

## Commissioner Determinations

# Interstate parties to bond disputes

The Commissioner for Consumer Protection (the Commissioner) can decide most disputes relating to the release of a residential tenancy security bond.

There are situations where the Commissioner may decline to make a decision about a bond dispute. This fact sheet explains when the Commissioner is unable to decide a bond dispute because of an interstate party and why.

The term 'party' refers to any tenant or landlord linked to the bond.

### Referral of a bond dispute

Bonds Administration refers a bond release application (application) to the Determinations Branch when there is a dispute, or agreement was not reached within the set timeframe. The Determinations Branch will check all parties' principal place of residence to determine if the Commissioner has jurisdiction to make a decision.

### Jurisdiction of the Commissioner where a party lives interstate

The Commissioner is unable to make a decision when both of the following apply:

- every party is a natural person (they are an individual person and not an organisation such as a company etc.); and
- at the time the application was referred, at least one party lived in another Australian State (NSW, QLD, SA, TAS or VIC).

The Commissioner can make a decision when a party lives overseas (e.g. New Zealand) or in an Australian Territory (ACT, NT or Christmas Island, etc.).

An agent employed to manage the rental property on the landlord's behalf is not considered a party to the bond.

### Why the Commissioner cannot decide interstate bond disputes

The Commissioner does not have jurisdiction to determine bond disputes between residents of different States under Chapter III of the Australian Constitution and the High Court of Australia decision *Burns v Corbett* [2018] HCA 15.

In simple terms, the Commissioner can't make a decision about the bond of someone who lives in another state.

The Commissioner can still decide non-bond matters, such as pet and minor modification applications, even if someone lives interstate.

### Examples

#### Example 1: Tenant is temporarily interstate.

Giulia (tenant) moved from a rental home in Subiaco, WA, to another rental home in Rockingham, WA. When the bond release application was referred, Giulia was in Sydney, NSW, for a two-month holiday. Giulia's principal place of residence is in WA. The Commissioner **can make a decision**.

**Example 2: Tenant moved interstate.** Min-jun (tenant) moved from a rental home in Esperance, WA, to one in Sydney, NSW. When the application was referred, Min-jun had moved into the tenancy in Sydney. Min-jun's principal place of residence is in NSW. The Commissioner **can't make a decision**.

**Example 3: Tenant moved overseas.** Selam (tenant) lived in a Bentley, WA rental property while studying at university. When she finished her studies, she moved back to Ethiopia. Selam was in Ethiopia when the bond release application was referred. Selam's principal place of residence is outside of Australia. The Commissioner **can make a decision**.

**Example 4: Tenant moves to an Australian territory.** Li (tenant) moved from a Joondalup, WA, rental property to a rental property in Canberra, ACT. When the bond release application was referred, Li had moved into the tenancy in Canberra. Li's principal place of residence is in ACT, an Australian Territory (not a state). The Commissioner **can make a decision**.

**Example 5: Landlord lives interstate.** Mike (tenant) moved from one Karratha, WA, rental to another rental in WA. Imran (landlord) lived in Melbourne, VIC, when the bond release application was referred. Imran's principal place of residence is in VIC. The Commissioner **can't make a decision**.

**Example 6: Landlord is a company and director lives interstate.** Joe (tenant) moved from a Fremantle (WA) rental property to another rental property in WA. The rental property is owned by Investments Pty Ltd (landlord). Ayesha is a director of the company and was living in Brisbane (QLD) when the bond release application was referred. Because the landlord is a company, which is not a natural person, the Commissioner **can make a decision**.

## Negotiated Agreement Service

If the Commissioner cannot make a decision on your dispute, you may be offered the free Negotiated Agreement service.

The negotiated agreement service:

- is voluntary;
- requires that everyone on the bond agrees to participate;
- helps you resolve the dispute quickly without going to Court; and
- cannot be offered if there is a restraining order between the parties.

We will contact you if this service is available for your situation.

More information is available on our fact sheet: [Negotiated Agreement for bond disputes](#).

## Notice that Commissioner declines to decide

If an agreement cannot be reached or if you don't use the Negotiated Agreement service, your dispute must be settled at the Magistrates Court.

You will receive a formal notice titled 'Notice that Commissioner declines to decide application'.

This explains the reason the Commissioner cannot make a decision on the bond release. It will also have instructions for applying to the Court for a decision about the bond dispute.

## Applying to Court?

You can make an application online on the [eCourts Portal](#).

You will need to submit:

- evidence to support your case; and
- the Notice that Commissioner declines to decide application.

You can make an application even if your landlord or tenant:

- lives interstate; or
- is unwilling to participate in the Negotiated Agreement service.

We cannot provide information to Court for you. You will need to upload your own documents to Court, such as the bond release application and supporting documents.

For more information about going to Court, see the Consumer Protection's website:

- [Magistrates Court](#).
- [Going to court about rental property issues](#).

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