



7 Boarders and lodgers

It can be difficult to distinguish the difference between boarders, lodgers and tenants.

A tenant is a person who pays rent and in return is granted a right to occupy residential premises, usually (but not always) including a right to exclusive possession of the premises – see “How do I know if I have exclusive possession” below.

A boarder is an occupant who shares the landlord’s house, pays rent and receives some services from the landlord, such as cooking and cleaning.

A lodger is similar to a boarder, but a lodger generally does not receive services from the landlord.

Boarders and lodgers are a special group of home-dwellers in terms of the law. Unlike most people who rent, they are not covered by the *Residential Tenancies Act 1987*.

Am I a boarder or lodger?

The following factors may assist you to determine whether you are a tenant, a boarder or a lodger, however only a Court can make a binding ruling about this.

Depending on the documents making up the agreement and the circumstances of your situation, you are more likely to be a boarder or lodger if:

- you are entitled to live in the premises but cannot call the place your own i.e. the landlord exerts control and authority over the whole premises;
- the landlord provides you with attendance or services e.g. cleaning, linen or meals which require the landlord or their servants to access and use the premises;
- there are house rules;
- the landlord/owner/representative lives on site;
- the length of time of the agreement i.e. the length of time you are given permission to stay in the house is only for a short time; or

- the landlord and yourself only need to give a very short period of notice to leave – see “Do I need to give any notice before I move out” below.

How do I know if I have exclusive possession?

A right of exclusive possession means the right to exclude anyone, including the owner, from the premises or the room you rent. This is different from exclusive occupation or use, where you may have your own room in which no one else can stay without your permission.

The landlord is the person who provides the room/s and gives the boarder or lodger permission to live there. If you are a boarder or lodger, your landlord keeps control and authority over the house, even if you have a key, and can come into the house without giving you any notice.

Just because your room has a lock, it does not automatically mean you have exclusive possession of the room. The house rules may state that the landlord is allowed to come into your room without your permission.

For example, if your agreement includes cleaning, linen or meals, the landlord will need access and you would not have exclusive possession.

What if I am renting a room from an existing tenant?

If you are renting all or part of a house from an existing or head tenant, they 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 between you and the head tenant.

You are a sub-tenant if you agreed with the landlord that you could have exclusive possession of all or part of the house, meaning that you have the right to exclude anyone, including the landlord. This agreement must have been approved by the landlord before you moved in.

If you are staying in a room, 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 note that the head tenant may need the landlord's approval for this kind of arrangement.

Be aware there are other factors that 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.

If you are not sure if you are a tenant, sub-tenant, boarder or a lodger, please phone the Consumer Protection Advice Line on 1300 304 054 for advice or to request a copy of the publication *Boarders and lodgers*.

Can I be evicted?

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

However, the landlord/owner 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 the landlord/owner, but be aware that you may have to move out at short 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.

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 check any written agreement you may have. You should allow the landlord/owner a reasonable time to inspect your room and arrange for the return of any security bond you have paid.

Written agreements

If the landlord/owner asks you to sign a written agreement, make sure you read it, understand it and agree with its terms before signing.

You are entitled to and should always request and keep a copy of the written agreement. Get a receipt for any payments for rent or bond and keep those receipts.

If you have to pay a security bond, ask for a receipt that shows what the payment is for. For example, a single payment may include part payments towards the bond and rent for the premises. If you are paying for rent in advance then make sure the receipt shows the rental period covered.

You should inspect the rooms and common areas you will be using before deciding to move in

How do I solve disputes?

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

In some instances, you may be able to take civil action in the Magistrates Court. However, before taking such a step you should seek independent legal advice.

If you have failed to meet your responsibilities as a boarder or a lodger, the landlord/owner is entitled to take action against you in court.

What are my rights as a boarder or lodger?

While boarders and lodgers are not covered by the *Residential Tenancies Act 1987*, it is important to know that they still have certain rights.

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.

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 you have agreed with 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; and/or
- keeping any vehicle you may own in an agreed place.

Questions to ask before deciding

- How much is the rent?
- How much do I need to pay before you can move in?
- Does the rent cover the cost of other expenses, such as gas, electricity, water, telephone or internet? If not, how will I be charged for them?
- What services will be offered by the owner and how much extra will they cost e.g. linen, laundry, cleaning or meals?
- Does the arrangement allow for medical assistance, special diets or other needs? Will these be provided and what will it cost me?
- Am I happy with the rules of the house?
- Are there any limitations on visitors, noise, hours of entering and leaving, use of common areas, parking or gardening?
- How long can I live here?
- Will there be a restriction or penalty if I leave after only a short time?
- How much notice do I need to give if I decide to leave, and how much notice will I receive if the owner asks me to leave?

Rent assistance

You may be eligible for Commonwealth Rent Assistance for the cost of your accommodation excluding food or meal expenses. To find out more, contact Centrelink on 13 23 00.

Where can I get more information?

The Seniors Housing Advisory Centre
1300 367 057

To obtain a copy please visit:
www.dmirs.wa.gov.au/consumer-protection