



Boarders and lodgers

a guide to your rights and responsibilities

The purpose of this brochure is to help boarders and lodgers understand their rights and responsibilities. This fact sheet provides useful tips on how to avoid problems with landlords and if problems do arise, where to get advice.

Am I a boarder, lodger, tenant or sub-tenant?

It is not always easy to determine whether a person is a boarder or lodger, or a tenant or sub-tenant. A tenant has a higher level of security of tenure and protection under the law than a boarder or lodger because he or she is covered by the *Residential Tenancies Act 1987*. While boarders and lodgers are not covered by the *Residential Tenancies Act 1987*, it's important to know they still have certain rights under common law.

Depending on the documents that make up the agreement and the circumstances of your situation, you are more likely to be a boarder or lodger rather than a tenant, if you pay rent and:

- you are entitled to live in the premises but cannot call the place your own, that is the landlord exerts control and authority over the whole premises;
- the landlord provides you with attendance or services, such as cleaning, linen or meals, which require the landlord or his or her agent/employee to exercise unrestricted access and use the premises;

- there are house rules that are enforced;
- the landlord/owner/representative lives on site;
- the length of time of the agreement / the length of time you are given permission to stay in the house is only for a short time; and/or
- you or the landlord only need to give the other a very short period of notice to leave – see *Ending the agreement* on page 5 of this fact sheet.

TIP: The main difference between a boarder and a lodger is whether or not you are supplied with meals or other services. Generally, boarders are provided with services, whereas lodgers are not.

- If you have been given permission to stay at another person's house, have your meals or other services provided and pay rent, you are most likely a boarder.
- If you have been given permission to stay at another person's house and pay rent but are not supplied with meals or other services, you are most likely a lodger.

Department of **Commerce**
Consumer Protection Division

1300 30 40 54

Consumer Protection

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Administration: (08) 9282 0777 Facsimile: (08) 9282 0850

Advice Line on 1300 30 40 54

Website: www.commerce.wa.gov.au

Email: consumer@commerce.wa.gov.au

A tenant pays rent and in return is granted a right to occupy a residential premise, which may be by verbal or written agreement. However, a tenant is more likely to have exclusive possession than a boarder or lodger.

Exclusive possession means the right to exclude all others, including the landlord, from entering the house or room being rented. This is different from exclusive 'occupation' or 'use' where you may have your 'own' room in which no other people can stay without your permission.

If your room has a lock, which physically stops the landlord from entering, this does not automatically mean you have exclusive possession of the room. The 'house rules' may state that the landlord or another authorised person is allowed to come into your room without your permission. For example, if you receive any services such as cleaning, linen or meals, the landlord may require unrestricted access and you would not have exclusive possession.

If I am renting a room from an existing tenant am I a sub-tenant or lodger?

If you are renting all or part of a house from an existing or head tenant, the head tenant should have obtained approval from the landlord before you moved in. If this is the case, you are either a sub-tenant or a lodger depending upon the agreement reached between you and the head tenant.

If you and the head tenant agreed that you have exclusive possession of all or part of the house, where you have the right to exclude anyone, including the landlord, then you are more likely to be a sub-tenant. This agreement must have been approved by the landlord before you moved in.

If you are a sub-tenant the head tenant becomes your lessor and the agreement between you should be in the prescribed *Form 1AA Residential tenancy agreement*. Even if it is only a verbal agreement you should be provided with *Form 1AD: Information for tenant with non-written tenancy agreement* at the commencement of the tenancy.

If you are staying in a room and paying rent to the head tenant, you are probably a lodger and are unlikely to have exclusive possession of any part of the house. It is important to remember that the head tenant may still need the landlord's approval for this kind of arrangement.

Be aware there are other factors that may impact on whether you are a sub-tenant or lodger. Each case needs to be determined by looking at the particular agreement reached between the parties.

TIP: Make sure the tenant has approval from the landlord before you move in. Whatever the arrangement, it is always wise to get an agreement in writing beforehand.

If you are not sure whether you are a boarder, tenant, lodger or sub-tenant, or a dispute arises in relation to your living arrangement you can discuss the matter by calling the Consumer Protection Advice Line on 1300 30 40 54 or contacting one of the agencies listed in this brochure. However, in some circumstances it may be necessary for a Court to make a binding decision about which one you are.

What if I am offered a place to stay by my employer?

If your employer provides you with a place to live in, you may be a boarder, lodger or tenant, depending on the circumstances. You are likely to be a boarder or lodger if:

- your employer provides you with a room in his or her own home, in return for services such as gardening, cleaning or general handiwork instead of paying rent; or
- you are provided with a room, and perhaps meals, as part of your employment.

In both circumstances, your right to live in your employer's own home may exist only as long as you continue to be employed.

If you rent a house provided by your employer, which is not the employer's own home, you are probably a tenant and will have rights under the Residential Tenancies Act, even if your employment comes to an end. This will also depend on the terms of any agreement between you, the lessor and/or your employer.

TIP: Whatever the arrangement, you should put the agreement in writing and make sure it is signed by you and your employer.

Who is a landlord?

A landlord is the person who provides the room/s and gives permission to the boarder or lodger to live there. If you are a boarder or lodger, your landlord keeps control and authority over the house and may enter any part of the house without necessarily giving you notice.

What are my rights as a boarder or lodger?

If you are a boarder or lodger, you have a right to:

- expect the house to be clean and tidy and in a reasonable state of repair when you move in and while you are staying in the house, including all the rooms, common areas, facilities, furniture and equipment supplied by the landlord;
- privacy, peace and quiet and to use your room and facilities without unreasonable interference by the landlord;
- access to your room, toilets and bathrooms;
- access to common areas and facilities such as the laundry and the kitchen;
- security for your room and personal belongings; and
- be made aware of the house rules.

TIP: Your rights as a boarder or lodger may be changed by agreement between you and the landlord.

What are my responsibilities as a boarder or lodger?

This depends on what has been agreed between you and your landlord. For example, you will probably be responsible for:

- keeping your room clean and tidy;
- paying your rent when it is due and in the agreed way;
- following the house rules;
- asking your landlord before you keep any pets;

- letting your landlord know about any damage you or your visitors may have caused and paying for that damage;
- letting your landlord know if any of the furniture, fixtures, facilities or equipment needs to be fixed;
- making sure you don't disturb the privacy or peace and quiet of other residents;
- allowing your landlord to enter your room to clean it or in an emergency;
- giving the required length of notice to leave; and/or
- keeping any vehicle you may own in an agreed place.



What should I do before I move in?

You should decide what type of accommodation suits your needs and consider the following:

- How much is the rent?
- Does the rent cover the cost of other expenses such as gas, electricity, water, telephone or internet? If not, how will you be charged for them?
- What services, such as linen, laundry or meals, will be offered by the landlord and how much extra will they cost?
- If you have any special needs, such as medical assistance, or require a special diet, will these be addressed and what will it cost you?
- How long do you want to live there?
- Will there be a restriction or penalty if you leave after only a short time?
- How much notice do you need to give if you decide to leave, and how much notice will you receive if the landlord asks you to leave?
- Are the rooms and common areas of an adequate standard?
- Do the house rules suit you and your lifestyle?
- Are there any limitations on visitors, noise, hours of entering and leaving, use of common areas, parking or gardening?
- How much do you need to pay before you can move in?
- Do you have to pay a security bond? If so, make sure you ask for a receipt that shows what the payment is for, for example part may be for the bond and part for the rent. If you are paying for rent in advance make sure the receipt shows the rental period covered.
- Has the landlord asked you to sign a written agreement? If so, make sure you read it carefully, understand its terms and agree to all its terms before you sign it.

Help is available from the agencies listed in this brochure if you have trouble understanding anything in the agreement.

TIP: Always keep a copy of any written agreement. Get a receipt for any payments and keep all receipts. This may help in the event of a dispute.

What condition is the property in?

It is useful to take photographs or make a video recording showing the condition of certain areas and the date the record was made.

You should make a list of all the contents and brief descriptions of the condition they are in, plus a description of anything damaged or in bad condition, for example, torn fly screen on front door, stained carpet in your bedroom, dirty or chipped walls in the hallway. Having a record of the condition of the property at the start of the agreement can help minimise disputes about any changes in the condition of the property at the end of the agreement.

Ending the agreement

If you are a boarder or lodger, your landlord may ask you to leave without any reason at any time.

However, your landlord must give you 'reasonable notice' to leave the premises and take your belongings. The length of notice may have been agreed before you moved in – check any written agreement you may have. If not, you should be able to agree about a reasonable time with your landlord, but be aware that you may have to move out at short notice.



What is 'reasonable notice'?

'Reasonable notice' depends on the circumstances of each situation. For example, if you need to make arrangements to move furniture you may need more notice than if you are renting a furnished room.

Important: A landlord can evict you without any reason if you are a boarder or lodger, subject to any terms you and the landlord may have agreed to.

Do I need to give any notice before I move out?

The length of notice you are required to give may have been agreed to before you moved in, so you should first check any written agreement you may have. As a courtesy, you should let your landlord know in a reasonable time - at least a week in advance, if you want to move out. This gives the landlord time to look for another lodger, inspect your room and arrange for the return of any security bond you may have paid.

Where can I get advice or help to solve a problem?

If you have a problem with your boarding or lodging arrangements, you should always check the terms of your agreement and first try to sort it out by discussing it with your landlord. If this does not work, you can contact one of the agencies listed below.

For more information and general advice:

Consumer Protection Advice Line: 1300 30 40 54 - 8.30 am – 5.00 pm weekdays

Website: www.commerce.wa.gov.au/consumerprotection

Email: consumer@commerce.wa.gov.au

Citizens Advice Bureau: (08) 9221 5711 or cab@cabwa.com.au

Tenant Advice Line: (08) 9221 0088 or 1800 621 888 (for country callers)

For legal advice you can call the Legal Aid Infoline on 1300 650 579 or visit www.legalaid.wa.gov.au.

If you think you have been discriminated against on such grounds as your age, marital status, impairment, gender or race, you should contact the Equal Opportunity Commission on (08) 9216 3900.

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