



Government of **Western Australia**  
Department of **Mines, Industry Regulation and Safety**  
**Consumer Protection**



# **Renting out your property > a lessor's guide**

**An easy-to-read guide that explains  
your rights and responsibilities  
as a private property owner.**



# Disclaimer

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The information, including advice ('information') in the Department of Mines, Industry Regulation and Safety's *Renting out your property - a lessor's guide* ('the Guide'), is provided by the officers of the department in good faith and derived from sources believed to be accurate and reliable at the time of publishing. Changes in circumstances after information is published in the Guide may influence the accuracy of that information. No assurance is given about the accuracy of the information. The information provided is of a general nature only and is provided solely on the basis that you are responsible for making your own verification and assessment of it. If necessary, you should obtain your own independent advice (including legal advice) in relation to your own particular circumstances.

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## What we do

The Department of Mines, Industry Regulation and Safety gives free advice to all parties in a residential tenancy agreement, looks into complaints, and, wherever possible, helps settle them. If we can't negotiate a fair outcome, it may be necessary for the matter to be settled in court (see *'Going to court'*).

However, our powers are limited to conciliation and prosecution of breaches of consumer law – only the courts can make orders or determinations (in other words, we can't make a tenant or lessor/property manager do something).

We also provide the legislated bond management service for lessors/property managers to lodge the tenant's money. All new bonds must be lodged with the Bond Administrator, located in our Cannington office. This is a free service.

You can contact us by telephone or by calling at one of our offices (see the last page for details).

Our website [www.commerce.wa.gov.au/renting](http://www.commerce.wa.gov.au/renting) has a wealth of information on tenancy laws and other matters.

The information provided in this publication explains and simplifies the law and should not be taken as a statement of law, for which you should refer to the *Residential Tenancies Act 1987* and the *Residential Tenancies Regulations 1989*.



For the most up-to-date version of this guide, please visit our website or scan this QR code with your mobile device.



This publication is free. The Department of Mines, Industry Regulation and Safety has no objection to lessors/property managers, tenants or others photocopying parts or all of the text.

This publication is available on request in other formats to assist those with special needs.

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# Introduction

If you are renting out a residential property in Western Australia or thinking of doing so soon, the information in this guide will help you avoid many potential problems.

Renting in Western Australia is governed by a set of laws called the *Residential Tenancies Act 1987* (the Act) and the Residential Tenancies Regulations 1989 (the Regulations). You can buy copies of the Act and Regulations from the State Law Publisher, telephone 08 6552 6000, or download copies from [www.slp.wa.gov.au](http://www.slp.wa.gov.au). We also advise you to periodically check whether any changes have been introduced.

This guide doesn't take the place of the Act, nor does it cover everything, but it will give you a good working knowledge of your rights and responsibilities as a lessor of a residential rental property.

The term 'lessor' is used in this guide to describe the person who is renting out the property. This person is commonly known as the 'landlord'.

## The Act covers:

- the role of the Department of Mines, Industry Regulation and Safety (the department) and the Magistrates Court;
- your obligation to use a prescribed tenancy agreement if the agreement is in writing;
- the need to give the tenant a copy of the *Information for tenant* (Form 1AC for a written agreement or Form 1AD for a non-written agreement);
- use of the premises;
- discrimination against children;
- options for tenants affected by family and domestic violence;
- urgent repairs;
- fixtures, renovations, alterations and additions;
- right of entry by the lessor;
- payment of rent and rent increases;
- security bonds;
- assignment and subletting;
- who pays rates and taxes;
- ending a tenancy; and
- giving of notices.

**This publication covers agreements entered into from 1 July 2013.**

**Some parts of the Act may not apply to tenancy agreements entered into prior to 1 July 2013. See the Changes to Residential Tenancy Law FAQ at [www.commerce.wa.gov.au/renting](http://www.commerce.wa.gov.au/renting) or contact the Consumer Protection Contact Centre on 1300 304 054.**

## Please note

The laws referred to throughout this guide do not relate to the following:

- boarders/lodgers (refer below);
- holiday accommodation;
- most long-stay caravan and park home residents (see 'Caravan and park home residents', page 3);
- hotels/motels;
- colleges;
- educational institutions (unless a for-profit organisation prescribes the accommodation);
- hospitals/nursing homes/clubs; or
- certain homes for aged or disabled persons.

If you have any doubts about whether your rental situation is covered by the Act please contact the Consumer Protection Contact Centre on 1300 304 054 for the cost of a local call.

## Be aware

Lessors, real estate agents, tenants and the Department of Housing (formerly Homeswest) and its tenants are bound by the Act.



## Boarders and lodgers

To understand your legal obligations and to avoid costly court disputes, you should work out if you are providing accommodation to a tenant, boarder or lodger. 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 Act, however, it is important to know they still have certain rights.

A tenant is a person who pays rent and in return is granted a right to occupy a residential premises, whether exclusively or not, as long as they are

not a boarder or lodger. A tenant has exclusive possession of the premises they are renting whereas a boarder or lodger has exclusive occupation of their room. A right of exclusive possession means the right to exclude anyone, including the landlord, from the premises or the room they rent. This is different from 'exclusive occupation' or use, where the occupant can have their own room in which no one else can stay without their permission.

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 may not receive services from the landlord.

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

Depending on the documents that make up the agreement and the circumstances of the situation, a person is more likely to be a boarder or lodger if:

- the landlord exerts control and authority over the whole premises, that is the boarder or lodger is entitled to live in the premises but cannot call the place their own;
- the landlord provides attendance or services (such as cleaning, linen or meals) which require the landlord, or his or her servants, to exercise unrestricted access to and use of the premises;
- there are house rules, which are enforced;
- the landlord/owner/representative lives on site;
- the term of the agreement is for a short period of time; and
- if you and the tenant only need to give a very short period of notice to leave. See *Notice to leave below*.

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

Just because the boarder or lodger's room has a lock, it does not automatically mean they have exclusive possession of the room. The 'house rules' may state the landlord is allowed to enter the room under certain circumstances without the boarder's permission, for example, to clean the room.

If the agreement includes cleaning, linen or meals, the landlord needs unrestricted access and the occupant does not have 'exclusive possession'.

Be aware there are other factors that may impact on whether the occupant is a boarder or lodger. Each case needs to be determined by looking at the particular agreement reached between the parties.

## Your obligations to boarders and lodgers

Although boarders and lodgers are not covered by the Act, common law obligations apply to your treatment of boarders and lodgers.

For more information, please phone the Consumer Protection Contact Centre on 1300 304 054, visit the boarders and lodgers page online at [www.dmirs.wa.gov.au/consumer-protection](http://www.dmirs.wa.gov.au/consumer-protection) or refer to the brochure *Boarders and lodgers: a guide to your rights and responsibilities*.

The department suggests that if you want to rent your premises to boarders/lodgers, you seek legal advice on how to set up the situation.

## Caravan and park home residents

The Act also covers long-stay residents of caravan parks and park home residents who entered into or renewed a fixed-term long-stay tenancy agreement **prior to 3 August 2007** that has not been renewed or extended. The *Residential Parks (Long-stay Tenants) Act 2006* covers residents of caravan parks and park home residents who started long-stay tenancy agreements after 3 August 2007. Several publications and more information regarding residential parks long-stay tenancy are available at [www.commerce.wa.gov.au/ResParks](http://www.commerce.wa.gov.au/ResParks)



# Getting started

As with any business, you must expect and plan for some losses or unforeseen expenses and also accept others may not always be as careful about the use and care of your property as you are.

It is very important to maintain full insurance cover on the building and any furnishings. It may also be a good idea to take out rental protection insurance (also known as landlord's protection insurance) to cover any losses of rental income if, for example, the property becomes uninhabitable, your tenants do not pay the rent or there is a vacancy for some period.

## Agent or DIY?

Once you have decided to rent out a property, one of the first decisions you will need to make is whether to manage the property yourself or employ a real estate agent to do it for you.

It needn't be all or nothing. You may employ an agent just to find tenants and handle the bond details, and then manage the property yourself, or you may just want an agent to collect the rent but do everything else yourself.

If you don't live near the property, then using an agent may be your best option. An agent may also be the best choice if the house has been your home. Sometimes it's hard to be objective when tenants don't keep the house exactly as you did, even though they may be considered good tenants by most people.

If you decide to do it yourself, look at renting out your property as running a small business and your tenants as your customers.

## Using an agent

### Selecting an agent

Real estate property managers must be registered real estate sales representatives operating under the supervision of a licensed real estate agent who is in charge of the agency.

If you choose to use a property manager, then consider:

- the person's experience in property management. Ask about the agency's management portfolio and the types of properties the agency manages;
- the property manager's approach to managing your property, for example response time to issues;
- the property manager's manner in dealing with people; and
- the fees charged.

### What to expect of an agent

If you use an agent just to find a tenant and deal with the bond, then you will pay the agency a 'letting fee'. If you use an agent to manage the property and/or collect the rent, then there will be a fee for that.

However, any fees you pay to an agent, and some other expenses, are likely to be tax deductible.

If you decide to engage a property manager, you will need to give the agent written authority to act on your behalf. The document, Exclusive Authority to Act as Managing Agent for Residential Premises, is generally used for this purpose. The agent will have a copy of this agreement. It provides for you to nominate a fixed term for the management of the property.

#### Be aware



If you use another agent to find your tenants after you have given exclusive authority to one agent, you could be liable to pay a fee to each agent.

If you use an agent to manage everything, then you should expect the following services:

- advice on matters such as rental values, rent reviews, insurance and any repairs that should be done before the property can be let;
- advertising for tenants;
- selecting tenants and letting the property;
- collecting and lodging the bond with the Bond Administrator (the Department of Mines, Industry Regulation and Safety) in accordance with the Act;
- collecting rent payments;
- preparing a property condition report at the start of the tenancy and checking the property's inventory;
- inspecting the property and ensuring it is suitably maintained;
- paying accounts, such as water service charges, council rates;
- providing you with regular financial statements;

- attending court on your behalf in any disputes with tenants; and
- at the end of the tenancy, preparing a property condition report and finalising matters relating to the bond.

Make sure all matters you want the agent to handle, and any specific conditions, are listed as clear instructions in the agreement. For instance, before signing the agreement you should ask yourself these questions:

- How often do you want inspections to take place (the Act allows for four routine inspections in a 12-month period)?
- How do you want to receive your copy of the property condition reports and inspection reports?
- If a rental payment is late, when do you want to be told?
- How do you want to receive information?

Once you sign an authority for an agent to manage your property, it is binding on both parties for the agreed management period.

Make sure the agent gives you a copy of the agreement.

Remember an agent cannot be held responsible for the conduct of tenants.

You can find additional information in the publications *You and your property manager* and *Real estate fees - negotiating with an agent*, which are available from the department's website.

## Managing the property yourself

### Advertising your property for rent

Tenants may search the Internet or in state or local newspapers to find somewhere to rent.

Listing your property online allows you to list your rental property by location, size, rental cost etc., and include a photo. If your property is vacant, it is a good idea to provide only general details of the location (such as the suburb) so as not to invite issues.

### Choosing tenants

When you are seeking a tenant, the department has an application form you can use. You can download the *Application to rent residential premises* (Form 18) from our website.

The 'ideal' tenant will:

- pay the rent on time; and
- take good care of your property.

To help find your ideal tenant, it's a good idea to take the following steps:

- get references—employment and personal—and photo identification and check them;
- meet the tenant at the premises to discuss their references and the premises; and
- if you use a real estate agent, ask them to check the tenant's previous rental history.

Some young people will not have a previous record of renting, so personal references from 'responsible' adults will be important, such as a school teacher, church minister or employer.

You cannot refuse a tenancy because the tenant intends to have a child live on the premises.

#### Important:

The *Equal Opportunity Act 1984* prohibits discrimination, including discrimination against potential tenants, on a range of grounds including sex, race, age, disability, marital status, pregnancy, family status or responsibility, religious or political beliefs, spent convictions, sexual orientation or gender history.

### Minors

Minors (a person who is over 16 years of age but under 18 years of age) may apply for a residential tenancy. For example, a young person may choose to rent because of their employment or study. A tenancy agreement may be enforced in accordance with the Act against a minor who is a tenant. However, there are protections in the Magistrates Court for minors, such as the appointment of a litigation guardian.

### Inform prospective tenants about the property

Being honest and up-front with potential tenants about the positive and negative aspects of the property will reduce the risk of any future misunderstandings.

You should disclose to prospective tenants what services, amenities or appliances in the property are or are not available or functioning and if you intend to fix these items, before entering into the tenancy agreement. Refer

to page 14 for more about maintenance requirements.

If fixtures or chattels provided with the property appeared to be available when your tenant inspected it, it is your responsibility to ensure the items are maintained during the course of the tenancy unless they were disclosed as not functioning before the tenancy agreement was signed by the tenant.

To avoid disputes with the tenant, include this information in the prescribed tenancy agreement. For example, if the TV aerial or air conditioner or solar hot water system is not functioning it should be disclosed as not functioning.

If there is an impediment or inability to connect services like telephone or internet at the property, you should disclose this to the prospective tenant. If the property is not connected to scheme water or gas is not mains connected, the tenant will need to know its availability and the average annual cost so they can make an informed decision. Refer to page 16 for more on utilities.

In the case of strata properties, prospective tenants should be informed of any by-laws that may affect them, such as the use of common property, rules relating to moving into and out of the property, parking and whether or not pets are permitted.

## Option fees

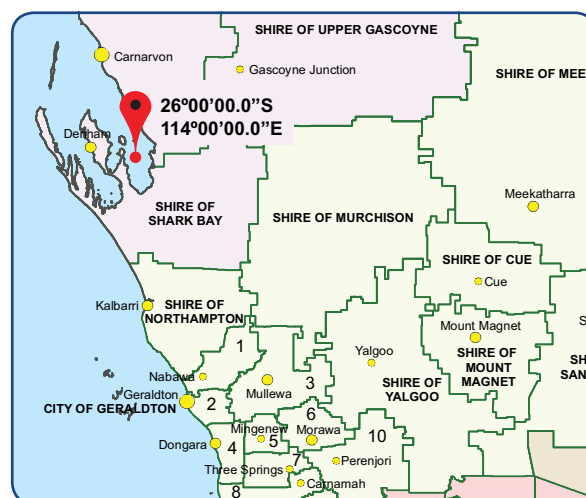
An option fee is money paid by prospective tenants to the lessor or property manager when lodging a rental application.

If you choose to take an option fee, you will hold it while you check references and decide whether to offer them the tenancy.

If the average weekly rent for the premises is up to \$500, the tenant may be charged a maximum of \$50 for the option fee. For premises with a higher weekly rent, please refer to the table below.

Weekly rent of the property	Location of the property	
	Above 26th parallel of south latitude	Below 26th parallel of south latitude
\$500 or less	\$50 maximum	\$50 maximum
More than \$500 but less than \$1,200	\$100 maximum	\$100 maximum
\$1,200 or more	\$100 maximum	\$1,200 maximum

**Note:** Denham in Shark Bay is just above the 26th parallel.



If a prospective tenant is offered the tenancy, the option fee must be applied towards their rent or be refunded in cash. If the prospective tenant is not offered the tenancy, the amount must be refunded by EFT or in cash within seven days.

Changes to the Act and the *Real Estate and Business Agents Act 1978* effective from 5 April 2007 abolished tenant letting fees. It is an offence for anyone to charge a letting fee to a residential tenant in Western Australia.

## Fixed-term or periodic tenancy?

You will need to decide whether to offer a fixed-term tenancy or periodic tenancy to the tenant. You can choose the term of the agreement in Part A of the prescribed tenancy agreement.

A **fixed-term tenancy** specifies, with a start and finish date, the length of time a tenant has agreed to stay in the property. Rent can only be increased during the fixed-term if the tenancy agreement stipulates the amount of the increase or the method of calculating the increase.

A fixed-term tenancy agreement may also state whether the tenant can automatically renew the tenancy at the end of the original period and/or provide for renewal of another fixed term. If it contains an option to renew for a further period, the choice is usually the tenant's, unless the written agreement states otherwise.

The fixed-term agreement should state the conditions for an option to renew, including the maximum extent of any rent increases that may apply. If the tenant stays on at the property, with your consent, after the initial period has expired but another fixed-term tenancy agreement is not signed, the tenancy will automatically become a periodic tenancy.



However, the rent cannot be increased for the first 30 days of the periodic tenancy.

The rent can also not be increased for the first 30 days if the fixed-term tenancy expires and a new agreement follows at the same premises.

### Advantages

Your rental income is more secure.

### Disadvantages

You have less flexibility to end the agreement, for example a sudden change in your circumstances may mean you want the tenants to leave before the end of the term.

### Note:

Notices for a periodic tenancy differ from fixed-term agreements. See 'When things don't work out'.



Most fixed-term agreements are for six or 12 months but they can be for any length of time. Although fixed-term agreements have expiry dates, an agreement does not automatically terminate on the end date unless either party has provided the other with a minimum 30 days' notice of termination. Refer to 'Ending a fixed-term agreement' in 'When things don't work out'.

A **periodic tenancy** can last for an indefinite time. The agreement can be ended when proper notice is given by either party.

A periodic tenancy provides greater flexibility if your circumstances change and you need to end the tenancy. You have to give a minimum of 60 days' notice to end the tenancy (except where your tenant is in breach of the agreement or you sell the property).

Your tenant can move out more quickly too (minimum 21 days' notice in writing). Finding new tenants could mean your rental income is less assured.

### Advantages

Greater flexibility if your circumstances change and you need to end the tenancy. You have to give a minimum of 60 days' notice (except where your tenant is in breach of the agreement or you sell the property).

### Disadvantages

Your tenant can move out just as easily (minimum 21 days' notice in writing). Looking around for new tenants could mean your rental income is less assured.

### Prescribed tenancy agreement

If you enter into a written residential tenancy agreement (fixed-term or periodic) you must use the prescribed *Residential tenancy agreement* (Form 1AA).

The prescribed tenancy agreement means there can be little argument over the terms and conditions agreed at the outset between you and your tenants.

This agreement becomes a key document for you and the tenant and covers most of the matters concerning your relationship and the leasing of the property. It is important to ensure your tenant understands the provisions in the agreement.

Your explanations about the tenancy is likely to be important too as half of Australians aged between 15 and 74 years have 'poor' or 'very poor' literacy skills<sup>1</sup>.

The clauses in a prescribed tenancy agreement must not be altered. You can insert additional clauses in Part C of the agreement. **It is against the law to contract out of any section of the Act; however, a contract entered into before 1 July 2013 is exempt for the life of that agreement regarding obligations that were legitimately contracted out of under the former legislation.** Any additional conditions should also comply with the unfair contract terms provisions of the *Fair Trading Act 2010*. For further information about unfair contract terms ring our Contact Centre on 1300 304 054.



You can download the prescribed Residential tenancy agreement and forms from our website. Visit [www.commerce.wa.gov.au/renting](http://www.commerce.wa.gov.au/renting). You should always download a new copy at the start of each tenancy, as the form may have changed.

If you ordinarily use a tenancy database, you must give each applicant written notice at the time when the application is made, whether or not you intend to use the database on this occasion.

<sup>1</sup> Adult Literacy and Life Skills, Australia 2006, Australian Bureau of Statistics (Cat.no. 4228.0).

For more information on tenancy databases, see 'Tenancy databases' in 'Once the tenancy begins' (page 21).

## Penalties

Tenancy agreements cannot provide for penalties or damages if the tenant fails to keep to the agreement. Only a magistrate can make this type of order.

Even if an agreement allows a reduced rent, as long as the tenant keeps to the agreement, you must not charge any higher rent if he or she breaks the agreement. Such action would be seen as a penalty rate.

You must also not charge the tenant re-inspection or rent payment administration fees.

## Subletting

Subletting (or 'assigning') the rental property is where a tenant rents out all or a part of the premises to another person.

The prescribed tenancy agreement enables you to choose whether to:

- permit the tenant to sublet;
- prohibit the tenant from subletting; or
- permit the tenant to sublet but only with your written consent.

If you agree to allow the tenant to sublet but only with your written consent, then you must not withhold your consent unreasonably.

If the agreement does not make any reference to the tenant's ability to sublet, then the agreement is deemed to include the provision that subletting can occur with your written consent.

## Alterations and additions

You can specify in the tenancy agreement whether or not you allow the tenant to attach fixtures, renovate, or alter the property. If the agreement says these changes can be carried out only with your consent, that permission should not be withheld or refused unreasonably. The tenant must obtain your permission first and preferably in writing, other than when necessary to prevent [family violence](#) (see 'Tenants affected by family and domestic violence').

## Security bond

A security bond is a payment made in advance by the tenant to cover any costs for which the tenant may be liable at the end of the tenancy,

for example unpaid rent, outstanding water use charges, or damage to property or chattels.

You do not need to charge a security bond. If you do take a bond, there are restrictions on the amount of bond allowed. For most properties, the bond must not be more than four times the weekly rent. If the weekly rent is \$1,200 or more per week then you may charge a bond higher than four weeks' rent.

If more than one person has paid money as part of the bond, it is important the names of all the parties appear on the lodgement form, to protect each person's share.

If you have more than one rental property, you must have a separate bond for each property.

If you permit the tenant to keep any pet capable of carrying parasites that can affect humans (such as cats, rats, birds or dogs) on the property, an additional amount of no more than \$260 (regardless of the number of pets) can be charged as a pet bond to meet the cost of fumigation at the end of the tenancy. A pet bond cannot be taken for assistance dogs.

### Note:



The keeping of certain dogs, such as American pit bull terriers and Brazilian mastiffs, is restricted under the Dog (Restricted Breeds) Regulations 2002 (s53 of the *Dog Act 1976*). For advice on the legality of any pet your tenant may want to keep, contact your local council ranger, vet or the Department of Local Government, Sport and Cultural Industries.

## Receiving and depositing the security bond

If you receive a security bond from a tenant, you must immediately issue a receipt. The receipt must show the name of the person who paid, the amount paid, the date of payment and the address of the rental premises.

All security bonds must be lodged with the Bond Administrator (a section of the Department of Mines, Industry Regulation and Safety) as soon as practicable and in any event within 14 days of receiving it. If you do not pay the bond money to the Bond Administrator within 14 days of the receipt of the bond you will be in breach of the Act and can be prosecuted.

The Bond Administrator will send you and the tenant a record of the payment.

Bonds can be lodged by email to [bondsadmin@dmirs.wa.gov.au](mailto:bondsadmin@dmirs.wa.gov.au) by post or in person at one of the department's offices. Alternatively, if you are eligible to use BondsOnline, bonds can be lodged electronically using eTransactions. The service is free and the interest on residential tenancy bond accounts goes towards the cost of administration, dispute resolution and tenancy education, such as this document.



For more information on lodging bonds with the Bond Administrator you can obtain the publication *Bond administration* from the department's website.

## Department of Housing (previously Homeswest)

Some tenants will arrange for the security bond to be paid to you on their behalf by the Department of Housing. In effect, such money is a personal loan to the tenant to help them rent in the private sector. You must deal with these security bonds in the same way as any other security bond.

## Decreased rent during tenancy agreement

While the bond can be reduced at any time with the consent of both parties, you are not obliged to partially refund the bond where rent is decreased during the tenancy.

## Property condition reports

Property condition reports are used to avoid disagreements with the tenant about damage to the property.

Tenancy laws require you to prepare a property condition report describing the condition of the property at the start and the end of a tenancy.

You may create your own property condition report, but at a minimum, it must contain the information stated within the *Property condition report* (Form 1) available from the department. You can add more detail to this form if you wish.

The property condition report enables you to list all of the contents and identify if they are clean, undamaged or working. You can also add further comments about anything damaged or in bad condition, such as a cracked ceiling, torn fly screen, stained carpet or dirty or chipped walls.

It is advisable for the report to describe the condition of any lawns or garden beds, including

shrubs and trees, plus the type and number of garden sprinklers and the condition of the bore or reticulation system.

If there is a swimming pool or spa, it's a good idea to record its condition and note the accessories and cleaning equipment and check it complies with pool safety laws. For more information on swimming pools, refer to page 12.

## Provide two copies to the tenant

Two copies of the property condition report must be provided within seven days of the tenant moving in. You can attach dated and signed photographs or digital recordings if you wish to do so.

The tenant then has a further seven days to mark any disagreement on the two copies of the property condition report and return one marked up and signed copy to you. If the parties do not agree, the property condition report is not considered to reflect the condition of the property. You and the tenant(s) may wish to meet to view the property jointly and compare the differences in an attempt to resolve the disagreement. If there is a dispute at the end of the tenancy, a court may look at the marked up copy and other evidence.

If the tenant does not return the property condition report, it is understood it has been accepted as an accurate record of the condition of the property. A tenant is unlikely to return (or dispute) a report that includes fair descriptions of the condition of the property so it's in your interest to provide reports that are accurate.

You will be able to check each item on the original property condition report as compared to the report at the end of the tenancy to see if there has been any damage or if items are missing.

The tenant is not liable for normal wear and tear (see the 'Who's responsible in a tenancy?' section).

The tenant must be given a reasonable opportunity to be present at the final inspection. After conducting a final inspection and report, you will need to provide a copy of the report to the tenant as soon as possible and in any event within 14 days after the termination of an agreement.

## Documents and information you must give to the tenant

You must give the tenant:

- A copy of the prescribed *Residential tenancy agreement* (Form 1AA) (if using a written residential tenancy agreement):
  - when the tenant signs it; and

- within 14 days of all parties signing the agreement.
- A copy of the *Information for tenant*:
  - If there is a written tenancy agreement, the Form 1AC is to be provided at time of entering into agreement.
  - If there is a verbal tenancy agreement, the Form 1AD must be provided within 14 days after the tenant takes possession of the premises.

Two copies of a completed property condition report (Form 1, as detailed above). If the tenant is paying a security bond, you must provide them with a completed bond lodgement form to sign so it can be lodged with the Bond Administrator. If you are eligible to use BondsOnline eTransactions, this can be done electronically and the tenant will be sent an email asking them to approve the details online.

- A receipt for the security bond must also be provided showing the date, amount, who paid and the address of the premises.
- Your full name and address. If the property is managed by a real estate agent, they will provide your name but their address.

If more than one person owns the property, you must nominate someone to be head lessor and give the tenants their name and address. If the lessor is a company or other body corporate, you must provide the name and business address of the secretary of the owning company.



The prescribed tenancy agreement, property condition report (with prescribed minimum content) and other forms are all available free of charge from the department's website.

## Water, gas and electricity bills

Generally, you pay the water rates and the tenant pays for their consumption of utilities.

The prescribed tenancy agreement requires you to indicate whether the electricity, gas and water services to the rental property are separately metered.

If there is no separate metering for any of these services, the prescribed tenancy agreement requires you to put in a calculation about how the tenant's costs will be worked out. For example, a calculation for electricity may be as follows:



**\$ total amount of bill ÷ total number of bedrooms in the apartment block × number of bedrooms in the rental premises in this tenancy agreement.**

It is important to include these calculations as the tenant is not obliged to pay a utility bill unless there is written agreement about how the bill will be calculated.

You should note that if the tenant receives their electricity bill from you rather than directly from the electricity supplier, you cannot charge the tenant any amount other than the consumption cost. You cannot add an account or administration fee.

## Meter reading

Where it is necessary to accurately account for consumption, it may be reasonable to organise a special meter reading. This should be recorded at the start and end of a tenancy, in Part C of the prescribed tenancy agreement. This will reduce the likelihood of disputes over costs, which are a common area of concern for tenants.



Since all water consumed is chargeable to your tenant, you may want to share the costs of the water bill to encourage the tenant to water lawns and gardens. The prescribed tenancy agreement lets you specify what percentage of the water consumption costs the tenant is required to pay.

## Before tenants move in

Before your tenants move in, there are things you must do to the property which comply with the Act and things you should do which are good business practices.

What you must do:

- Make certain the rental premises are vacant on the day and time at which it is agreed the tenant will move in.
- Ensure the property and contents are in a clean and habitable condition.
- Ensure the property has minimum levels of security in place.
- Ensure the condition of the property complies with all laws relating to buildings, health and safety, such as residual current devices, smoke alarms and pool fences.

What you should do:

- Consider obtaining landlord's insurance, which can cover lost rental income or rebuilding (refer to product disclosure statements to check your coverage).
- Make sure carpets and windows are clean.
- Mow lawns, trim edges and make any garden beds neat and tidy. If the home and garden is in neat condition when your tenants take possession, you stand a much better chance that they will keep it that way.

It is the landlord's responsibility to ensure the rental premises are safe to live in. Under common law, a landlord has a duty of care to tenants as well as anyone the tenant invites into the property.

## Minimum levels of security

Residential tenancy laws in Western Australia have always required lessors to provide and maintain locks or other devices to ensure rental premises are 'reasonably secure'. Minimum levels of security standards have now been defined and your rental property must meet these standards.

These security measures include:

- Main entry door – either a deadlock or a key-lockable screen door to Australian Standard AS 5039-2008.
- All other external doors (excluding balcony doors where there is no access to the balcony except from inside the premises) – a deadlock or, if a deadlock cannot be fitted, a patio bolt lock or a key lockable security screen to Australian Standard AS 5039-2008.
- Exterior windows (excluding windows fitted with security grilles to Australian standard AS 5039-2008, windows on, or above the second floor of the building and where the window is not easily accessible from outside the premises) – must be fitted with a lock that prevents the window from being opened from outside. Does not have to be a key lock.
- Main entry light – an electrical light that can illuminate the main entry to the premises must be fitted to or near the exterior of the premises and be operable from inside the premises.

A deadlock is defined by reference to Australian Standards as, "A bolt that is not actuated by a spring. When locked the bolt cannot be returned by end pressure".

Exclusions apply, including residential premises that are on the Register of Heritage Places, and

land zoned for agricultural or rural use under a local planning scheme.

The requirement for a light at the main entry does not apply if a strata company is responsible for the lighting to the main entry.

For commercial reasons, you may want to provide additional security measures. For example, if you choose to have keyed window locks or a security alarm it will improve the value of the property and may help you retain tenants.

Further information is available from the department's website and in the fact sheet *Minimum levels of security*.

## Residual current devices

You must ensure at least two residual current devices (also known as safety switches or RCDs) are professionally installed to protect all power point and lighting circuits in your rental properties before they are leased or sold.

For common areas of strata schemes at least one RCD is to be fitted to protect power points and lighting circuits.

Penalties of up to \$15,000 for individuals and \$100,000 for bodies corporate may apply if RCDs are not fitted. Ask for a no-obligation quote from a licensed electrical contractor before authorising installation and have the contractor give you an Electrical Safety Certificate afterwards.



For more information visit [www.commerce.wa.gov.au/rcd](http://www.commerce.wa.gov.au/rcd) or call Building and Energy on 6251 1900.

## Smoke alarms

You must ensure the rental property has smoke alarms as required by law. Most dwellings built since 1997 already comply with the requirement to have professionally installed smoke alarms.

Where mains-powered (hard-wired) smoke alarms cannot be fitted (a common issue in multi-storey buildings), approved battery-powered smoke alarms must be fitted before any new tenancy agreement commences.

Mains-powered smoke alarms also contain rechargeable batteries so both kinds must be less than 10 years old (the whole alarm – not just the battery). The year of installation should be visible upon removal of the cover.

### Note:



A smoke alarm must be replaced when it reaches its expiry date, or, if there is not one, when it is ten years since installation.

The yearly changing of batteries as they run out is likely to be considered household maintenance that the tenant may be responsible for if it is reasonably accessible by your particular tenant. However, the overall responsibility for ensuring there are working smoke alarms as required by the Building Regulations 2012 is the lessor's.

For more information, visit the websites of the Building and Energy division of the Department of Mines, Industry Regulation and Safety ([www.dmirs.wa.gov.au/building-commission](http://www.dmirs.wa.gov.au/building-commission)) and the Department of Fire and Emergency Services ([www.dfes.wa.gov.au](http://www.dfes.wa.gov.au)).

## Swimming pools and spas

If a rental property has a swimming pool or spa there are responsibilities for both tenant and lessor.

It is the lessor's responsibility to provide safety barriers and any equipment to properly maintain and take care of the pool or spa, such as scoops or vacuums. At the start of your tenancy, the lessor should make sure the water is clean, chemically balanced and the pool and equipment are serviceable.

Unless the written agreement states otherwise, it is the tenant's responsibility to keep the pool or spa clean and maintained, including the ongoing chemical supplies. It is also their responsibility to keep the safety barrier shut and make sure it is in good working order. The tenant must advise the lessor if the barrier is damaged or not working properly. The lessor must repair it as soon as practicable.

Local government authorities enforce pool and spa enclosure safety requirements. It is advisable to have all barriers checked every four years to ensure they are compliant with current safety standards.

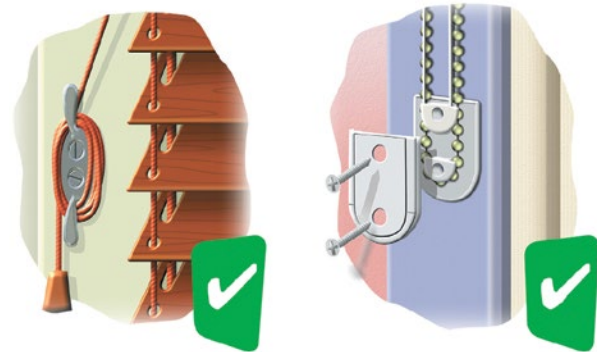
If the tenant sets up a portable pool or spa that is capable of holding more than 300mm of water, they are responsible for any safety requirements such as pool barriers. However, the tenant must ask the lessor for permission to install a portable pool or spa and barrier, which must comply with any local government requirements.

Building and Energy produce several publications about pool and spa barriers available on its website at: [www.dmirs.wa.gov.au/rules-for-pools](http://www.dmirs.wa.gov.au/rules-for-pools)

## Product safety

Product Safety Australia provide information about bans and mandatory standards on products including internal blinds, curtains and window fittings. Find out more at [www.productsafety.gov.au](http://www.productsafety.gov.au)

Mandatory requirements for corded internal window coverings were implemented due to the risk of strangulation to children through curtain and blind cord fittings. Lessors need to check for hazards on their exiting cords or strings, even if they were installed before the order was made.



Lessors must give tenants permission to anchor furniture to protect children. Any holes created in walls must be repaired at the end of the tenancy by the tenant or at their expense. In furnished rental properties, lessors should anchor furniture prior to tenants moving in.

Consumer Protection will speak with the property manager or landlord on behalf of the tenant if needed.

## Keys

The keys you give the tenant should include those to any door, window, garage or letterbox.

Only hand over the keys to tenants after all bond and rent in advance has been paid, and all documents have been signed. You cannot charge your tenants a deposit for keys, but may charge for the actual cost of replacing any keys.

# Once the tenancy begins

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## Minimising problems

Even with the best preparation, unforeseen difficulties between tenants and lessors do arise.

If you experience a problem, please refer to the list of contents at the front of this booklet and read about the topic before making any decisions. If you need any further information or advice, please call us on 1300 304 054.

If your rental property is an investment, then think of yourself as a small business with your tenants as your customers. Proper attention to customer concerns is an essential part of any well managed business operation.

Your aim should be to avoid complaints, but if they do arise, you should resolve them as quickly and amicably as possible.

It is important to recognise:

- Tenants have the right to complain about aspects of the tenancy they believe are not in accord with the tenancy agreement or the Act.
- Tenants have the right to have their complaints dealt with fairly.
- The following tips should assist in ensuring minor issues do not blow out into major conflicts and end up in court.

## Get the paperwork right

- Verbal agreements are a major source of residential tenancy disputes. It is best that all agreements with your tenants are detailed within a written prescribed *Residential tenancy agreement* (Form 1AA) that covers property maintenance, fixtures and fittings.
- Fully explain the conditions of the tenancy agreement at the start – especially to people who have never been tenants before. Remember: you must give tenants a copy of *Information for tenants* (Form 1AC or 1AD).
- Issue accurate rent receipts promptly within three days of receiving the rent (not required if the tenant pays by electronic transfer).
- Keep proper records of rent (that the payment is for rent, date rent is received, name of the person paying, amount paid, period for the payment and address of the rental premises). These will be necessary in court disputes about rent.

## Varying the security bond

During the course of a tenancy you may need to vary the security bond because:

- the amount of bond money permitted to be charged may change (usually because the rent has been increased);
- one or more tenants in the property may decide to move out;
- the ownership of the property may change; or
- you may employ a different managing agent.

You can use a *Variation of Security Bond* form for any variations which may arise that affect the record of payment details or the bond.

You can generate and print the form from the department's website or, if you are eligible to use BondsOnline eTransactions, this form can be submitted electronically and the tenant will be sent an email asking them to approve the details of the change online.

You must keep the record of the bond payment which will be sent to you by the department.

If there is more than one tenant at the property, and one or more of the tenants leave or is replaced, it is advisable for all parties to agree to amend the tenancy agreement. You should also contact the Bond Administrator to arrange to vary the bond to ensure the names of the lessor and the names of each of the new tenants listed on the amended tenancy agreement are recorded correctly.

Alternatively, you could all choose to change the agreement and have the bond disbursed, then complete a new bond lodgement form signed by all parties.

## Have a good approach to solving problems

- Try to resolve problems by calm discussion. Plan what you want to say beforehand and listen respectfully to your tenant's concerns. If necessary, ask a third party to mediate.
- Consider and suggest a problem may have arisen from a misunderstanding, rather than implying it must be the tenant's fault.
- Avoid blaming; instead, put yourself in the tenant's shoes before jumping to conclusions or refusing to listen.

- Have a bottom line to resolve the problem. Even if the law is on your side, it is sometimes wise to compromise a little to fix the problem and allow the tenancy to become peaceful again.
- Never let problems mount up. For example, if the tenant is falling behind with the rent, don't wait until the debt is so large it may not be paid. Or, if the garden is being neglected, follow the correct breach of agreement procedure (see 'When things don't work out') and do something about it before it becomes overgrown or dies.
- Understand your tenant's problems, but always remember your responsibilities. For example, sympathising with the financial problems of a young family doesn't mean you have to let unpaid rent build up for months to a level which can never be repaid.
- Don't create false expectations such as promising tenants you'll replace something and not doing it.
- After a discussion, it is always a good idea to put in writing what has been agreed.
- It also helps to talk the same language. If necessary, ask the Translating and Interpreting Service for help by calling 13 14 50.

## If problems continue

If you regularly experience serious problems with a succession of your tenants, it's best to think about the following:

- Select your tenants in a different way, for example, obtain references from the lessor or agent of their previous tenancy and/or their employer.
- Upgrade your property to prevent breakdowns or adapt your garden to make it easier to maintain.
- Consider taking a short course in practical dispute resolution to better deal with disputes.
- Engage an agent to manage your property.

## Who's responsible in a tenancy?

You and your tenants have shared responsibilities. At the start of a tenancy, you must provide the premises to the tenant in a habitable and reasonable state of cleanliness and repair.

The tenant must keep the premises clean and tidy and hand it back in a similar condition to how it was at the start of the agreement, taking

into account normal use, in other words fair wear and tear. The tenant must not intentionally or negligently damage property and must notify you as soon as possible if any damage occurs.

## Maintenance inside

You must keep the premises in a reasonable state of repair during the tenancy and comply with building, health and safety laws.

The tenant is responsible for basic household maintenance like replacing light globes, vacuuming, cleaning windows, dusting and removing cobwebs inside and out.

You are responsible for the upkeep of the property, for example plumbing and the maintenance of contents already provided such as the stove, washing machine or air conditioner.

If there is mould or mildew caused by faults in gutters or other fixtures, then you must fix it. On the other hand (where the property allows), the tenant must ensure there is adequate ventilation throughout to help avoid mould problems occurring.

## Maintenance outside

You are responsible for major tree lopping, cutting back overhanging branches (such as those near power lines) and maintaining fire breaks.

Your tenant is responsible for garden maintenance, such as mowing and edging lawns, weeding and light pruning. You should provide them with the necessary hoses, sprinklers etc.

You are responsible for normal maintenance to any garden reticulation system. Delays in dealing with maintenance problems can lead to claims from your tenant that the lawns or gardens suffered damage because they were unable to water them properly. The tenant may still be responsible for hand watering the garden where it is reasonable to do so.


The tenant should advise you if they notice a water leak (if they don't and the leak is obvious to them, they may be liable for the costs of water lost).

Once you've been told the water is leaking, you are responsible for the cost.

Before the start of a tenancy, it is a good idea to leave clear instructions on the proper use of any reticulation system. In addition, your tenant should always have access to the system's timer box. Setting and locking the timer yourself means your tenant has no control over the system – and can argue that because of your unnecessary use of water, you should pay the costs.



If you prefer to have sole access to the automatic reticulation system it is a good idea to contribute to a percentage of the water costs. Whatever is decided should be clearly written into Part C of the tenancy agreement before signing.



It's always a good idea to give your tenant the use of tip passes so they'll clear their rubbish from your property.

## Neglectful damage versus wear and tear

You are responsible for costs arising from 'fair wear and tear'.

Sometimes it is difficult to agree what is normal fair wear and tear and what is wilful and neglectful damage by the tenant. The following examples may help to explain the difference:

Fair wear and tear - lessor is liable	Neglectful damage - tenant is liable
Carpet wear in corridors or other areas used frequently.	Stains or burns from things dropped or placed on carpets.
A lock broke because it was old and had worn out. Paint flaking because it is old or not applied properly.	The tenant forgot the key and broke a lock to get in.
Curtains faded from years of exposure to sunlight.	Mould/mildew has formed because the dwelling was not aired adequately.
	The tenant's pet tears the curtains.

## Who is responsible for damage?

If the tenant causes damage, he or she is responsible for any necessary repairs.

However, if your property is damaged by a third person not directly connected with your tenant, or who was not invited to the premises by the tenant, or if damage is caused by an event outside your tenant's control such as break-ins, floods or traffic accidents, it is your responsibility to arrange and pay for the necessary repairs.

You are not responsible for damage or loss to your tenant's own possessions, but you may be liable if the damage was caused by a problem with the property – such as a ceiling collapsing or leaks from the roof.

## State of cleanliness

The Act requires tenants to keep the property in a reasonable state of cleanliness but what someone considers 'clean' may not be an acceptable standard by others.

You can help tenants by providing a checklist of items that should be clean at the end of a tenancy, such as:

- cooking appliances to be cleaned of food stains, oil and grease;
- refrigerator to be defrosted and clean;
- bathrooms, showers, toilets, laundry to be scrubbed;
- walls and skirting boards to be cleaned of marks;
- floors to be washed; or
- lawns cut, edges trimmed and garden beds weeded etc.

Compulsory property condition reports at the start and at the end of a tenancy help to avoid disputes.

## Urgent repairs

The tenant must inform you if an urgent repair is needed as soon as possible.

Urgent repairs are those that are necessary to supply or restore an essential service, or to avoid:

- exposing a person to the risk of injury;
- exposing property to damage; or
- causing the tenant undue hardship or inconvenience.

'Essential services' are urgent repairs including the following services: gas, electricity, a functioning refrigerator (if supplied with the premises), sewerage/septics/other waste water treatment and water (including the supply of hot water).

When the tenant advises you about an urgent repair, you must contact a repairer to arrange (not complete) repairs to essential services within 24 hours and urgent repairs within 48 hours. This means you need to contact a suitable repairer to arrange to have the problem fixed.

It is also your responsibility to follow up with the repairer to ensure that the repairs are carried out as soon as possible.

The tenant can arrange repairs themselves if they have been unable to contact you in the 24 or 48 hour timeframes or, if after they have contacted you, the repair is not carried out as

soon as practicable. The tenant can only arrange for the repairs to be carried out to the minimum extent necessary and must use a suitably qualified repairer.

As soon as possible after the repairs are carried out you must reimburse the tenant for any reasonable expenses incurred by the tenant in relation to arranging and paying for the repairs.

It is a good idea to provide the tenant with emergency contact numbers so they can contact you rather than arranging their own repairs.

## Water usage costs

You must pay the annual service charges (water rates) for the supply of water to the rental premises.

The tenant generally pays for water used each day, unless your agreement provides for sharing the costs to encourage watering of lawns and gardens. The prescribed tenancy agreement provides space for you to identify what percentage of water usage the tenant will need to pay.

Where there are individual water meters on a property, the Water Corporation (on your written or verbal authorisation) will send water consumption accounts directly to your tenants. However, be aware if the account is not paid, you will be responsible for the amounts owing.

We strongly recommend you get a special meter reading from the Water Corporation at the end of a tenancy and record this in Part C of the prescribed tenancy agreement or the property condition report.

A special meter reading will provide the cost of, and produce an account for, the water used since the previous reading.

If your property is not connected to the Water Corporation's sewerage system, you should ensure this is disclosed to the tenant and documented in the tenancy agreement, as these properties require quarterly inspections and the avoidance of strong bleaches and disinfectants.

## Water, gas and electricity bills

When you send a utility bill to a tenant, you will need to provide the following information:

1. If the property is separately metered:
  - cost must be according to the meter reading; and

- full details of the account are provided to the tenant including any meter readings, the cost per metered unit and the amount of GST payable.

2. If the property is not separately metered:

- there must be prior written agreement about how the cost will be calculated (either in the prescribed tenancy agreement or in a separate written agreement); and
- when the bill falls due the tenant must be given details of how their share was calculated and the amount of GST payable.

Only the consumption cost can be charged to a tenant, not any other charges, such as supply or account fees. Charges for common areas are also not allowed to be passed to the tenant.

## Rates

You are responsible for paying local council rates.

## Painting

You are responsible for painting, unless the damage is caused by the tenant's negligence.

The tenant should paint the property only if you have given permission, in which case it is probably wise if you choose the colour and pay for the paint.

## Pest and vermin control

As a general rule, any outbreak or infestation (of rats, mice, possums, cockroaches, termites, ants, spiders, wasps or bees), requiring attention by a pest control operator is your responsibility and not the tenant's. You are also responsible for any annual maintenance inspection.

However, you are not responsible for infestations if there is evidence they were caused by the activities of tenants or their pets.

The tenant is required to take regular basic pest prevention measures such as proper storage of food and using sprays and baits.

### Note:

The Health Department of WA's Pesticide Safety section can give you advice on how to deal with substantial infestations.



## Insurance

You are responsible for taking out insurance for loss or damage to buildings and fixtures and fittings, such as the stove and hot water system. You may also consider rental income protection insurance to cover situations where a tenant vacates a property and unpaid rent and damage cannot be recovered.

## Tenant's conduct on premises

The tenant must not use the premises for any illegal activity, or be responsible for a nuisance, such as excessive noise that disturbs neighbours. The tenant must notify you as soon as possible about any changes to the premises.

## Inspections

Visits and inspections are frequent causes of disagreement between lessors and tenants and should always be dealt with sensitively.

The Act says tenants are entitled to 'quiet enjoyment of the property'. Therefore before you enter the premises, you must provide appropriate notice and be careful not to interfere with the tenant's privacy or use of the premises.

**No more than four routine inspections are allowed in any 12-month period (and an inspection is not allowed when collecting rent).** Routine inspections allow you to note any maintenance required and ensure your tenants are looking after the property. Routine inspections can also help to determine what is 'fair wear and tear' and what is 'damage'.

Before giving notice of entry to the tenant, you must make a reasonable effort to negotiate with the tenant a suitable time and day.

Proper notice must be given. You must use *Notice of proposed entry to premises* (Form 19) to advise the tenant you wish to enter the premises and the reason why.

### Note:

A reasonable time for entering the premises is defined by the Act as being between 8 am and 6 pm on a weekday, 9 am and 5 pm on a Saturday or any other time agreed between you and the tenant.



The notice must stipulate if the inspection will be before or after 12 noon; however, to maintain goodwill with the tenant it is recommended that you provide a more specific time if you can, such as 'between 3 and 4 pm'.

Under the Act, you have the right to enter the rental premises:

- to conduct routine inspections at a reasonable time (no more than four routine inspections in any 12-month period) – written notice must be given no less than seven days and no more than 14 days before the proposed entry and indicate before or after 12 noon;
- to collect the rent at a reasonable time if it is paid not more frequently than weekly and the agreement allows for it to be collected at the premises;
- to carry out or inspect necessary repairs and maintenance at a reasonable time after giving at least three days' (72 hours') written notice;
- to inspect the premises and assess any damage, in the event that a tenant has filed a *Notice of termination of tenant's interest in residential tenancy agreement on grounds of family violence* (Form 2) or where an application has been made to have a tenant's interest in the tenancy agreement terminated on the grounds of family violence (see 'Tenants affected by family and domestic violence');
- to show the premises to prospective tenants at a reasonable time in the 21 days before the end of an agreement, after giving the tenant reasonable written notice;
- to show the premises to prospective buyers at a reasonable time, after giving reasonable written notice;
- to inspect and secure abandoned premises after 24 hours' written notice left at the premises and tenant's last known place of employment (see the section 'Abandoned premises' in this guide);
- in any case of emergency; or
- if the tenant consents at the time, or immediately beforehand.

## A summary - who's responsible in a tenancy?

The following table provides a quick reference to the information in this section. It is not a complete list and some responsibilities will depend on particular circumstances and the agreed details of the tenancy agreement.

Generally, you are responsible for	Generally, the tenant is responsible for
The premises being provided in a habitable and reasonable state of cleanliness and repair; complying with building, health and safety laws (such as smoke alarms and pool fencing).	The premises being kept clean and tidy and handing it back in a similar condition to that which it was in at the start of the agreement.
Major repairs (like plumbing) and maintenance of contents provided such as a refrigerator or washing machine.	Basic household maintenance (such as replacing light globes, replacing smoke alarm batteries where practical and vacuuming).
Major garden maintenance (such as tree lopping, maintenance of fire breaks). Provision and maintenance of sprinklers etc.	General garden maintenance (such as mowing, weeding, light pruning).
Any swimming pool or spa meeting safety standards and being clean and chemically balanced at the start of the tenancy. Provision of maintenance equipment (such as vacuums, scoops).	Day-to-day maintenance of any swimming pool or spa.
Costs arising from fair wear and tear (such as carpet wear, paint flaking).	Carpet stains and burns or breakages etc.
Repair of damage caused by a third party or events outside the tenant's control (such as break-ins, traffic accidents).	Loss or damage to their personal property unless caused by a problem with the premises.
Annual water services charges (water rates).	Payment of water used unless agreed otherwise.
Your share of power charges in the common areas of a strata complex such as a shared laundry or outside lights.	Payment for electricity and gas used.
Pest and vermin control (such as rats, mice, termites).	Pest infestations such as fleas caused by their pets. Prevention of pests by proper storage of food and by using sprays and baits.
Payment of local council rates.	Putting bins out and rubbish removal.
Minimum levels of security.	Replacing lost keys.

## Rental payments

You cannot ask the tenant to pay more than two weeks' rent in advance at any time during the tenancy agreement. If the tenant offers to pay more frequently (such as monthly or at any other interval) you may agree if convenient; however, this cannot be a requirement of the tenancy agreement.

You cannot ask for post-dated cheques nor insist any rent be paid before the period covered by the previous payment is finished.

Apart from rent in advance and a security bond, you cannot require a tenant to make any other payment in connection with a residential tenancy agreement.

Here is an example if the weekly rent is \$350:

Bond	\$1,400 (four weeks' rent)
Pet bond	\$260
Rent in advance	\$700 (two weeks' rent)
<b>Total</b>	<b>\$2,360</b>

If the rent is paid into an account at the bank, building society or credit union, you do not have to issue a receipt. The financial institution's receipt is sufficient to comply with the Act.

If you receive the rent directly by cash, cheque or money order, you must give your tenant a receipt within three days after receiving the rent. The receipt must show the name of the person paying the rent, date received, amount paid, premises and rental period covered by the payment.

## Sample receipt

### Rent receipt

Received from Mr/Mrs/Ms .....

Rent receipt no. xx

Date ...../...../.....

The sum of (in words) .....

..... (\$ .....

being ..... weeks'/months' rent for premises situated at:

.....

from ..... (date) to ..... (date)

Rent due \$.....

Rent paid \$.....

Any arrears \$.....

With thanks .....

You must keep an accurate record of rent paid. The record must show the payment is for rent, date the rent is received, name of the person paying the rent, amount paid, address of the rental premises and rental period covered by the payment (see sample rent record).

## Sample rent record

### Property at: 23 Sample Street, Sample Town

Example: Lease Agreement at \$800.00 per fortnight commencing 4 March 2012.

Period	Date Paid	Rent Received (\$)	Rent paid by	Rent Owing
4/3 – 17/3	4/3/12	\$800.00	John Renter	\$0.00
18/3 – 31/3	18/3/12	\$800.00	John Renter	\$0.00
1/4 – 14/4	1/4/12	\$800.00	John Renter	\$0.00
15/4 – 28/4	15/4/12	\$800.00	John Renter	\$0.00
29/4 – 12/5	29/4/12	\$800.00	John Renter	\$0.00
13/5 – 26/5	13/5/12	\$800.00	John Renter	\$0.00
27/5 – 09/6	27/5/12	\$800.00	John Renter	\$0.00

## Rent increases

For most tenancies, you should use the required form *Notice to tenant of rent increase* (Form 10) to give the tenant at least 60 days' notice about a rent increase. The notice includes details of the amount of the increase and the day it will take effect.

In rare cases where the tenant's income is used to calculate their rent (such as when an employer provides rental premises and charges a percentage of the tenant's income as rent) the *Notice to tenant of rent increase calculated by tenant's income* (Form 11) should be used.

Further rules apply to rent increases depending on whether the tenancy is fixed term or periodic.

In a **periodic tenancy**, you cannot increase the rent in the first six months, or less than six months after the previous increase.

In a **fixed-term tenancy**, where the rent is not based on income, rent can only be increased if the tenancy agreement stipulates the amount of the increase or the method of calculating the increase (such as CPI or a percentage) and it has been six months or more since the last increase. This can be included in Part C of the prescribed tenancy agreement. The method of calculating the increase cannot be listed as 'market rent' as this is not a clear indication of what the rent increase is likely to be.

Even if the fixed-term tenancy agreement stipulates the amount of rent increase or method of calculating the increase, you still need to provide your tenant with at least 60 days' notice of the increase in a *Notice to tenant of rent increase (except for rent calculated by tenant's income)* (Form 10).

If a fixed-term agreement is being renewed for the same tenants at the same rental premises and you wish to increase the rent, you don't have to give your tenant 60 days' written notice; however, the tenant does not have to pay the increased rent for the first 30 days after the new agreement begins.

At all times, with a series of agreements (whether fixed or periodic), it must be at least six months since the last rent increase.

In tenancy agreements where rent is calculated on the basis of the tenant's income, notice is required only if the basis of the calculation has changed but not for automatic increases occurring as the tenant's income changes.

Refer to 'All about notices' for how to issue a notice. If you don't provide appropriate notice, the tenant is not required to pay.

### Important:

You cannot propose excessive rent increases as a way of getting rid of your tenant. If your tenants thought this was the case, they could take the matter to the Magistrates Court for a ruling.

If there is a significant reduction in the amenities provided as part of the rental agreement, you may wish to consider decreasing the rent required for the time the amenities are unavailable. Alternatively, the tenant could also apply to the Magistrates Court for a rent reduction.

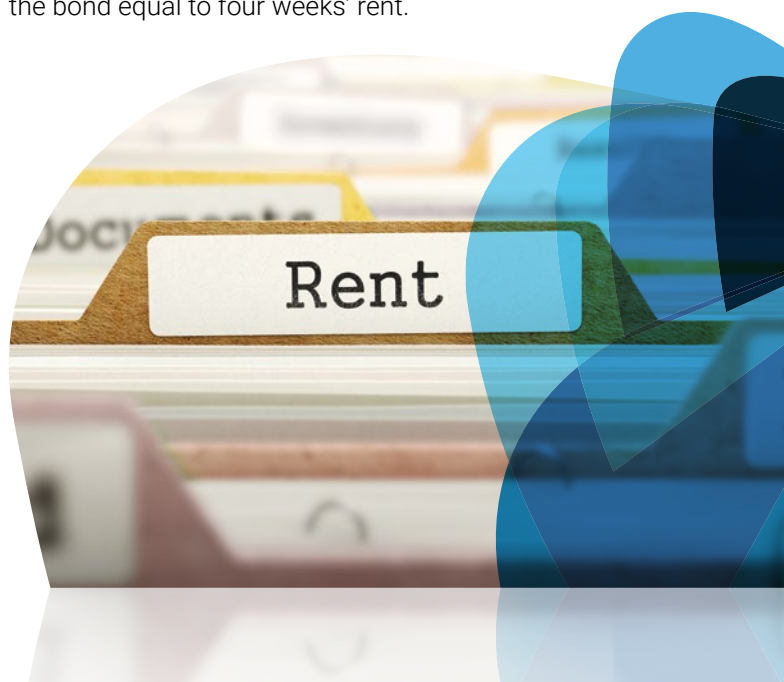
For details about what you can do if the rent is not paid, please see the next section 'When things don't work out'.

## Bond increase may follow a rent increase

The security bond may only be increased by the lessor following a rent increase if:

- a legal increase in rent has occurred with the appropriate notice;
- at least 60 days' notice of the increased bond is given; and
- the new tenancy agreement has been in place for at least six months, or it is not less than six months since the last bond increase.

If the rent decreases you don't have to decrease the bond; however, it may simplify matters to keep the bond equal to four weeks' rent.



## Tenancy databases

### What is a residential tenancy database?

Residential tenancy databases are run by private companies, not by the government. They collect and hold information about individuals and their tenant history to assist lessors to decide whether to enter into a tenancy agreement.

Residential tenancy databases are often used by real estate agents who pay membership fees. Members can list tenants on the database for certain reasons and can check the database to see if a prospective tenant has been listed by another member.

Files kept by an individual lessor or real estate agency for their own internal use (hard copy or computerised) are not residential tenancy databases for the purposes of the legislation.

### What do I need to tell people who apply to rent my property?

If you usually use a tenancy database to check a tenant's rental history, you must give each applicant for a tenancy agreement a written notice containing certain information. A sample letter is attached to the *Application to rent residential premises* (Form 18).

The written notice may be provided at the time they make the application, or up to seven days before they make the application, so the written notice may be attached to the application to rent if you wish to do so.

You need to provide this information even if you don't intend to use a database on this occasion.

### What do I need to tell tenants listed on the database?

If you discover a prospective tenant has been listed on a database, you must give them written notice within seven days after using the database stating:

- the name of the database;
- personal information about them is in the database;
- the name of each person who listed the personal information (if identified in the database); and
- how and in what circumstances the prospective tenant can have the personal information removed or amended.

You do not have to advise them of the reason for the listing. They are entitled to a copy of the information from the person who listed them (free of charge) or directly from the database operator. The database operator can charge them a fee for the information but it must not be excessive. Some database operators also provide information over the phone, but charges may apply.

### When can a person be listed in a database?

A person can only be listed in a residential tenancy database if:

- they were named as a tenant in a residential tenancy agreement that has ended;
- they breached the agreement; and
- because of the breach either:
  - they still owe more than the security bond amount; or
  - a court has made an order terminating the residential tenancy agreement.

Any information recorded in a database must be accurate, complete and unambiguous, must indicate the nature of the breach and relate only to the breach.

It is unjust to list a person on a tenancy database if the reason for the listing arises out of them being subjected or exposed to family violence (see 'Tenants affected by family and domestic violence').

### What do I need to do before listing a person in a residential tenancy database?

You must advise tenants in writing if you propose to list them in a tenancy database. You also must either:

- give them a copy of the information to be listed; or
- take reasonable steps to try to disclose the information to them.

You can do this by sending a letter to their new address (if known) and/or to the address of the rented premises (in case they are having their mail redirected).

You must also give the person at least 14 days to review the information before you list the information on the database, and consider any submissions they may make.

## Removal of out-of-date, incorrect or unjust listings

Any listing older than three years must be removed from a database by the database operator. In addition, if the person was under 18 when they were listed, the listing must be removed when they turn 18.

Listings less than three years old must also be removed if they are 'out of date'. Out-of-date listings include:

- the tenant owed more than the bond but repaid it within three months after the amount was due; and
- a termination order was made by the court but was set aside on appeal.

Listings also need to be amended if the information is inaccurate, incomplete or ambiguous.

A person can also seek to have their name removed from a tenancy database if they think the listing is unjust.

The real estate agent or lessor who listed the information, must notify the database operator about how to amend the information or remove it within seven days of them becoming aware the information needs to be changed. This notice must be in writing. The database operator then has 14 days to have it removed or amended. The lessor or real estate agent must keep any written notice given to a database operator for one year from the date it was given.

The laws apply to all listings, including any listings made before the new laws commenced on 1 July 2013.

## Disputes

Always try to resolve any disagreement with your tenant through negotiation. If you cannot resolve the matter, the tenant can apply to the Magistrates Court to have incorrect, out-of-date, ambiguous or unjust listings removed.

The court can make orders for information about a tenant in the database to be wholly or partly removed, changed or not listed at all if it was a proposed listing.



# When things don't work out

If you are unhappy with your tenant's care of the property, or you have disagreement over any of a range of issues including rent payments and inspections, try to sort out the issue amicably (see the earlier section on 'Minimising problems').

If you and your tenant cannot agree, there are some formal procedures established under the Act to sort things out. These are covered in this section and subsequent sections.

The Act requires formal notices are issued by either party to deal with a number of important circumstances, such as if you believe there has been a breach of the tenancy agreement.

You can download these notices from the department's website. When filling them in, it is important to complete all details, including the name of the tenant, address of the property, date the rental agreement was signed and nature of the breach.

There is a standard procedure for counting of the days specified for various actions and special requirements for serving the notices on tenants (see 'All about notices').

## If the rent is overdue

You can have the tenancy terminated if the tenant falls behind with the rent **and** doesn't correct the situation within an agreed time, or if they present a bad cheque.

However, there are legal procedures you must follow.

You have two alternatives:

1. Not less than one day after the rent should have been paid but was not received, you may give the tenant a *Breach notice for non-payment of rent* (Form 21). This requires them to bring their rent up to date within 14 days. The breach notice must be in writing, state the tenant's name and the address of the rented property. It must also state the current amount of money owing and request payment within 14 days. It must be signed by the lessor.

If all the outstanding rent is not paid within the 14 days, you can then issue a *Notice of termination for non-payment of rent* (Form 1A). This seeks to terminate the residential tenancy agreement and requires the tenant to vacate the premises within the next seven days.

### Note:



If the tenant refuses to leave the property after this period, it is essential you apply to the Magistrates Court for an order to have them evicted. It is illegal to try to force the tenant out yourself.

2. Not less than one day after the rent should have been paid but was not received, you may give the tenant a *Notice of termination for non-payment of rent* (Form 1B). This notifies the tenant that unless the outstanding rent is paid within the following seven days, you may apply to the Magistrates Court for an order to terminate the agreement.

If the tenant does not pay rent arrears within the seven days, then they will incur the cost of the court application fee after the seven days have expired as well as having to pay the rent arrears.

The Magistrates Court hearing date cannot be earlier than 21 days after the *Notice of termination for non-payment of rent* (Form 1B) has been issued.

If the tenant pays all outstanding rent and the court application fee to you by the day prior to the court hearing, the application will not continue.

## Which alternative to choose?

Because the procedures are somewhat complex, we have drawn up flow charts for the two alternatives. You can find Chart one and Chart two in the Appendices.

If this is the first time the tenant has fallen in arrears, or has a previous history of late payments but you'd still like to keep them as a tenant, then you should choose **Chart one**.

If your primary object is to obtain the rent as quickly as possible, or your tenant has fallen behind with the rent and you don't think they'll catch up, you should choose **Chart two**.

Regardless of which option you choose, you cannot force a tenant out of your property without a court order ending the agreement.

Tenants who reasonably believe they are not behind in the rent can stay in the premises while you both negotiate, or until you apply for

an eviction hearing in the Magistrates Court, where both parties can put their case (see 'Ending a tenancy').

Under no circumstances does the law allow you to seize a tenant's belongings in lieu of rent owed.

## Breaches of the tenancy agreement

Apart from not paying rent, your tenant may be breaking or have broken the rental agreement in some other way. For example:

- keeping a cat or dog on the premises when this is not allowed;
- subletting to others where you have not agreed;
- not keeping the property reasonably clean;
- causing damage to the property (see 'Serious damage to the premises or injury to the lessor');
- changing the locks without approval, other than when necessary to prevent [family violence](#) (see 'Tenants affected by family and domestic violence');
- causing a nuisance to neighbours;
- failing to water or maintain the garden and lawns;
- using the premises for an illegal purpose; or
- using the premises for business purposes without your approval.

If you and the tenant can't agree, then you can issue a notice that they have breached the agreement and/or the Act.

The procedures for giving your tenant formal notice of a breach are aimed primarily at getting the problem fixed – but it can lead to asking the tenant to leave.

### Issuing a breach notice (other than for failure to pay rent)

**Step 1:** Notify your tenant of the breach of agreement by using the *Notice to tenant of breach of agreement (other than failure to pay rent)* (Form 20). Alternatively, you may also give a letter that gives your tenant 14 full days to rectify the situation. You must clearly state how the tenant breached the agreement.

**Step 2:** If your tenant fails to rectify the situation within the 14-day period, your next option is to

issue a Notice of termination (Form 1C). This seeks to end the tenancy no sooner than seven full days after the notice is received.

If you would prefer to have the tenant rectify the breach rather than you terminate the tenancy you may apply to the Magistrates Court seeking a court order stating the tenant must fix the problem.

As this procedure is complex we have prepared a chart (Chart three) which you will find in the Appendices.

Should your tenants refuse to move out after the issue of the termination notice, you cannot personally evict them. You must seek an order from the Magistrates Court – see 'Eviction – obtaining an order for possession'.

If the tenant believes you are in breach of the tenancy agreement, they can follow a similar breach procedure to that outlined above. They can write you a letter or use the *Notice to lessor of breach of agreement* (Form 23).

Your tenant could seek a number of solutions to the problem, including:

- rectification;
- an order from the court;
- termination of the tenancy; or
- compensation.

### Serious damage to the premises or injury to the lessor

If your tenant is causing, or you believe is likely to cause, serious damage to the premises or injury to you or your agent, you may apply immediately to the Magistrates Court for an order that the agreement be terminated.

To apply to the Magistrates Court, use their *Application to the court* (Form 12) and ask the manager of the court registry for an urgent hearing. Under these circumstances, the waiting time for a court listing is usually much shorter than for a normal hearing.

You will find information on serving notices in the section 'All about notices' and information about taking your dispute to court in the section 'Going to court'.

### Ending a tenancy (other than for a breach of agreement)

There are various reasons why a tenancy ends other than disagreements. If both you and

your tenant agree in writing that the tenancy agreement be ended and agree on the date, this is acceptable and none of the formal procedures such as issuing notices need apply.

However, make sure both of you sign a clear, written statement to that effect.

If termination notices do need to be given to your tenant, these must be in writing on the required forms and follow the procedure specified in the Act.

## Ending a periodic tenancy agreement

You can end a periodic tenancy by giving the proper notice in writing for any of the reasons below:

1. No particular reason. You can, without any reason, give written notice to the tenant ending the tenancy not sooner than 60 full days from the date you give them the notice. Use *Notice of termination* (Form 1C).

### Note:



A tenant may also end a periodic tenancy agreement without having to provide a reason, but is required to give a minimum of 21 full days' notice in writing. The 21 days commences from the day of personal delivery or the day following the postmark on their letter.

2. Sale of the rental premises. If you sell the premises and the *Offer and Acceptance* form requires vacant possession to the purchaser, you may give notice to your tenant on a *Notice of termination* (Form 1C), ending the tenancy no sooner than 30 full days after the date you give them the notice. This form of notice may be served only after the acceptance of the offer on the property becomes a binding contract on both the seller and buyer.

A tenant can give two full days' notice to end a tenancy agreement if the premises are destroyed, are compulsorily acquired by law or become

uninhabitable. As the lessor, you must give the tenant seven days' notice in writing.

## Ending a fixed-term tenancy agreement

Fixed-term tenancy agreements will not automatically terminate on the expiry date unless either you or the tenant gives 30 days' written notice of intention not to renew the agreement. You must use *Notice of termination* (Form 1C) for this purpose.

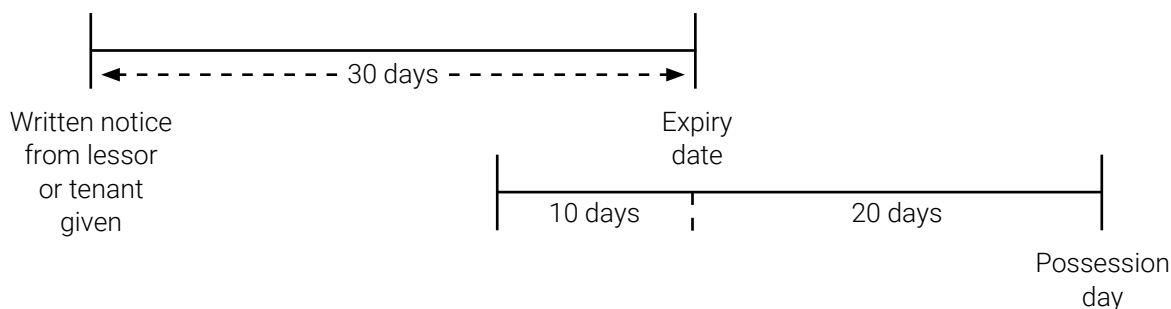
The 30 days' written notice must be given before the lessor takes possession. However, if the notice is given less than 30 days before the expiry date, usually the possession day (the day by which the tenant needs to have moved out) will be extended by the balance of the 30 days.

However, if you issue the notice less than 30 days before the expiry day, and the tenant does not issue a notice, they can move out at any time from the expiry day.

If neither you nor the tenant gives the required notice to each other by the **expiry date of the fixed term**, the tenancy continues as a periodic tenancy after the expiry date. If you want to end the tenancy without grounds once it has become periodic, you will need to provide 60 days' notice to end it. If the tenant wishes to end the periodic agreement, they will need to give you at least 21 days' notice.

If you and the tenant both provide notice specifying different days for the tenant to deliver possession of the property to you, the day that is the earlier of the two days is taken to be the possession day.

Although you cannot require a fixed-term tenant to vacate the property before the tenancy expiry date, it does not mean you cannot put the property up for sale. The house may be sold to another investor who automatically takes over your lessor responsibilities upon sale, or the house can be sold with vacant possession to occur at the time the existing fixed-term agreement expires.



During the period of 21 days preceding the termination of a fixed-term agreement, you are able to show the premises to prospective tenants after providing written notice to the current tenants. You must use the *Notice of proposed entry to premises* (Form 19) for this purpose.

A tenant can give two full days' notice to end a tenancy agreement if the premises are destroyed, are compulsorily acquired by law or become uninhabitable. As the lessor, you must give the tenant seven days' notice in writing.

## If you need to break the tenancy agreement

Unless mutually agreed by all parties in writing or by a court order, fixed-term tenancies cannot usually be ended before the end date (period) stated in the agreement.

If your circumstances change significantly after you have committed yourself to a fixed-term tenancy, and you need to end the tenancy or suffer considerable hardship as a result, you are advised to approach the tenant and see if they are willing to move out early. Examples of undue hardship may be the death of a partner, serious illness or redundancy.

As part of such an arrangement, you may perhaps offer to pay relocation costs and connection charges for telephone, electricity and gas at the tenant's new premises, or some other form of compensation. Any such agreement should, of course, be in writing and signed by you and your tenant.

If your tenant does not agree, you can apply to the Magistrates Court for an order to end the tenancy agreement. You would have to be able to satisfy the court that you would suffer undue hardship if the term of agreement were to run to the end date. In such circumstances, it is likely you would be ordered to compensate the tenants for their additional cost incurred, such as payment of removal expenses.

You must never try to force a tenant out of the premises or change locks without an order from the court.

## If the tenant wants to break the tenancy agreement during a fixed term

A fixed-term tenancy agreement is a legally binding contract. However, unforeseen circumstances can mean your tenant needs to break the tenancy agreement, for example:

- job relocation;

- redundancy;
- personal or family illness.

In such situations, try to be reasonable and offer to try to find replacement tenants.

Of course, you may not want to lose money by agreeing to break the agreement. Therefore, you should make it clear to your outgoing tenants they will be responsible for any loss you have suffered (such as advertising costs incurred in finding suitable new tenants).

Your tenants should also know they must keep paying rent until the replacement tenant moves in. Invite your tenants to introduce potential replacement tenants to you.

If your tenant does break the agreement without prior agreement, the Act requires you to 'mitigate the losses'. Basically, this means you must do everything reasonable to find a new tenant as quickly as possible and keep your losses to a minimum. This way, claims for loss of rent, advertising costs etc., are likely to be recoverable from the tenant, either from the bond or by an order from the court.

If you have not kept to any one of the terms of the tenancy agreement or refuse to remedy a problem, the tenant can seek an order from a magistrate to end a fixed-term agreement.

If a tenant needs to end a fixed-term agreement due to being affected by [family violence](#), they may give you at least seven days' notice and vacate with immediate effect (see 'Tenants affected by family and domestic violence').

Apart from the above situations, a tenant is committed to a fixed-term tenancy agreement for the duration of that term, unless termination is mutually agreed in writing or unless the agreement is assigned by agreement to another tenant.

A tenant must give you a forwarding address at the end of a tenancy.

## Eviction - obtaining an order for possession

If you have sought to end a tenancy by giving the proper notice and your tenant does not leave the premises, you have 30 days to apply for an order of possession from a magistrate. If you do not apply within 30 days the *Notice of termination* (Forms 1A, 1B or 1C) will expire.

You would need to contact the Magistrates Court nearest the rental premises and lodge your application on an *Application to the court* (Form 12) available from the Magistrates Court with the appropriate fee.

If the tenant refuses to leave after this process, you should apply for a Property Seizure and Delivery Order and the court-appointed bailiff will remove the tenant for you. The bailiff is required to give the tenant the opportunity to move out peacefully, however the order can be enforced with a warrant authorising a bailiff to evict the tenant.

The tenant can ask for an order to be suspended for up to 30 days if they are likely to suffer hardship. Tenants also have protection under the Act if they believe any action to evict them was due to complaints they made to a public authority in the previous six months, or other steps they took to enforce their rights. In such cases, they can remain in the rental property until the matter goes to court where they can argue against the ending of the agreement.

You cannot force a tenant out of a property without a court order. This applies to all tenants. Any other method of eviction is unlawful under the Act.

If you reasonably suspect the tenant has abandoned the premises you may enter the premises and secure them without a court order – refer to ‘Abandoned premises’.

You are not permitted to change locks, turn off the electricity, gas or water, or take any other action to force the tenant out of the property, unless authorised by a court order. Any interference with utilities (such as electricity, gas, water or the hot water heating system) with the intention of forcing a tenant to give up possession, is viewed very seriously by the department. Such ‘unlawful coercion’ is a breach of the Australian Consumer Law and can attract severe penalties.

## The rental property is destroyed or taken over by an authority

This section applies to both periodic and fixed-term tenancy agreements.

The lessor may give seven days’ notice to the tenant, *Notice of termination* (Form 1C), if:

- the rental property is wholly or partially destroyed, for example by a cyclone or serious fire; or
- the property cannot be lived in.

Similarly, the tenant may give the lessor two days’ notice ending the tenancy under these circumstances.

If the property is taken over by any authority by legal process (such as by a mortgage provider or

as the result of a court order), the authority may take on the role of ‘lessor’ and must then comply with the normal rules of the tenancy agreement under the Act. If a mortgagee takes over possession of the premises, the mortgagee must give the tenant a *Notice to vacate from mortgagee to tenant* (Form 14) and must include a specified date that is not less than 30 days after the date the notice was given to the tenant.

If the cause of the notice is a breach of the agreement by the lessor, the tenant may have a legitimate claim for compensation for the cost of moving.

## The final inspection, property condition report and bond

You are entitled to have your property returned to you in a clean and undamaged condition at the end of a tenancy. However, remember that the tenant is not responsible for ‘fair wear and tear’.

As soon as possible after the conclusion of the tenancy, and in any event within 14 days, you must conduct a final inspection of the property, prepare a final property condition report describing the condition of the property and provide a copy to the tenant. As with the report provided at the start of the tenancy, the final property condition report must have the minimum content as set out in the *Property condition report* (Form 1).

The tenant must be given a reasonable opportunity to be present at the final inspection. It is in the best interests of both parties to undertake a joint inspection at the time your tenant moves out and to arrange for the return of the keys.



Arrange in advance for the water, power and gas meters to be read on the day of the final inspection.

Using the property condition report prepared at the start of the tenancy, compare the condition of each item with the original details and discuss any problems such as breakages, items missing etc missing.

Work out any outstanding liabilities of your tenant such as:

- rent arrears;
- outstanding water, gas and electricity bills;
- cleaning costs (if the property was not left in a clean condition); or

- damage to the property and/or contents belonging to you.

If your tenant has not cleaned the property to your reasonable satisfaction, or if minor repairs are needed, you may undertake the work yourself. However, if you decide to repair or clean the property yourself you may claim from the tenant only for out-of-pocket expenses, such as cleaning materials. Your time taken cleaning your property should be considered as part of the cost of managing your rental investment.

Your tenants are liable to compensate you for any wilful or neglectful damage they may have caused. However, unless your fixtures or fittings have been totally destroyed, it is sometimes difficult to work out an amount to claim against your tenant for damage to contents.

If the damage can be reasonably repaired, only the repair costs may be charged.

Burn marks or stains that cannot be removed are much more difficult to assess, as they depend on a number of individual factors, including the age of the property and the size and location of the damage.

In most situations, it is much better to attempt to negotiate with your tenant a sum of money to be deducted from the bond as compensation.

Sometimes, carpet damage is so severe you may need to replace the carpet. In such a case, your tenants would be liable to pay for replacing the damaged carpet with one of similar quality to the original.

Of course, you cannot change 'new for old' and you must also make allowance for depreciation. Contact the Australian Taxation Office to obtain instructions for calculating depreciation.

Make every effort to agree with your outgoing tenants the amount of any deductions from the security bond. In the event of a disagreement, parties should try to compromise if possible.



It is a good idea to compile a detailed statement listing all the charges to be set against the bond together with any receipts or other records to support your claims (including the property condition report). Keep all these documents for future reference.

Your tenant is responsible for returning all sets of keys given to them at the start of the tenancy. If they don't return keys they can be held responsible for the cost of changing the locks or be charged rent until the keys are returned.

Once you have calculated and agreed with your tenant on a reasonable amount of money to deduct from the security bond, complete a *Joint application for disposal of security bond* and both sign it. The form should show the amount to be returned to the tenant and/or the lessor and/or to be refunded to the Department of Housing.

Once the form has been signed by all parties it should be scanned and emailed to the Bond Administrator at [bondsadmin@dmirs.wa.gov.au](mailto:bondsadmin@dmirs.wa.gov.au). If you are eligible to use BondsOnline eTransactions, the Joint application for disposal of security bond form can be submitted electronically and the tenant will be sent an email asking them to agree to the details online.

Send the form to the Bond Administrator (by post, fax or email). The Bond Administrator can only pay out the bond money if you/the property manager and tenant(s) have signed or electronically approved the form, or if a court order from a magistrate has been obtained.

You should arrange to release the bond as soon as possible after the end of the tenancy agreement in order for tenants to receive their bond money back and/or you to receive any outstanding monies claimed from the bond.

#### Note:



It is an offence for you to ask a tenant to sign a bond form before the tenancy agreement is terminated and/or if it is blank.

If a dispute arises over how the bond money should be paid out, try to resolve it by negotiation. If that doesn't work, you will need to go to the Magistrates Court.

The department will handle complaints concerning bonds if the complaint arises because:

- the amount of bond money charged is more than the amount allowable under the Act;
- a receipt or bank record for bond money paid has not been issued by the lessor; or
- the bond money has not been paid to the Bond Administrator.

If you are unable to reach an agreement with the tenant(s), or you cannot contact your outgoing tenant, you may apply to the Magistrates Court by lodging an *Application for disposal of bond money* (Form 6) available from the Magistrates Court with the appropriate fee. You can use this form to ask the Magistrate to award you the costs of your application. The tenant can also use this form to apply to the Magistrates Court.

If the tenant doesn't respond when sent a copy of this, the Magistrates Court may then issue an order for the release of the bond after seven days.

Once the form is lodged, the court will send a copy to the tenant, who has three options:

- agree to settle the dispute;
- dispute the application by lodging the Magistrate Court's *Notice of intention to dispute application for disposal of bond money* within seven days; or
- ignore the order (the court may then issue an order for the release of the bond after seven days).

If a dispute goes to court, the magistrate will make an order as to how the bond money is to be paid out (see 'What happens in court?').

A magistrate may order the tenant to pay compensation to you for losses caused by any breach of the tenancy agreement. This includes failing to comply with an order for possession, or for losses incurred as a result of the premises being abandoned.

## Department of Housing bonds

If the original security bond was paid by the Department of Housing then, at the end of the tenancy, it is generally repayable directly to the Department of Housing. When the tenancy ends, we suggest you ask your tenant what the arrangements are to be and confirm these with the Department of Housing.

If there are any deductions to be made, you should tell both the Department of Housing and your tenant.

If any deductions are made at the end of the tenancy, the Department of Housing will require the tenant to repay the balance of the loan to that department.

## Abandoned premises

Tenants sometimes abandon a property without giving any notice.

If this happens, you will want to ensure the security of the premises and minimise your losses.

If you have reasonable grounds to suspect a tenant has abandoned the premises, you can issue a *Notice to tenant of abandonment of premises* (Form 12). Refer to 'Counting days' in 'All about notices'.

'Reasonable grounds' means the tenant has failed to pay rent under the tenancy agreement and at least one of the following has occurred:

- uncollected mail, newspapers or other material at the premises;
- reports from neighbours of the tenant indicating the tenant has abandoned the premises;
- absence of household goods at the premises; or
- disconnection of services such as gas, electricity and telephone to the premises.

In addition, before you take any action, it is a good idea to check whether the tenant has gone on holidays or into hospital by contacting the neighbours and next of kin (if known).

If you want to check and secure the rental premises, a *Notice to tenant of abandonment of premises* (Form 12) must be delivered to premises and the tenant's last known place of employment. Refer to 'Counting days' in 'All about notices'.

If the tenant does not tell you within 24 hours that they have not abandoned the property, you can enter the property but only to check and secure it.

At this stage, if you wish to terminate the tenancy for abandonment you have two options:

1. issue a second notice (Notice of termination to tenant if premises abandoned, Form 13) to the tenant advising you suspect the premises have been abandoned and if the tenant does not respond to the Magistrates Court or dispute the notice within seven days the tenancy agreement will be terminated; or
2. apply to the Magistrates Court for an order declaring the premises have been abandoned.

**If you are unsure, a court order may be a better option as the tenant can challenge the *Notice of termination* for loss or expenses through the Magistrates Court within 28 days after the notice was given.**

If you wish to seek compensation from the tenant, seek further information from the Magistrates Court.

## Enforcement in the Magistrates Court

It is important to note, if the court finds in your favour but the tenant does not pay you, further court action would be needed to force a tenant to pay from their earnings or their property.

Refer to the 'Enforcement' section of the department's publication *Going to the Magistrates Court* on the department's website or visit [www.magistratescourt.wa.gov.au](http://www.magistratescourt.wa.gov.au) for further information.

## Abandoned goods (excluding documents)

The first thing to do is to try and contact your tenant to find out when, or if, they are going to collect any abandoned goods. We provide the following information to assist you if you cannot contact the tenant or they provide no instruction for the abandoned goods.

You can treat the following items as rubbish, and dispose of them after two days of the tenancy ending:

- Newspapers and magazines;
- Cardboard boxes, plastic bags, household rubbish etc;
- Personal items eg toiletries, perfume, make up, medicines and pharmaceuticals;
- Cleaning products, paint, solvents, oil, chemicals; and
- Perishable and Non-perishable foodstuffs.

### Items requiring special consideration

If your tenant abandons any of the following items, contact the appropriate organisation for assistance.

- Money: You can contact the Department of Treasury for information on [how to deal with unclaimed money](#).
- Animals and pets: You can contact an animal shelter or refuge for information on what to do with abandoned animals and pets.
- Firearms, illegal drug paraphernalia or equipment: You must report any firearms, illegal drug paraphernalia or equipment to the police.

- Rental items belonging to a third party commercial supplier: Contact the third-party commercial supplier to arrange the return of any item that belongs to them. This may include rented white goods, Foxtel units, rented furniture, shopping trolleys etc.

### Vehicles, motorcycles, caravans, trailers or boats

If your tenant abandoned a vehicle at your property, your first course of action should be to check with the police to see if the vehicle(s) is/are stolen.

You can check whether there is a security interest for any debt registered over the vehicle, and whether the vehicle is reported stolen or written off, by searching for the vehicle on the [Personal Property Securities Register \(PPSR\)](#).

### Goods of little or no value

If the estimated value of the goods left by your tenant is less than what it would cost for you to remove the goods, store the goods for at least 60 days, and then sell them at public auction, you can choose to dispose of the goods or apply for an Abandoned Goods Certificate and then dispose of the goods.

Before you choose to dispose of the goods, you should note the tenant may apply to the Magistrates Court for compensation for the disposed goods. You may need to provide information to the Magistrate to evidence your belief the goods were of a lesser value than the cost to remove, store and sell them. We recommend you obtain in writing an estimated value of the goods from an authorised person, such as a second-hand dealer. You should also obtain written quotes to show the cost to store the goods for 60 days, and written quotes to show the cost to sell the goods at a public auction.

If you decide to apply for an Abandoned Goods Certificate, you will need to provide the following information:

- Title (ie Mr, Ms), name and telephone number of the person requesting the certificate (probably you);
- Name of the tenant(s) and the tenant(s) last known mobile phone number or email address (if known);
- Rental address;
- Date the property was vacated (attach a copy of the termination notice or court order and bailiff's notice if applicable);
- Details of any attempted contact with the tenant(s);



- Itemised list of the goods you wish to dispose of;
- Clear colour photographs of each item on the list of goods.

Use our [Application for an Abandoned Goods Certificate](#) form to apply online.

The department may also require a valuation by an authorised person (such as a second-hand dealer), but do not arrange one unless the department asks you to do so, as it may not be necessary.

Once you have all the above details, and depending on the value of the goods, we will advise you whether we will provide an Abandoned Goods Certificate, or if you need to store the goods in accordance with the Act. If we issue an Abandoned Goods Certificate, you may dispose of the goods in any way you wish.

### **Goods of value:**

If the estimated value of goods, including motor vehicles, caravans, trailers or boats, is more than it would cost for you to remove, store and sell the goods at public action, you must store the goods immediately in a safe place and manner for at least 60 days.

Within seven days of storing the goods, you must notify the former tenant in writing. If you know the tenant's forwarding details, you must complete [Form CP2 - Notice to former tenant as to disposal of goods](#), and give it to the former tenant ("give" means personally, by post or electronically).

If you don't know the tenant's forwarding details, you must complete [Form 3 - Notice as to disposal of goods](#), and publish a copy in a newspaper that circulates generally throughout the State, and place a copy in a prominent position on the premises (within nine days). You do not need to complete a Form CP2. You should keep a record of these forms in case you need to prove in court that you performed these actions.

Someone with a lawful right to the goods may reclaim them within the 60 days or after that time if they remain unsold, after paying your reasonable removal and storage costs. Goods not claimed within 60 days must be sold at public auction, and you are entitled to claim the costs incurred in their removal, storage and sale.

The balance is to be paid into the Rental Accommodation Account on application to the Magistrates Court using [Form 11 - Proceeds of sale of abandoned goods](#). This will discharge your liability in respect of the funds.



If you are owed money from the tenancy (rent, damages etc.), you can use a Magistrates Court Form 11 to claim from the money deposited.

Apart from the abandoned goods provisions of the Act (section 79), you cannot seize the tenant's goods or property as compensation for rent owing.

If you are in dispute with a former tenant over abandoned goods and you are unable to resolve the issue, you can apply for a hearing in the Magistrates Court.

### **Abandoned documents**

If the tenant leaves behind important documents then you will be required to store them. These include official documents, photographs, correspondence or other significant documents you would reasonably expect a person to keep. This may include digital storage devices such as laptops, smartphones and USBs that may contain documents or photos.

You need to take care of the documents for 60 days and take reasonable steps to notify the tenant where to collect the documents. If the tenant picks them up, or you take the matter to court, you can be reimbursed for any reasonable costs. If the documents remain unclaimed after 60 days, you can dispose of them.

# Tenants affected by family and domestic violence

## What is family and domestic violence?

Family and domestic violence is a crime. It is behaviour that results in physical, sexual and/or psychological damage, forced isolation, economic deprivation, or causes the victim(s) to live in fear. It can be experienced by people of all classes, religions, ethnicity, ages, abilities and sexual preference.

Examples of criminal offences in FDV situations include assault, sexual assault, making threats to a person's safety, stalking, damaging or stealing property, harming a person's pet and breaching restraining orders.

In many cases, the affected tenant(s) and the perpetrator may live together, however the perpetrator does not have to be living in the same house for the situation to qualify as FDV.

### Important:

In April 2019 the Act changed to provide options for tenants affected by family and domestic violence including a process to terminate a tenancy quickly and legally; the ability to remove the perpetrator from the agreement; the ability to change locks without permission; and the right to improve security.

## When a tenant wants or needs to break the tenancy agreement due to FDV

Tenants who have been affected by family violence during the tenancy can give you a minimum of 7 days' notice that they want or need to break their interest in the agreement (whether fixed-term or periodic) and vacate with immediate effect. They must provide you with a *Notice of termination of tenant's interest in residential tenancy agreement on grounds of family violence (Form 2)* and one of the following:

- a domestic violence order;
- a family court injunction or an application for a family court injunction;
- a copy of a prosecution notice or an indictment detailing a charge relating to family

violence having been committed against the tenant; or

- an official *Consumer Protection family violence report - evidence form* signed by a designated professional who can be\*
  - a doctor;
  - a psychologist;
  - a social worker;
  - the person in charge of a women's refuge; or
  - a police officer.

\*From October 2019 the following professionals will also be able to sign the Consumer Protection evidence form:

- a child protection worker;
- a family support worker; or
- a person in charge of an Aboriginal health, welfare or legal organisation.

You cannot challenge your tenant's request to break the agreement if the notice and supporting evidence have been completed properly and provided to you with at least 7 days' notice. If the documents are not completed properly you can appeal the termination notice in court.

## If there are co-tenants on the tenancy agreement

If you receive a *Notice of termination of tenant's interest in residential tenancy agreement on grounds of family violence (Form 2)* you must provide a copy of the form (but not accompanying evidence) to any co-tenants and give them 7 days to decide if they want to continue with the tenancy agreement. If a co-tenant wants to stay you must let the lease continue. If the co-tenant decides to leave they must give you 21 days' notice.

### Important:

Be sure to keep any FDV evidence (eg. *Consumer Protection family violence report - evidence form*, copy of restraining order, family court order) provided by the tenant in a safe and secure manner. If you disclose the details, for example to a co-tenant, you can be prosecuted and could be putting a victim's life at risk.

Please note, if the alleged perpetrator is a co-tenant, you cannot make them leave if the victim leaves. Forcing an alleged perpetrator to leave the home has the potential to make the victim less safe. If an alleged perpetrator wants to remain in the tenancy, the lease continues. Even though they have been violent to a family member it does not necessarily mean they will be a bad tenant.

## When a tenant wants to stay and remove the perpetrator from the agreement

If a perpetrator is named on the tenancy agreement and the tenant wants to stay, they can apply to the court to have the perpetrator removed from the agreement. You and any co-tenants will find out about this hearing via a notice from the court and as the landlord you are entitled to participate in the court proceedings.

## Dealing with debt and liability

In the case of damage to the premises or unpaid rent because of FDV the Magistrate can assign liability to the perpetrator. Either a vacating or remaining tenant will need to apply for this court order. If there is no court order, all tenants remain jointly liable for any damages and or debt.

### Note:



This provision can only be used if a tenant's interest in the tenancy has been terminated due to FDV circumstances. A *Notice of termination of tenant's interest in residential tenancy agreement on grounds of family violence* (Form 2) and required supporting evidence must have been provided to you.

The court can also make an order to pay out some of the security bond

- to any tenant who is leaving the tenancy, if they don't owe you any money; and/or
- to you if you are owed money for any damages and debt.

If part of the security bond is paid out and the tenancy is ongoing, you will be entitled to ask the remaining tenant(s) to top up the security bond to the maximum amount permitted under the Act.

## Tenants can change locks without permission

A tenant can change the locks without first seeking your permission either

- after the perpetrator's interest in the tenancy agreement has been terminated; or
- if it is necessary to prevent family violence that the tenant suspects is likely to be committed against them or their dependant.

The tenant must give you a copy of the new key(s) within seven days unless you are the alleged perpetrator. You are prohibited from giving a copy of the key(s) to anyone the tenant has specifically instructed you in writing not to. Of course, you are welcome to offer to change the locks on the tenant's behalf if that is an option.

## When the tenant wants to make security upgrades

A tenant can make prescribed security upgrades to the premises without your permission:

- after a perpetrator's interest in a tenancy agreement is terminated; or
- if necessary to prevent family violence that the tenant suspects is likely to be committed against them or their dependant.

You should be informed about the tenant's intention to make the security upgrades, which must be installed by a qualified tradesperson. Any associated costs are the tenant's responsibility and a copy of any invoice should be supplied to you. All upgrades should comply with strata by-laws and take into consideration the age and character of the property.

At the end of the tenancy, you can ask the tenant to restore the rental property to its original condition. If you feel the upgrades add value to the home and you would like to leave them in place you could negotiate this with the tenant.

For more information about the tenancy laws regarding family and domestic violence, visit the Consumer Protection website at [www.safetenancy.wa.gov.au](http://www.safetenancy.wa.gov.au)

### Important:

If your tenant wants to know how to use the tenancy laws to leave a tenancy for family violence reasons, have them contact Consumer Protection on 1300 304 054 or your local [Community Legal Centre](#) for help.

# All about notices - What to issue and how to do it

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## What to issue

There are a number of notices under the Act to help you, your property manager and the tenant deal with various issues.

Only issue a notice after you have tried to negotiate the problem or dispute with your tenant.

### **Breach of agreement by tenant (other than not paying the rent)**

Use the *Notice to tenant of breach of agreement (other than failure to pay rent)* (Form 20) for breaches such as damage to property or gardens not maintained. This is the step to take to get a problem remedied (not to remove your tenant).

### **Breach of agreement (not paying/late with the rent)**

Use *Breach notice for non-payment of rent* (Form 21) if you want the tenant to remain but to pay rent arrears. This form requires them to bring their rent up to date within 14 days.

### **Breach of agreement (not paying/late with the rent)**

Use *Notice of termination for non-payment of rent* (Form 1A) if outstanding rent is not paid within the 14 days (after you have issued the above breach notice). This form seeks to terminate the tenancy agreement and requires the tenant to vacate the premises within the next seven days.

### **Breach of agreement**

Use *Notice of termination for non-payment of rent* (Form 1B). This form should be sent one day after the rent should have been paid. It warns the tenant that unless the outstanding rent is paid within the next seven days, then the agreement will be terminated and, should the tenant refuse to leave, you will be applying to the Magistrates Court. If the tenant pays all rent owing no later than one day before the court action, then the action will not proceed. Use this form if no breach notice has been issued.

### **You want to end the tenancy for a reason other than the tenant failing to pay rent or abandonment**

Use *Notice of termination* (Form 1C). This form details the various grounds for ending a tenancy, one of which must be specified, and the period

of notice. The reverse of the form explains the grounds on which a tenancy can be ended.

### **You want to enter and secure the property as you suspect the premises have been abandoned**

Use *Notice to tenant of abandonment of premises* (Form 12).

### **You want to end the tenancy for abandonment**

Use the *Notice of termination to tenant if premises abandoned* (Form 13) or use the Magistrates Court's *Application for court order* (Magistrates Court Form 12) application.

### **The tenant wants to end a periodic agreement**

They may give you a *Notice of termination from tenant to lessor* (Form 22), or simply write to you notifying you of their intention to move out and the date on which the property will be handed back (must not be less than 21 days).

### **The tenant wants or needs to end an agreement on grounds of family violence**

The tenant will give you a *Notice of termination of tenant's interest in residential tenancy agreement on grounds of family violence* (Form 2) in order to give at least seven days' notice that they want or need to end the tenancy agreement and vacate with immediate effect. This form must be presented along with a document meeting specific evidence requirements (see 'Tenants affected by family and domestic violence').

### **The tenant believes you have breached the tenancy agreement**

The tenant may give you a *Notice to lessor of breach of agreement* (Form 23), or they can simply write to you stating the problem and calling on you to correct it as soon as possible. If you don't fix the problem, the tenant may apply for an order from a magistrate for the work to be carried out, or seek assistance from the department. They can't hold back the rent to try to make you fix the problem (that would breach the agreement and you could apply to terminate the agreement).

### **The tenant abandons goods of value**

Use *Notice to former tenant as to disposal of goods* (Form CP2) and *Notice as to disposal of goods* (Form 3).

## Disposing of the proceeds from the sale of abandoned goods

Use the *Proceeds of sale of abandoned goods* (Magistrate's Court Form 11) to make a claim if you are owed money from the tenancy (for rent, damage etc.).

## Application for immediate termination of a tenancy

Use the *Application for court order* (Magistrates Court Form 12).

## Other forms you will need or will find useful

All forms are available from the department unless otherwise stated.

**You must** use a prescribed *Residential tenancy agreement* (Form 1AA) for written tenancy agreements. You must also give the tenant *Information for tenant* (Form 1AC) if you use a prescribed tenancy agreement or, for non-written agreements, *Information for tenant with non-written residential tenancy agreements* (Form 1AD).

**You must** use a property condition report which contains the minimum information in the *Property condition report* (Form 1) at the start and end of a tenancy.

*Lodgement of security bond money* form is used to lodge bond money.

*Joint application for disposal of security bond* is used at the end of the tenancy to return the bond money to the tenants, the Department of Housing and/or the lessor.

*Application for disposal of bond money* (Magistrates Court Form 6) is used to make an application at the Magistrates Court if your tenant refuses to sign the disposal form, or you cannot contact your outgoing tenant. Available from the Magistrates Court.

*Notice of intention to dispute application for disposal of bond money* (Magistrates Court Form 5 – included at the end of Form 6) is used if your tenant completes an application for a hearing at the Magistrates Court and you disagree with the details. Available from the Magistrates Court.

### Note:

Forms are available from the department's website:

[www.commerce.wa.gov.au/renting](http://www.commerce.wa.gov.au/renting)



*Bond Administration* provides information on tenancy bonds and how to lodge them with the Bond Administrator and get them paid back.

*Notice of variation of security bond* can be used for variations relating to the record of bond payment details, the amount of the bond, or when ownership or management by an agent of the rented property changes.

*Application for an Abandoned Goods Certificate* can be used to deal with goods left behind by a tenant.

Our staff can help you with any queries or concerns about the types of notices required under a residential tenancy agreement. You can visit one of our offices, visit our website, or phone our Contact Centre on 1300 304 054.

## How and when to issue notices

When a notice is served under the Act, proper procedures must be observed. If the matter in question ends up in court, the person who prepared the notice would have to prove it had been served correctly.

## How to issue a notice

Under the Act you can serve a notice by handing it to the intended person or mailing it by ordinary post. The Act says that serving a notice by mail takes effect from the time the letter would have been delivered by ordinary post.

The count of days for the notice period must exclude the day on which the notice is served, and the last day of the notice period (see 'Counting days' overleaf or the flowcharts from page 43).

A notice to a tenant can be given to:

- the person who usually pays the rent; or
- a person who looks to be over 16 years of age living in the rented premises.

If the tenant is giving a notice to the lessor, it can be given to:

- the lessor;
- the lessor's property manager;
- a person who looks to be over 16 years of age who lives with the lessor; or
- the person who looks to be over 16 years of age who usually receives the rent.

Where there are two or more lessors or tenants, you only need to give a notice to one of them, although it should refer to all parties to the agreement.

Any notice to be given to a person whose address is not known is regarded as having 'been served' if a copy of it is published in a daily newspaper, which circulates generally throughout the State.

It is the department's view that notices under the Act may be served by email, as long as the notice does not require a witness signature, both parties have previously agreed they will correspond electronically and it is reasonable to expect the information will be accessible and available at a later date.

However, to ensure a notice is being received by the intended recipient and to avoid a dispute about whether it is received, it would be wise to serve important notices personally or by mail.

### **When to serve a notice**

If the tenant breaches the agreement by not paying the rent you have two alternatives which are explained earlier under 'When things don't work out' (if the rent is overdue) and in the Charts one and two in the Appendices.

If the tenant breaches the agreement by any action other than not paying the rent, you can take action as described earlier under 'When things don't work out' (breaches of the tenancy agreement) and in Chart three in the Appendices.

When serving a notice to end a tenancy, it must not be issued before the expiry or specified time period given in a breach notice, otherwise a magistrate may reject court action to end the tenancy.

If you are ending the tenancy for reasons other than a breach of the agreement (such as selling the property), you must still serve notice with a *Notice of termination* (Form 1C) as required by the Act and as previously described.

Similarly, if you are serving notices about a rent increase or inspections, you must also comply with the Act's requirements.

### **Counting days**

If you are serving a notice, you will find certain periods of notice are required for certain actions.

The counting of days for the notice period must exclude both the day on which the notice is served, and the last day of the notice period.

In counting the days, you may find it helpful to refer to the charts in the Appendices.

If you mail a notice, allow adequate time for the letter to reach the recipient by regular post. Allow two to three business days for delivery within the same city or town and more than that (up to six business days) between regions. Australia Post now offers a priority option which costs more but delivers mail one or two business days faster than regular post.

Weekends and public holidays need to be taken into account and may be excluded if the last day for the notice falls on a weekend or public holiday. That is, the person receiving the notice can choose for service to be effected on the next working day after the weekend or public holiday.

Notices do not necessarily have to be related to rental payment periods.

### **Proof notice was served**

If a tenancy issue goes to court, the magistrate is likely to require proof the notice was served correctly. Therefore, keep a copy of each notice, including a written record of the method you used to serve it, and the date it was sent or handed to the person. Also, the person who sends the notice should sign these notations.

### **Standard forms for use under the Residential Tenancies Act**

Please refer to Appendix 1 for a table of standard forms commonly used under the Act.

You will find some forms you must use (those prescribed or approved by the Minister under the Act) and others you can use (suggested forms). For suggested forms, you can write a letter or other document instead.



# Going to court

## About the courts

The most common disputes that find their way into court include:

- refusal to return bond money;
- overdue rent;
- damage to property;
- maintenance of the premises; and
- problems when ending tenancy agreements.

Whatever the dispute, the most important thing for you to remember is you need to keep detailed records of your conduct and your tenant's conduct in relation to the tenancy agreement.

Disputes between lessors and tenants are dealt with by the Magistrates Court under a special minor case category. At present, minor cases are defined as involving disputes of not more than \$10,000.

For minor case hearings there are some rules designed to keep the proceedings 'private and informal'.

You are entitled to be represented by a property manager. Both tenants and lessors are entitled to be represented by a person employed or engaged by a not-for-profit organisation. Hearings are relatively informal so a tenant or lessor may represent themselves. A body corporate may be represented by one of its officers.

You will be expected to attend the court hearing unless you can give a good reason, such as being too ill or away interstate or overseas. If this happens, you can 'seek leave of the court' to be represented by an agent, property manager or legal practitioner and must show the court your agent has sufficient knowledge of the issue and your authority to act on your behalf. The court may impose conditions on the hearing to ensure no one will be disadvantaged by one party being represented by a third party.

If the court considers a dispute could be resolved through mediation, the court may order the appointment of a registrar or someone else to be a mediator. The disputing parties may also agree to go to mediation, if the magistrate agrees.

The successful party in a minor case is entitled to an order to recoup their 'allowable costs'.

There are no appeals against the decision of the magistrate, except on the grounds the court did not have jurisdiction to hear the case or natural justice was denied.

## Applying for a court hearing

Applications must be made to the court closest to the rented premises, unless the parties in the dispute agree to a different arrangement. Check with the court as to how this can be done.

The fee for a hearing is relatively small. Check with the court for the current rate.

The address of the court where the hearing will take place is shown on a form, which will be sent to you. Court staff will advise you on the correct form to lodge for a hearing or to defend a matter in dispute, and tell you what the application fees are. However, they cannot give you advice about the strength of your case, the possible result or what evidence you might need.

When applying for a hearing, you should complete either an:

- *Application for disposal of bond money* (Magistrates Court Form 6), which is used for bond disputes where the amount in dispute is not more than the amount held in the bond account, and the bond has not been paid out; or
- *Application for court order* (Magistrates Court Form 12), which is used for general disputes (such as rent not paid, damage to property) or a dispute where the amount being sought is greater than the bond.

Make sure you use the right form. Ask the court staff if you are still unsure.

If you want your property manager to represent you in court, you will need to fill out an *Application for an agent to present a party's case* (Magistrates Court Form 24) and attach it to your application.

Usually the magistrate will only consider the items listed in the application, so give full details of the order you are seeking from the court, such as an order to terminate the tenancy agreement and gain possession of the premises.

### Note:

If you do not state all the possible orders, the hearing may be adjourned.



Court staff will check the application and enter it as an official court document. With a Form 12 application, a hearing date will be set automatically.

In the case of a bond dispute application, a hearing date will be set if the matter is to be disputed by the other party. Where the matter is not disputed and evidence of the expense incurred has been provided, the court will authorise payment of the bond as requested in the application. This is usually when the whereabouts of a tenant or lessor is unknown and one of the parties has not signed the bond release.

## Preparation is important

Whether you win or lose in court may depend on whether you followed the correct procedures in handling the dispute, from the beginning to the court stage and how thorough you are in preparing your evidence.

Make sure you have records of all notices, receipts, records of rent and other relevant documents that will support your case. Take both the original documents and photocopies to court.

To be sure you understand the section(s) of the Act on which you are basing your application or your defence, you may want to read the Act or seek advice from the department. We can give you general advice, but not legal advice.

If you intend to call witnesses to support your case, give them details of:

- the hearing date;
- the court they should go to; and
- any documents they should bring.

If a witness is vital to your case but will not come to court voluntarily, you can serve him or her with a Summons to Witness. You will need to serve the document on the witness personally as it cannot be sent by post. You will also need to give the witness sufficient money to enable them to use public transport for the return trip to the court.

Before you attend court, go through exactly what you intend to tell the magistrate. Make an orderly list of the points you need to make.

Use this checklist:

- Can I establish I had the right to let the premises or an authority to act if I am not the lessor?
- Do I have a copy of the tenancy agreement?
- Did I lodge the bond correctly?

- Have I kept proper records of the rent paid and the date of the last payment?
- Did I issue receipts for rent paid, and are they in order for quick reference by the magistrate?
- If the rent was paid directly into a bank account, do I have the appropriate statements?
- When the rent fell behind, did I serve a notice on the tenant on the correct day?
- Did I follow correct procedures when serving a notice to end the tenancy agreement?
- Have I arranged for witnesses to appear at the hearing (if required)?
- Have I gone through my evidence thoroughly?

### Note:



You cannot read a prepared statement at the hearing, although you may be allowed to refer to a list of points to help you make your statement. Ask the magistrate if this is allowed. Any notes you made at the time of the event can be given as evidence.

## On the day

Make sure you have plenty of time to get to court and know where to find the court room.

Arrive for the hearing on time or a little earlier. Let a court official know you are there and then go to the waiting room. Remain within hearing distance of the court room. If you are not there when your case is called, it could start without you and the magistrate might make an order which may not have been made if you had been there.

A registrar has authority to hear disputes if neither party objects.

Where only one party to a dispute attends court, the court can deal with the application without input from the absent party.

If both parties attend court, a conference may be held before the hearing. This is not compulsory and either party may choose to go straight to a full hearing.

Such a conference can be held to:

- relax the parties;
- shorten proceedings by defining the matters at issue;
- resolve the matter, either partially or fully;



- make any orders with the consent of both parties; and
- advise the parties of the procedure in court, if the dispute is not resolved.

If the matter appears likely to be settled in this way, it is important to be aware what you are agreeing to. It is final and binding on both parties.

If the case is to be heard before a magistrate, when your case is called, enter the courtroom and take your place at either the applicant's or respondent's seat, as directed by the court usher.

The 'applicant' is the person who has asked the court to resolve the dispute. The other person is the 'respondent'. The court documents and records will show you as applicant or respondent as the case requires.

## Rules of the court (which may vary slightly between the courts)

Although proceedings in the Magistrates Court are relatively informal, certain rules must be observed:

- Call the magistrate 'Your Honour'.
- Stand up when it is your turn to speak or when you are spoken to by the magistrate and sit down when you or the magistrate have finished.
- Only one person is allowed to speak at a time. The magistrate will tell you when it is your turn to speak.
- Don't interrupt when the other person is telling their version of the dispute to the magistrate, or when the magistrate is talking.

## How the case is heard

The magistrate usually conducts the hearing in the following way (except in the case of a Application for a bond dispute, where the lessor always proceeds first):

1. The applicant tells their story (evidence) and presents any documents in support of their case.
2. Then the respondent questions (cross-examines) the applicant about their evidence.
3. If the applicant has witnesses, they tell their story.
4. The respondent can cross-examine each witness.
5. The respondent then tells their story and produces any supporting documents.

6. The applicant can cross-examine the respondent.
7. If the respondent has witnesses, they tell their story.
8. The applicant can cross-examine each witness.

## Presenting your story to the magistrate

When it is your turn to give evidence, you go into the witness box, take an oath or make an affirmation to tell the truth and present your version of the dispute.

Tell your story in the order events happened.

Show any documents that support your story to the magistrate at the time you give your evidence.

Make sure you tell the magistrate all the important facts as you see them.

When you and your witnesses have told your version of events and have been cross-examined, you have finished presenting your case.

## The decision

When both parties have finished providing their version of events, the magistrate will make a decision, which is final.

Generally, the magistrate will outline the problem, summarise what has been said and then give the decision, known as an order.

Listen to what the magistrate says when making the order. The court will usually send you a copy of the order by mail after the hearing. Ask the magistrate if this will be done, as procedures vary from court to court.

If you do not understand the order, ask the magistrate to explain it to you. Orders handed down by the magistrate can include:

- ending a tenancy agreement;
- how bond money will be paid out;
- action being carried out in accordance with the tenancy agreement;
- stopping any action which breaches the tenancy agreement;
- payment of compensation by the person in breach of the agreement, for loss or injury (other than personal injury), caused by the breach; and

- payment of rent into the court until the lessor carries out the magistrate's order to remedy a breach or for compensation.

If an order is granted and the tenant can demonstrate they would suffer hardship if it was effective immediately, they can ask the magistrate to suspend the order for up to 30 days.

If the tenant does not pay an amount ordered by the magistrate, you can take action to enforce the order. There are different actions and the most common are explained in the department's publication *If they don't pay – What happens if court/tribunal orders are not paid*. Contact our Contact Centre for a copy or go to our website to download a copy.

You can seek legal advice on the best course of action through a lawyer, Legal Aid, the Citizens Advice Bureau or a Community Legal Centre – though you may have to qualify for such assistance.



# A final checklist

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You will want your rental property to be profitable and the tenancy arrangements to be hassle free.

Here is a final checklist to help make that a reality.

- Ensure you have adequate funds set aside to meet unexpected costs such as repairs to the property or to cover times when no rent is coming in.
- Decide whether to use an agent or whether you are confident enough to handle matters yourself.
- Choose your tenants carefully.
- Decide whether you are going to offer a periodic or fixed-term tenancy.
- Make sure you have a prescribed written tenancy agreement and *Information for Tenant* (Form 1AC).
- If you have you have a verbal agreement you must give your tenant *Information for tenant with non-written residential tenancy agreement* (Form 1AD).
- Make sure the property is in good condition ready for your tenant to move in.
- Check important safety items, such as electrical wiring, pool fencing, plumbing, safety glass (in bathrooms), smoke alarms and safety switches (RCDs).
- Spend time and effort on the property condition report containing prescribed minimum information. It can save a lot of disagreements and heartache later.
- Lodge the bond money correctly with the Bond Administrator.
- Remember your tenant's rights, especially to quiet enjoyment of the property.
- Respond promptly to any request to fix items that are your responsibility.
- Deal promptly and fairly with any disputes and be prepared to negotiate a compromise solution.
- Take action promptly if the rent falls into such arrears that it may become a real problem for your tenant.
- Give the tenant a reasonable opportunity to attend the final inspection and carry it out thoroughly.
- Prepare a final property condition report and discuss sensibly any items of dispute with your tenant.
- Make sure you know what notices to use for various procedures.
- If you have to go to court, make sure you understand the procedures and prepare your case well.



# Glossary of terms in common use

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**Assign the premises:** To transfer rights to occupy the premises and associated responsibilities to another person.

**Bond:** Money paid by the tenant and held in trust by the Bond Administrator as security against damage to the premises.

**Breach of agreement:** The breaking of a term or condition of the tenancy agreement. In other words, doing something the agreement or standard terms of the Act says the lessor or tenant should not do, or failing to do something the agreement or standard terms of the Act require the lessor or tenant to do.

**Counting days:** The time for notices which includes additional days for mailing and the exclusion of the first and last days of the notice period.

**Fair wear and tear:** General terms for anything that occurs through ordinary use. Wilful and intentional damage, or negligence, is not fair wear and tear.

**Family violence / Family and domestic violence (FDV):** A reference to violence, or a threat of violence, by a person towards a family member of the person; or any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.

**Fixed-term tenancy:** A tenancy agreement that specifies a set period of tenancy.

**Head tenant:** A tenant who sublets to another person (who is known as a 'sub-tenant').

**Landlord:** See 'lessor'.

**Lessor:** A person who grants the right to occupy the property and who is entitled to collect rent. This can be the owner or their agent, and in some circumstances the 'head tenant'.

**Option fee:** A fee charged to the prospective tenant when lodging a rental application. Option fees are capped at a maximum. Refer to page 6 for more details.

**Periodic tenancy:** A tenancy agreement that doesn't specify a fixed end date to the tenancy.

**Possession day:** The day by which the tenant needs to have moved out.

**Premises:** A general term for a residence. It can mean a house, duplex, unit, flat, apartment or caravan site, caravan or park home and can include the land on which the premises are situated.

**Prescribed form:** Is the approved, standard form or document a lessor must use.

**Property:** In relation to rental properties, this includes the building, garden and any sheds etc.

**Property condition report:** A compulsory form listing the contents of the property and their condition, as well as the condition of the fixed parts of the property such as walls, ceilings and doors. The content of the report is prescribed, but more detail can be added.

**Quiet enjoyment:** The right of the tenant to be able to occupy, use and enjoy the premises in reasonable privacy and without undue interference.

**Rent:** The money the tenant pays the lessor for the right to live in the premises.

**Security bond:** See 'Bond'.

**Sub-let:** A rental agreement where the tenant rents out all or a part of the premises to another person.

**Sub tenant:** The tenant in a sub-let arrangement, who pays rent to the 'head tenant'.

**Tenancy bond:** See 'Bond'.

**Tenant:** The person who rents accommodation from the lessor.

**Termination of a tenancy:** When the lessor, the tenant or the court ends a tenancy by:

- a. agreement;
- b. the provisions of the Residential Tenancies Act; or
- c. a court order.

# Contact details

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Department of Mines, Industry Regulation and Safety – see the last page of this publication for metropolitan, regional and electronic contact details.

## Magistrates Courts

General enquiries 9425 2222

## Metropolitan

Armadale Court 9399 0700  
Fremantle Court 9431 0300  
Joondalup Court 9400 0700  
Mandurah Court 9583 1100  
Midland Court 9250 0200  
Perth Court 9425 2222  
Rockingham Court 9527 6433

## Regional

Albany Court 9845 5200  
Broome Court 9192 1137  
Bunbury Court 9781 4200  
Busselton Court 9754 9666  
Carnarvon Court 9941 5500  
Christmas Island Court 9164 7901  
Cocos (Keeling) Islands Court 9162 6600  
Collie Court 9734 2061  
Derby Court 9191 1406  
Esperance Court 9071 2444  
Geraldton Court 9921 3722  
Kalgoorlie Court 9093 5300  
Karratha Court 9185 2922  
Katanning Court 9821 1177  
Kununurra Court 9166 7100  
Manjimup Court 9771 1316  
Merredin Court 9041 5266  
Moorabool Court 9651 1407  
Narrogin Court 9881 1722  
Northam Court 9622 1035  
Roebourne Court 9182 1281  
South Hedland Court 9172 9300



# Appendices

## Appendix 1: Standard forms for use under the *Residential Tenancies Act 1987*

The following is a list of the standard forms in common use.

You can download these forms from the department's website at [www.commerce.wa.gov.au/renting](http://www.commerce.wa.gov.au/renting). If you do not have internet access public libraries and community resource centres often offer free or low-cost access, or you can call the Consumer Protection Contact Centre on 1300 304 054 for advice.

### Prescribed and approved forms (must be used and must not be amended)

Residential tenancy agreement ([Form 1AA](#))

Information for tenant ([Form 1AC](#))

Information for tenant with non-written residential tenancy agreements ([Form 1AD](#))

Property condition report ([Form 1](#)) (Note: This is the minimum content that must be provided but can add additional detail)

Notice of termination for non-payment of rent (to be used only if a 14-day breach notice has been issued) ([Form 1A](#))

Notice of termination for non-payment of rent (to be used if no breach notice has been issued) ([Form 1B](#))

Notice of termination (not to be used for non-payment of rent – termination for one of seven grounds, other than non-payment of rent) ([Form 1C](#))

Notice of termination of tenant's interest in residential tenancy agreement on grounds of family violence ([Form 2](#))

Notice to former tenant as to disposal of goods ([Form CP2](#))

Notice as to disposal of goods ([Form 3](#))

Notice to tenant of rent increase (except for rent calculated by tenant's income) ([Form 10](#))

Notice to tenant of rent increase calculated by tenant's income ([Form 11](#))

Notice to tenant of abandonment of premises ([Form 12](#))

Notice of termination to tenant if premises abandoned ([Form 13](#))

Notice to vacate from mortgagee to tenant ([Form 14](#))

Notice to tenant of proposed recovery of premises by person with superior title ([Form 17](#))

Notice of proposed entry to premises ([Form 19](#))

Joint application for [disposal of security bond](#)

[Lodgement](#) of security bond money

[Variation](#) of security bond money

### Suggested forms

Consumer Protection family violence report - [evidence form](#)

Application to rent residential premises ([Form 18](#))

Notice to tenant of breach of agreement (other than failure to pay rent) ([Form 20](#))

Breach notice for non-payment of rent ([Form 21](#))

Notice of termination from tenant to lessor ([Form 22](#))

Notice to lessor of breach of agreement ([Form 23](#))

#### Note:

This list does not include forms used for applications to the Magistrates Court. These forms can be obtained from your closest Magistrates Court, or you can complete many of the forms online at [www.magistratescourt.wa.gov.au](http://www.magistratescourt.wa.gov.au)



## Appendix 2: Chart one - Service of a Breach notice for failure to pay rent

STEP  
1

### Notice of breach

- A** Day **RENT IS DUE**
- B** Day **AFTER RENT IS DUE, SERVE NOTICE OF BREACH** for non-payment of rent (**Form 21**).  
  
Give 14 full days to bring rent up to date.  
**Refer to DELIVERY METHODS**
- C** Day **NOTICE RECEIVED**   
(after delivery period).
- D** Day one is Day **AFTER NOTICE RECEIVED**   
**1 2 3 4 5 6 7 8 9 10 11 12 13 14**

STEP  
2

### Notice of termination

- E** Day **15** If **RENT ARREARS STILL UNPAID, SERVE NOTICE OF TERMINATION** for non-payment of rent (**Form 1A**).  
  
Give seven full days to vacate the premises.  
**Refer to DELIVERY METHODS**
- F** Day **NOTICE RECEIVED**   
(after delivery period).
- G** Day one is Day **AFTER NOTICE RECEIVED**   
giving seven full days notice to vacate the premises.  
**1 2 3 4 5 6 7**

STEP  
3

### Court orders

- H** Day **8** **LEASE IS TERMINATED**
- I** Day **9** Day **AFTER TERMINATION**

If tenant has not moved out, apply to the Magistrates Court within 30 days from the day after termination, for an order terminating the tenancy and seeking possession of the premises (**Court Form 12**).

### Delivery methods

**General Post** – Australia Post mail delivery is now made on limited days. Allow 2–6 business days including:

- The day of the service
- Additional days for weekends and public holidays

**Electronic/Email** – There must be a prior agreement in writing and proof of service\* may be required.

**In person** – Notice to be handed to someone 16 years or older who normally resides at the property; it cannot be left in the letterbox.

\* **Proof of Service** – The sender should retain a copy of the notice, record details of how it was served, date of service and sign it.

# Chart two - Service of Notice of termination for failure to pay rent

## STEP 1

### Notice of termination

- A Day RENT IS DUE
- B Day AFTER RENT IS DUE, SERVE NOTICE OF TERMINATION for non-payment of rent (Form 1B).  
  
Give seven full days to bring rent up to date.  
**Refer to DELIVERY METHODS**
- C Day NOTICE RECEIVED   
(after delivery period).
- D Day one is Day AFTER NOTICE RECEIVED   
1 2 3 4 5 6 7

## STEP 2

### Court orders

- E Day 8 LEASE IS TERMINATED
- F Day 9 Day AFTER TERMINATION

**If tenant has not moved out, apply to the Magistrates Court within 30 days from the day after termination, for an order terminating the tenancy and seeking possession of the premises (Court Form 12).**

Court action cannot be continued if the tenant pays rent and Court filing fee no less than one day before the hearing date.

Hearing date cannot be earlier than 21 days after the notice of termination is issued.

### Delivery methods

**General Post –** Australia Post mail delivery is now made on limited days. Allow 2–6 business days including:

- The day of the service
- Additional days for weekends and public holidays

**Electronic/Email –** There must be a prior agreement in writing and proof of service\* may be required.

**In person –** Notice to be handed to someone 16 years or older who normally resides at the property; it cannot be left in the letterbox.

\* **Proof of Service** – The sender should retain a copy of the notice, record details of how it was served, date of service and sign it.



## Chart three - Service of Breach notice other than for failure to pay rent

### STEP 1

#### Notice of breach

**A** Day of **BREACH**   
**SERVE NOTICE OF BREACH** of agreement (Form 20).  
 Give 14 full days to rectify the breach.  
 Refer to **DELIVERY METHODS**

**B** Day **NOTICE RECEIVED**   
 (after delivery period).

**C** Day one is Day **AFTER NOTICE RECEIVED**   
 1 2 3 4 5 6 7 8 9 10 11 12 13 14

### STEP 2

#### Notice of termination - Option 1

**D** Day **15** If **BREACH IS NOT REMEDIED**, **SERVE NOTICE OF TERMINATION** (Form 1C).

Give seven full days to vacate the premises.  
 Refer to **DELIVERY METHODS**

**E** Day **NOTICE RECEIVED**   
 (after delivery period).

Day one is Day **AFTER NOTICE RECEIVED**   
 giving seven full days notice to vacate the premises  
 1 2 3 4 5 6 7

#### OR Notice of termination - Option 2

Apply to the Magistrates Court for an order to remedy the breach of the agreement (Court Form 12)

### STEP 3

#### Court orders

**G** Day **8** **LEASE IS TERMINATED**

**H** Day **9** Day **AFTER TERMINATION**

If tenant has not moved out, apply to the Magistrates Court within 30 days from the day after termination, for an order terminating the tenancy and seeking possession of the premises (Court Form 12).

\* **Proof of Service** – The sender should retain a copy of the notice, record details of how it was served, date of service and sign it.

#### Delivery methods

**General Post** – Australia Post mail delivery is now made on limited days. Allow 2–6 business days including:

- The day of the service
- Additional days for weekends and public holidays

**Electronic/Email** – There must be a prior agreement in writing and proof of service\* may be required.

**In person** – Notice to be handed to someone 16 years or older who normally resides at the property; it cannot be left in the letterbox.

## **Department of Mines, Industry Regulation and Safety**

### **Consumer Protection Division**

**Contact Centre 1300 304 054**

(for the cost of a local call statewide)

8.30 am – 4.30 pm Mon, Tue, Wed and Fri

9.00 am – 4.30 pm Thurs

Gordon Stephenson House  
Level 2/140 William Street  
Perth Western Australia 6000

Locked Bag 100, East Perth  
Western Australia 6892  
Administration: (08) 6251 1400  
Facsimile: (08) 6251 1401  
National Relay Service: 13 36 77

Website: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)

Email: [consumer@dmirs.wa.gov.au](mailto:consumer@dmirs.wa.gov.au)

### **Regional offices**

Goldfields/Esperance	(08) 9021 9494
Great Southern	(08) 9842 8366
Kimberley	(08) 9191 8400
Mid-West	(08) 9920 9800
North-West	(08) 9185 0900
South-West	(08) 9722 2888



This publication is available on request in other formats to assist people with special needs.