. Be prepared to relax, listen and take everything in. It may be revealed, for instance, that the reason they won't do the washing-up is because they've cleaned the bathroom every week since you moved in and are pissed off about that!
7. Let your flatmate know that you hear what they're saying, even if you don't agree with what they say. Tell them you're glad you're talking about the problem.
8. When you've reached this point, try working on the dispute together. Work out what you both have to do to resolve the problem.
9. Get the whole problem out in the open. Don't leave out the part that seems 'less important' or that is the hardest to talk about. These are the things that will ruin any solution you come up with.
10. Agree to check with each other at a specific time in the future to see how things are going and don't forget to do it.
11. If you find it is too difficult to talk to your flatmate or find that each time you try, you end up shouting or getting upset, call one of the community justice centres to try to arrange a mediation session (see Contact Points). However, both of you will have to

be willing to participate in order for mediation to work.

Domestic violence and share housing

The suggestions above will be of no help if a situation has turned violent. The most important thing to remember is that just because you live with someone this doesn't mean they have any right to subject you to emotional violence, physical violence, sexual harassment or sexual abuse.

Violence between flatmates, whether or not they are in a sexual relationship, is almost always against women. In 1995, 43 per cent of assaults in NSW where victims were female occurred inside the home (Women's Refuge and Referral Service, 1997).

Violence and harassment can have a severe impact upon a person's housing and lifestyle. If you are subjected to this sort of behaviour by another flatmate, whether you have a sexual relationship with them or not, you should seek an Apprehended Violence Order (AVO). Contact the chamber

magistrate at your Local Court for advice about what you need to do to apply for an order. If you are afraid for your safety at any time, call the police immediately. If they seem reluctant to assist you, ask to speak to the police station's Domestic Violence Liaison Officer.

If your landlord takes you to the Consumer, Trader and Tenancy Tribunal because you have fallen behind in your rent during the period of violence, be sure to explain the situation to the Tribunal. The Tribunal will take this into account when deciding on what orders to make.

If your name is on the residential tenancy agreement and you want to leave the house quickly because of violence from a flatmate who is not on the tenancy agreement you can apply for early termination of the agreement to the Consumer, Trader and Tenancy Tribunal. You need to argue that due to the "special circumstances" of your case you are facing "undue hardship" and therefore you need to leave early.

However, if the person who is being violent towards you is a co-tenant (and is also on the tenancy agreement), you cannot usually apply to the Tribunal for termination. However it is hoped that by co-tenants making applications regardless the Tribunal may be forced to change. As ideally, the laws would allow a co-tenant facing violence from another co-tenant to end the tenancy. Please contact your local service for more advice if you are in this situation.

If you need to leave your flat because of domestic violence and are eligible for public housing, you can apply to the Department of Housing for emergency housing. For advice about what you should do in these situations, contact the Tenants' Union Hotline or your local tenants' service (see Contact Points).

LANDLORD PROBLEMS - A FEW TIPS

Some of the most common problems flatmates face as tenants are the landlord/agent's refusal

to do repairs, provide reasonable security or respect your privacy. The following are some suggestions for getting the reluctant landlord or real estate agent to do what they should. For more details about your rights, contact the Tenants' Union Hotline or your local tenants' advice service (see Contact Points).

- Notify your landlord/agent as soon as you become aware of a problem. Complain in person or on the phone and then follow up with a letter confirming what was said. Make sure you keep a copy of the letter. If you can, take someone along to act as a witness when you first go to see the landlord/agent about the problem.
- If nothing happens, keep phoning and sending follow-up letters. Your letters should clearly outline the problem, what you want done and the history of your complaint, i.e. when you first made contact etc. This will make your case stronger if you have to apply to the Tribunal or

another dispute body to deal with the problem. Keep a copy of all your letters. You can find sample letters at www.tenants.org.au.

- Quote the relevant sections of the *Residential Tenancies Act* to your landlord/agent. You can find the Act at the NSW Legislation website (www.legislation.nsw.gov.au) or Austlii (www.austlii.edu.au). The Act is not hard to read or understand.
 - Some real estate agents have a 'complaints' book. Make sure your complaint is put in the book, as you can then ask for it to be produced as evidence at the Tribunal.
 - Keep a diary of your conversations with the landlord/agent. Buy an exercise book specially for this purpose and keep it safely with your tenancy agreement and bond receipt. Record the dates of conversations, who you spoke to and what they agreed to.
- Keep a printout of all e-mails sent and responded to. Be warned that e-mails are often written in the heat of the moment and sometimes people say things that they do not mean, or understand their legal consequences. E-mails should remain formal and passionless. To avoid agents and landlords claiming that the void of cyber space swallowed the e-mail and it was never received, always try and follow up with a formal letter which outlines the key points discussed and decided upon.
 - Do not stop paying rent at any stage regardless of what the landlord/agent does or doesn't do. Fourteen days rent arrears is sufficient grounds for your landlord to give you 14 days notice to leave. It's much safer and much more effective to apply to the Tribunal for a solution.
 - Don't move out without giving the required notice as you may end up losing your bond.

- Contact a tenancy adviser, community legal centre or community worker for advice and assistance if you feel you are getting nowhere with the landlord/agent (see Contacts).
- Contact your local Member of Parliament or some other influential person such as a member of the local council. Explain your situation and ask if they would write a letter to your landlord/agent to add extra pressure.
- Apply to the Consumer, Trader and Tenancy Tribunal for a remedy (see Contacts). At the moment more landlords than tenants are using the Tribunal. It's your right to get assistance from the Tribunal - take advantage of it!

MOVING OUT (or being kicked OUT)

The following section looks at what the legal situation is if you are moving out or being evicted - or want a flatmate to go. This is the most difficult time in any share housing situation - and it helps to know what your rights are.

Whatever the problem, it is always best if possible to try and work out a solution together rather than having to go to the Tribunal. In law the relationship between head-tenant and sub-tenant is the same as that between landlord and tenant, which means that there are notice periods

for your protection, but of course it's not the whole story. You are rarely friends with your landlord; you rarely live with them and share the kitchen every day! If you can't resolve the problem try to negotiate a date to move out that suits everybody. A community justice centre may be able to assist with your negotiations (see Contact Points).

whether you are in a fixed-term or continuing agreement:

- If you are on a fixed-term agreement, the landlord/agent only has to give you 14 days written notice that the agreement will terminate at the end of the fixed term. However, they cannot make you leave during the fixed term unless you have seriously or persistently breached the lease.

SCENARIO 1: YOUR LANDLORD TERMINATES THE AGREEMENT AND ...

(a) ... you're a co-tenant or a head-tenant

If a tenant is a co-tenant or head-tenant, they are covered by the *Residential Tenancies Act* and the procedure for eviction is clear. The eviction process consists of four parts:

1. The landlord must give a notice of termination in writing which states the reason that notice is being given. The period of notice they have to give you depends on

- After the fixed term of the agreement has expired, your lease automatically becomes what is known as a continuing agreement. From this point, the landlord must give you 60 days written notice of termination for a no-cause eviction (i.e. you haven't breached the lease), or 30 days if the place has been sold with vacant possession. If you think the landlord is evicting you as a pay back for asserting your rights, you can challenge the eviction in the Tribunal. Contact your local tenancy service for further advice.



B-but...you can't throw me out -
I'm the head tenant!

- If you have breached the lease either during the fixed-term or continuing agreement, the landlord only has to give you 14 days written notice of a termination. Examples of a breach are if you are more than 14 days behind in rent, or you have seriously damaged the property.

2. If you have not moved out by the date specified on the notice of termination, the landlord can (within 30 days) apply to the Consumer, Trader and Tenancy Tribunal for orders of termination and possession of the premises, i.e. an eviction order. A hearing will be held at the Tribunal and a decision will be made as to whether or not you should be evicted. The Tribunal will look at the circumstances of the case in making a decision, including the nature of the breach (if there was one) and the reasons why the breach may have occurred, for example, if you are experiencing hardship which may have affected your ability to keep up-to-date with the rent.

Be sure to attend the hearing as you might be able to negotiate to have the notice withdrawn or for extra time to move out. If you don't turn up and take the opportunity to explain the problem, you can guarantee the case will go against you. It will help your claims if you have been able to catch up with the rent before the hearing. Contact the Tenants' Union Hotline or your local tenants' service for advice about how to prepare for a Tribunal hearing (see Contact Points).

3. If the Tribunal terminates the agreement, it will make an order ending the agreement and an order giving possession of the premises to the landlord. The possession order will usually give you between 5 and 28 days' to leave the premises, but not in all cases. If you're not out by the date in the order, the landlord can get a 'warrant for possession' from the registry of the Tribunal and go to the Sheriff's Office. A Sheriff can remove you from the premises, with police help if needed. If the

landlord/agent attempts to do this before the Tribunal makes an order of possession, they are committing an illegal act. This is known as a lock out and can result in a fine of up to \$22,000 for your landlord.

4. The agent or landlord should not remove your goods from the premises for at least two working days after the enforcement of the warrant. It is very important to collect your goods within this time. You should arrange with the landlord for a time to collect them.

- If two days have elapsed after you have left, then the landlord may store the goods of monetary value and destroy the rest (this includes valuable documents such as photos). The landlord must give you written notice that your goods have been stored. The landlord should also publish in a newspaper within seven days after the goods are stored a notice that the goods are being held.

- If you fail to collect your goods after they have been stored by the landlord for 30 days, the landlord can dispose of the goods by public auction. He or she can retain the reasonable costs of removal, storage and sale of the goods, but must return the balance of the monies to you.

• It is illegal for the landlord to refuse to return a former tenant's goods because they owe rent or monies other than the reasonable costs of removal and storage. If the landlord refuses to allow you to collect your goods, you should apply to the Consumer, Trader and Tenancy Tribunal for an order that the agent or landlord give you access to your goods.

- If the agent or landlord disposes of your goods illegally or damages them, you can apply to the Local Court for compensation. You should contact your local community legal centre for further advice (see Contact Points).

(b)... you're a sub-tenant

A head-tenant must give their sub-tenants the same notice as the landlord is required to give them (i.e. 60 days or 14 days as explained above). So, when a head-tenant gets the news that the landlord is terminating the tenancy, they must pass the notice on to you straight away - and this notice should be in writing. After that, the same procedure as in the above scenario applies.

**(c) ... you're a boarder/
lodger**

As a boarder or lodger you are not covered by the *Residential Tenancies Act* and have virtually no protection against eviction. Generally, only 'reasonable' notice is required before you can be required to leave. What is reasonable depends on the particular circumstances. The only way to determine whether you were given reasonable notice is to sue the landlord in court. A court would take into account many things including: the length

of occupation; the interval of rent payment; the type of premises and the difficulty moving. Generally, reasonable notice would be the same period for which you pay your rent (e.g. if you pay rent fortnightly, two weeks notice would be required).

If you decided to take action in the Local Court, the only remedy you could obtain would be compensation for breach of contract. Court action is expensive and will take too long to solve the immediate problem of losing your housing.

The story gets worse. As a boarder or lodger, you have no protection against being locked out of your premises. It is an offence to physically evict someone who has good reason to be on the premises, however, this does not stop the landlord locking you out when you pop down to the corner shop to buy some milk!

There is little you can do to protect your possessions if you are locked out. The landlord could be charged with stealing

if they refuse to return your goods. It is possible to sue the landlord in court but this can be expensive. Contact the Tenants' Union Hotline, your local tenants' service or a community legal centre for advice in this situation (see Contact Points).

If you are threatened with eviction, there is one argument you should keep in mind. *You may in fact be a sub-tenant rather than a lodger or boarder and be covered by the Residential Tenancies Act.* It is important to look at the rights and obligations that you have, rather than what the landlord has labelled the agreement, such as a licence rather than a residential tenancy agreement. If in doubt, you can apply to the Consumer, Trader and Tenancy Tribunal for an order regarding an issue such as the landlord to stop breaching your right to quiet enjoyment of the premise, and the Tribunal will determine whether you are covered by the Act as part of the proceedings. If the application is successful and the landlord or head-tenant still locks you out, they

may face a fine of up to \$22,000. If you have been recognised as a tenant, the landlord must also deal with your possessions according to the *Residential Tenancies Act*. (See scenario 1 (a))

**SCENARIO 2: YOU WANT
TO LEAVE AND ...****(a) ... you're a co-tenant or
head-tenant**

Difficulties can arise where you decide to move out of a shared tenancy, but the remaining occupants want to stay there. There is no set period of notice that you are required to give co-tenants if you are moving out but it is important to remember that if your name is on the lease you are legally liable for rent until your name is removed. This means that you should make arrangements to 'assign' your interest and responsibility under the agreement to a new tenant or the remaining co-tenants before moving out.

Assignment is permitted under the *Residential Tenancies Act* and

requires the consent of the remaining co-tenants and the landlord. (See p80 for a sample assignment form.) Alternatively, you could ask your landlord and your former flatmates to end the agreement and for a new agreement to be signed between them.

If these formal options are not possible, you should write to the landlord or agent informing them that you are leaving, that you wish to discharge all your responsibilities in the tenancy, and that the remaining tenants have undertaken to pay the rent (remember to keep a copy for your records). This will not end your legal responsibilities but can be helpful in reducing your liability for damage or rent owing if there is a dispute after you leave.

Ultimately, if you do not legally remove yourself from liability, you could end up being chased by the landlord or real estate agent for any rent owing. You could also be placed on a “bad tenant” database, which may make it difficult to rent

a place in the future (See Bad Tenancy Record).

You should make sure that your name is removed from any telephone, electricity or gas accounts. If you don’t, you could be held responsible for any bills that come in after you leave and may have difficulty getting services connected later if your flatmates leave any unpaid accounts. Contact the relevant services for information about closing accounts (see Contact Points).

If all the tenants decide to end the agreement and leave the house, you need to give your landlord 21 days notice in writing if you’re on a continuing agreement, or 14 days at the end of a fixed-term agreement.

If you are in a fixed term agreement, generally you’re stuck there unless you can get someone to take on the lease, or are prepared to pay the costs for breaking the agreement early. If you desperately need to move out, for example due to violence from a flatmate

or other serious hardship you can apply to the Tribunal for an order terminating the residential tenancy agreement between you and your landlord. You will have to show that in the “special circumstances” of the case you would suffer “undue hardship” if the agreement were not terminated.

It’s a good idea to write to your landlord/agent at the same time telling them that you intend to apply to the Tribunal under this provision. If the landlord/agent agrees to take your name off the tenancy agreement, you should get this in writing. Contact your local tenants’ service for more information about this law (see Contact Points).

(b) ... you’re a sub-tenant

A head-tenant/sub-tenant relationship is treated in the same way as a landlord/tenant relationship under the *Residential Tenancies Act*. This means you have to give 21 days written notice to your head-tenant if you want to

leave. It’s rare for a sub-tenant to have entered into a fixed-term agreement at the beginning of the tenancy, but if you have you must give 14 days notice at the end of the term or if you want to leave before the fixed term ends you could be liable for certain costs. This can include paying rent until a new tenant is found and any advertising costs involved.

If however you can show there are special circumstances which would cause you to suffer undue hardship if your head-tenant won’t allow you to break the tenancy agreement early, you can apply to the Tribunal for an urgent termination. Again, contact your local tenants’ advice service for information on this law.

If your head-tenant has breached the agreement in some way (for example, by invading your privacy or failing to get repairs done), you should contact the Tenants’ Union Hotline or your local tenants’ service for advice about terminating the agreement (see Contact Points).

(c) ... you're a boarder/ lodger

Boarders and lodgers are required to give 'reasonable notice' which generally depends on how regularly you pay rent. For example, if you pay fortnightly you would only need to give two weeks notice on the occasion of paying rent; if you pay weekly, one week's notice would be adequate. The meaning of 'reasonable' is very much open to interpretation in the law but it's worth giving adequate notice to prevent bad blood and avoid problems with the return of your bond. It can also be a good idea if possible to get your landlord/head-tenant to give you a written agreement when you move in to help avoid disputes about appropriate notice and return of the bond when leaving.

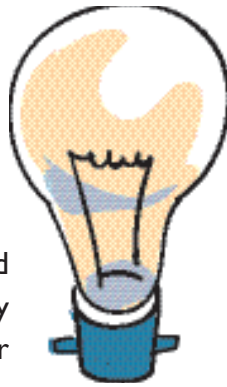
SCENARIO 3: A FLATMATE MOVES OUT LEAVING YOU (AND THE OTHER FLATMATES) TO PAY ALL THE RENT AND ...

(a) ... you're a co-tenant

Co-tenants are said to be "individually and jointly liable" for the rent. This means that if a flatmate leaves and you continue to occupy the rented premises, then you are responsible for all the rent until a new tenant moves in or you decide to end the lease. You need to have a new tenant approved by the landlord before they move in.

If you are still within the fixed term of your agreement, it's probably best to try to get a new flatmate in as soon as possible. If you have problems, try explaining the situation to your landlord and asking them to reduce the rent until another tenant can be found. However, they are under no obligation to do this and may try to evict you if you fall two weeks behind in the rent.

If the fixed term of the agreement has expired, you might decide



to just give 21 days notice and terminate the agreement. In this case, you could use some of your bond to cover the rent owing.

If you are left paying all the rent yourself, you could try to get compensation from your previous co-tenant. This would involve lodging a 'statement of liquidated claim' through the local court and trying to recover the money as a debt. However, taking court action can be difficult, time-consuming and expensive. You should get advice from a community legal centre or chamber magistrate before you go ahead. (See Scenario 2(a) for more information on the liability of co-tenants.)

(b) ... you're a head-tenant

If a sub-tenant leaves without giving correct notice (21 days), the head-tenant/s may pursue compensation for loss of rent through the Consumer, Trader and Tenancy Tribunal in the same way that a landlord can if a tenant abandons their lease. (See

Scenario 1(a) for details.)

(c) ... you're a sub-tenant

If your head-tenant walks out and has no intention of returning, the names on the residential tenancy agreement will no longer match the tenants actually living in the house. The problem is that you, as a sub-tenant, do not have a legal relationship with your landlord.

The best way to resolve this problem is to let your landlord/agent know what has happened. (Do this in writing - and keep a copy of the letter.) If you assure them that you are interested in staying and can pay the rent, they might allow you to stay as a tenant. You and the landlord may decide to sign a new tenancy agreement - but be warned: the landlord/agent may seize this opportunity to increase the rent!

If you have been paying rent and the landlord/agent knows the people whose names were on the tenancy agreement have gone, you could apply to the Tribunal to

be recognised as a tenant.

(d) ... you're a boarder/ lodger

With the head-tenant gone, you have very few rights in relation to your landlord unless you inform them of the situation. Again, the landlord may agree to you staying there, in which case you become a tenant and should be asked to sign a residential tenancy agreement. You could also apply to the Tribunal to be recognised as a tenant (see Scenario 3(c) above).

SCENARIO 4: YOU WANT ONE OF YOUR FLATMATES TO LEAVE AND ...

What happens if tensions or personal conflicts develop within a shared household to such an extent that the house can no longer operate? What if flatmates find they are incompatible? Can one group of flatmates insist that another flatmate leaves? Can you evict a flatmate?

(a) ... they are a co-tenant

If a flatmate's name is on the lease then you cannot force them to leave. The *Residential Tenancies Act* does not cover the legal relationship between co-tenants which means you cannot go to the Tribunal over a dispute with a co-tenant.

Basically you have two options. First, you should try to resolve the dispute by discussing the problem and coming to an agreement for one or more tenants to leave. If you find it difficult to reach a solution, you can get help with mediation through a community justice centre. If one or more of the co-tenants agree to leave, they should sign over their legal rights to the remaining co-tenants or to the new tenants (see Scenario 2(a) or p80 for a sample assignment form).

If the problem can't be resolved, the second option is to end the tenancy. This requires all the flatmates to agree to move out, which can be very traumatic for

everyone involved and could be expensive if the fixed term of the lease has not yet expired and you are held liable for rent and other costs. If you are in a continuing agreement, 21 days written notice needs to be given to the landlord/agent.

Clearly the law offers co-tenants no adequate solutions to this kind of problem. Your best option is to try to resolve the dispute before you are forced to break up the household. Keep talking as long as possible and don't let egos get out of hand!

(b) ... they are a head-tenant

If you are a sub-tenant and you want your head-tenant to move out, you're going to have a tough time unless they agree. The whole point about being a head-tenant is that they can choose who they want to live with, not the other way around. If the head-tenant has breached the *Residential Tenancies Act* for example, by harassing you, not organising for repairs to be done or not giving

you rent receipts when you've asked for them, then you have the right to take them to the Consumer, Trader and Tenancy Tribunal. The Tribunal can order the head-tenant to stop breaching the *Act*, but they can't order the head-tenant to move out when the complaint is made by a sub-tenant.

(c) ... they are a sub-tenant

If you are a head-tenant and want a sub-tenant to leave, you must abide by the *Residential Tenancies Act* and if no fixed term was ever entered into give them 60 days written notice to move out (unless they have breached the *Act*, in which case only 14 days notice would be required - see chapter 3 - Your rights and responsibilities as a tenant). If the sub-tenant ignores the notice, you must apply to the Consumer, Trader and Tenancy Tribunal for orders of termination and possession before they can be evicted by a sheriff. It is illegal to try to lock your flatmate out without the authority of the Tribunal - and

you could face a fine of \$22,000 if you try it.

You cannot ask a sub-tenant to leave simply because they have asserted their legitimate rights, for example, by asking you as head-tenant to organise for repairs to be done or requesting receipts for rent. If the Tribunal concludes that the notice of termination is a 'pay back' to a tenant for seeking their rights in the house, the application for eviction may not be granted.

(d) ... they are a boarder or a lodger

Boarders and lodgers are not protected by the *Residential Tenancies Act* and only need to be given 'reasonable' notice to move out. The meaning of reasonable is very elastic (see Scenario 1(c) for details).

It is often difficult to know whether a flatmate is a lodger or a sub-tenant. Generally, it is safer (and fairer!) to treat your flatmate as a sub-tenant and give the 60

days notice required under the *Residential Tenancies Act*.

SCENARIO 5: YOUR FLATMATES ARE TRYING TO KICK YOU OUT AND ...

(a) ... you're a co-tenant

As a co-tenant, you have the same legal right to stay in the place as the other tenants - only the landlord/agent can order you to leave and they would have to evict the whole household rather than an individual tenant. However, if it's pretty clear that you don't get on with your flatmates, it's pointless causing unhappiness for yourself and the others by staying there forever. See Scenario 2(a) for information about what you should do if you decide to move out.

(b) ... you're a head-tenant

If the lease is in your name, then you are the head-tenant and your flatmates whose names are not on the lease can't insist that you

leave. If you want to stay, you will have to try to work things out - in the end, your flatmates may decide to go themselves. If you decide to leave, you will either have to terminate the agreement and give appropriate notice to your landlord and flatmates (see Scenario 1(a)), or assign the agreement to the remaining flatmates. This will require the prior permission of the landlord/agent (see Scenario 2(a)).

(c) ... you're a sub-tenant

You must be given the correct notice by your head-tenant, that is if no fixed term was ever entered into, 60 days notice in writing unless you have breached the lease, in which case only 14 days are required. (These notice provisions are the same as the notice that a landlord has to give a head-tenant - see Scenario 1(a)).

If your head-tenant doesn't give you the written notice, you should ask for it. The notice period should start from the date you receive the letter. If you are

being asked to leave because you have breached the lease, the letter should give the reason and details for the termination, for example, you have damaged the house or done something illegal on the premises etc.

If you don't leave by the notice date, your head-tenant will need to take you to the Consumer, Trader and Tenancy Tribunal for a termination order. (See Scenario 1(a) for an outline of the eviction procedure.)

(d) ... you're a boarder/lodger

Boarders and lodgers have very little protection. If your flatmate is your landlord or head-tenant, they are only required to give you reasonable notice. As boarders and lodgers cannot apply to the Consumer, Trader and Tenancy Tribunal to protect their rights, there is little you can do to stop the eviction or get a longer notice period if you think the notice isn't reasonable. You can also be locked out if you don't leave by the required date. Legal

SAMPLE ASSIGNMENT OF TENANCY AGREEMENT

This assignment dated the day of (month) of 20 . . .

Between

. (Name and address of Tenant 1)

And (Name and address of Tenant 2)

And (Name and address of landlord)

Agree

A. The landlord, (name of landlord), is the owner of premises at (address of premises) in the State of New South Wales.

B. A Residential Tenancy Agreement dated was signed by (name of Tenant 1) over the premises at (address of premises) in the State of New South Wales.

C. By the Agreement (name of Tenant 1) became tenant of the premises at (address of Tenant 1) for the term of months from the date of the commencement of the Agreement.

D. (name of Tenant 1) wishes to assign his/her Agreement to (name of Tenant 2).

E. The landlord gives his/her consent to the assignment of the Agreement from (name of Tenant 1) to (name of Tenant 2).

Upon the signing of this Assignment

1. Upon execution of this Deed the landlord agrees that (name of Tenant 1) is hereby a tenant under the Agreement and he/she may exercise any rights accorded to him/her under that Agreement.
2. Upon execution of this Deed the Agreement is hereby assigned by (name of Tenant 1) to (name of Tenant 2).
3. Upon execution of this Deed the landlord releases (Tenant 1) from any liability arising from the Agreement after the date of execution of this Deed.
4. Upon execution of this Deed. (name of Tenant 2) agrees to indemnify (name of Tenant 1) against all claims arising from the Agreement after the date of execution of this Deed.

IN WITNESS WHEREOF the parties hereto have executed this Deed of Assignment on the day of (month) 20 . . .

SIGNED SEALED and DELIVERED
by the said (Tenant 1)
in the presence of
Solicitor/Justice of the Peace

SIGNED SEALED and DELIVERED
by the said (Tenant 2)
in the presence of
Solicitor/Justice of the Peace

SIGNED SEALED and DELIVERED
by the said (Name of Landlord)
in the presence of
Solicitor/Justice of the Peace

protection for your possessions is difficult to enforce.

However, if you have been living in the house on equal terms with your flatmate and appear to have exclusive possession of your room, it may be that you are a sub-tenant and are protected by the *Residential Tenancies Act*. If there is doubt about your status, you can apply to the Consumer, Trader and Tenancy Tribunal for an order regarding an issue such as the landlord to stop breaching your right to quiet enjoyment of the premise, and the Tribunal will determine whether you are covered by the *Act* as part of the proceedings.

If your application is successful, and your flatmate still locks you out, they may face a fine of up to \$22,000. You could also apply for compensation for expenses caused by the lock out and any loss of property. Call your local tenancy service for further advice (see Contact Points).

SHARE HOUSING - THE FUTURE

As you will have realised by now, the law in NSW with regard to share housing is inadequate. It is often hard to figure out whether you are a co-tenant, a sub-tenant or a boarder/lodger. There is currently no legislation in NSW that protects you if you're a boarder/lodger.

Even if you are a tenant, there are still major problems. If you are in a messy legal wrangle with your co-tenant there are no formal dispute resolution processes. The Consumer, Trader and Tenancy Tribunal cannot decide that a tenancy be terminated if co-tenants have a falling out. This is particularly damaging in the case of domestic violence in a share house.

The *Residential Tenancies Act* which took effect in 1989, did not anticipate the problems raised by share housing. It is clear that there need to be amendments made to the *Act* in order to effectively deal

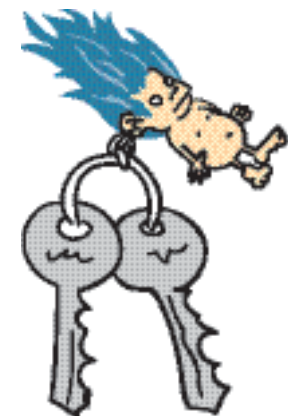
with share housing. However legislative reform can only go part of the way. The nature of share housing, where legal rights and obligations are inevitably entangled with personal relationships, lends itself more to policy and education than legal reform.

If you are interested in joining any campaign to reform tenancy laws and policies in NSW, contact the Tenants' Union on (02) 9251 6590. Becoming a member of the Tenants' Union entitles you to receive the quarterly newsletter and also to join any of the working parties, for example, the Tenants' Legal Working Party. It only costs \$8 per year if you are unwaged, \$16 if you are waged and \$32 if you are an organisation.

If you are a tertiary student, find out if your students' association is active in tenancy reform. If not, make it active! If you are involved with community organisations, or are a member of a local tenants' group, encourage your organisation to join the Tenants Union. If you live in an area with a lot

of share houses, start your own Tenants' Action Group. The law will only be reformed and appropriate policies created if people work together for change.

In 1998 the Tenants' Union of NSW commissioned a report on reforming residential tenancies law as it relates to share housing. *The Fair Share* (Jane Goddard, Kessels and Associates and Stamatia Stamatellis) recommends major legal changes, including the creation of a new type of "communal" tenancy for all tenants in a share house. For a copy of the report, please contact the Tenants' Union on (02) 9247 3813.



GLOSSARY

Like most legal issues, tenancy law has its own bizarre language. If you came across a term in the guide that you didn't understand, check this list for an explanation.

Assignment of the lease or agreement: this is when a person whose name is on the residential tenancy agreement signs over their legal rights as a tenant in the house/flat to another person.

Bond: this is a security paid by the tenant/s and held by the Rental Bond Board (RBB) of the Office of Fair Trading for the duration of the tenancy. The bond is usually equal to four weeks rent for unfurnished premises, and six weeks rent for furnished premises. At the end of the tenancy, the bond should be returned to you in full unless you are behind in your rent or have damaged the property, in which case the landlord can claim for their losses.

Boarder: a lodger who has meals provided by the landlord or head-tenant. Boarders and lodgers are not covered by the *Residential Tenancies Act* and have virtually no protection in relation to their housing. See lodgers below for more details.

Breach by landlord: the landlord/agent breaches the tenancy agreement when they fail to fulfil their obligations under the agreement, for example, they don't do repairs, the house is insecure, or they invade your privacy.

Breach by tenant: this is where you break one or more of the terms of your tenancy agreement, for example, if you fall 14 days behind in your rent, cause damage to the house or fail to maintain the premises in an adequate state of cleanliness.

Community justice centres (CJCs): these are centres funded by the Government to provide free mediation for people who are having a dispute and need an independent person to act as

a mediator to help resolve the problem. CJCs can be used by co-tenants and head-tenants and sub-tenants to deal with disputes in a share house. There are community justice centres in a number of local areas in NSW (see Contact Points).

Conciliation: this is where people in dispute agree to come together and attempt to settle a dispute without going to court. An independent third party (the conciliator) assists the parties to understand and settle their differences. The conciliator should have no interest in the dispute but may offer their opinions if this assists the process. However, a conciliator shouldn't try to impose their own ideas about the terms of settlement on the people involved in conciliation.

The Consumer Trader and Tenancy Tribunal has an obligation to make sure settlement has been attempted **before it hears** and decides disputes between landlords and tenants. To assist this process, the Tribunal offers

conciliation services to disputing parties.

Condition report: this is a written record of the condition of a rented house or flat, which should be completed when you move in and then again when you move out. Your landlord/agent should give you a report to fill in when you sign the lease (this is Part 2 of the lease). It's very important that you fill it out in detail and return it within seven days.

Continuing agreement: at the end of the initial fixed term of a lease (e.g. six months), the tenancy agreement automatically becomes a continuing agreement unless you or the landlord/agent has given prior written notice about wishing to terminate the agreement. All the conditions of the original lease stay the same except that: the agreement can now be terminated without having to prove a breach by either party (60 days written notice for a no-cause termination from the landlord and 21 days notice from

the tenant, or 30 days notice if the place has been sold with vacant possession); and the rent can be increased (with 60 days written notice).

Consumer, Trader and Tenancy Tribunal: this is the legal body which was set up to resolve residential tenancy disputes. The Act that governs the Tribunal is called the *Consumer, Trader and Tenancy Tribunal Act (2001)*. The Tribunal is similar to a court, but not as formal (for example, people are usually not represented by lawyers) and much cheaper. It costs only \$29 to make an application to the Tribunal (\$5 if you're on Centrelink benefits or a student on Austudy/Youth Allowance/Abstudy) and there are usually no other costs.

Co-tenant: when two or more people sign the tenancy agreement they are known as co-tenants. Each co-tenant has the same legal rights and responsibilities regarding the house or flat. This means that you are all legally responsible for paying the rent

and looking after the place. It also means that one tenant does not have the right to evict another co-tenant.

Eviction: a scary term covering the process where you are forced to leave your rented home. Tenants can only be evicted by order of the Consumer, Trader and Tenancy Tribunal, following the appropriate notice of termination from the landlord/agent. Boarders and lodgers have far less protection and can be evicted without having to go through this process. For full details about the eviction procedure, see Chapter 5 'Moving Out'.

Exclusive possession: you are said to have 'exclusive possession' of your room in a share house when it is understood that other flatmates and the landlord cannot enter your room without your permission. It doesn't mean that you must have a lock on your door. Whether or not you have exclusive possession of your room is an important factor in working out whether you are

a sub-tenant or boarder/lodger and therefore what your legal rights and responsibilities are in the share house. See boarders and lodgers for more information about this.

Fixed term: the period for which a tenancy agreement is signed, usually 6 or 12 months.

Head-tenant: this is a person who signs a tenancy agreement and then sub-lets rooms in the house or flat to one or more other people. The head-tenant's name is the only name on the lease and they have the rights and responsibilities of a landlord in relation to their sub-tenants. This means, for example, that they are responsible for collecting the rent and getting the landlord/agent to do any necessary repairs. It also means they can ask their sub-tenants to move out but must give the appropriate amount of notice (60 days, or 14 days if there has been a breach of the agreement). (See also sub-tenant.)

Kitty: a cute term for the joint shopping 'account' in a share house. Generally everyone in the house pays the same amount (usually about \$30-\$40 per week) to buy food and household items jointly. It's often cheaper and easier to have a kitty than for everyone to buy their own food and goods separately.

Landlord: this is a term for someone who leases a property they own to tenants. Landlords often view their rented properties as money-spinners and forget that they are other people's homes. Fortunately, the rights and responsibilities of the landlord are now spelt out in the *Residential Tenancies Act* which provides some protection for tenants in rented accommodation. Landlords can be men, women, companies or trusts.

Lease: the old name for what is now called a residential tenancy agreement. In this guide we use both terms to refer to the tenancy agreement between a landlord/agent and tenant(s).

Lodger: someone who rents a room but does not have exclusive possession of the room. If you rent a room in a hotel-style house, where you share a laundry, kitchen and other areas, and/or where the landlord provides you with sheets, cleaning or other services, then you may legally be a lodger. Some people in share houses may also be classified as lodgers, for example, if you are renting a room in an owner-occupied house or the place is run by a head-tenant and you are not seen to have an equal say in the running of the house. Lodgers are not covered by the *Residential Tenancies Act* which means they have virtually no protection in relation to their housing. Rent increases, evictions, repairs and privacy are the greatest problems. Boarders are lodgers whose meals are provided by the landlord or head-tenant.

Mediation: when you are having a problem or disagreement with someone else, you may need an independent third person, or mediator, to help sort

out the problem. A mediator does not take sides. They help the parties discuss the problem and work towards agreement. If your dispute is with a flatmate (or neighbour), you can get help with mediation from a community justice centre.

No-cause termination: when there has been no breach of the lease, but either you or the landlord/agent wishes to terminate the agreement, this is known as a no-cause termination. A no-cause termination is not possible during the fixed term of an agreement: this type of termination is known as a termination by consent. Tenants are required to give 21 days notice for a no-cause termination in a continuing agreement; landlords/agents must give 60 days notice. (See also fixed-term agreement.)

Order of termination and possession: the Consumer, Trader and Tenancy Tribunal can make an order that a tenancy agreement has ended and that the landlord or head-tenant can take

back possession of the rented premises or room. This order might be made if the tenant had breached the lease and failed to move out after the landlord had given appropriate notice. (See also eviction.)

Owner-occupied: if you are renting a room in a house in which the owner is living, this is known as an owner-occupied house. Often people renting rooms in owner-occupied houses are classified as boarders or lodgers.

Quiet enjoyment: a fancy phrase meaning the right to live in your rented premises without interference from others, particularly your landlord/agent. This is one of the conditions of your tenancy agreement. When the landlord keeps popping in on Sunday mornings without warning, your right to 'quiet enjoyment' has been breached.

Real estate agent: the real estate agent acts for the landlord and, like the landlord, is subject to the *Residential Tenancies Act 1987*.

Like some landlords, real estate agents can sometimes forget they are dealing with people's homes and often ignore the rights of their tenants under the *Act*. If you have complaints about your real estate agent, you can phone the Real Estate Institute of NSW or the Office of Fair Trading (see Contact Points).

Recognition as a tenant: under the *Residential Tenancies Act 1987*, the Consumer, Trader and Tenancy Tribunal has the power to recognise a person as the tenant of a premises. A flatmate can apply to be recognised as a tenant if they occupy premises and the original tenant has died or left. For example, if you have been living in a share house and the head-tenant moves out, you can apply to the Tribunal for recognition as the tenant of the premises on the same terms as the original agreement. Recognition as the tenant can avoid problems such as the landlord evicting you or changing the terms of the agreement.

Rent: this is the 'fee' that a tenant pays to a landlord/agent to live in a house or flat. If you have signed a lease, the agreed rent must be written on the agreement and can only be increased after the end of the fixed term period (unless the agreement specifically allows for an increase during the fixed-term period).

Rent arrears: this weird phrase refers to the rent owed for the days you have lived in a place but haven't paid rent for. When your rent arrears is 14 days (that is, you are behind in the rent by 14 days, not including the requirement to pay rent in advance), the landlord/agent can issue you with a notice of termination.

Rent increase: Any rent increase requires 60 days written notice. If you are a sub-tenant and have not signed a lease, the rent can be increased at any time with 60 days written notice from your head-tenant. For boarders and lodgers, reasonable notice only is required. 'Reasonable' is an elastic term in the law and provides little or no

protection. You should contact the Tenants' Union Hotline or your local tenants' service for advice if you feel inadequate notice has been given.

Reservation fee: if you decide you want to rent a house or flat, you often have to pay a reservation fee to the landlord/agent while they check out your application. The fee should be no more than one weeks rent and should be credited toward the first week of renting if you get the place. You should be given a receipt. If the landlord/agent rejects your application, you should be given a full refund of the reservation fee. However, if you change your mind and decide not to take the place, you may lose some or all of the reservation fee.

Residential Tenancies Act 1987 (RTA): the *Residential Tenancies Act* sets out the rights and responsibilities of landlords and tenants when they enter into a residential tenancy agreement. If you pay rent and can establish that you are a tenant, then the Act

will generally cover your situation. The Act also sets out the procedures and powers of the Consumer, Trader and Tenancy Tribunal which is the legal body that hears and makes decisions on tenancy disputes. The Act covers private housing, public housing, caravan parks and manufactured home estates. It does not cover educational institutions, hospitals, pubs, clubs, holiday letting, boarders, lodgers and some homes or hostels for aged people. It also doesn't cover commercial leases. See Chapter 3 for a list of your rights as a tenant under the RTA.

Residential tenancy agreement (or tenancy agreement): this is the contract which is made by the tenant and the landlord/agent at the start of the tenancy. Agreements should be in writing but can be spoken, or part-spoken and part-written. The *Residential Tenancies Act* sets out the terms which must be part of all tenancy agreements. Usually, an agreement will be signed with an initial fixed term of 6 or 12 months, during which

time the rent generally cannot be increased and the agreement cannot be terminated, unless it is breached. Tenancy agreements are also known as leases.

Share housing: a flexible communal living arrangement where a number of people share a flat or house, splitting the rent and general living costs. The house can be set up as a co-tenancy, head-tenancy and sub-tenancy, a lodging or a combination of these. Share housing may be rewarding, economical, varied and dangerous - an adventure!

Statement of Liquidated Claim: a strange legal term which describes the first document lodged in debt recovery cases.

Strata building: a block of flats or units which are not all owned by one person or company. Together the individual owners form the body corporate, now known as the owners corporation under the *Strata Schemes Management Act 1996*, which has responsibility for common areas and dealing

with any general problems which may arise in the building. Strata buildings are governed by a set of by-laws which set out the rights and responsibilities of individual unit dwellers. These by-laws should be included with the tenancy agreement when you rent a unit. For further information on by-laws and particular issues for unit dwellers, contact the Strata Information Service (see Contact Points).

Sub-letting: this is where the person whose name is on the lease, that is, the head-tenant, rents a room or even the whole house or flat to another person. Legally, a tenant cannot sub-let without the landlord's prior consent. (See also head-tenant and sub-tenant.)

Sub-tenant: a tenant whose name is not on the tenancy agreement who pays rent to a head-tenant rather than the landlord/agent. As a sub-tenant, you have the same rights and responsibilities as other tenants under the *Residential Tenancies Act*, and the head-tenant has the rights and responsibilities of a landlord.

Tenant: a person who rents land or property from a landlord. In this guide, the term 'tenant' refers to anyone whose tenancy is covered by the *Residential Tenancies Act 1987*.

Termination: this is when either party decides to end the tenancy agreement, for example, if you give notice to move out or the landlord gives you notice to leave. The agreement does not actually end (terminate) until the tenant moves out or the Consumer, Trader and Tenancy Tribunal makes an order of termination.

Water usage: since 1990, tenants in most parts of NSW have had to pay for water usage in rented properties. This will be included as one of the conditions of your tenancy agreement. Tenants *don't* have to pay water rates, the water service fee or sewerage usage charges which are the responsibility of the owner of the property. If your landlord tries to charge you for these, you should contact your local tenants' advice service. (See also Chapter 4.)

CONTACT POINTS

TENANTS' ADVICE SERVICES

The following services will give advice and assistance to tenants only - they will not help landlords. If you are ringing as a head-tenant seeking advice on how to evict a sub-tenant, many of these services will not be able to assist you because you are in the position of a landlord. You should contact the Office of Fair Trading Tenancy Service listed below or the chamber magistrate of your local court for help.

The Tenant's Union of NSW

The Tenants' Union provides advice through its Hotline which is staffed by volunteers Monday to Friday 9.30am - 5pm (closed between 1-2pm for lunch). The Union works on tenancy law reform and resources the tenancy services across NSW. It also puts out a series of Tenancy Factsheets in various languages covering problems tenants may encounter, and the Tenants Rights Manual (by Phillipa Bellemore in association with the Tenants' Union of NSW). The Union employs a solicitor who runs test cases on behalf of tenants.

They can also put you in touch with Tenants' Unions or Services for other States.

Hotline (02) 9251 6590
1800 251 101

Office/Administration (02) 9247 3813

Website : www.tenants.org.au
Includes factsheets and sample letters.

Regional Tenants' Advice and Advocacy Services

These services were set up in 1995. As well as generalist tenancy workers, some services employ Aboriginal workers and workers for tenants from a non-English speaking background. Below is a list of services currently operating. Phone your local service for full contact details and interview times.

Eastern Sydney

(for tenants in Randwick, Waverley, Woollahra)

Eastern Area Tenants Service (02) 9386 9147

Inner Sydney

(for tenants living in Sydney City, Botany, Leichhardt)

Inner Sydney TAAS (02) 9698 5975

www.rlc.org.au

Inner Western Sydney

(for tenants in Ashfield, Burwood, Canada Bay, Marrickville, Strathfield)

Inner Western Sydney TAAS (02) 9559 2899

www.mlc.asn.au/tenancy.html

Southern Sydney

(for tenants in Bankstown, Canterbury, Hurstville, Kogarah, Rockdale, Sutherland)

Southern Sydney TAAS (02) 9787 4679

www.cbmrc.org.au/service_tenancy.html

South West Sydney

(for tenants in Camden, Campbelltown, Fairfield, Liverpool, Wollondilly)

South West Sydney Tenants Service (02) 4628 1678

1800 631 993

Western Sydney

(for tenants in Auburn, Baulkham Hills, Blacktown, Blue Mountains, Hawkesbury, Holroyd, Parramatta, Penrith)

Western Sydney Tenants Service (02) 9891 6377 or 1800 625 956

www.unitingcare NSW act.org.au/wests

Northern Sydney

(for tenants in Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Manly, Mosman, North Sydney, Pittwater, Ryde, Warringah, Willoughby)

Northern Area Tenants Service (02) 9884 9605

Central Coast

(for tenants in Gosford, Wyong)

Central Coast TAAS (02) 4353 5515

<http://users.bigpond.net.au/cctaas/>

Hunter

(for tenants in Cessnock, Dungog, Gloucester, Great Lakes, Lake Macquarie, Maitland, Muswellbrook, Newcastle, Port Stephens, Singleton, Upper Hunter)

Hunter TAAS (02) 4929 6888 or 1800 654 504

North Coast

(for tenants in Ballina, Byron, Copmanhurst, Grafton, Kyogle, Lismore, Maclean, Pristine Waters, Richmond Valley, Tweed)

Northern Rivers TAAS (02) 6621 1022 or 1800 649 135

Mid Coast

(for tenants in Coffs Harbour, Nambucca, Macksville, South West Rocks, Crescent Head, Kempsey, Port Macquarie, Wauchope., Camden, Haven, Laurieton, Wingham, Taree and Forster Tuncurry)

Mid Coast TAAS (02) 6583 9866 or 1800 777 722

Illawarra/South Coast

(for tenants in Bega Valley, Eurobadalla, Kiama, Shellharbour, Shoalhaven, Wingecarribee, Wollongong)

Illawarra and South Coast TAAS (02) 4274 3475 or 1800 807 225

www.illawarralegalcentre.org.au

New England and Western NSW

(for tenants in New England, North West, Western and Far West)

New England and Western TAAS (02) 6772 8100 or 1800 836 268

South Western NSW

(for tenants in Central and South West NSW)

South Western (NSW) TAAS 1800 642 609

www.cwcc.nsw.edu.au

Specialist Tenants' Advice Services

Greater Sydney Aboriginal Tenants Service

(02) 9564 5367 or 1800 772 721

Specialist tenancy service for Aboriginal tenants in the Greater Sydney area

North & North West NSW Aboriginal TAAS

(02) 6643 4426 or 1800 248 913

Tenancy service for Aboriginal tenants from Taree to Tweed Heads and Armidale to Moree

Older Persons Tenants Service

(02) 9281 9804 or 1800 451 488

Statewide service for tenants over 55. The Older Persons Tenants Service works in cooperation with local tenants services to cater for the specific needs of older tenants. They have specialist knowledge

about protected tenancies, which often pertains to tenants who live in houses built before 1954

Southern NSW Aboriginal TAAS - Murra Mia

(02) 4472 9363 or 1800 672 185

Aboriginal tenants advice service for tenants in the south east and lower western regions of NSW

Western NSW Aboriginal TAAS

(02) 6772 8100 or 1800 810 233

For Aboriginal tenants in Western and far Western NSW

OTHER SERVICES

(The) Aged-Care Rights Service

(02) 9281 3600

www.tars.com.au

Information and advocacy for elderly residents in nursing homes, hostels, boarding houses

Anti-Discrimination Board of NSW

(02) 9268 5555

www.lawlink.nsw.gov.au/adb

For enquiries about discrimination on the basis of race, sex, age, disability, marital status or homosexuality

ARCH (Association to Resource Co-operative Housing)

(02) 9361 6834 or 1800 066 834

www.arch.asn.au

Information and advice on setting up a housing co-operative

Austlii

www.austlii.edu.au

Browse and download Acts (such as *The Residential Tenancies Act 1987*) and decisions of the Consumer Trader and Tenancy Tribunal. Both are under New South Wales

Combined Pensioners and Superannuants Association

(02) 9281 3588

Housing assistance for pensioners and superannuants

Community Justice Centres

Sydney

(02) 9228 7455

TTY 1800 671 964

www.cjc.nsw.gov.au

Free mediation services for dispute resolution, e.g. for disputes between flatmates or neighbours. There are centres in a number of local areas. Phone the central numbers above for contact details and advice about your local mediation services.

Community Legal Centres NSW

Combined Community Legal Centres (NSW)

(02) 9318 2355

www.nswclc.org.au

For contact details for local and specialist community legal centres.

Consumer, Trader and Tenancy Tribunal

Toll free: 1300 135 399

www.cttt.nsw.gov.au

For orders to resolve disputes between landlords and tenants and head-tenants and sub-tenants. The Tribunal does not give general tenancy advice, but will advise on making an application for an order.

Department of Energy, Utilities and Sustainability

(02) 8281 7777

www.deus.nsw.gov.au

For information about the Energy Accounts Payment Assistance scheme (EAPA)

Department of Family and Community Services (NSW)

(02) 9716 2222

www.community.nsw.gov.au

For information about the Emergency Relief Program

Department of Housing (NSW) - Head Office

(02) 9821 6111

www.housing.nsw.gov.au

For housing assistance for low-income earners

Domestic Violence Advocacy Service

(02) 8745 6999

www.dvas.org.au

Advice to women experiencing domestic violence

Financial Counsellors

www.financialcounsellors.asn.au

Financial counselling is a free community service which assists people who are experiencing financial difficulties or who need information relating to credit and debt.

Examples include:

Bobby Goldsmith (HIV/AIDS)

(Darlinghurst)

(02) 9283 8666

www.bgf.org.au/services/fin_counsel.htm

Credit Line

(02) 9951 5544 or 1800 808 488

www.wesleymission.org.au/centres/creditline

St Vincent De Paul

(02) 9698 1529

www.vinnies.org.au

Homeless Persons Information Service

(02) 9265 9081 or (02) 9265 9087 or 1800 234 566

www.cityofsydney.nsw.gov.au

A telephone information and referral service for crisis accommodation vacancies.

Homeless Persons Legal Service

(02) 9299 7833

www.piac.asn.au/legal/hpls.htm

Legal advice provided at specific times at each drop in service (such as Matthew Talbot, Parramatta Mission and Edward Eager Lodge).

Human Rights and Equal Opportunity Commission

Complaints Infoline: 1300 656 419

Privacy Hotline: 1300 363 992

TTY: 1800 620 241

www.hreoc.gov.au

Law Access

1300 888 529

www.lawaccess.nsw.gov.au

Free phone service for general legal enquiries, including referral to appropriate legal services. Website has legal information on many areas of law.

Legal Aid Commission of NSW

Sydney Office - appointments

(02) 9219 5000

www.legalaid.nsw.gov.au

Information about legal aid.

Legal Aid Hotline for under 18s

1800 101 810

Legal advice line about criminal law.

Legal Information Access Centre (LIAC)

(02) 9273 1558

<http://liac.sl.nsw.gov.au>

For information on the law and the legal system. The central LIAC is based in the State Library in Sydney and there are a number of branches in other areas of NSW.

National Children's and Youth Law Centre

(02) 9398 7488

www.lawstuff.org.au

Provides free legal information, advice and representation to children and young people in Australia particularly to disadvantaged young people.

NSW Federation of Housing Associations

(02) 9281 7144 For information on community housing.

www.communityhousing.org.au

Office of Fair Trading

Tenancy Service (02) 9377 9100 or 1800 451 301

For advice to tenants, landlords and real estate agents

133 220 - For complaints about misleading share housing advertising or about Real Estate Agent conduct.

www.fairtrading.nsw.gov.au

Office of the Privacy Commissioner

1300 363 992

www.privacy.gov.au

Gives privacy law information and deals with complaints about Tenant Database Listings

Public Tenants Council

(02) 9267 4180

For Department of Housing tenants. Call the Sydney office number above for the number of your local office.

Real Estate Institute of NSW

(02) 9264 2343

www.reinsw.com.au

Deals with written complaints about real estate agents who are members of the Institute

Rental Bond Board

(02) 9377 9000 or 1800 422 021

www.fairtrading.nsw.gov.au

For lodging bonds. The RBB is now a division of the Tenancy Services in the Office of Fair Trading (see above).

Sharespace

(02) 9360 7744 or 1300 661 960

www.sharespace.com.au

Lesbian and gay share accommodation agency serving Sydney metropolitan area

Shelter NSW

(02) 9267 5733

www.shelternsw.infoexchange.net.au

A lobby group on housing issues.

(The) Shopfront Youth Legal Centre

(02) 9360 1847

www.theshopfront.org

Free legal service for homeless and disadvantaged young people aged 25 and under.

Strata Scheme and Mediation Services

(02) 9338 7900

www.fairtraing.nsw.gov.au

For people renting strata title units; also gives information on body corporates.

Translating Interpreter Service

131 450

www.immi.gov.au/tis

If you or someone else needs an interpreter, e.g. for help with a tenants' adviser or to interpret a lease.

Youth Action Policy Association (YAPA)

(02) 9281 2344

www.yapa.org.au

For information about services for young people in NSW

Youth Emergency Accommodation Line

(02) 9318 1531 ext 2 or 1800 424 830

www.yaa.com.au

Gives the current crisis vacancies across NSW

STUDENT REPRESENTATIVE COUNCILS

Australian Catholic University

Student Centre (MacKillop) (02) 9739 2302
Student Centre (Strathfield) (02) 9701 4237
www.acu.edu.au

Charles Sturt University

General Information (02) 6338 4896
www.csu.edu.au

La Trobe University

General Information (02) 9290 1988
www.latrobe.edu.au/acn

Macquarie University

Student Services (02) 9850 7376
www.mq.edu.au

Southern Cross University

General Information (02) 6620 3000
1800 626 481
www.scu.edu.au

University of New England

General Information (02) 6773 333
www.une.edu.au

University of NSW

Student Guild (02) 9385 5454
www.unsw.edu.au

University of Newcastle

General information (02) 4921 5000
www.newcastle.edu.au

University of Sydney

Student Representative Council (SRC)
(02) 9660 5222
www.src.usyd.edu.au

University of Technology Sydney

Students Association (02) 9514 1155
www.sa.uts.edu.au

University of Western Sydney

General Information (02) 9852 5222
1800 897 669
www.uws.edu.au

University of Wollongong

General Information (02) 4221 3555
www.uow.edu.au

FUN SHARE HOUSING BOOKS TO READ...

He Died with a Felafel in His Hand

John Birmingham, The Yellow Press, 1994. (also a play and a film).

Home at Last

produced by Streetwize Comics for Marrickville Legal Centre, 1995 (a comic strip giving practical advice to young people living in share housing - call Streetwize on (02) 9560 3244 to get a copy).

Lifestyles of Previous Tenants

Barbara Wells, University of Queensland Press, Brisbane, 1995.

Monkey Grip

Helen Garner, McPhee Gribble, Melbourne, 1977 (also a film).

Praise

Andrew McGahan, Allen & Unwin, Sydney, 1992 (also a film).

Tales of the City

Armistead Maupin, Harper & Row, New York, 1978

Dead Famous

Ben Elton, Bantam Press, 2001

...AND FILMS TO WATCH

- Animal House
- Barcelona
- Beverley Hills
- Dogs in Space
- Go Fish
- La Boheme
- Love and Human Remains
- Love and Other Catastrophies
- Mad Bomber in Love
- Monkey Grip
- Notting Hill
- Reality Bites
- Shallow Grave
- Single White Female
- Singles
- Sweetie
- The Knack
- The Last Supper
- The Odd Couple
- The Spanish Apartment
- The Young Ones
- Three Is Company
- Trainspotting
- Withnail & I



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