



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

**i**

# **Renting a home in Western Australia**

## **> a tenant's guide**

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



**iRentWA**



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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 disputes. If we can't negotiate a fair outcome, it may be necessary for the matter to be settled in court (see '[Going to court](#)').

The department's powers are limited to conciliation and prosecution of breaches of consumer law. Only the courts have the power to make orders or determinations to force a tenant or lessor/property manager do something.

We are however legislated to provide a bond management service for lessors/property managers and hold the tenant's money. All new bonds must be lodged with the Bond Administrator at our office located at 303 Sevenoaks Street, Cannington. This service is provided free of charge.

You can contact us by telephone or visit one of our offices (listed on the back page).

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.



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 copying 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 currently renting a home in Western Australia, or currently considering it, this Guide will help you to avoid common renting pitfalls and enjoy a harmonious and lawful relationship with the lessor/property manager or agent.

Renting a home 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 at [www.slp.wa.gov.au](http://www.slp.wa.gov.au) - be sure to also check for updates.

This Guide does not take the place of the Act, or cover everything you might need to know but it will give you a good working knowledge of your rights and responsibilities as a tenant.

The term 'lessor' is used in this Guide to describe the person who is renting out the property though you probably know them as your 'landlord'.

## The Act covers:

- the role of the Department of Mines, Industry Regulation and Safety (the department) and the Magistrates Court;
- payment of rent and rent increases;
- security bonds;
- use of the premises;
- urgent repairs;
- right of entry by the lessor/property manager;
- fixtures, renovations, alterations and additions;
- who pays rates and taxes;
- assignment and subletting;
- discrimination against children;
- 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 Advice Line on 1300 304 054.**

## Please note

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

- boarders/lodgers (see below);
- holiday accommodation;
- most long-stay caravan and park home residents;
- hotels/motels;
- colleges;
- educational institutions (unless a for-profit organisation that provides 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 Advice Line on 1300 304 054.

## Boarders and lodgers

It is not always easy to distinguish between tenants, boarders and lodgers. Although boarders and lodgers pay for the right to occupy residential premises they are not covered by the Act, but it is important to know they still have certain rights.

## How can you tell if you are a boarder, lodger or tenant?

- If you have been given permission to stay at another person's house, have your meals or other services provided and pay rent, you are most likely a boarder.
- If you have been given permission to stay at another person's house and pay rent but are not supplied with meals or other services, you are most probably a lodger.

If you pay rent and in return are granted a right to occupy a residential premises, and have exclusive 'possession' then you are most likely a tenant rather than a boarder or lodger. You can be a tenant whether you have a written agreement or a verbal agreement. The major difference is that tenants have a higher level of security of tenure and protection under the law than either boarders or lodgers because they are covered by the Act.

Exclusive possession means you have the right to exclude all others, including the landlord, from entering the house or room being rented. This is different from exclusive 'occupation' or 'use' where you have your 'own' room and no other people can stay in it without your permission.

If your room has a lock, which physically stops the landlord from entering, this does not automatically mean you have exclusive possession of the room. The 'house rules' that may state the landlord or another authorised person is allowed to come into your room without your permission.

For example: if you receive any services such as cleaning, linen or meals, the landlord could ask for unrestricted access and you would not have exclusive possession.

For more information, phone the Consumer Protection Advice Line 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*.

## Caravan and park home residents

The Act also covers long-term residents of caravan parks and park home residents who have entered into or renewed a fixed-term long-stay tenancy agreement **prior to 3 August 2007**.

The *Residential Parks (Long-stay Tenants) Act 2006* covers agreements signed 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

## Finding the right place to fit your budget

It is important to think about what you really need and to avoid making rash decisions about renting.

### Costs

Starting a new tenancy can have significant up-front costs.

For example, renting a house at \$380 per week could cost you around \$2,500 to move in. You could have to find the money to pay for:

- rent in advance (two weeks) \$760;
- a security bond (equivalent to a maximum of four weeks' rent) \$1,520;
- a pet bond (if permitted to keep one under the tenancy agreement): to a maximum amount of \$260; and
- other costs associated with changing house, such as moving furniture etc.

You can get a good idea of what you will get for your money by checking the 'To Let' columns of newspapers or searching reputable websites online.

### Suitability

Think carefully about whether the property meets your day-to-day needs, such as:

- Can you afford the rent and other living costs?
- Is it convenient for schools, child care centres, public transport and shops?
- Will you feel safe in the area and the home?
- Would you prefer a periodic or fixed-term residential tenancy agreement (see 'Tenancy agreements' on the next page)?

### If you are refused as a tenant

The lessor/property manager **cannot** refuse a tenancy because you intend to have a child living on the premises as *Equal Opportunity Act 1984* prevents discrimination on the grounds of sex, race, age, disability, marital status, pregnancy, family status or responsibility, religious or political beliefs, spent convictions, sexual orientation or gender history.

Minors (a person who is over 16 but under 18 years of age) may apply for a residential tenancy. A tenancy agreement may be enforced in accordance with the Act against a minor however, there are protections in the Magistrates Court as a litigation guardian can be appointed.

## Sorting out the paperwork

There are a number of required forms to protect the rights of tenants and lessors. These forms include the tenancy agreement, property condition report, bond lodgement and taking matters to court.

If you have a smart phone you may wish to download the [iRentWA](#) app to assist with the paperwork and to keep digital versions of some documents.

### Application forms

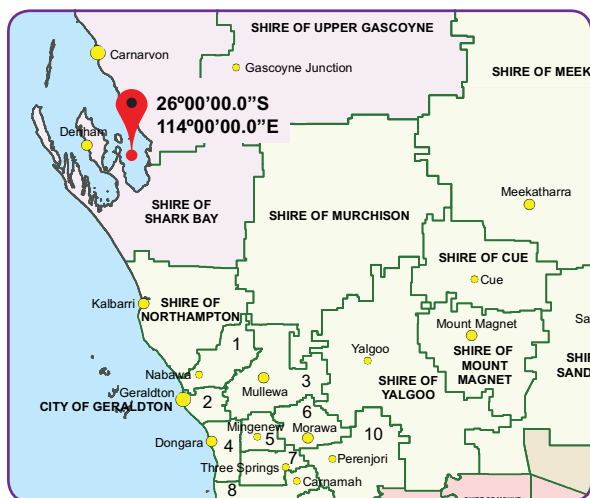
Some lessors/property managers will ask you to complete an application form so they can decide whether or not to accept you as a tenant. The form may ask you for details of any previous rental history and references from a previous landlord, your employer or a teacher or minister etc.

### Option fees

You may be asked to pay an option fee to show your rental application is genuine. The lessor/property manager holds on to the option fee while they check references and decide whether to offer you the property. The amount that can be charged depends on the weekly rent and the property's location, as shown 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.



Check whether the application form requires an option fee and whether all or part of the fee can be kept if you decide not to go ahead with the tenancy. If the lessor/property manager decides not to offer you the tenancy, they must return the fee to you in full within seven days, either in cash, cheque or by EFT. If you take up the tenancy, the option fee can be credited towards your first rent payment or refunded to you.

## Tenancy agreements

When you rent a property to live in, you will most likely enter into a written residential tenancy agreement with a lessor/property manager. Although non-written agreements are also recognised under the Act, a written tenancy agreement means there can be little argument about the terms and conditions agreed to by both parties at the start of the tenancy.

This agreement is a key document and should cover most of the matters concerning your relationship and the renting of the property.

### Important

Make sure you understand exactly what is in the agreement and what you are agreeing to.



The prescribed *Residential tenancy agreement* (Form 1AA) can be downloaded from the department's website.

It covers items such as:

- the address of the premises;
- the names and addresses of you and the lessor/property manager;

- if the agreement is periodic (start date only) or fixed (start date and end date);
- rent requirements, such as the rental amount, frequency of payments and how the rent is to be paid;
- any special conditions you both agree to; and
- a summary of key residential tenancy laws.

The clauses in the prescribed *Residential tenancy agreement* must not be altered. You and your lessor/property manager can add any agreed additional terms (in Part C), provided these do not breach the Act or conflict with the tenancy agreement. Any additional clauses should also comply with the unfair contract term provisions in the *Fair Trading Act 2010*.

Check if the lessor/property manager intends to fix any problems you observe when you inspect the property and have this written into the agreement. Repairs must be done within a reasonable time.

Also, make sure the lessor/property manager gives you a copy of the agreement when you sign it and a final copy of the agreement signed by both you and the lessor within 14 days of returning it. Always keep your copy in a safe place for the duration of your tenancy.

It is against the law to contract out of any section covered by the Act and it is worth remembering that contracts signed before 1 July 2013 slightly different obligations.

## Fixed-term or periodic tenancy?

Depending on the circumstances, the lessor/property manager can offer you a fixed-term or a periodic tenancy.

A **fixed-term tenancy agreement** will specify a start and finish date, and the minimum length of time you agree to stay in the property. Most fixed-term agreements are for six or 12 months though they can be for any time and offer you more certainty and security than a periodic tenancy.

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. The agreement should state any conditions and whether you can automatically renew the tenancy at the end of the original period and/or renew for another fixed term. If it contains an option to renew the choice is usually yours, unless the agreement states otherwise.

If you stay on with the lessor/property manager's permission after the initial period has expired but don't sign another fixed-term agreement, the tenancy will automatically become a periodic tenancy. All the conditions from the previous fixed-term agreement will continue to apply, however the rent cannot be increased for the first 30 days of the periodic tenancy.

**Although fixed-term tenancy agreements have expiry dates they do not automatically end unless either you or the lessor/property manager gives 30 days' written notice of the intention not to renew the agreement. For further information refer to 'Ending a tenancy'. This applies to all tenancies.**

A **periodic tenancy agreement** can last for an indefinite time. It provides greater flexibility in case you or your lessor's circumstances change and either of you need to end the tenancy. The agreement can be ended when the lessor gives 60 days' notice, or you give 21 days' notice. For further information, refer to 'Ending a tenancy'.

## 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 the lessor/property manager to choose whether to:

- permit you to sublet;
- prohibit you from subletting; or
- permit you to sublet but only with their written consent.

If the lessor agrees to allow you to sublet but only with their written consent, then the lessor must not withhold consent unreasonably.

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

### Note:

Having a paying boarder or a lodger is not subletting.



## Moving in

When you move in, it is the lessor/property manager's responsibility to make sure the premises are vacant, clean with all utilities and appliances fully functional on that day.

When you move in you should be given the keys to lockable doors, windows, the garage and letterbox. You cannot be charged a deposit for keys, but may have to pay for any replacements.

## Property condition report

The lessor/property manager must prepare a report describing the condition of the property at the start and the end of the tenancy. The *Property condition report* (Form 1) sets out the minimum content and is available on the department's website.

This report sets down and lists, on a room-by-room basis, all the contents and identifies if they are clean, damaged and/or in working order (including fixed appliances such as ovens, exhaust fans and air conditioners, water heaters etc.). Further comments about anything damaged or in bad condition can also be included. For example, a cracked ceiling, torn fly screen, stained carpet in main bedroom, dirty or chipped walls.

Within seven days of moving in the lessor/property manager must provide you with two copies of the property condition report. You have a further seven days to mark anything you disagree with on both copies and return one copy to the lessor/property manager. Keep your copy in a safe place as this will be important evidence if a dispute arises at the end of your tenancy. If you do not return a marked up copy, it is understood that you have accepted the report as an accurate description of the property.

If the parties do not agree, the property condition report is not considered to reflect the condition of the property. You should meet the lessor/property manager to view the property jointly and compare the differences in an attempt to resolve the disagreement. If you still cannot agree at the end of the tenancy, a court can look at the marked up copy and other evidence.

When completing the property condition report, you should follow these steps:

- Check the premises for cleanliness and maintenance issues including insects and pests and building maintenance, for example roof tiles, guttering, taps and the hot water system.
- Check security including locks, the state of doors, windows, and fencing.
- 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 any bore or reticulation system. You should also check that these work.

- If there is a swimming pool or spa, record its condition and note the accessories and cleaning equipment and check they work.
- Take photographs or make a digital recording showing any problem areas and the date the record was made.

### Note:

You may wish to use the smartphone iRent app to store digital photos as part of the property condition report.



As soon as possible and within 14 days after the end of the tenancy, the lessor/property manager must conduct an inspection of the premises, prepare a report describing the condition of the property and provide a copy of the report to you. The lessor/property manager must also give you a reasonable opportunity to attend the final inspection.

## Residual current devices

The lessor/property manager must ensure at least two residual current devices (RCDs) are professionally installed to protect all power point and lighting circuits in the property before any new tenancy agreement commences.



For common areas of strata title properties 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. For more information visit [www.commerce.wa.gov.au/rcd](http://www.commerce.wa.gov.au/rcd) or call EnergySafety on 6251 1900.

## Smoke alarms

The lessor/property manager must ensure the property has working smoke alarms. 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 in case of a blackout, so both kinds must be less than 10 years old (the whole alarm – not just the battery).

You are most likely to be responsible for keeping smoke alarms in working order by changing the battery if it is reasonably accessible.

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)).

## Security bonds

You will usually be asked to pay a security bond in advance to cover any costs you may be liable for at the end of a tenancy, such as damage you caused to property or chattels, outstanding water usage charges or unpaid rent.

When you or another tenant pays the bond, the lessor/property manager 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.

It is against the law for you to be asked to sign or electronically lodge a bond disposal form before your tenancy has ended.

The security bond cannot be used by any party or person unless by written agreement or by a court order.

Generally, the security bond must not be more than four times the weekly rent, but there are exceptions. If the weekly rent is \$1,200 or more per week then the lessor may charge a bond higher than four weeks' rent. Also, if your lease allows you to keep a pet capable of carrying parasites that can affect humans, such as cats, birds or dogs, an additional amount of no more than \$260 can be charged as a pet bond to meet the cost of fumigation at the end of the tenancy. A pet bond cannot be charged for assistance dogs.

### Note:

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



## Depositing the bond

The lessor/property manager must deposit the bond with the department's Bond Administrator as soon as possible and in any event within 14 days of paying it.

### Note:

If more than one person has paid the bond, such as in a shared house, it is important to record the names of those renting on the lodgement form to protect each person's share.



The Bond Administrator will send you and the lessor/property manager a record of the payment directly from the department.

**If you do not receive this record in the first few weeks of moving in, please contact us on 1300 304 054.**

## Varying the security bond

If the lessor/property manager of a rented property changes during the tenancy, all tenants and the Bond Administrator must be notified and the bond varied. A *Variation of security bond* form must be signed or electronically approved by the new lessor/property manager and the previous lessor showing the full name and address of the new lessor.

If there is a change in tenants, all parties can choose to change the tenancy agreement and have the bond paid out, then replaced by a new bond.

Alternatively, the incoming tenant can pay the departing tenant their portion of the bond. A *Variation of security bond* form must be completed to notify the Bond Administrator of the change of tenants, so that at the end of the tenancy the bond can be paid out to the correct tenants and/or the lessor. If the lessor/property manager uses 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.

For details about how to get your bond back see the section 'Ending a tenancy'.

## Decreased rent during a tenancy agreement

The bond can be reduced at any time with the consent of both parties, however there is no obligation on the lessor to partially refund the bond if the rent is decreased during the tenancy.

## Complaints about bonds

The department will handle complaints concerning bonds where:

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

For information on getting your bond back, please refer to page 23.

## Paying rent

The lessor/property manager cannot:

- ask for more than two weeks' rent in advance. You can choose to pay more if it suits your salary pay period, however this is not a requirement of the tenancy agreement;
- overlap the rental pay periods. Rent should not be requested to be paid until the period covered by the previous payment is finished; or
- ask you for a post-dated cheque (one dated some time in the future).

Rent is not considered to be paid until it is received by the lessor/property manager. Therefore if you choose to pay by electronic transfer or a personal/company cheque, you should consider making the payment before the due date to be sure the funds are cleared into the lessor's account and you are not in breach of the tenancy agreement.

If the lessor or real estate agent asks you to pay rent via a third party/rent collection agency, you cannot be charged an administration fee.

## Receipts and records

If the rent is paid by electronic transfer into an account at a bank, building society or credit union, the lessor/property manager does not have to give you a receipt as the bank record is sufficient.

However, if you pay rent directly to the lessor/property manager, by cash or cheque, they must give you a receipt within three days of it being received.

The rent receipts must show your name as the tenant, the date the payment was received, the amount paid, the address of the rental premises and the rental period covered by the payment.

The lessor/property manager must keep a record of all rent paid and you should keep all the receipts, just in case there is ever a disagreement about rent payments in the future.

## Rent increases

For most tenancies, the *Notice to tenant of rent increase* (Form 10) should be used by the lessor/property manager. This gives you at least 60 days' notice about a rent increase and includes details of the amount of the increase and the day it will take effect.

In rare cases where your income is used to calculate the rent (such as when your employer provides the rental premises and charges a percentage of your income as rent) the *Notice to tenant of rent increase calculated by tenant's income* (Form 11) should be used. This notice is only required for a change to the method of calculating the increase, not for automatic increases that occur as your income changes.

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

In a **fixed-term tenancy**, where your 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) provided it has been six months or more since the last increase. The method of calculating the increase cannot be listed as 'market rent' as it is not clear what the rent increase is likely to be.

The lessor/property manager doesn't have to give you notice of an increase if your fixed-term tenancy agreement is being renewed however, the rent cannot be increased for the first 30 days after the new agreement begins.

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

Regardless of the type of tenancy, you only have to pay the increase if you have been given the proper notice on the required form.

If you think the lessor/property manager is increasing the rent by what you believe is an unreasonable amount, see the section 'When things don't work out'.

If there is a significant loss or reduction in the amenities provided as part of the agreement, you may wish to ask the lessor/property manager about a decrease in rent for the time the amenities are unavailable. Alternatively, you could apply to the Magistrates Court for a rent reduction.

## Rent in arrears

If you fall behind with the rent and don't remedy the situation within an agreed time, the lessor/property manager can apply to end your tenancy. See the section 'Ending a tenancy'.

## Additional fees and charges

You are not responsible for any payments other than rent and bond (and utilities, if this forms part of your lease).

Lessors/property managers are not allowed to charge you fees for their day-to-day management of the tenancy for things such as sending you invoices or breach notices.

However, you can be asked to compensate the lessor/property manager of the property if it is shown that by breaching the agreement you have cost the lessor/property manager money.

Before you can be asked to pay compensation, it should be shown that the amount is justified and allowable under the law. If you dispute the charge, you are entitled to have the matter heard in the Magistrates Court.

If you are uncertain about any fees or charges you are being asked to pay, contact the Consumer Protection Advice Line on 1300 304 054 for advice or lodge a written complaint.

# Once the tenancy begins

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## Minimising problems

Even with the best preparation, unforeseen difficulties between tenants and lessors/property managers can still arise.

If you experience a problem, please refer to the list of contents at the front of this Guide and read up about the topic before making any decisions. Try to resolve problems through calm discussion. If you need any further information or advice, please phone the Consumer Protection Advice Line on 1300 304 054. Remember you have the right to:

- complain about aspects of the tenancy you believe breach the tenancy agreement or the Act; and
- have your complaints dealt with fairly.

## Who's responsible in a tenancy?

Tenants and lessors/property managers have shared responsibilities.

When you move in, the lessor/property manager must have ensured the premises are habitable, functional and in a reasonable state of cleanliness and repair.

You must be notified of the lessor's name and address when you commence your tenancy. If the property is under management, you must still be provided with the lessor's name, but in place of the lessor's address, you will be provided with the contact details of the property manager.

You must keep the property clean and tidy. At the end of a tenancy you need to hand it back in a similar condition to how it was at the start of the agreement, taking into account normal use (fair wear and tear).

## Maintenance inside

While you are renting, the lessor/property manager must keep the premises in a reasonable state of repair and comply with building, health and safety laws. The lessor/property manager is responsible for the upkeep of the property including:

- plumbing;
- oven and stove tops;
- water heaters;

- air conditioners; and
- fixed or appliances provided such as the stove - unless you have damaged them.

You are responsible for basic household maintenance, including:

- replacing light globes;
- cleaning windows;
- litter and rubbish removal and general cleaning;
- dusting and removing cobwebs inside and out; and
- ensuring there is adequate ventilation to help avoid mould problems occurring.

Mould or mildew caused by faults in gutters or other fixtures is the responsibility of the lessor.

## Maintenance outside

You are responsible for garden maintenance, such as:

- watering;
- mowing;
- edging lawns;
- weeding; and
- light pruning.

The lessor/property manager should provide you with the necessary hoses, sprinklers etc.

If you become aware of any potential damage to gutters through leaf blockages, or notice a water leak, you must advise the lessor/property manager. If the leak is obvious and you fail to report it, you may be liable for the costs of water lost.

The lessor/property manager is responsible for maintenance to any garden including:

- reticulation system;
- tree lopping;
- cutting back overhanging branches (such as those near power lines); and
- maintaining fire breaks, unless your tenancy agreements states otherwise.



## Swimming pools and spas

If the 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 any 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 all safety requirements such as pool barriers. However, the tenant must ask their 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)

## Urgent repairs

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

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

You must inform the lessor/property manager of any urgent repairs as soon as possible.

The lessor/property manager is required to arrange (not necessarily complete) repairs to essential services within 24 hours and address urgent repairs within 48 hours.

'Essential services' are urgent repairs that include the following:

- gas;
- electricity;
- functioning refrigerator (if supplied with the premises);
- sewerage/septic/other waste water treatment; and
- water including the supply of hot water.

If despite making reasonable attempts, you cannot contact the lessor/property manager, or you contact them and they take no action, you can have the minimum repairs carried out by a qualified tradesperson and claim back the costs. The urgent repair costs must be reasonable and it is advisable to obtain some evidence showing the need for the urgent repair was not your fault. For example, you could ask the tradesperson to write on the invoice an explanation of the cause of the problem.

As soon as possible after the repairs are carried out, the lessor/property manager must reimburse you for any reasonable expenses you have incurred.

## Neglectful damage versus fair wear and tear

You are not responsible for costs arising from 'fair wear and tear'. The following examples may help to explain the difference between wear and tear and damage:

Neglectful damage (You are liable)	Fair wear and tear (The lessor/property manager is liable)
Stains or burns from things you dropped or placed on carpets including soiling by pets.	Carpet wear in corridors or other areas used frequently.
You forgot your key and broke a lock to get in.	The lock broke because it was old and had worn out.
Mould/mildew has formed because the dwelling was not aired adequately.	Paint that is flaking because it is old or not applied properly.
Your pet damages the curtains.	Curtains faded from years of sunlight.

## Who is responsible for damage?

You must not intentionally or negligently damage the rented property. If you cause damage, you must notify the lessor/property manager as soon as possible, and expect to pay for repairs or replacement.

However, if the damage is caused by a third party not directly connected with you, or you did not invite them onto the premises, or the event was outside your control e.g. break-ins, floods or traffic accidents, then the repairs are the lessor's responsibility.

Similarly, if your own possessions are damaged by a problem, such as a ceiling collapsing or leaks from the roof, or if the lessor/property manager or a person accompanying them, damages your possessions while they are on the premises, they are again liable.

Any existing damage to the property, or other issues, should be noted in your [property condition report](#).

Before you unpack your belongings into any rental property it is a good idea to take photos of all rooms, gardens and any problem areas. You can store them using our free app [iRentWA](#).

## Insurance

As a tenant, it is your responsibility to take out your own contents insurance to cover your personal belongings. Damage and loss can come from various sources, such as theft, water damage, fire and other natural disasters. The lessor's building insurance, covers their building, fittings and fixtures, it does not cover your things.

## Water usage costs

You must pay for the water you use unless your agreement provides for sharing costs, for example, shared costs for watering gardens.

The lessor/property manager is responsible for paying the annual water rates.

The Water Corporation recognises when there is a change of tenancy the new tenants may be disadvantaged if their usage is less than the previous tenants. To avoid this happening, a 'special meter reading' can be taken at the end of a tenancy.

The lessor/property manager will probably arrange for this reading. If not, you can request one, but if you do, remember you will have to pay for it. Make sure you know what the starting reading was and

record it in writing – preferably in the property condition report or tenancy agreement.

### Note:

You have the right to discuss your bill with the Water Corporation, if it forms part of your lease.



If there are separate water meters on the property, the Water Corporation may be authorised by the lessor/property manager to send water use accounts directly to you. When checking your water accounts, make sure only charges for water use are included and there are no water rates or outstanding unpaid charges from a previous tenant.

If the water use account is issued to the lessor/property manager, they must provide you with written notice of the charges, including the meter reading, the charge per metered unit and any applicable GST component, when requesting payment from you. The lessor/property manager may choose to provide you with a copy of the account issued by the Water Corporation.

If there are no separate meters on the property, the lessor/property manager must have a prior agreement with you in writing about how the consumption charges will be calculated (check your tenancy agreement). When they ask you to pay for your consumption, the lessor/property manager must give you an account showing how the charge was calculated using the agreed method and any applicable GST component.

Although you can be required to pay for all the water you use, some lessors/property managers will agree to pay part or the entire bill to cover the cost of maintaining lawns and gardens. The prescribed tenancy agreement provides space for the percentage of water usage costs you need to pay.

If you hold a Pensioner Concession Card or State Concession Card, contact the [Water Corporation](#), as you may be eligible for reduced water charges.

For further information on water consumption charges, billing or water conservation measures contact the [Water Corporation](#) on 13 13 85.

## Electricity and gas

If there are separate meters for electricity and gas, you will probably be billed directly.

If the property does not have separate metering, or the lessor wants to keep the bills in their own name, the lessor/property manager must have a prior written agreement with you about how the costs for these charges will be calculated (check your tenancy agreement). You can only be charged for consumption.

At the time of asking you to pay for your consumption, the lessor/property manager must provide you with written notice of the charges (calculated in accordance with the agreed method within your tenancy agreement and any applicable GST component). The lessor/property manager may choose to provide you with a copy of the master bill as a statement showing how your share was calculated.

## Rates

The lessor is responsible for paying local council rates.

## Painting

The lessor/property manager is responsible for painting, unless the damage was caused by your negligence.

You can carry out painting only if you have their permission but remember, the lessor/property manager will probably choose the colour and pay for the paint.

## Alterations and additions

Your tenancy agreement may or may not allow you to attach fixtures like picture hooks, or renovate and alter the property. If the agreement says these changes can be carried out with the lessor/property manager's consent, withholding permission should have reasonable grounds. You must obtain the lessor/property manager's permission first and preferably in writing, other than when necessary to prevent [family violence](#) that you suspect is likely to be committed against you or your dependant (see 'Tenants affected by family and domestic violence').

If fixtures or chattels such as a TV aerial, air conditioner or solar hot water system were provided in working order with the property when you inspected it, the lessor/landlord must maintain the items unless they were disclosed as not functioning before the tenancy agreement

was signed.

If there are services you want to connect at the property during your tenancy, such as a telephone line or internet, you should ask the lessor whether there are any problems with connecting the service. Do this before signing the tenancy agreement. It is also a good idea to check with your preferred provider to ensure they can open an account at the rental address.

## Locks and 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 have now been defined so your lessor must ensure the rental property complies with the required security relating to door locks, window locks and exterior lights. Further information is available from the department's website and in the fact sheet *Minimum levels of security*.

## Pest and vermin control

As a general rule, any outbreak or infestation of pests such as rats, mice, possums, cockroaches, termites, ants, spiders, wasps or bees requiring attention by a pest control operator is the responsibility of the lessor/property manager.

The lessor/property manager is not responsible for infestations caused by your activities or lack of cleanliness. You are required to take basic pest prevention measures, such as storing food properly and using sprays and baits.

## Your conduct on the premises

You and anyone you allow onto the premises, must not:

- cause a nuisance, such as making excessive noise that disturbs neighbours;
- breach any local laws pertaining to parking, littering or dogs; or
- use the premises for any illegal or undisclosed business or commercial activity.

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





## Inspections

Tenants are entitled to the 'quiet enjoyment of the property' (in other words, your peace, privacy and comfort). When the lessor/property manager enters the premises, they must provide you with appropriate notice and be careful not to interfere with your privacy or use of the premises.

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

The lessor/property manager has 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). However, written notice of no less than seven days and no more than 14 days before the proposed entry must be provided;
- to collect the rent at a reasonable time. This must be not more frequently than weekly and only if the agreement allows for it to be collected at the premises;
- to carry out or inspect necessary repairs 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 you 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 your last known place of employment;

- in any case of emergency; or
- if you consent at the time, or immediately beforehand.

You have a right to be present whenever the lessor/property manager or their contractor wishes to access the premises including during home opens and inspections by prospective tenants.

### Note:



The lessor/property manager can stipulate the time and date for accessing the property to undertake an inspection. If this time is unsuitable it may be possible to renegotiate an alternative arrangement in good faith.

Reasonable time is defined as:

- a. between 8.00 am and 6.00 pm on a weekday;
- b. between 9.00 am and 5.00 pm on a Saturday; or
- c. at any other time, including Sundays, agreed between the lessor/property manager and each tenant.



# When things don't work out

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If you have a disagreement over any issues, such as rent payments and inspections, try to sort out the issue amicably (see the earlier section on 'Minimising problems').

If you and the lessor/property manager cannot agree, there are some formal procedures established under the Act to sort things out. These are covered in this and subsequent sections.

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

If you believe the lessor/property manager has breached the agreement, you can write a letter or use a *Notice to lessor of breach of agreement* (Form 23) and contact them to remedy the breach as soon as possible. The department recommends you keep a copy of any letters or breach notices you send as you may need to provide details later in court.

Form 23 is available from the department's website. It is important to complete all details, including your name (as the tenant), the lessor's name (not the property manager's name), the address of the property, the date the rental agreement was signed and the nature of the breach.

You can seek:

- to have the problem put right;
- an order from the Magistrates Court;
- an end to the tenancy; or
- compensation.

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

## Do you think you are paying too much rent?

The amount of rent charged at the start of a new tenancy is generally controlled by market forces. However, if the lessor/property manager increases the rent by what you can demonstrate is an unreasonable amount, you can apply to the Magistrates Court (usually within 30 days of receiving the increase notice) for a reduction or to argue against a proposed increase.

## If the rent is overdue

If there is a problem paying your rent on time, explain your financial situation to the lessor/property manager as soon as possible and arrange to pay the outstanding amount in full.

If you are behind in rent payments, or present a bad cheque, lessors/property managers can issue formal notices under the Act.

One day after the rent should have been paid, the lessor/property manager may issue a *Notice of termination for non-payment of rent* (Form 1B). This will warn you that unless you pay the outstanding rent within the next seven days, the rental agreement will be terminated and, if you refuse to leave, they will apply to the Magistrates Court. If you pay all rent owing no later than one day before the court action, then the action will not proceed.

Alternatively, the lessor/property manager may issue a *Breach notice for non-payment of rent* (Form 21) to advise you are in breach of your tenancy agreement and need to remedy the breach by paying the outstanding rent within 14 days.

If you don't pay within 14 days, the lessor/property manager can issue a *Notice of termination for non-payment of rent* (Form 1A). This seeks to end the tenancy agreement and requires you to leave the premises within the next seven days. If you do not vacate the premises, the lessor may apply to court to terminate the tenancy and regain possession of the premises.

## A lessor/property manager cannot seize your belongings instead of the rent you owe.

If you reasonably believe you are not behind in rent payments, you can remain in the premises while you both negotiate or until the lessor/property manager applies for an eviction hearing in the Magistrates Court, where both parties can argue their case.

A lessor/property manager cannot end a tenancy without a court order, even if you are behind in rent.

## If you breach the agreement (other than not paying rent)

Examples of possible breaches of your rental agreement may include:

- keeping a pet on the premises when this hasn't been agreed to;
- subletting to others if not previously agreed;
- not keeping the property reasonably clean;
- causing damage to the property;
- changing locks without approval other than when necessary to prevent [family violence](#) that you suspect is likely to be committed against you or your dependant (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 the lessor/property manager's approval.

If you breach the agreement the lessor/property manager can apply to the Magistrates Court seeking a court order saying you must fix the problem. Alternatively, they can give you a minimum of 14 full days to rectify the situation by issuing a letter or by using the *Notice of breach of agreement – by tenant* (Form 20). If you don't put things right within the time, they can issue a *Notice of termination* (Form 1C) to end the tenancy after an additional seven days.

Similarly, if you believe a lessor/property manager has breached the agreement, you can serve a *Notice to lessor of breach of agreement* (Form 23) or write a letter in order to have the breach rectified.

If you cause serious damage to the premises, or the lessor/property manager believes your behaviour is likely to result in damage or injury to the premises or to them personally, they may apply to the Magistrates Court for an order to end the agreement, without having to first issue a breach notice and/or termination notice.

See also our publication [Department of Housing tenants](#).

# Ending a tenancy

There are various reasons why a tenancy ends other than disagreements. You may be going to buy your own property or move in with a friend or the lessor/property manager may want to move back in or sell the property.

If both you and the lessor/property manager agree in writing that the tenancy will end on a certain date, then none of the formal procedures such as issuing notices applies. However, make sure both of you sign a clear, written statement to that effect.

Sometimes premises are destroyed, or compulsorily acquired by law, or become uninhabitable in this situation you only have to give two full days' written notice to end either a periodic or fixed-term tenancy while the lessor/property manager must give you at least seven days' written notice.

There are rare occasions when a lessor/property manager or a tenant applies to the Magistrates Court for the rental agreement to be terminated on the grounds that, if it continues, they would suffer 'undue hardship'.

Regardless of whether you are in a periodic or fixed-term tenancy, **you must give the lessor/property manager a forwarding address at the end of your tenancy.**

## Important

A termination notice is an important document. You should generally only mail this document or hand it over in person. Refer to 'All about notices' for important information about how to issue notices.



## Ending a periodic tenancy agreement

You may end a periodic tenancy agreement without providing a reason, but you must give a minimum of 21 full days' written notice.

If the lessor/property manager wants you to leave, they must give you a minimum of 60 days' notice using a *Notice of termination* (Form 1C).

The exception to the length of notice is if the property is to be sold and the contract involves handing over a vacant property. In this case they must give you a minimum of 30 days' notice, again using Form 1C. Alternatively, the agreement

can be ended prior to the required length of notice by mutual written agreement.

## Ending a fixed-term tenancy agreement

**Your fixed-term tenancy agreement will not automatically terminate on the expiry date unless on or prior to the expiry date, either you or the lessor/property manager gives the other 30 days' written notice of the termination.**

The lessor/property manager must use a *Notice of termination* (Form 1C) to give the required notice. A sample letter (Sample Letter 1) is provided at the end of this section. Alternatively, you may use the *Notice of termination from tenant to lessor* (Form 22) available on the department's website.

The written notice must be given at least 30 days before the lessor takes possession of the property. In the event you, the tenant, provide less than 30 days' notice, the tenancy will not expire until the waiting period has expired. If the lessor provides less than 30 days' notice you can move out any time after the original expiry date. The lessor/property manager can only take possession of the property after the expiration of the fixed-term agreement. Refer to 'Counting days' in the 'All about notices' section as extra days will be needed when the notice has not been provided within the required timeframe.

Should the day of possession fall on a weekend or public holiday, you may nominate the following business day as the day to officially vacate the premises.

If however, you and the lessor/property manager both provide notice specifying different days, the earliest date is taken to be the possession day.

If the fixed-term tenancy expires without you or the lessor providing notice, and if the rental payments continue unchanged, the agreement will automatically become a periodic tenancy and the appropriate termination notices will apply.

If you wish to extend the tenancy, contact the lessor/property manager about five or six weeks before the expiry date so you can agree on the term of the tenancy to be renewed.



## Ending a fixed-term tenancy early

Unforeseen circumstances may mean you wish to terminate the tenancy agreement prior to the expiry date. For example:

- your job requires you to move;
- you are made redundant; or
- there is personal or family illness.

In these circumstances you can terminate the fixed-term tenancy agreement prior to the expiry date by reaching a mutual written agreement with the lessor/property manager.

First, approach the lessor/property manager and explain the situation to seek their understanding and cooperation for negotiating agreeable terms for your early termination.

The lessor/property manager may still require you to remain liable for your tenancy under the terms of the tenancy agreement until a new tenant commences their tenancy or your tenancy agreement expires. This liability would include, but may not be limited to, the payment of rent, payment of utilities and maintenance of the property.

The lessor/property manager may also seek reimbursement for losses incurred as a result of you terminating the tenancy early, such as advertising costs. However, your lessor is not entitled to be compensated for losses that could have been avoided (for example, lost rent because he or she unreasonably delayed getting replacement tenants).

If you are not able to reach a mutual agreement with the lessor/property manager, you can apply to the Magistrates Court for an order terminating the agreement early.

### Note:

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



## The final inspection

The lessor/property manager is entitled to expect that their property will be returned to them in a clean and undamaged condition at the end of your tenancy.

Within 14 days' of the conclusion of your tenancy, the lessor/property manager must conduct a final inspection of the premises, prepare a final property condition report describing the property's condition, and provide you with a copy of this report.

You 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 when you move out and to arrange for the return of the keys.

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.

If the lessor/property manager believes you have not cleaned the property to their reasonable satisfaction, or if minor repairs are needed, you will probably be required to meet the costs involved to fix the problem.

The lessor/property manager may decide to repair or clean the property themselves. If so, they may only charge you for out-of-pocket expenses, such as cleaning materials. If professional cleaning, repairs or renovation are required, you will be required to meet reasonable costs.

### Remember

You cannot be charged for what is considered 'fair wear and tear'. To help you understand the difference between what is fair wear and tear and neglectful damage, refer to the examples in the 'Who's responsible for what' section.



A sample letter (Sample Letter 2) is provided at the end of this section for you to use to send to the lessor/property manager to arrange a suitable time for inspection or to notify them of your opinion regarding any deductions to be taken from the bond.

This is also the time to arrange for the return of the keys. If you don't return keys, you may have to pay the cost of changing the locks and/or be charged rent until the keys are returned.

There are frequent disagreements over whether items can be repaired, or are so badly damaged that replacement is necessary.

If the damage can be reasonably repaired, you only have to meet the repair costs.

If there are burns or stains (on a carpet, for example), the lessor/property manager must take into account factors such as the age of the carpet, its general condition and the degree of damage. If the damage is so severe the carpet needs to be replaced, then you would be charged the cost of a replacement carpet of similar quality.

If it is agreed to replace with 'new for old', the lessor/property manager should allow for depreciation.

Once you and the lessor/property manager have calculated and agreed 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. If the lessor/property manager uses BondsOnline eTransactions, they will complete the disposal request electronically. Each tenant will be sent an email containing a link to request a unique access code that will enable them to review the bond information, complete their bank account details for EFT payment and approve (or request a change) to the disposal amount.

The form should show the amount to be returned to you and/or the lessor/property manager.

If all or part of the original security bond was paid by the Department of Housing any outstanding debt is generally repayable directly to them at the end of the tenancy.



# Sample letter 1

From tenant to lessor/property manager giving 30 days' notice of termination of a fixed-term tenancy (or use *Notice of termination from tenant to lessor* (Form 22) available on the department's website).

(Your address)

(Telephone contact)

Dear Mr/Mrs/Miss/Ms (lessor)

## RE: Termination of tenancy agreement for (address)

As you would be aware, my fixed-term tenancy agreement is due to expire on (date).

**\* Note:** Choose option 1 if you have given 30 days' notice **before** the expiry of the fixed-term tenancy or option 2 if you have not.

### OPTIONS:

1. The purpose of this letter is to give you notice of my intention to vacate on that day.

### OR

2. The purpose of this letter is to give you 30 days' notice of my intention to vacate the premises on the possession day which will be (date).

I would also like to begin the necessary steps for the return of my bond money. Please can we arrange a suitable time for both of us to inspect the premises?

Subject to the satisfactory completion of the inspection at the end of the tenancy, I request we both sign the *Joint application for disposal of security bond* form, to provide for the payment of my bond. This form should show the amount to be returned to me and whether any money should go to you.

Yours sincerely

(tenant)

(date)

### Note:

The date of service must be before the last day of the fixed-term tenancy. Refer to 'Counting days' in the 'All about notices' section to ensure you provide sufficient time.



# Sample letter 2

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From tenant to lessor/property manager seeking return of bond (premises inspected: bond money not returned)

(Your address)

(Telephone contact)

Dear Mr/Mrs/Miss/Ms (lessor)

## **RE: Refund of bond money**

After a joint inspection of the premises at (address of rental property) on (date of inspection), there is disagreement over the return of my bond money.

You have indicated that \$(amount) should be deducted from my bond as payment for (list deductions).

1. I believe deductions of \$(amount) for (if any) are fair because (give reasons).
2. I disagree with your deductions because (give reasons).

I would like to arrange for both of us to sign a *Joint application for disposal of security bond* form, to provide for the release of my bond money.

If I do not receive a written response within seven days I will seek a hearing in the Magistrates Court to settle the matter.

Yours sincerely

(tenant)

(date)



## Evictions

You cannot be forced out of a property without a court order. Any other method of eviction is unlawful under the Act.

If you receive proper notice to end an agreement but refuse to leave, the lessor/property manager can seek a court order to end the agreement and take possession of the premises. The order can be enforced with a warrant authorising a bailiff to evict you.

If the Magistrates Court make an order that you must leave, and you believe you are likely to suffer hardship as a result, you can ask the magistrate for the order to be suspended for up to 30 days.

You also have protection under the Act if you believe any action to evict you is due to complaints you have made to a public authority in the previous six months, or other steps you have taken to enforce your rights. In such cases, you can remain in the property until the matter goes to court where you can argue against the ending of the agreement.

The lessor/property manager is not permitted to change locks, turn off the electricity, gas or water, or take any other action to force you out of the property, unless authorised by a court order.

If you believe there has been any unauthorised action to force you to give up possession, contact the department as 'unlawful coercion' is a breach of the Australian Consumer Law and can attract penalties.

## Getting your bond back

At the end of a tenancy, bond money will only be paid out if you and the lessor/property manager agree on the disposal, or if either party obtains a court order.

If there is no dispute over the condition of the property, or you and the lessor/property manager have agreed how the bond money should be divided, you must both sign or electronically approve a *Joint application for disposal of security bond* form and give it to the Bond Administrator.

Forms can be submitted by email to [bondsadmin@dmirs.wa.gov.au](mailto:bondsadmin@dmirs.wa.gov.au) by post or in person at the Mason Bird Building, 303 Sevenoaks Street, Cannington or at one of the Department's regional offices. If the lessor/property manager uses BondsOnline eTransactions, they will submit the form electronically and you will be sent an email asking you to approve the disposal amounts online.

If there is a disagreement over how the bond money should be paid out, you and the lessor/property manager should try to resolve it by negotiation. You can use Sample letter 2 (previous page).

### Remember



It is an offence for you to stop paying rent with the intention that the amount owing will be taken out of the bond.

It is an offence for a lessor/property manager to ask you to sign or electronically approve a *Joint application for disposal of security bond* form before the tenancy has ended. The form must also clearly specify how much is to be paid to each party.

### Note:



If you have received bond assistance from the Department of Housing, the *Joint application for disposal of security bond* form should show the amount to be returned to you and/or the lessor/property manager and/or to be refunded to the Department of Housing.

If either you or the lessor/property manager refuse to sign or electronically approve the form because you are disputing the amount, either party may apply to the Magistrates Court using the Magistrate's Court form *Application for disposal of bond money* for a decision on how the funds should be allocated.

Once the *Application for disposal of bond money* form is lodged, the court will send a copy to the other party named in the agreement. Once the document has been issued, the other party has three options:

- to agree to settle the dispute;
- to dispute the application by lodging a *Notice of intention to dispute application for disposal of bond money* within seven days – the matter will then be set down for hearing in the Magistrates Court; or
- to ignore the notice (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. Remember, going to court doesn't mean you will face high costs (see 'Going to court').

It is a requirement under the Act for you to provide the lessor/property manager with your forwarding

postal or residential address at the end of your tenancy. If you do not provide your address and the lessor/property manager applies to the court for the order, the court will not be aware of the address that the hearing details should be sent to and the matter may be heard in your absence.

## Abandoned premises or goods

If you abandon the rental premises, the tenancy agreement will end. The lessor/property manager can then give written notice stating that if no response is received within 24 hours with confirmation that the premises has not been abandoned, they will enter the property for inspection and secure the property. If no response is provided, they can:

1. issue a second notice to you advising that they suspect the premises has been abandoned – if you don't respond 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 has been abandoned.

The lessor/property manager must ensure the property has been abandoned. You should always notify the lessor/property manager if you plan on being away from the premises for an extended period of time and make any appropriate arrangements, such as rent payments, while you're away.

The lessor/property manager cannot seize your goods or property as compensation for any rent owing.

If you leave your belongings behind the lessor/property manager should take action under the Act to store, sell or dispose of the goods.

If they are of little or no value, the lessor/property manager can apply to the department for a certificate allowing them to dispose of the goods.

If there are items of some value, the lessor/property manager must store them for at least 60 days and notify you in writing and in person, within seven days that the items have been placed in storage.

If you have provided your forwarding address, the notice can be provided by post. Alternatively, the notice may be provided by phone, via the internet, or any other method that has been agreed upon by both parties. If the lessor/property manager



disposes of your goods and you disagree with this decision, you can seek compensation from the lessor or the department by applying to the courts for an order stating the lessor acted inappropriately.

## Abandoned documents

If you leave behind important documents, the lessor/property manager is required to take reasonable care of these for 60 days and take reasonable steps to notify you of where you can collect the documents from.

Examples of important documents that should be stored would include an official document, a photograph, correspondence or any other document a reasonable person would be expected to keep.

If you collect the documents, you must reimburse the lessor/property manager for any reasonable costs incurred for storing them.

Remember, the lessor/property manager may destroy the documents after 60 days, so it is in your best interests not to leave documents behind.

## Right of lessor/property manager to compensation

A lessor/property manager can seek compensation from you for any loss, including rent, by applying to the Magistrates Court, but they must still take all reasonable steps to minimise any losses.

# 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; the right to improve security.

## When you want or need to break the tenancy agreement due to FDV

If you or your dependant have been affected by family violence during the tenancy you can give the lessor/property manager at least 7 days' notice that you want or need to break your interest in the agreement and vacate with immediate effect. You must provide the lessor/property manager 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 you or your dependant; 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.

The lessor/property manager cannot challenge your request to break the agreement if the notice and supporting evidence have been completed properly and provided with at least 7 days' notice. If the documents are not completed properly lessor/property manager can appeal the termination notice in court.

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

If you issue a *Notice of termination of tenant's interest in residential tenancy agreement on grounds of family violence* (Form 2) the lessor/property manager 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 the lessor/property manager must let the lease continue. If the co-tenant decides to leave they must give the lessor/property manager 21 days' notice.

The lessor/property manager is required to keep any FDV evidence (eg. *Consumer Protection family violence report – evidence form*, copy of restraining order, family court order) you provide in a safe and secure manner. If they disclose the details, for example to a co-tenant, the lessor/property manager can be prosecuted.

Please note, if the alleged perpetrator is a co-tenant, the lessor/property manager cannot make them leave if you leave. If an alleged perpetrator wants to remain in the tenancy, the lease continues.

### Important:

If the alleged perpetrator is a co-tenant, you may need to consider having a safety or exit plan in place before issuing a *Notice of termination of tenant's interest in residential tenancy agreement on grounds of family violence* (Form 2). As the lessor/property manager is obligated to give a copy of the form to any co-tenants, the perpetrator would become aware of your intention.

## If you want to stay and remove the perpetrator from the agreement

If a perpetrator is named on the tenancy agreement and you want to stay, you can apply to the court to have the perpetrator removed from the agreement. The lessor/property manager and any co-tenants will find out about this hearing via a notice from the court.

## 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 the lessor/property manager.



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 the lessor/property manager any money; and/or
- to the lessor/property manager if they are owed money for any damages and debt.

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

## Changing the locks without permission

You can change the locks without first seeking the landlord's permission either

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

You must give the lessor/property manager a copy of the new key(s) within seven days unless the lessor/property manager is the alleged perpetrator. The lessor/property manager is prohibited from giving a copy of the key(s) to anyone that you specifically instruct them in writing not to.

## Making security upgrades without permission

You can make prescribed security upgrades to the premises without a lessor/property manager's permission:

- after a perpetrator's interest in a tenancy agreement is terminated; or
- if necessary to prevent family violence that you suspect is likely to be committed against you or your dependant.

You must inform the lessor/property manager about your intention to make the security upgrades, which must be installed by a qualified tradesperson. You are responsible for any associated costs and to supply a copy of any invoice to the lessor/property manager. All upgrades should comply with strata by-laws and take into consideration the age and character of the property. If the landlord asks you to restore the premises to original condition at the end of the tenancy, you are required to do so.

For more information about the tenancy laws regarding family and domestic violence, visit the Consumer Protection [website](#).

### Important:

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



# All about notices

## What to issue

If either you or the lessor/property manager believes parts of the tenancy agreement or the Act have not been met, notices can be sent by either party, highlighting the problem and giving a time limit for making changes.

Only issue a notice after you have tried to solve the problem or dispute with the lessor.

### Note:

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 required notice may have to prove it was served (given to the other party) correctly.



## Forms you may issue

The following forms should be used.

### **Notice to lessor of breach of agreement (Form 23)**

A Form 23 is issued to the lessor/property manager if you believe they have not kept to their part of the tenancy agreement.

You can also simply write to them stating the problem (such as the premises are not maintained in good repair or your right to quiet enjoyment has not been observed) and call on them to remedy the breach as soon as possible. Keep a copy for your records.

If they don't fix the problem, you can apply for an order from the Magistrates Court for the work to be carried out, or seek assistance from the department. In some circumstances, you can arrange for urgent repairs yourself and be reimbursed by the lessor. Refer to 'Urgent repairs' in the 'Once the tenancy begins' section for more information. You can't hold back the rent to try to make them fix the problem, as that would place you in breach of the agreement and they could apply to have it ended.

If the problem is covered by council by-laws, building health and safety laws, electricity, gas, or any other utility provider's regulations, you should get advice from the relevant authority.

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

If you want to end a periodic agreement you can give the lessor/property manager a Form 22, or simply

write notifying them of your intention to move out and the date on which the property will be handed back, provided it is not less than 21 days' notice. Keep a copy for your records. You don't have to give any reasons for your intention to leave.

### **Consumer Protection family violence report - evidence form**

This form is one of several options used to provide the required evidence of family violence when submitting a *Notice of termination of tenant's interest in residential tenancy agreement on grounds of family violence* (Form 2).

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

This form is issued to the lessor/property manager in order to give seven days' notice that you want or need to end the tenancy agreement and vacate with immediate effect. At the same time you must present a document meeting specific evidence requirements (see 'Tenants affected by family and domestic violence').

**In the case of fixed-term agreements, if the lessor/property manager breaches a fixed-term tenancy and refuses to correct the problem, the tenancy can be ended by agreement or by an order from the Magistrates Court.**

## Forms the lessor/property manager may issue

There are also a number of notices and forms that lessors/property managers can use to deal with issues.

### **Notice of proposed entry to premises (Form 19)**

If your lessor/property manager intends to inspect the premises they must give you seven to 14 days' notice in writing. They can put details such as the time (either before or after 12 noon, as a minimum), date and reason for entering in a letter or use a Form 19. This form summarises the circumstances in which the lessor/property manager may enter the premises.

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

If your lessor/property manager believes you have breached the agreement by a means other than by not paying the rent (such as damage to the property, gardens not maintained etc.), they can

use a Form 20 or simply write you a letter with the necessary details. If you fail to resolve with the problem, the lessor/property manager can apply for a court order to ensure you do so, or take steps to end the agreement.

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

If your lessor/property manager believes you have breached the agreement by not paying the rent or by paying the rent late, they may use a Form 21 or a letter. This requires you to bring the rent up to date within 14 days.

### **Notice of termination for non-payment of rent (Form 1A)**

This form is used if the outstanding rent is not paid within the 14 days under the breach notice. It seeks to end the tenancy agreement and requires you to vacate the premises within the next seven days.

### **Notice of termination for non-payment of rent (Form 1B)**

This form can be sent one day after the rent should have been paid. It warns you that, unless the outstanding rent is paid within the next seven days, the agreement will be terminated and, should you refuse to leave, the matter will be taken to court. If you pay all the rent owing (and court fees) no later than one day before the court action, the action will not proceed.

### **Notice of termination (Form 1C)**

If your lessor/property manager wants to end the tenancy for any reason other than you failing to pay the rent they can use a Form 1C and specify the reason. The reverse of the form explains the grounds on which a tenancy can be ended and the periods of notice that must be given.

### **Magistrates Court's Application to the court (Form 12)**

If your lessor/property manager wants to terminate the tenancy immediately they can use a Form 12 to get an urgent hearing.

**If you abandon goods of a high value and the lessor/property manager wants to dispose of them** they may use a *Notice to former tenant as to disposal of goods* (Form CP2) and *Notice as to disposal of goods* (Form 3) to inform you of their intentions.

Notices and forms can be confusing, but our staff can help you with any queries or concerns about the types of notices required under a tenancy agreement. You can visit one of our offices or phone the Consumer Protection Advice Line on 1300 304 054.

## **How to serve a notice**

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

If you are giving a notice to the lessor, you can give it to:

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

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

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) living in the rented premises.

Any notice 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.

## **Serving notices electronically**

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.

If you have agreed to serve or receive notices electronically, you should keep a copy of that agreement in writing.

However, to ensure a notice is being received by the intended recipient and to avoid any dispute about whether it is received, you are advised to serve the notice personally or by mail.

## **Counting days**

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

When you count the days for the notice period, you must exclude the day on which the notice is served, as well as the last day of the notice period.

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 should be excluded if the last day for the notice falls on a weekend or public holiday. This means, 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 a notice was served

If a tenancy issue goes to court, the magistrate is likely to require proof that the notice was served correctly. Therefore, it is important to keep copies 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. The person who sends the notice should also sign these notations.

## Other forms that may affect you

### **Information for tenant with non-written residential tenancy agreement (Form 1AD)**

If you have a verbal tenancy agreement (such as between family members) your lessor must give you a Form 1AD within 14 days of you moving in.

BondsOnline has allowed licensed real estate agents and other organisations that manage a significant property portfolio to:

- view records and access reports for security bonds held by the Bond Administrator;
- create and print bond transaction forms; and
- use eTransactions to lodge, vary and initiate disposals of security bonds online (real estate industry only).

### **Lodgement of Security Bond Money form**

As the name suggests the *Lodgement of Security Bond Money* form is used to lodge bond money.

### **Joint Application for Disposal of Security Bond form**

Similarly, the *Joint Application for Disposal of Security Bond* form is used at the end of the

tenancy to return your bond money to you, the Department of Housing and/or the lessor.

Sometimes when a tenancy comes to an end it is not possible for both parties to reach an agreement over how the bond money should be paid out. When this happens forms are obtained from the Magistrates Court. These include:

- *Application for Disposal of Bond Money* (Form 6). Once this form is lodged the other party has three options:
  - to agree and settle the dispute;
  - lodge a *Form 5 Notice of Intention to Dispute Application for Disposal of Bond Money*; or
  - ignore the notice, in which case the court can order the release of the bond money within seven days.

### **Notice of intention to dispute application for disposal of bond money (Form 5)**

This form is used if you disagree with how the lessor/property manager wants to dispose of your bond money.

### **Variation of security bond form**

This is used by property managers when ownership or management (by a property manager) of the rented property changes. It can be used to make changes to the record of bond payment details and for changes to tenant details.

### **Residential tenancy agreement (Form 1AA)**

A prescribed agreement must be used for all written residential tenancy agreements.

### **Property condition report (Form 1)**

This is a report that must be prepared at the start and the end of the tenancy showing the contents of the premises and their condition.

## Helpful advice about bonds

*Bond administration* provides information on tenancy bonds held by the Bond Administrator and how to have them released. It is available to download from our website.

### **Note:**

The listed notices and forms are available from the department unless otherwise stated. You can download them from our website at [www.commerce.wa.gov.au/renting](http://www.commerce.wa.gov.au/renting)



## Tenancy databases

Tenancy databases may be used by lessors/property managers as a way of screening prospective tenants.

The Act sets out who, when, and why a person can be listed. It also enables disputes over proposed and existing listings to be resolved.

If you believe a lessor/property manager has listed information about you that is incorrect, out of date or unjust, there are ways you can go about having the information removed or amended.

### What is a tenancy database?

Tenancy databases are run by private companies, not by the government. They collect and hold information about tenants and can only be used by members (usually real estate agencies) 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. There are a number of tenancy databases which operate, including:

- TICA (Tenancy Information Centre of Australia) [www.tica.com.au](http://www.tica.com.au)
- NTD (National Tenancy Database) [www.equifax.com.au](http://www.equifax.com.au)

Tenancy databases are sometimes referred to as 'blacklists' or 'bad tenant databases'.

Files kept by an individual lessor/property manager or agency for their own internal use (hard copy or computerised) are not databases for the purposes of the legislation.

### When can I be listed on a database?

You can only be listed on a database:

- if you are named on the tenancy agreement as a tenant – approved or unapproved occupants, visitors or children cannot be listed;
- if your tenancy has ended – you cannot be listed on a database simply because you fall behind with the rent, or aren't looking after the property in a satisfactory way; and
- for one or both of the following two reasons:
  - you have vacated due to your breach of the agreement, you owe more than your security bond and the amount owed is still outstanding at the time of listing; or

- a court has made an order terminating your agreement because of something you have done wrong.

Any information recorded on a database must identify the reason for the listing in an accurate, complete and unambiguous way. For example, 'eviction order given on grounds of rent arrears, tenant owes \$500 in rent above the bond'.

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').

### How will I know if I have been listed on a database?

Lessors/property managers must advise you in writing if they propose to list you on a tenancy database. They must also give you:

- details of the proposed listing, or take reasonable steps to try to advise you. They can do this by sending a letter to your new address (if known) or to the address of the rented premises (in case you are having your mail redirected); and
- at least 14 days to object before listing you on the database.

If you apply for a tenancy and the lessor/property manager discovers you have been listed on a database, they must advise you in writing. They should inform you of the contact details of the person who has listed you, how you can find out what the listing says and how to have it corrected or amended if it is incorrect.

They do not have to advise you of the reason for the listing. You are entitled to a copy of that information from the person who listed you (free of charge) or directly from the database operator. The database operator can charge you a fee for the information but it must not be excessive.

Some database operators also provide information over the phone, but charges may apply.

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

Any listing older than three years must be removed from a database.

Listings less than three years old must also be removed if they are 'out of date'.



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

In addition, if the person was under 18 when they were listed, the listing must be removed when they turn 18.

You can also seek to have your name removed from a tenancy database if you think the listing was unjust.

Upon becoming aware information in a tenancy database is inaccurate, incomplete or out of date, the lessor/property manager must notify the database operator of the issue and how to correct it in writing within seven days. The operator then has 14 days to make the amendments.

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

Examples of out-of-date listings:

1. You owed more money than your security bond would cover but you repaid it to the lessor/property manager within three months.
2. A termination order was made by the court but not enforced.

## Disputes

Always try to resolve any disagreement with the agent or lessor/property manager through negotiation. If you cannot resolve the matter you can apply to the Magistrates Court to have incorrect, out-of-date or unjust listings removed.

The court can order information about you in the database to be:

- taken out entirely;
- partly removed;
- changed; or
- not listed at all if it was a proposed listing.



# 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 to keep detailed records of the conduct of both you and the lessor/property manager in relation to the tenancy agreement.

Disputes between lessors/property managers and tenants are dealt with by the Magistrates Court of Western Australia 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'.

The lessor is 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 who must lodge an authorisation for representation form with the Magistrates Court. Hearings are relatively informal so a tenant or lessor may represent themselves. Ordinarily, lawyers are not allowed to represent parties.

If the court believes the dispute could be resolved through mediation, they may order the appointment of a registrar or someone else to be a mediator. The disputing parties can also choose to go to mediation provided 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 (such as if you can show you weren't given the opportunity to state your case).

## 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 to see 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.

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 your privacy not being observed.

### 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/ property manager 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 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 general advice from the department. You can obtain legal advice from a Community Legal Centre.

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:

- Do I have a copy of the tenancy agreement?
- Was the bond lodged correctly?
- Have I kept proper records of the rent I have paid and the date of the last payment?
- Did I receive 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?
- 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.

A conference can be held to:

- relax the parties;
- shorten proceedings by defining the matters in dispute;
- 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 as the settlement reached is final and binding on both parties.

If the matter 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 and the other person is the 'respondent'. The court documents and

records will show you as either the 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 bond dispute, where the lessor/property manager always proceeds first):

1. The applicant tells their story and presents any supporting documents (evidence) 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 and present any supporting documents they may have.
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 and present any supporting documents.
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 the 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 and make sure you understand what it actually means. The court will usually send you a copy of the order by mail after the hearing but it is worth asking the magistrate if this will be done, as procedures vary from court to court.

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/property manager carries out the magistrate's order to remedy a breach or for compensation.



If an order is granted and you can show that you would suffer hardship if it was to take effect immediately, you can ask the magistrate to suspend the order for up to 30 days.

If the other party in the dispute is ordered to pay an amount 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?* Copies are available to download from our website.

You can seek legal advice through a lawyer, Legal Aid, the Citizens Advice Bureau or at a Community Legal Centre – though certain conditions will apply.



# 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. Willful 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 4 for more details.

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

**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

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

Community Legal Centres – to obtain the details of the centre nearest to you please visit [www.communitylaw.net](http://www.communitylaw.net) or call (08) 9221 9322.

## 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
Moora Court	9651 1407
Narrogin Court	9881 1722
Northam Court	9622 1035
Roebourne Court	9182 1281
South Hedland Court	9172 9300



# Appendix

## 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 Advice Line 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)







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

### **Consumer Protection Division**

#### **Advice Line 1300 304 054**

(for the cost of a local call statewide)

8.30 am – 5.00 pm Mon, Tue, Wed and Fri

9.00 am – 5.00 pm Thurs

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

Locked Bag 14 Cloisters Square  
Western Australia 6850

Administration: (08) 6251 1400

Facsimile: (08) 6251 1401

National Relay Service: 13 36 77

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