



Government of **Western Australia**  
Department of **Commerce**  
**Consumer Protection**



# Renting a home in Western Australia a tenant's guide

A guide that explains your rights and responsibilities  
since the 2013 changes to tenancy laws.



**iRentWA**



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

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

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

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

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

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

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



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

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

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## Disclaimer

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

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If you are renting a home in Western Australia or thinking of doing so soon, the information in this guide will help you avoid common renting pitfalls and have 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). We also advise you to check whether any other changes have been introduced.

This guide doesn't take the place of the Act, nor does it pretend to cover everything, 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. This person is commonly known as the 'landlord'.

## The Act covers:

- the role of the Department of Commerce (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 30 40 54.

## Please note

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

- boarders/lodgers (see next page);
- holiday accommodation;
- most long-stay caravan and park home residents (see next page);
- hotels/motels;
- colleges;
- educational institutions (unless a for-profit organisation 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 30 40 54 for the cost of a local call.

## Be aware

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

Significant changes to the Act took effect from 1 July 2013. These changes include new laws covering tenancy databases, bonds, rent increases, security and repairs.



## 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 residents of caravan parks and park home residents who commence on long-stay tenancy agreements after 3 August 2007.

Several publications and more information regarding residential parks long-stay tenancy are available at [www.commerce.wa.gov.au/ResParks](http://www.commerce.wa.gov.au/ResParks).

## Boarders and lodgers

It is not always easy to distinguish whether a person is a tenant, boarder or lodger. While boarders and lodgers pay for the right to occupy residential premises they are not covered by the *Residential Tenancies Act 1987*, but it's important to know they still have certain rights.

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 likely a lodger.

A tenant has a higher level of security of tenure and protection under the law than a boarder or lodger because he or she is covered by the *Residential Tenancies Act 1987*. A tenant pays rent and in return is granted a right to occupy a residential premises, however a tenant is more likely to have exclusive possession than a boarder or lodger. A person may be a tenant even if they do not have a written agreement (if they have a verbal agreement, for example).

Exclusive possession means 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 may have your 'own' room in which no other people can stay 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' 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 may require unrestricted access and you would not have exclusive possession.

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

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

- You are entitled to live in the premises but cannot call the place your own, in other words the landlord exerts control and authority over the whole premises.
- The landlord provides you with attendance or services (such as cleaning, linen or meals) which require the landlord, or his or her servants, to exercise unrestricted access to and use of the premises.
- There are house rules which are enforced.
- The landlord/owner/representative lives on site.
- The length of term of the agreement / the length of time you are given permission to stay in the house is only for a short time.
- You and the landlord only need to give a very short period of notice to leave.

For more information, phone the Consumer Protection Advice Line on 1300 30 40 54, visit the boarders and lodgers page online at [www.commerce.wa.gov.au/ConsumerProtection](http://www.commerce.wa.gov.au/ConsumerProtection) or refer to the brochure *Boarders and lodgers: a guide to your rights and responsibilities*.



## Finding the right place at the right cost

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

### **Costs**

There are significant up-front costs, so think about what you can afford.

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): \$1520;
- a pet bond (if you have one and are allowed to keep one under the tenancy agreement): 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 through the 'To Let' columns of newspapers or searching on the Internet.

### **Suitability**

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

- Can you afford the rent?
- 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 page 5)?

### If you are refused as a tenant

The lessor/property manager cannot refuse a tenancy because you intend to have a child (or children) living on the premises.

The *Equal Opportunity Act 1984* says you cannot be discriminated against on a range of grounds, including sex, race, age, disability, marital status, pregnancy, family status or responsibility, religious or political beliefs, spent convictions, sexual orientation or gender history.

Minors (a person who is over 16 years of age but under 18 years of age) may apply for a residential tenancy. A tenancy agreement may be enforced in accordance with the *Residential Tenancies Act 1987* against a minor who is a tenant. However, there are protections in the Magistrates Court for minors, such as the appointment of a litigation guardian.

## Sorting out the paperwork

There are a number of required forms to protect the rights of tenants and lessors. These forms are for tenancy agreements, property condition reports, lodging bond money and taking matters to court.

### Application forms

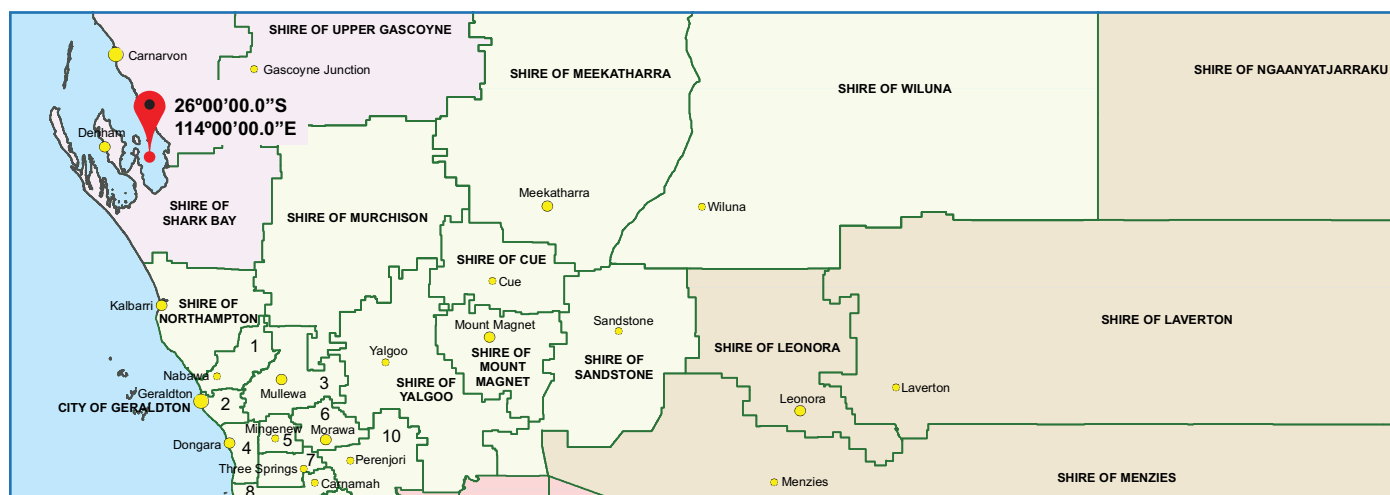
Some lessors/property managers will ask you to complete an application form so they can decide whether or not to accept you as a tenant. The form may ask you for details of any previous rental history and references, for example from your employer, teacher or church minister.

### Option fees

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

Weekly rent 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 or by electronic transfer. 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. Non-written agreements are also recognised under the Act; however, a written tenancy agreement means there can be little argument about the terms and conditions on which you and the lessor/property manager agreed at the start of the tenancy.

This agreement is a key document between you and the lessor/property manager and covers most of the matters concerning your relationship and the renting of the property. Make sure you understand exactly what is in it and what you are agreeing to.

If you have a written tenancy agreement, your lessor/property manager must provide you with a fully signed copy of the agreement. If they do not, or you want to check the agreement they provided is the prescribed *Residential tenancy agreement* (Form 1AA) that must be used, you can download it from the department's website.

The prescribed *Residential tenancy agreement* includes 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 parts A and B of 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 discover and have this written into the agreement. Repairs must be conducted within a reasonable period after the need for them arises. If fixtures or chattels (such as a TV aerial, air conditioners or solar hot water system) provided with the property appeared to be available when you inspected it, your lessor/property manager must maintain the items unless they were disclosed as not functioning before you signed the tenancy agreement.

If there are services you wish to connect at the property during your tenancy, such as a telephone line or internet, you should ask the lessor/property manager whether there are any known issues connecting the service, before signing the tenancy agreement. You may also wish to check with your desired provider whether they can open an account at the rental address.

The lessor/property manager must give you a copy of the agreement when you sign it and a copy of the agreement signed by you and the lessor within 14 days of you signing it and returning it to the lessor/property manager. Make sure you keep a copy in a safe place for the duration of your tenancy.

It is against the law to contract out of any section of the Act; however, a contract entered into before 1 July 2013 is exempt for the life of that agreement regarding obligations that were legitimately contracted out of under the former legislation.



## **Fixed-term or periodic tenancy?**

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

A **fixed-term tenancy agreement** specifies 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, but they can be for any time. A fixed term gives 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. A fixed-term tenancy agreement may also state whether you can automatically renew the tenancy at the end of the original period and/or provide for renewal of another fixed term. If it contains an option to renew for a further period, the choice is usually yours, unless the written agreement states otherwise. The fixed-term agreement should state the conditions for an option to renew, including the maximum extent of any rent increases that may apply.

If 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 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.

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

Although fixed-term tenancy agreements have expiry dates they will not automatically terminate on the stated end date unless on or before the expiry date, either you or the lessor/property manager gives the other 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, including those that commenced before 1 July 2013.

A **periodic tenancy agreement** can last for an indefinite time. It provides greater flexibility if you or your lessor's circumstances change and either of you need to end the tenancy. The agreement can be ended when you or the lessor/property manager gives proper notice in writing. The lessor must give 60 days' notice, while you must 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.

## **Moving in**

When you move in, it is the lessor/property manager's responsibility to make sure the premises are vacant and clean 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 contents required to be in the report and is available on the department's website.

The property condition 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. Further comments about anything damaged or in bad condition may 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 will have seven days after you receive the property condition report 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 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 and the lessor/property manager may wish to meet to view the property jointly and compare the differences in an attempt to resolve the disagreement. If there is a dispute at the end of the tenancy, a court may look at the marked up copy and other evidence.

When completing the property condition report, it is recommended you follow these steps:

- Check the premises for cleanliness and maintenance issues including insect 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, 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.

As soon as possible but no more than 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 (also known as safety switches or 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 schemes at least one RCD is to be fitted to protect power points and lighting circuits. Penalties of up to \$15,000 for individuals and \$100,000 for bodies corporate may apply if RCDs are not fitted. For more information visit [www.commerce.wa.gov.au/rcd](http://www.commerce.wa.gov.au/rcd) or call EnergySafety on 9422 5200.



## Smoke alarms

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

Where mains-powered (hard-wired) smoke alarms cannot be fitted (a common issue in multi-story 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 blackout, so both kinds must be less than 10 years old (the whole alarm – not just the battery).

You are likely to be responsible for keeping smoke alarms in working order to the extent practical, such as changing the battery if reasonably accessible by you. The overall responsibility for ensuring these are working smoke alarms as required by the Building Regulations 2012 is the lessor's.

There are new requirements for houses and apartments built after 1 May 2014 where more than one smoke alarm is required to be installed. For more information visit the Building Commission ([www.commerce.wa.gov.au/BuildingCommission](http://www.commerce.wa.gov.au/BuildingCommission)) and the Department of Fire and Emergency Services ([www.dfes.wa.gov.au](http://www.dfes.wa.gov.au)).

## Securing curtain and blind cords

Children can get caught in loose curtain and blind cords and be strangled. Tie cords at least 160 cm from the ground. Contact your lessor for permission to install safety devices and ask if they will contribute to the cost. Product safety laws apply – visit [www.productsafety.gov.au](http://www.productsafety.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 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. If you are permitted to keep any 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.

## 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 receipt.

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 a record of your bond from the department in the first few weeks of moving in, please contact us on 1300 30 40 54.**

### ***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 by the new lessor/property manager and the previous lessor. It must show 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 *Variation of security bond* form can be used to notify the Bond Administrator of the change of tenants, so at the end of the tenancy the bond can be paid out to the correct tenants and/or the lessor. The incoming tenant can pay the departing tenant their share of the bond.

### ***Decreased rent during tenancy agreement***

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

### ***Complaints about bonds***

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

- 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 24.**

## **Rent**

### ***Paying rent***

You must not be asked for more than two weeks' rent in advance. If convenient you can choose to pay more (such as monthly or any other agreed period); however, this cannot be a requirement of the tenancy agreement.

The lessor/property manager cannot ask you for rent until the period covered by the previous payment is finished. Nor can they ask you for a post-dated cheque (in other words, one on which the date is 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 personal/company cheque, you should consider making the payment in advance of the due date so 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 to comply with the Act.

Where you pay rent directly to the lessor/property manager, he or she must give you a receipt promptly (within three days at the latest).

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.

You should keep all receipts in case of a future disagreement about rent said to be owing.

### **Rent increases**

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

In rare cases where 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. Where rent payable is calculated by reference to your income, notice is only required for a change to the method of calculating the increase but not for automatic increases occurring as your income changes.

Further 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) and it has been six months or more since the last increase. The method of calculating the increase cannot be listed as 'market rent' as this is not a clear indication of what the rent increase is likely to be.

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 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 rental agreement).

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

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

Before you can be asked to pay an amount for compensation, it should be shown 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 30 40 54 for advice or to lodge a written complaint.

# Once the tenancy begins

## Minimising problems

Even with the best preparation, unforeseen difficulties between tenants and lessors/property managers may 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 30 40 54. Remember:

- You have the right to complain about aspects of the tenancy you believe breach the tenancy agreement or the Act.
- You have the right to 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 and in a reasonable state of cleanliness and repair.

It is a requirement that you are notified of the lessor's name and address at the commencement of your tenancy. If the property is under management, you are still to 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 at the commencement of your tenancy.

You must keep the property clean and tidy and, at the end of a tenancy, 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 (for example, plumbing and the maintenance of contents already provided, such as the refrigerator, stove, washing machine or air conditioner) unless you have intentionally or neglectfully damaged them.

You are responsible for basic household maintenance, like replacing light globes, vacuuming, cleaning windows, dusting and removing cobwebs inside and out and ensuring there is adequate ventilation to help avoid mould problems in winter. 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 mowing and edging lawns, weeding and 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 reticulation system, tree lopping, cutting back overhanging branches (such as those near power lines) and maintaining fire breaks, unless your tenancy agreement states otherwise.

### *Swimming pools and spas*

If the property has a swimming pool or spa, you are responsible for keeping the pool or spa and any associated equipment in a properly treated and clean condition and for observing all legal requirements relating to pools or spas during the period of the lease.

The lessor/property manager must ensure the pool or spa is secure, that it is child safe and complies with pool safety standards. Under the Building Regulations 2012, as the occupier of the property you are jointly responsible for pool fencing with the property owner. However, pool fencing is ultimately the lessor's responsibility as the Act requires the lessor to be responsible for complying with building, health and safety laws.

If you become aware of any safety concerns relating to the swimming pool or spa, you must report these concerns to the lessor/property manager as soon as possible. If the lessor/property manager fails to resolve any safety issues, contact your local council. Local governments monitor compliance with the requirements that apply to spa or swimming pool barriers.

The Building Commission produces several publications about pool fencing laws that are available on its website at [www.commerce.wa.gov.au/building-commission/swimming-and-spa-pools](http://www.commerce.wa.gov.au/building-commission/swimming-and-spa-pools).

At the start of your tenancy, the lessor/property manager should make sure the water is clean, chemically balanced and the pool and equipment are serviceable. You should be provided with the necessary tools and equipment for day-to-day maintenance, such as vacuums, hoses, brushes and scoops.

Unless the written agreement states otherwise, you are responsible for routine day-to-day maintenance and upkeep of the pool, such as cleaning and maintaining the chemical balance of the water, including buying pool chemicals.

### ***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 property to damage; or
- causing you undue hardship or inconvenience.

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

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

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

If you can’t contact the lessor/property manager after making reasonable attempts, or you contact them and they take no action, you can then have the minimum repairs carried out by a qualified tradesperson and claim back the costs. However, the urgent repair costs must be reasonable. 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 incurred in relation to arranging and paying for the repairs.

### ***Neglectful damage versus fair wear and tear***

You are not responsible for costs arising from ‘fair wear and tear’. Sometimes it is difficult to agree what is normal fair wear and tear. The following examples may help to explain the difference:

<b>Neglectful damage (You are liable)</b>	<b>Fair wear and tear (The lessor/property manager is liable)</b>
Stains or burns from things you dropped or placed on carpets.	Carpet wear in corridors or other areas used frequently.
You forgot your key and broke a lock to get in.	A lock broke because it was old and had worn out.
Mould/mildew has formed because the dwelling was not aired adequately.	Paint 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 damage is caused by a third party not directly connected with you or who you did not invite to the premises, or by an event outside your control, such as break-ins, floods or traffic accidents, then the repairs are the lessor's responsibility.

If your own possessions are damaged by a problem, such as a ceiling collapsing or leaks from the roof, you may be able to claim the costs from the lessor.

If the lessor/property manager or a person accompanying them damages your possessions while they are on the premises, the lessor/property manager is liable for the damages.

### ***Insurance***

As a tenant, it is your responsibility to take out your own home and 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, if they have it, will 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 service charges (water rates).

To encourage careful use of water, the Water Corporation has a sliding scale of charges. The higher the use, the higher the price for each kilolitre. A kilolitre is 1,000 litres.

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 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.

**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). At the time of asking you to pay for your consumption, the lessor/property manager must give you an account showing how the charge was calculated in accordance with the agreed method and any applicable GST component.

Although you can be required to pay for all the water you use, the lessor/property manager may agree to pay part or all of the 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.

To ensure usage costs reflect in some measure the cost of providing the water, charges for towns and areas in regional Western Australia have been divided into five 'classes'.

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 or visit [www.watercorporation.com.au](http://www.watercorporation.com.au).**

### ***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 agreement with you in writing 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 GST component if applicable. The lessor/property manager may choose to provide you with a copy of the master bill as well 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 the lessor/property manager's permission. In such circumstances, the lessor/property manager will probably choose the colour and pay for the paint.

### ***Alterations and additions***

A tenancy agreement may or may not allow you to attach fixtures, renovate, or alter the property. If the agreement says these changes can be carried out with the lessor/property manager's consent, that permission should not be withheld or refused unreasonably. In all cases, you must obtain the lessor/property manager's permission first and preferably also in writing.

### ***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. Your lessor must ensure the rental property complies with the required security relating to door locks, window locks and exterior lights by 1 July 2015. 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 must not cause a nuisance, such as making excessive noise that disturbs neighbours. You must not use the premises for any illegal activity.

You are also responsible for any person you allow on the premises. You need to make sure that anyone you allow to be at the premises does not cause a nuisance or use the premises for an illegal activity.

### **A summary — Who's responsible in a tenancy?**

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

<b>Generally, as a tenant you are responsible for</b>	<b>Generally, the lessor/property manager is responsible for</b>
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 and repair and complying 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) and maintenance of contents provided (such as a refrigerator, washing machine, or smoke alarms).
General garden maintenance (such as mowing, weeding, 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.	Any swimming pool or spa meeting safety standards and being clean and chemically balanced at the start of the tenancy. Provision of maintenance equipment (such as vacuums, scoops).
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 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 services charges (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 (and 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 is 'fair wear and tear' and what is 'damage'.

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 if it is paid not more frequently than weekly and the agreement allows for it to be collected at the premises;
- to carry out or inspect necessary repairs at a reasonable time after giving at least three days' (72 hours') written notice;
- 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: Before giving written notice of entry, the lessor/property manager must make a reasonable attempt to negotiate a suitable time and day for the access with you. The notice itself must stipulate the date of the access and whether it will be before or after 12 noon.

You should not be unreasonably difficult or refuse access because the lessor/property manager can apply to the court for an order requiring access.

Reasonable time is defined as:

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



# When things don't work out

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 section 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 of 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 a problem arises in making the rent payments on time, you should 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, the lessor/property manager 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 ended 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 require you 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 put their case.

In this case the 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;
- 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 not less than 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 in 14 days, they can issue a *Notice of termination* (Form 1C) to end the tenancy after a further 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 your behaviour is such that the lessor/property manager believes you are likely to cause such 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 through 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 agreement be ended and agree on the date, then none of the formal procedures such as issuing notices need apply. However, make sure both of you sign a clear, written statement to that effect.

If the premises are destroyed, compulsorily acquired by law or become uninhabitable, you only have to give two full days' written notice to end either a periodic or fixed-term tenancy. In such circumstances, 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 ended 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.**

**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' notice in writing.

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 vacant premises, in which 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 of the agreement, either you or the lessor/property manager gives the other 30 days' written notice of 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 for you to send to the lessor/property manager giving 30 days' notice of termination at the end of a fixed-term tenancy. 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. If you provide less than 30 days' notice before the end of the lease, the tenancy will not expire until the end of the 30-day notice period. If the lessor provides less than 30 days' notice before the end of the lease, you can move out any time after the original expiry date. The possession day can be after the day on which the fixed term expires. Refer to 'Counting days' in the 'All about Notices' section as extra days will be needed.

If the possession day falls on a weekend or public holiday, the recipient of the notice may choose the next business day as the day you move out.

If you and the lessor/property manager both provide notice specifying different days, the earlier of the two days 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 tenancy will automatically become a periodic tenancy and periodic tenancy termination notice periods will then apply.

If you wish to extend the tenancy, it makes sense for you to contact the lessor/property manager about five or six weeks before the expiry date to agree whether or not the term of the tenancy is 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;
- there is personal or family illness; or
- you are being subjected to family violence.

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, explain the situation and seek their understanding and cooperation in negotiating the terms of the mutual agreement for the early termination.

The lessor/property manager may require you to remain liable for your tenancy under the terms of the tenancy agreement until a new tenant is able to commence 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 of losses incurred as a result of you terminating the tenancy early, such as reimbursement of advertising costs. However, your lessor is not entitled to compensation 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.

### ***The final inspection***

The lessor/property manager is entitled to expect their property to be returned to them as closely as possible to the same condition as it was at the start of the tenancy, fair wear and tear excepted.

As soon as possible (and at the latest within 14 days) after 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 condition of the premises, and provide you with a copy of the 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 you have not cleaned the property to a reasonable state of cleanliness or if minor repairs are needed, you will probably have 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.

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 time for inspection or 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 frequently 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 a replacement is required, the lessor/property manager has to 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.

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 that department 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)

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

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 makes 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 such action to force you to give up possession, contact the department because such '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 to pay for any damage, you and the lessor/property manager must sign a *Joint application for disposal of security bond* form and give it to the Bond Administrator (the Department of Commerce). You can visit the Bond Administrator at Gordon Stephenson House, 140 William St, Perth. If the security bond is held in a real estate agent's tenancy bond trust account, the agent must refund your bond money or the agreed part of it within seven days of receiving the form signed by both parties (all new bonds received after 1 July 2013 must be lodged with the Bond Administrator).

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).

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 a *Joint application for disposal of security bond* form until the tenancy has ended. The form must also specify how much is to be paid to each party.

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 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 bond money should be allocated. Once the *Application for disposal of bond money* form is lodged, the court will send a copy to the other party in the agreement who 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, it means the tenancy agreement will end. The lessor/property manager can then give written notice stating that if no response is received within 24 hours indicating the premises have not been abandoned, they will enter the premises for the purposes of inspecting and securing them. If no response is provided, the lessor/property manager may then:

1. [issue a second notice to you advising they suspect the premises have 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 have been abandoned](#)

The lessor/property manager has to make certain the premises have truly been abandoned. You should always notify the lessor/property manager if you are planning on not being at the premises for an extended period of time and make the appropriate arrangements, such as rent payments, while you're away.

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

If you leave goods belonging to you at the property, the lessor/property manager should take action under the Act such as storing, selling or disposing of the goods.

If the goods 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 (if you have given a forwarding address) and by a notice in a newspaper that circulates generally throughout the State within the first seven days of the 60-day storage period.

If you leave goods behind and the lessor/property manager disposes of them and you disagree he or she was entitled to do so, you can seek compensation from the lessor or the department by applying to the courts for an order agreeing the lessor acted inappropriately.

## **Abandoned documents**

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

Important documents to be stored would include an official document, a photograph, correspondence or any other document which it would be reasonable to expect a person would want to keep.

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

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

## **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 take all reasonable steps to minimise any losses.



## What to issue

If either you or the lessor/property manager believes there has been a failure to meet parts of the tenancy agreement or the Act, notices can be sent by either party, informing the other of the problem and giving a time limit for making changes.

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

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

For the following matters, use the form indicated:

**If you believe the lessor/property manager has not kept to their part of the tenancy agreement** you may give the lessor/property manager a *Notice to lessor of breach of agreement* (Form 23), or you can simply write to them stating the problem (such as premises aren't 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 end the agreement.

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.

**If you want to end a periodic agreement** you may give the lessor/property manager a *Notice of termination from tenant to lessor* (Form 22), or simply write notifying them of your intention to move out and the date on which the property will be handed back. This cannot be less than 21 days. Keep a copy for your records. You don't have to give any reasons for your intention to leave.

**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.

If the lessor/property manager intends to inspect the premises they must attempt to negotiate a time with you and then 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 *Notice of intention to enter premises* (Form 19). This form summarises the circumstances in which the lessor/property manager may enter the premises.

If the lessor/property manager believes you have breached the agreement by means other than by not paying the rent (such as damage to property, gardens not maintained), they may use the *Notice to tenant of breach of agreement (other than failure to pay rent)* (Form 20) or they can simply write you a letter with the necessary details. If you fail to deal 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.

**If the lessor/property manager believes you have breached the agreement by not paying the rent or paying the rent late**, they may use:

- *Breach notice for non-payment of rent* (Form 21). This requires you to bring the rent up to date within 14 days. Alternatively, the lessor/property manager may send you a letter to this effect.
- *Notice of termination for non-payment of rent* (Form 1A). This 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 rent owing (and court fees) no later than one day before the court action, the action will not proceed.

**If the lessor/property manager wants to end the tenancy for any reason other than you failing to pay the rent** they may use the *Notice of termination* (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.

**If the lessor/property manager wants to terminate the tenancy immediately** they may use the Magistrates Court's *Application to the court* (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 *Notice to former tenant as to disposal of goods* (Form 2) and *Notice as to disposal of goods* (Form 3) to inform you of their intentions.

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 30 40 54.

## 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 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.

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

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

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

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

### ***Proof a notice was served***

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

## **Other forms that may affect you**

If you have a verbal tenancy agreement (such as between family members) your lessor must give you the form *Information for tenant with non-written residential tenancy agreement* (Form 1AD) within 14 days after you move in.

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

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.

The *Notice of intention to dispute application for disposal of bond money* form can be used if you disagree with how the lessor/property manager wants to dispose of your bond money. The form is available from the Magistrates Court.

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

The *Residential tenancy agreement* (Form 1AA) is the prescribed agreement that must be used for all written residential tenancy agreements.

The *Property condition report* (Form 1) is the 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

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

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. The Act 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.veda.com.au](http://www.veda.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'.

## 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).
- 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

## Court procedures and outcomes

### About the courts

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

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

Whatever the dispute, the most important thing for you to remember is you need to keep detailed records of your conduct and the lessor/property manager's conduct 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 with the Magistrates Court an authorisation for representation form. Hearings are relatively informal so a tenant or lessor may represent themselves. Ordinarily, lawyers are not allowed to represent parties.

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

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 advice from the department. We can give you general advice, but not legal advice. 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?

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

## On the day

Make sure you have plenty of time to get to court and know where to find the court room. Arrive for the hearing on time or a little earlier. Let a court official know you are there and then go to the waiting room.

Remain within hearing distance of the court room. If you are not there when your case is called, it could start without you and the magistrate might make an order which may not have been made if you had been there.

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

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

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

Such a conference can be held to:

- relax the parties;
- shorten proceedings by defining the matters at issue;
- resolve the matter, either partially or fully;
- make any orders with the consent of both parties; and
- advise the parties of the procedure in court, if the dispute is not resolved.

If the matter appears likely to be settled in this way, it is important to be aware what you are agreeing to. The settlement is final and binding on both parties. If the case is to be heard before a magistrate, when your case is called, enter the courtroom and take your place at either the applicant's or respondent's seat, as directed by the court usher.

The 'applicant' is the person who has asked the court to resolve the dispute. The other person is the 'respondent'. The court documents and records will show you as 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 has 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 (evidence) and presents any documents in support of their case.
2. Then the respondent questions (cross-examines) the applicant about their evidence.

3. If the applicant has witnesses, they tell their story.
4. The respondent can cross-examine each witness.
5. The respondent then tells their story and produces any supporting documents.
6. The applicant can cross-examine the respondent.
7. If the respondent has witnesses, they tell their story.
8. The applicant can cross-examine each witness.

### ***Presenting your story to the magistrate***

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

Tell your story in the order 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. The court will usually send you a copy of the order by mail after the hearing. Ask the magistrate if this will be done, as procedures vary from court to court.

If you do not understand the order, ask the magistrate to explain it to you.

Orders handed down by the magistrate can include:

- ending a tenancy agreement;
- how bond money will be paid out;
- action being carried out in accordance with the tenancy agreement;
- stopping any action which breaches the tenancy agreement;
- payment of compensation by the person in breach of the agreement, for loss or injury (other than personal injury), caused by the breach; and
- payment of rent into the court until the lessor/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 effective 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 ordered by the magistrate, you can take action to enforce the order. There are different actions and the most common are explained in the department's publication *If they don't pay – What happens if court/tribunal orders are not paid?* which is available from our website.

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

# Glossary of terms in common use

## 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/property manager or tenant should not do or failing to do something the agreement or standard terms of the Act say the lessor/property manager or tenant should do.

## Counting days:

The time for notices which includes additional days for mailing and the exclusions of the first and last days of the notice period. See page 28 for more detail.

## Fair wear and tear:

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

## 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 (property manager), and in some circumstances the 'head tenant'.

## Option fee:

A fee charged to the prospective tenant when lodging a rental application. Option fees are usually capped at a maximum amount. Refer to page 4 for more detail.

## 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:

The standard form or document a lessor/property manager must use.

## Property:

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

## Property condition report:

A report of 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/property manager for the right to live in the premises.

## Security bond:

See 'Bond'.

## Sublet:

A rental agreement where the tenant rents out all or a part of the premises to another person.

## Sub-tenant:

The tenant in a subletting 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

(details are correct at the time of publishing)



Department of Commerce – see the last page 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 2247

## Metropolitan

Armadale Court ..... 9399 0700

Fremantle Court ..... 9431 0300

Joondalup Court ..... 9400 0700

Mandurah Court ..... 9581 4000

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 1082

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 ..... 9168 1011

Manjimup Court ..... 9771 1316

Merredin Court ..... 9041 1064

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 30 40 54 for advice.

Prescribed forms (must be used)	Other required forms (must be used)	Suggested forms
Residential tenancy agreement (Form 1AA)	Notice to tenant of rent increase (except for rent calculated by tenant's income) (Form 10)	Application to rent residential premises (Form 18)
Information for tenant (Form 1AC)	Notice to tenant of rent increase calculated by tenant's income (Form 11)	Notice of intention to enter premises (Form 19)
Information for tenant with non-written residential tenancy agreements (Form 1AD)	Notice to tenant of abandonment of premises (Form 12)	Notice to tenant of breach of agreement (other than failure to pay rent) (Form 20)
Property condition report (Form 1)	Notice of termination to tenant if premises abandoned (Form 13)	Breach notice for non-payment of rent (Form 21)
Notice of termination for non-payment of rent (to be used only if a 14-day breach notice has been issued) (Form 1A)	Notice to vacate from mortgagee to tenant (Form 14)	Notice of termination from tenant to lessor (Form 22)
Notice of termination for non-payment of rent (to be used if no breach notice has been issued) (Form 1B)	Notice to tenant of proposed recovery of premises by person with superior title (Form 17)	Notice to lessor of breach of agreement (Form 23)
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)	Joint application for disposal of security bond	
Notice to former tenant as to disposal of goods (Form 2)	Lodgement of security bond money	
Notice as to disposal of goods (Form 3)	Variation of security bond money	

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).

## Consumer Protection Division

Gordon Stephenson House,  
140 William St, Perth  
Western Australia 6000

Postal address ..... Locked Bag 14 Cloisters Square WA 6850

Advice Line (for the cost of a local call) ..... 1300 30 40 54

Translating and Interpreting Service  
ask for connection to 1300 30 40 54 ..... 131 450

National Relay Service ..... 13 36 77

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



@ConsumerWA



ConsumerProtectionWesternAustralia

### REGIONAL OFFICES

#### Goldfields/Esperance

Suite 4/37 Brookman Street  
Kalgoorlie WA 6430  
Administration: 9026 3250

#### Great Southern

Unit 2/129 Aberdeen Street  
Albany WA 6330  
Administration: 9842 8366

#### Kimberley

Woody's Arcade, Office 7/15  
Dampier Terrace  
Broome WA 6725  
Administration: 9191 8400

#### Mid-West

Shop 3, 50-52 Durlacher Street  
Geraldton WA 6530  
Administration: 9920 9800

#### South-West

8th Floor, 61 Victoria Street  
Bunbury WA 6230  
Administration: 9722 2888

#### North-West

12 Hedland Place  
Karratha WA 6714  
Administration: 9185 0900