



### Fact Sheet 5: Types of Residents

#### 1. Overview

When Housing ACT offers a home to an applicant and the applicant accepts the property, a tenancy is formed. The tenancy is formalised by the signing of a tenancy agreement, sometimes called a lease.

In other kinds of living situations – such as a boarding house, a hostel, a refuge or a student residence, the residents may sign an occupancy agreement which generally offers more limited protection to the resident and the arrangement will generally be for a shorter term.

With a few exceptions, Housing ACT offers tenancy agreements with no fixed term, no end date. This is known as a periodic tenancy.

#### 2. Tenants—Sole or Joint?

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

Any person whose name is on a tenancy agreement with Housing ACT is a tenant. If there is only one name on the agreement, then that person is the sole tenant. If there are multiple names on the agreement, then (unless the agreement says otherwise) those people are joint tenants.

Joint tenants have ‘joint and several’ liability, meaning that the tenants undertake to comply with the agreement both individually and as a group. The main effect of this is that Housing ACT can pursue any one tenant for any or all debts arising out of the tenancy, even where the debt results entirely from the actions of another tenant of the property.

#### 3. Guests

Tenants have the right to have guests stay in their homes. This might be a friend, a member of your family, a visitor from overseas—anyone you invite to stay with you on a temporary basis. You do not have an obligation to tell Housing ACT about your guest and you are not required to pay any extra rent because you have a guest unless they become a resident (*see below*).

#### 4. Residents

If you receive a rent rebate from Housing ACT, then you have an obligation to tell Housing ACT about anyone who is a resident in your home, and you must also notify Housing ACT of his or her income. This is because your rent rebate is based on your household income (*see Fact Sheet 2: Rent and Rent Rebates*).

#### 5. When does a guest become a resident?

Whether someone is a guest or a resident is not always entirely clear, but there is a distinction between a person who stays as a guest for a short while and someone who starts living or residing in the place. The longer a person stays at your place the more likely it is that they will be regarded as a resident. Sometimes someone starts off being a guest but stays on and becomes a resident.

Housing ACT’s policy is that a 4 week ‘period of grace’ is given before a guest is regarded as a resident. This time period can be extended by a further 2 weeks. After the ‘period of grace’ has passed, the resident’s income must be declared on the rebate application. This cannot be a hard and fast rule because the circumstances and intention of the people involved is very important to tell the difference between guests and residents.

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

- If the person is using your address as his or her own postal address (i.e. for bills);
- The length of time he or she has been staying with you so far;
- The length of time the person intends on staying with you;
- The circumstances of why the person came to be staying with you;
- The domestic arrangements of the household (i.e. are household responsibilities and/or bills shared?); and
- The housing situation of the guest/resident (do they have a permanent address elsewhere?).

Generally it is best to tell Housing ACT when someone comes to live with you and tell Housing ACT if and when that person leaves. If you do not inform Housing ACT about a resident in your home, you could end up with a large debt.

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

Although rebated rent is based on the income of the whole household (including the tenant and residents), Housing ACT can only demand rent from the tenant (or tenants) of the property, not from other residents. So it is important for the tenant/s to have a clear arrangement with other residents about their contribution to the rent.

### Access to Interpreters

The ACT Government is committed to ensuring that all Canberra residents, regardless of their background have equal access to its programs and services. It is ACT Government policy to use these professional interpreters when speaking with people who have difficulty communicating in English.

You are entitled to an interpreter free of charge when dealing with an ACT Government directorate or agency (such as Housing ACT and shopfronts).

Simply ask the staff member you are dealing with to arrange an interpreter.

### Disclaimer

This fact sheet contains general information available at the time of printing. It does not constitute legal advice. If you have a specific legal problem, please contact Canberra Community Law's advice line on 02 6218 7977.

Canberra Community Law is entirely independent of Housing ACT. All assistance is free.

March 2019