SORT IT!

DEAKIN LEGAL SERVICE FOR STUDENTS

SHARING A HOUSE 101

A guide for resolving housemate disputes

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eclc.org.au/Deakin

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Housemate disputes are complicated!

Disputes between housemates and about shared housing are complicated. This is because the law can be very different in each situation depending on how the house is set up – ***there is no legal definition of a "share house"***. Instead, the law categorises share house and housemate relationships under other existing types of legal relationships:

- License agreements
- Co-tenancies
- Sub-tenancies
- Rooming house residencies

In many cases, shared housing situations can make it difficult to know which legal relationship applies. Sometimes it will not be clear which legal relationship applies until a Tribunal or a Court makes a decision

Disputes with your landlord

This book deals with disputes between housemates and occupants inside the same house only. If you have dispute with your landlord or real estate agent and they **don't** live at the property, you can seek further advice from ***Sort It! Deakin Legal Service for Students***. Alternatively you can also seek advice from:

Consumer Affairs Victoria

www.consumer.vic.gov.au

1300 55 81 81

Tenants' Union of Victoria

www.tuv.org.au

(03) 9416 2577 (Advice) & (03) 9411 1444 (Admin)

What do these words mean?

Bond: An amount of money that a renter pays to the landlord to make sure they keep to the conditions on their rental agreement. See page 14.

Consumer Affairs Victoria (CAV): The government agency responsible for the Residential Tenancies Act. CAV helps educate everyone about their obligations. They can also help with negotiations in some cases. See page 21.

Exclusive possession: A legal phrase meaning someone has been granted exclusive use or control of all or part of a property. See page 7.

Intervention Order: A court order that protects people from violence, stalking and harassment. The order can stop someone from living at a house. See page 11.

Landlord: The person who rents you the house or room. They often own the property, but they can also be another renter.

License: A type of contract that is not covered under the Residential Tenancies Act.

- **Licensee:** The person who receives the rights under a licensee. Acts like a tenant in the agreement.
- **Licensor:** The person who gives the rights under a license. Acts like a landlord in the agreement.

Rooming House Operator: The person who manages the rooming house. They act like the landlord. They can own the rooming house or they can be renting from the person who owns the house.

Residential Tenancies Act: The full reference is Residential Tenancies Act 1997 (Vic) and it is sometimes also shortened to the 'RTA'. This is the law that covers most renters in Victoria. The law applies to: tenancy agreements, sub-leases, rooming house agreements, caravan park and site agreements, some retirement villages.

This law does not cover license agreements or most disputes between tenants.

You cannot contract out of the laws in the RTA. This means that even if contract contradicts the Act, the Act will still apply.

Residential Tenancies Bond Authority (RTBA): A government agency that keeps your bond safe until you move out. See page 14.

Tenant: The person who pays rent to live in a house a room.

Co-tenant: Indicates the person is renting together with other tenants on the same contract. See page 10.

Sub-tenant: Indicates the person is renting from another tenant, sometimes called the 'head tenant'. This means there are two contracts: between the owner of the house and the head tenant, and between the head tenant and the sub-tenant. See page 12.

Victorian Civil and Administrative Tribunal (VCAT): This is the independent Tribunal that hears a lot of renting cases in Victoria. It is a type of Court, but the process is more informal and you can represent yourself. See page 21.

What kind of legal relationship do I have with my housemates?

1

Are all the occupants listed as tenants on the lease AND the landlord doesn't live at the property?

YES → **Co-tenancy**

page 10

NO ↓

2

Do the occupants have ***exclusive possession*** of all or a portion of the property (eg. a room or a bungalow)?

NO → **License Agreement**

page 9

YES ↓

3

Does the property have capacity to house at least 4 people?

YES → **Rooming House**

page 13

NO ↓

Sub-tenancy

page 12

This graph is only a guide. If you're not sure, contact ***Sort It! Deakin Legal Service for Students*** to discuss your particular situation.

What is 'exclusive possession'?

'Exclusive possession' is a legal phrase and it is used to test whether someone has been granted exclusive use or control of all or part of a property. If someone has exclusive possession of a room or a house will always depend on the facts of each case.

If a renter has exclusive possession of all or part of a property, they will fall under the Residential Tenancies Act 1997 (Vic). This will grant the renter more rights in the property, but the renter will also have more responsibilities too. It is assumed that renters are covered by the Residential Tenancies Act unless it is proven that they are not.

To decide whether someone has exclusive possession, a Tribunal or Court will look at a range of factors to determine how much control over the property or part of the property the occupant has, and whether they can exclude others from that area.

Indications that an occupant has exclusive possession of an area may include:

- Landlord doesn't live at the property
- Locks present on bedroom doors or on own rooms
- Whether there are self-contained units or independent living arrangements (own bathroom, kitchen, etc)
- Words and intentions in a written contract and what was agreed at the time of making the contract (although this is not necessarily determinative)

Case Example

Tenants, Subtenants, Licensees

Josh, **Lucy** and **Stanley** live in a two-bedroom property with a bungalow at the back. **Kate** owns the whole property but does not live there.

Josh and **Lucy** have their own bedrooms in the main house, but the rooms are not lockable.

Stanley lives in the lockable bungalow at the back with its own bathroom, and only comes into the main house to use the kitchen and to shower.

Only **Josh** is named as a tenant on the lease with the owner, **Kate**, and he collects the rent from all the housemates every month then transfers it into Kate's bank account. **Josh** told **Kate** he would have housemates to share the rent with, and Kate didn't mind as long as they didn't damage the property and he continued to pay rent on time.

LUCY is likely to be a **LICENSEE**. Without a lock on her bedroom door at minimum, it will be difficult to prove she has 'exclusive possession' of this particular room.

STANLEY is likely to be a **SUB-TENANT** of Josh's. Because the bungalow is self-contained, lockable and located in a separate area to the main house, it is likely that Stanley will be found to have 'exclusive possession' of this part of the property only.

JOSH is a **TENANT** at the house in his contract with the landlord, Kate. However, Josh is also considered to be the **LANDLORD** in his sub-tenancy contract with **Stanley**, and the **LICENSOR** in his license contract with **Lucy**. **Stanley** and **Lucy** do not have a contract with **Kate** at all, and if they have any issues around the house, they will need to take up the dispute with Josh.

License Agreement

A license agreement usually occurs in a shared house when an occupant who is not on the lease (the ***licensee***) makes an oral or written agreement with the tenants on a lease or the owners of a house (the ***licensor***) for the use of the house or room. Arrangements that advertise for 'boarder', 'lodger' or 'homestay' agreements that include food are often license agreements under the law.

A license agreement only gives the licensee a right to use the house and its facilities for a particular purpose. It does not give the licensee a right to possess or control part of that property.

Licensor: The person who gives the rights under a license. Acts like a landlord in the agreement.

Licensee: The person who receives the rights under a licensee. Acts like a tenant in the agreement.

This means that the licensor has the legal control of the property, and could potentially evict the licensee at any time. The licensee may be able to apply for compensation for an unlawful eviction, but it may be difficult to stop the eviction itself.

Co-tenancy

A co-tenancy dispute arises when the housemates are joint tenants on a lease, and they have a disagreement with each other, not the landlord. The Residential Tenancies Act treats joint tenants as one entity and only contains provisions about disputes between tenants and landlords. The Act is silent about what happens if tenants disagree among themselves.

Each tenant is ***jointly and severally liable*** for the property. Unless a separate bond has been paid for each tenant, usually the bond will also be considered as joint and the tenants will need to agree on how the bond should be paid.

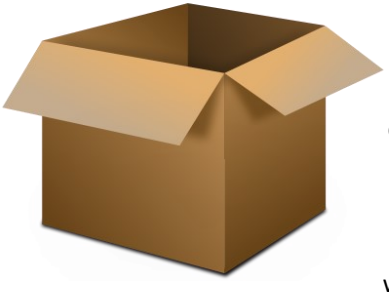
Jointly and severally liable: If there is any damage to the house or rent owing, the landlord can choose to pursue all the tenants together, or just one or a few of the tenants.

Each tenant also has equal joint exclusive possession of the entire property. While a landlord may evict tenants in accordance with the Residential Tenancies Act, it may be very difficult for one tenant to "evict" another tenant who does not wish to give up their property rights.

There are no specific laws governing co-tenancy disputes. All the rights and responsibilities of the parties will be determined by what was agreed between the parties.

Leaving the Lease

If one or more of the co-tenants wish to leave the lease, they will require the approval of everyone on the contract including all the tenants as well as the landlord. This is different to breaking a lease, because the existing contract will continue under the remaining tenants' names. If a co-tenant's name is not taken off the lease they may continue to be liable for rent or damage to the property even after they have moved out. This process is usually different when the entire household wishes move out.



Family Violence and Intervention Orders

The one type of co-tenancy dispute that the Act **does** cover is where there is an intervention order between co-tenants and it excludes one of the tenants from living in the same property as another. The Victorian Civil and Administrative Tribunal may also be able apportion liability for damages.

More information about Intervention Orders:

Tenants' Union of Victoria

www.tuv.org.au/family-violence-protection

Victoria Legal Aid

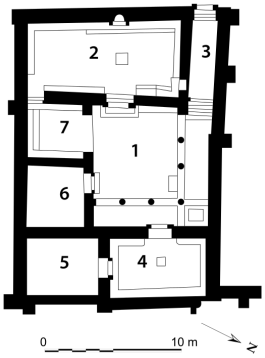
www.legalaid.vic.gov.au/find-legal-answers/family-violence-intervention-orders

Sub-tenancy

A sub-tenancy is created when a tenant on the lease (sometimes referred to as the 'head tenant') makes another agreement with a person who is not on the lease, and then lets that person have exclusive possession of all or part of the property. Sometimes sub-tenancies are created unintentionally – for example a tenant who temporarily leases out their apartment while they are away could create a sub-tenancy.

How does it work? There are two contracts. The person who is the 'head tenant' is a tenant in one contract, but a landlord in the other contract with you.

Under the Residential Tenancies Act, sub-tenancies must have written approval by the landlord in Contract A. If not, there is a risk that the entire household could be evicted. If the household believes that the landlord is unreasonably withholding their consent to a sub-tenancy, they can apply to VCAT to ask that the sub-tenancy occurs without the landlord's permission. However, this cannot be done after the sub-tenancy has already begun.



A sub-tenancy is its own tenancy within another tenancy. This means a sub-tenant has all the rights and responsibilities of a tenant under the Residential Tenancies Act. The 'head' tenant is treated as having all the rights and responsibilities of a landlord. A sub-tenant can therefore be evicted from a property using the same processes for evicting a tenant at the Victorian Civil and Administrative Tribunal.

Rooming House Residency

Under the Residential Tenancies Act, a rooming house is defined as a building where rooms can be rented and has a minimum capacity for 4 occupants, or alternatively has been legally declared to be a rooming house.

Rooming House Operator: The person who manages the rooming house. They act like the landlord. They can own the rooming house or they can be renting from the person who owns the house.

You can still be a rooming house resident even if there is more than one person living in a room, but you must have exclusive possession to the room (see information on page 7 about exclusive possession). Usually residents will sign separate contracts and pay separate bonds. The property will also have shared spaces for the residents, such as bathrooms, a kitchen, a laundry and living spaces.

There are specific sections that apply only to rooming houses in the Residential Tenancies Act. The Act also allows residents to sign tenancy agreements with the ***rooming house operator***. This means that even if you are living in a rooming house, if you have signed a tenancy agreement then the laws for tenants may apply instead to your room. However, the rooming house laws should still apply to any shared areas.

Rooming houses should be registered with local government councils and must also meet minimum standards in what kinds of facilities they provide.

You can search to find out if a rooming house is ***registered*** on the Consumer Affairs website:

www.consumer.vic.gov.au/housing-and-accommodation/renting/types-of-rental-agreements/sharing-in-a-rooming-house/public-register-of-rooming-houses

You can read about the ***minimum standards*** here:

www.consumer.vic.gov.au/minimumstandards

Bonds

A bond is an amount of money that the renter pays to the landlord to make sure they keep to the conditions on their rental agreement. If there are no problems in the property, the bond should be returned to the renter after they move out. If the landlord spends money on any damage or cleaning that is the renter's responsibility this may be deducted from the bond.

Co-tenants, Sub-tenants and Rooming House Residents

If you are **a *tenant*, *sub-tenant*** or ***a rooming house resident***, your bond must be paid to the ***Residential Tenancies Bond Authority*** (RTBA). This means the landlord cannot keep your bond without your consent, or unless they attend a bond hearing.

Residential Tenancies Bond Authority:
Shortened to the ***RTBA***. A government organisation that keeps your bond safe until you move out.

To make sure your bond money goes to the RTBA and not into the landlord's bank account, it is a good idea to pay your bonds in bank cheque or money order, and name the payee as the Residential Tenancies Bond Authority.

You'll know whether your bond was submitted to the RTBA if you signed a form about your bond when you moved in. After the bond is accepted, you should receive a letter from the RTBA confirming the details of your bond. If you're not sure whether your bond was submitted to the RTBA, you can contact them:

Residential Tenancies Bond Authority

www.rentalbonds.vic.gov.au

1300 137 164

The landlord must submit the bond to the RTBA. If they do not, they may be fined under the Residential Tenancies Act. If your landlord has kept the bond, you should ask them to submit it to the RTBA as soon as possible. You can also call Consumer Affairs Victoria for more advice and assistance about getting your landlord to submit your bond to the RTBA:

Consumer Affairs Victoria

- *www.consumer.vic.gov.au*
- 1300 55 81 81

Licensees

If you are a ***licensee***, there is no requirement for your bond to be paid into the RTBA. Unfortunately, if your licensor/landlord chooses to keep your bond and you cannot negotiate with them, you may need to apply to the Magistrates' Court to get your bond back. In many cases, the cost of making an application in the Magistrates' Court, together with lawyer fees, will cost much more than the bond.

In limited cases, you may be able to apply to the Victorian Civil and Administrative Tribunal in their general civil list if the license can be categorised as a consumer dispute, and as a service being supplied "in trade or commerce" under consumer laws.

The Dispute Settlement Centre of Victoria also offers free mediators and mediation services that may assist you in negotiating for your bond:

Dispute Settlement Centre of Victoria

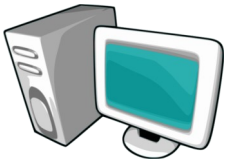
- *www.disputes.vic.gov.au*
- 1300 137 164

Utilities, Bills & Other Services

The utility company only has a contract with whoever is named on the bill. This means that if only one housemate's name is on the bill, the utility company will hold them responsible for the whole bill, and that housemate may need to seek compensation later from the other members of the household.

If you have bills in your name and you move out of a property, make sure you tell the utility company in advance about your moving date, or have the bills transferred into someone else's name. Otherwise, the utility company may find you responsible for bills that don't belong to you.

Internet

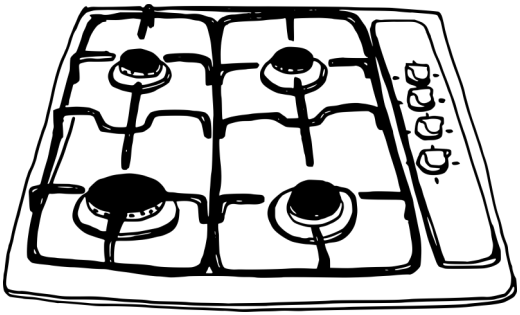


There are no laws about the provision of internet services in a property. Make sure that you have any agreements about internet costs, bandwidth and usage in writing.

Sub-tenants and Rooming Houses

If you are subletting or living in a rooming house, you are covered by the Residential Tenancies Act and you will only need to pay for utilities (electricity, gas and water) if there is a separate meter for your area of the house. Otherwise, the utilities should form part of your rent, and it is the landlord's responsibility to cover those costs.

If you have covered some or all of those costs already, you may be able to make a compensation claim against your landlord at the Victorian Civil and Administrative Tribunal.



License Agreements and Co-tenants

If the rented property shares utility meters with another property, then it is the landlord's responsibility to cover the shared utility.

However, if the rented property is separately metered, then there are no specific laws about how bills should be split among licensors/licensees or cotenants. Usually most people will split the bills evenly, and it is important to have a conversation about bills before moving in and perhaps sign a ***written agreement***.

Written agreements:
If you're not sure how to make a written agreement, Sort it! Deakin Legal Service for Students has a sample written agreement that you can use and change. Just contact us for a copy!

In most cases the Victorian Civil and Administrative Tribunal will not be able to hear disputes about bills between housemates. The Tribunal will only be able to hear matters in limited cases where license agreement disputes can be categorised as consumer disputes, and that the license is a service that is being supplied "in trade or commerce" under other consumer laws.

More information about disputes with your housemates:

Keeping the Mates in Housemates

www.tuv.org.au/articles/files/resources/keeping_the_mates_in_housemates_10-2011.pdf

If you have a dispute with your energy or water service provider:

Energy and Water Ombudsman

www.ewov.com.au

1800 500 509

Property & Personal Belongings

Damage and Theft

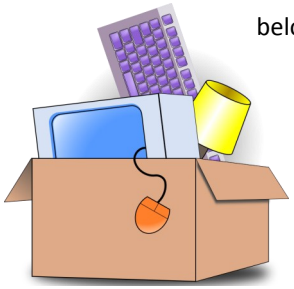
If you believe a housemate has deliberately damaged or stolen your property, then the matter may be something for the Police to investigate. It is the Police's decision whether they choose to charge someone with an offence, and there can be a lot of reasons why they don't, including that they don't have enough evidence to support the charge.

If your housemate is your landlord or rooming house operator, and they or someone they allowed into the property has caused damage and/or stolen your property, you may be able to bring a compensation claim against the landlord or rooming house operator at the Victorian Civil and Administrative Tribunal.

For all other housemate disputes, you may need to bring an action in the Magistrates' Court.

Personal Belongings Left Behind

When vacating a property, it is best to take all your belongings with you before you hand in your keys. You may wish to hire a storage unit to hold any leftover items that can't immediately be moved to a new property.



However, sometimes there is no option but to leave belongings at the property to pick up at a later date. It is a good idea to negotiate with your landlord or the remaining housemates about storage and collection of these goods, as well as providing a list of exactly what goods have been left behind. It is also a good idea to get an agreement or confirmation about any arrangements in writing.

Subtenancies and Rooming Houses

Subtenants and rooming house residents are covered under sections 379 – 403 of the Residential Tenancies Act. The landlord or rooming house operator must take reasonable care of any goods and personal documents left behind, and take reasonable steps to notify the former tenant/ resident of when and how the goods can be collected. However, the tenant or resident may need to pay for any costs associated with the storage of the goods before they can be collected.

There are timeframes after which landlords and operators may dispose of or sell the goods at auction if they cannot contact the former tenant/ resident or if the goods remain uncollected.

If the matter cannot be negotiated, disputes about leftover goods can be brought to the Victorian Civil and Administrative Tribunal.

License Agreements and Co-tenancies

There are no specific rules about dealing with leftover goods for licensees and co-tenants. If the matter cannot be negotiated, former licensees and tenants may be able to bring actions under ***detinue, conversion and trespass to goods*** in the Magistrates' Court. However, these legal arguments can be very technical, and the cost of commencing proceedings may be more than the cost of the goods. It is recommended that you seek advice from a private lawyer before commencing any legal action in the Magistrates' Court.

Detinue, Conversion, and Trespass to Goods

These are three different types of legal "wrongs" and legal reasons you can sue someone. They are general and technical laws that don't only apply to housemates.

Where can I go with my dispute?

Mediation

To save time and money, and to maintain a good relationship with your housemates, you may wish to attend mediation and have an honest discussion about the dispute. In mediation, an independent third person tries to help everyone resolve the dispute, and can also help you put an agreement in writing.

However, unless mediation was ordered by a Court or a Tribunal, your housemates don't have to go to mediation if they don't want to.

The Dispute Settlement Centre of Victoria offers free, independent mediation services.

Dispute Settlement Centre of Victoria

- *www.disputes.vic.gov.au*
- 1300 137 164

Consumer Affairs Victoria (CAV)

Consumer Affairs Victoria (CAV) are the government agency in charge of the Residential Tenancies Act. If you are covered by that Act, they can provide you with some advice. In some situations, they can also help you negotiate.

They also have the power to fine landlords and real estate agents if they don't follow the law. In practice, CAV will check if they can help in your particular situation and then try to talk with the landlord.

Consumer Affairs Victoria

- *www.consumer.vic.gov.au*
- 1300 55 81 81

Victorian Civil and Administrative Tribunal (VCAT)

If your legal problem falls under the Residential Tenancies Act or consumer laws, then you can make an application to the Victorian Civil and Administrative Tribunal (VCAT) to make a decision about most disputes involving your housing situation.

The Tribunal is a type of Court, but it's more informal and does not follow strict rules of evidence. You don't need to have a lawyer or a representative to go to VCAT. They can also provide free interpreters. The person who makes decisions at VCAT is called a Tribunal Member. They act like a judge.

You may need to pay an application fee to take your case to VCAT, but it is not as expensive as some other Courts. You may not need to pay a fee if you have a healthcare card or can prove that you're in financial hardship.

Victorian Civil and Administrative Tribunal

- *www.vcat.vic.gov.au*
- (03) 9628 9800 (Residential Tenancies List)

Magistrates' Court of Victoria

If VCAT cannot hear your legal problem, then you can take legal action in the Magistrates' Court. However, the application fees for the Magistrates' Court are much higher, and the rules and paperwork are more complicated. You may need to see a private lawyer to help you, and the cost of making an application can be much more than the amount you're disputing.

Magistrates' Court of Victoria

- *www.magistratescourt.vic.gov.au*
- (03) 9628 7777 (Melbourne)

	Licensee	Co-tenant	Sub-tenant	Rooming House Resident
Covered by the Residential Tenancies Act?	No	No for co-tenancy disputes. Yes for landlord disputes.	Yes	Yes
Exclusive possession of all or part of a property?	No	Yes, jointly with co-tenants.	Yes	Yes, for the room only.
Does the bond need to be submitted to the RTBA?	No	Yes	Yes	Yes
Who can make decisions about a dispute?	VCAT in limited consumer law cases. Magistrates' Court in all other cases.	VCAT for landlord disputes only, and where an intervention order is involved. Magistrates' Court in all other cases.	VCAT	VCAT

Still unsure?

Give the Deakin Legal Service a call!

We can:

- Give you legal information and advice
- Make referrals
- Provide you with copies of our sample co-tenancy agreement

Burwood campus

(03) 9285 4822

Waterfront, Waurn Ponds, Warrnambool campuses

(03) 5221 4744

Or submit an online query at
eclc.org.au/deakin

We wish to thank the firm Baker & McKenzie for their pro bono assistance in our co-tenancy agreement project.

ABOUT US

Sort it! Deakin Legal Service for Students provides free and confidential legal advice and information for all current Deakin University students.

Even if you are not sure if your problem is a legal one please visit our website. If we are unable to help, we can refer you to someone who can. Book your appointment at:

eclc.org.au/deakin

Eastern Community Legal Centre
ph: (03) 9285 4822

Burwood Campus

Barwon Community Legal Service
ph: 1300 430 599

Waurn Ponds Waterfront &
Warrnambool Campuses

Sort it! Deakin Legal Service for Students is a partnership between Deakin University Student Association (DUSA), Eastern Community Legal Centre (ECLC) and Barwon Community Legal Service (BCLS).

DISCLAIMER: This information is intended as a guide only. It is not a substitute for legal advice.