Legal situation

Not covered by Residential Tenancies Act

<http://www.lawhandbook.sa.gov.au/ch23s01.php>

Exception: Where the tenant is a boarder or lodger in premises other than a rooming house [Residential Tenancies Act 1995 (SA) s 5(b)], see [boarders and lodgers](http://www.lawhandbook.sa.gov.au/ch23s01s03s02.php):

#### Boarders and lodgers

A boarder or lodger is a licensee who is merely licensed to occupy part of premises. If a 'landlord' retains control of the building the occupier will be a lodger. Boarders are usually provided with services in addition to accommodation, such as meals, washing and cleaning. Usually a boarder or lodger has no exclusive legal right to possess the occupied area, although this may not always be so. Generally, the owner retains control of the premises, with the lodger or boarder having restricted rights. In either case a boarder or a lodger is not afforded the protection of the [Residential Tenancies Act 1995](http://www.legislation.sa.gov.au/LZ/C/A/RESIDENTIAL%20TENANCIES%20ACT%201995.aspx) (SA). Similarly, lodgers of a tenant have no rights against a landlord.

Problems often arise where a landowner shares premises with another. The few court cases that have dealt with the topic, such as the South Australian Supreme Court case of Noblett v Manley **(1952) SASR 155**, have emphasised the element of control. While there is no presumption that a person sharing a house with the owner is not a tenant, it may be difficult to establish a [tenancy](http://www.lawhandbook.sa.gov.au/go01.php#idp5493408) without proof of exclusive occupation over a long period. To determine whether a [lease](http://www.lawhandbook.sa.gov.au/go01.php#idp5182112) or licence situation has arisen it is important to look at the intention of the parties and whether there is evidence of control over the property.

The protection given by the law to a licensee is much less than that given to a tenant. For example, a boarder or lodger can rarely take court action to stop the owner from evicting them. In most cases, the only remedy is an action for damages, that is, compensation for breaching the licence agreement.

The distinction between boarders and lodgers and tenants is often difficult and anyone who has difficulties should seek legal advice or advice from the Tenancies Branch at Consumer and Business Services on 131 882.

<http://www.lawhandbook.sa.gov.au/ch23s01s03s02.php>