



Renting a home in Western Australia

a tenant's guide

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



Government of Western Australia
Department of Commerce



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The Department of Commerce gives free advice to all parties in a residential 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.

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

We also provide a free bond management service (for the tenant's money) to both property owners and real estate agents through the Bond Administrator, whose office is located within our head office.

You can contact us by telephone or by calling at one of our offices (see *Contact details*).

Our website www.commerce.wa.gov.au/tenancy 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.

This publication is free. The Department of Commerce has no objection to property owners or others photocopying parts or all of the text.

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

ISBN 1-920837-05-1

ISBN (Web) 1-920837-06-X

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I n t r o d u c t i o n

If you are renting a home in Western Australia or thinking of doing so soon, the information in this guide will help you find the right home, avoid common renting pitfalls and help you have a harmonious (and lawful) relationship with the property owner 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. You can buy copies of the Act and Regulations from the State Law Publisher, 10 William Street, Perth - telephone 9426 0000 or download copies at www.slp.wa.gov.au. At the date of publication (2011) the Act was being reviewed. We advise you to check whether any 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 Act covers:

- the role of the Department of Commerce and the Magistrates Court;
- payment of rent and rent increases;
- security bonds;
- use of the premises;
- urgent repairs;
- right of entry by the owner;
- fixtures, renovations, alterations and additions;
- who pays rates and taxes;
- assignment and subletting;
- your right to receive a copy of the form *Schedule 2 – Information for tenant (A statement of your rights and duties)* and a copy of the agreement, if it is in writing;
- discrimination against children;
- ending a tenancy;
- the parts of the Act that can be modified if you and the owner/agent agree in writing; and
- giving of Notices.



PLEASE NOTE

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

- boarders/lodgers;
- holiday accommodation;
- long-stay caravan and park home residents*;
- hotels/motels;
- colleges;
- educational institutions;
- hospitals/nursing homes/clubs; and
- 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

As well as owners, agents and tenants, the Department of Housing (formerly Homeswest) and its tenants are bound by the Act. There are some exemptions from minor sections of the Act for Department of Housing tenants and for some employment-related tenancies.

BOARDERS AND LODGERS

It can be difficult to distinguish the difference between boarders, lodgers and tenants. A boarder is an occupant who shares the owner's house, pays rent and receives some services from the owner, such as cooking and cleaning. A lodger is similar to a boarder, but may not receive services from the owner. For further advice on this, ring our Advice Line on 1300 30 40 54 or read our publication *Boarders and Lodgers* available on the website.

*CARAVAN AND PARK HOME RESIDENTS

The Act also covers permanent 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. The Department produces several publications regarding residential parks long-stay tenancy. These are available on our website or ring our Advice Line 1300 30 40 54 and we will post them to you.

Getting started



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.

To rent a house at \$300 per week could cost you somewhere in the region of \$2,000 to move in. You could have to find the money to pay for:

- rent in advance (two weeks): \$600;
- a security bond (equivalent to a maximum of four weeks' rent): \$1200;
- a bond for a cat or dog (if you have one and are allowed to keep one under the tenancy agreement): up to \$260 (from 1 June 2011); 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, looking in the windows of real estate agents 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 rental agreement (see below)?

If you are refused as a tenant

The owner/agent cannot normally refuse a tenancy because you will have a child (or children) living on the premises. The exceptions are when the home was the owner's principal place of residence or if the owner or agent lives next door.

The *Equal Opportunity Act 1984* says that 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.

Leases with minors are not generally enforceable under common law. However, there can be an exception if you are under 18 and the rental accommodation is for a 'necessity of life'; for example, it may be essential for you to rent because of your employment, study or you are homeless.

Sorting out the paperwork

There are a number of forms designed to protect the rights of tenants and property owners. These forms include standard tenancy agreements, property condition reports, forms for lodging bond money and forms associated with taking matters to court.

Application forms

Some owners/agents 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.

You may be asked to pay an option fee to show that your rental application is genuine. Check whether the application form states this and whether all or part of the fee can be kept if you decide not to go ahead with the tenancy. If the owner/agent decides not to offer you the tenancy, they must return the fee to you in full. If you take up the tenancy, they can credit it towards your first rent payment.

Tenancy agreements

A written tenancy agreement means there can be little argument about the terms and conditions on which you and the owner/agent agreed at the outset.

This agreement (or lease) becomes a key document between you and the owner/agent and covers most of the matters concerning your relationship and the leasing of the property. Make sure you understand exactly what is in it and on what you are agreeing.

If you are dealing with an agent, he or she will provide an agreement. If not, standard residential tenancy agreements can be downloaded from our website. If you do not have internet access, phone 1300 30 40 54 and we will post one to you.

Make sure the tenancy agreement is in writing showing your details, the details of any other tenants sharing with you, and those of the owner/agent. Make sure all parties sign it.

The agreement must include:

- the address and a description of the premises;
- the names, addresses and contact numbers of you and the owner/agent;
- relevant dates (check that the time period is in words, eg 12 months, and matches the dates);
- rent requirements, such as the rental amount, frequency of payments, due dates and how the rent is to be paid;
- any special conditions that you both agree to; and

- provision for renewal after the initial period (if required).

The owner/agent must give you a copy of the agreement; preferably when you both sign it, but at least within 21 days of signing, or such longer period that is reasonable in the circumstances. Make sure you keep a copy in a safe place.

When you both sign the agreement, the owner/agent must also give you a copy of the form *Schedule 2 - Information for tenant (A statement of your rights and duties)*.

Tenancy agreements are either fixed-term or periodic. The standard form for periodic agreements is Form 24B and for fixed-term agreements it is Form 24A.

You and the owner/agent can agree to delete or add terms – provided that in so doing you do not breach the Act.

You may also both agree not to comply with specific sections of the Act. You can do this as long as the agreement is in writing and both of you sign it.

This is known as ‘contracting out’. However, we recommend that you **do not agree to contract out of any section of the Act** without a very good reason.

If you would like more information on which sections of the Act that can be contracted out, phone the Consumer Protection Advice Line on 1300 30 40 54.

It can be a written condition of a residential tenancy agreement that you cannot assign or sub-let the premises, ie allow someone else to take over the tenancy or live in the property without the owner/agent’s permission. Alternatively, the owner/agent can agree to allow you to sub-let and can specify in the agreement that written consent must be obtained. If this is the case, or if the agreement does not mention sub-letting, the owner/agent must not refuse to give his or her consent unreasonably.



A **fixed-term tenancy agreement** (Form 24A) specifies in writing, a start and finish date and the minimum length of time you agree to stay in the property.

A fixed-term tenancy 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 agreement states otherwise.

If you stay on with the owner/agent's permission after the initial period has expired but don't sign another fixed-term agreement, the tenancy will automatically become a periodic tenancy. If no new conditions are agreed upon and put in writing, all conditions from the previous fixed-term agreement will continue to apply including those specific sections of the Act that were contracted out of.

Most fixed-term agreements are for six or 12 months, but they can be for any time. You may consider that a fixed term gives you more certainty and security than a periodic tenancy.

Because fixed-term agreements have expiry dates, you do not need to give notice if you intend to renew the agreement. The owner/agent may not add clauses that require such notice.

A **periodic tenancy agreement** (Form 24B) can last for an indefinite time. The agreement can be ended when you or the property owner/agent gives the 'proper notice'. The proper notice is 60 days (in writing), or 120 days if you are occupying a site in a residential park under a site only agreement, by the owner/agent, unless you have broken the agreement or the owner is selling the property. If you give notice, it must be a minimum of 21 days in writing. For further information on this refer to the section on 'Ending a tenancy'.

Property condition report

When you first move in, make sure you fill in a Property Condition Report. You can download a sample report from our website or phone the Consumer Protection Advice Line and we will post one to you.

The property condition report sets down, on a room-by-room basis, the exact contents and condition of the premises at the beginning of your tenancy. If

you are renting a site for a caravan, this report is known as a Site Condition Report.

The report should list all the contents and brief descriptions of the condition they are in, plus a description of anything damaged or in bad condition; for example, torn fly screen on front door, stained carpet in main bedroom, dirty or chipped walls in bedroom two.

Also:

- 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.
- Check if the owner/agent intends to fix any problems that you discover and have this written into the agreement.
- Describe the condition of any lawns or garden beds, including shrubs and trees, plus the type and number of garden sprinklers and the condition of the bore or reticulation system. 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 that they work.
- You can take photographs or make a video recording showing the condition of certain areas and the date the record was made.

You and the owner/agent should both sign the report. If the owner/agent won't sign it, you can have an independent person do it. Make sure you keep a copy.

When you move in, it is the owner/agent's responsibility to make sure the premises are vacant and clean on that day. You can make it a part of the agreement that he or she carries out certain tasks, eg replace the seal on the fridge.

When it is time to move out, the report will support your case if you are asked to pay for damage or missing items.

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.

Residual current devices

The owner/agent 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, or by 8 August 2011 if the property is not re-leased before then. For common areas of strata schemes at least one RCD is to be fitted to protect power points and lighting circuits. Properties constructed from the year 2000 should already be compliant. Penalties of up to \$15,000 for individuals and \$100,000 for bodies corporate may apply if the RCDs are not fitted. For more information visit www.energysafety.wa.gov.au/ RCD or call EnergySafety on 9422 5200.

Smoke alarms

The owner/agent 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, or by October 2011 if the premise is not re-leased before then. Even mains-powered smoke alarms 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 should be able to check the year of installation upon removal of the cover. Non-compliance can attract fines of up to \$5,000. Detailed information is available from www.fesa.wa.gov.au.

Security bonds

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

The bond money must be held by the owner/agent 'in trust' until the end of the tenancy. In Western Australia, this can be done in one of three ways:

- the bond is deposited with the Bond Administrator;
- the bond is deposited in a real estate agent's trust account; or
- the bond is deposited in a prescribed account with an authorised financial institution.

It 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 and if you are permitted to keep cats or dogs on the property, 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, unless:

- the weekly rent is more than an amount set by regulation (\$1,200 as at 1 June 2011 – for agreements made prior to 1 June 2011 the amount was \$500); or
- the property was the private residence of the owner for at least three months immediately before the agreement was made.

* This amount is effective from 1 June 2011. Prior to that, a pet bond could be no more than \$100.

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.

When you or another tenant pay the bond, the owner/agent must immediately issue a receipt when payment is received. 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.

Depositing the bond

Within 14 days, the owner/agent must put the bond into a Tenancy Bond Account with the State Government's Bond Administrator (a section of the Department of Commerce), or a prescribed account with an authorised financial institution, ie bank, building society or credit union.

If a real estate agent is handling the property the agent should deposit the bond as soon as possible into a 'REBA Tenancy Bond Trust Account' held with a financial institution such as a bank, or into an individual tenancy bond account held by the Bond Administrator.

The bond must be held in a joint account showing the names of all tenants and the names of the owner. A Combined Form 1 & 8 (*Record of Payment/Lodgement of Security Bond Money*) must be signed and lodged by you or the person who paid, and the owner/agent. Financial institutions may have their own version of this form.

NOTE

If more than one person has paid the bond, such as in a shared house, it is important that the names of all those renting appear on the lodgement form, to protect their share.

The owner/agent must keep a record of the bond payment, with details of the date, amount, name and number of the account into which the amount was paid and you must be given a copy of the lodgement form. If the Bond Administrator holds the bond, then you will receive a record of the payment directly from the Department. If the bond is held in a prescribed account with a financial institution, the owner/agent should give you a copy of the lodgement form.

It is an offence if the bond is not deposited with the Bond Administrator, a prescribed account with an authorised financial institution or a real estate agent's trust account. If you believe that the owner/agent has not done this, you should ask us what to do.

If the ownership of a rented property changes, all tenants and the bond holder must be notified and the signatures changed over. If the bond is held with the Bond Administrator, Form 9 (*Notice of Variation of Security Bond*) must be signed by the new owner and the previous owner to notify the bond holder of the full name and address of the new owner or property manager.



In situations where joint tenants are named on the lease agreement and one or more decide to leave or is replaced by new joint tenants, with the consent of the



owner/agent, all parties can elect to change the lease agreement and have the bond paid out, then replaced by a new bond.

Alternatively Form 9 can be used to notify the bond holder of the change of tenants, so that at the end of the tenancy the bond can be paid out to you and the current tenants. The incoming tenant can pay the departing tenant their share of the bond.

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

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 owner/agent; or
- the bond money has not been paid into a REBA Tenancy Bond Trust Account (for real estate agents) or a Tenancy Bond Account with the Bond Administrator or a prescribed account with an authorised financial institution.

Rent

Paying rent

An owner/agent must not ask you for more than two weeks rent in advance before or during the first fortnight of a tenancy. After that, the agreement can provide for rent payments on a weekly, fortnightly, four-weekly or calendar-month basis or any other period that you and the owner/agent agree.

The owner/agent 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, ie one on which the date is some time in the future.

Receipts and records

If the rent is paid into an account at a bank, building society or credit union, the owner/agent does not have to give you a receipt as the bank record is sufficient to comply with the Act.

Where you pay rent direct to the owner, he or she must give you a receipt within three days. Real estate agents must give you a receipt immediately.

Rent receipts must show your name as the tenant, the date the payment was received, the amount paid, the address of the premises and the rental period covered by the payment. The owner/agent must keep a record of all rent paid.

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

Rent increases

The laws relating to rent increases vary, depending on what type of tenancy you are in.

In a **fixed-term tenancy**, rent cannot be increased during the term of the tenancy unless the agreement says so and it is at least six months since the last increase. The owner/agent doesn't have to give you notice of an increase if your fixed-term tenancy agreement is being renewed, because all conditions (including rent) are up for renegotiation at that time.

Owners/agents can provide for pre-arranged rent increases by a special clause in the written agreement at the start of the tenancy. For example, 'After six months the rent will increase by \$10 per week to \$300 per week from etc'.

The owner/agent may use an official Form 18 (*Notice to Tenant of Rent Increase Pursuant to Section 30*) to advise you of a rent increase or just write you a letter.

In a **periodic tenancy**, rent may be increased only at six-monthly intervals; but you must be given at least 60 days notice in writing, with details of the amount of the increase and the day it will take effect. You only have to pay the increase if you have been

given the proper notice. Rent cannot be increased in the first six months of a periodic tenancy, or less than six months after the previous increase.



Rent in arrears

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

Additional fees and charges

Generally, you should not expect to be responsible for any payments other than rent and bond.

Owners/agents 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.

This does not mean they cannot ask you to compensate the owner of the property where it is shown that by breaching the agreement you have cost the owner money.

Before you can be asked to pay a charge, it should be shown that the charge 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.

Boarders and lodgers

Boarders and lodgers are a special group of home-dwellers in terms of the law. Unlike most people who rent, they are not covered by the *Residential Tenancies Act 1987*.

Boarders generally stay at another person's house paying rent and are provided with meals. **Lodgers** stay at another person's house and pay rent but are generally not supplied with meals.

There are two main differences between a tenant and a boarder or lodger. A tenant has a right to 'exclusive possession' of the place where they are staying and a term of tenancy, ie the time he or she is given permission to stay in the house.

A right of exclusive possession means the right to exclude anyone, including the owner/agent, from the premises or the room you rent. This is different from 'exclusive occupation' or use, where you may have your own room in which no one else can stay without your permission.

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

Just because your room has a lock, it does not automatically mean you have exclusive possession of the room. The 'house rules' may state that the manager, owner/agent and/or owner is allowed to come into your room without your permission.

If your agreement includes cleaning, linen or meals, the owner/agent will need unrestricted access and you would not have 'exclusive possession'.

If you are renting all or part of a house from an existing or head tenant, they should have obtained approval from the owner/agent before you moved in. If this is the case, whether you are a **sub-tenant** or **lodger** depends upon the agreement between you and the head tenant. You are a sub-tenant if you both agreed you could have exclusive possession of all or part of the house, where you have the right to exclude anyone, including the owner/agent. This agreement must have been approved by the owner/agent before you moved in.

If you are staying in a room and paying rent to the head tenant as a lodger, the head tenant still needs the owner/agent's approval. However, you won't have exclusive possession of any part of the house.

If you are not sure if you are a tenant, sub-tenant, boarder or a lodger, please phone the Consumer Protection Advice Line on 1300 30 40 54 for advice or to request a copy of the publication *Boarders and lodgers*.

Accommodation related to employment

If your employer provides you with a home, you may be a boarder, lodger or tenant, depending on the circumstances.

If your employer provides you with a room in his or her home in return for services such as gardening, cleaning or general handiwork, instead of paying rent, you are **likely to be** a boarder or lodger. Where you are provided with a room and/or meals as part of your employment, you are also **likely to be** a boarder or lodger; in which case, your right to live in your employer's home may exist only as long as you continue to be employed.

If you rent a house provided by your employer which is not the employer's own home, you are probably a tenant and will have rights under the *Residential Tenancies Act 1987*, even if your employment comes to an end.

Whatever the arrangement, we recommend you put the agreement in writing and make sure it is signed by you and your employer.

Notice to leave

If you are a boarder or lodger, the owner/agent may ask you to leave – without any reason – at any time.

However, they must give you 'reasonable notice' to leave and to take your belongings. This may have been agreed to before you moved in – check any written agreement you may have. You should be able to agree on a reasonable time with your owner/agent, but be aware you may have to move out at short notice. What amounts to 'reasonable notice' depends on the circumstances of each situation, eg if you need to make arrangements to move furniture.

As a common courtesy, you should let the owner/agent know about a week in advance if you want to move out. You should give them time to do a check of your room and arrange for the return of any security bond you may have paid.

It is your responsibility to keep your room clean and tidy and report any damage you have caused other than normal wear and tear.

For more details on your rights and responsibilities as a boarder or lodger, phone the Consumer Protection Advice Line 1300 30 40 54.

If you have a problem, you should first try to resolve it by discussing it with the owner/agent. If this does not work, you should contact one of the legal advice agencies listed under 'Contact details' at the back of this booklet.

In some instances, you may be able to take civil action in the Magistrates Court. However, you should seek legal advice first. You should keep in mind that if you have failed to meet your responsibilities as a boarder or lodger, the owner/agent is also entitled to take civil action against you.



Once the tenancy begins

Minimising problems

Even with the best preparation, unforeseen difficulties between tenants and owners/agents may arise.

If you experience a problem, please refer to the list of contents at the front of this handbook and read up about the topic before making any decisions. 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 that you believe breach the tenancy agreement or the *Residential Tenancies Act 1987*.
- You have the right to have your complaints dealt with fairly.

It will help to avoid conflicts ending up in court if you:

- Make sure you have a written lease agreement that covers property maintenance, fixtures and fittings. Verbal agreements are a major source of residential tenancy disputes.
- Make sure that a property condition report is completed at the beginning and end of the tenancy.

Who's responsible in a tenancy?

Tenants and owners/agents have shared responsibilities.

When you move in, the owner/agent must have ensured that premises are in a habitable and reasonable state of cleanliness and repair.

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

The owner/agent can 'contract' out of their obligation to look after the property and can include a clause in the agreement requiring you to look after maintenance and repairs. Be careful about accepting this as it could be expensive!

Maintenance inside

While you are renting, the owner/agent must keep the premises in a reasonable state of repair and comply with building, health and safety laws. The owner/agent is normally responsible for the upkeep of the property, for example plumbing and the maintenance of contents already provided such as the refrigerator, stove, lounge, washing machine or air conditioner.

You are responsible for basic household maintenance like replacing light globes, vacuuming, cleaning windows, dusting and removing cobwebs inside and out and ensuring that 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 owner/agent.

Maintenance outside

You are responsible for garden maintenance, such as mowing and edging lawns, weeding, pruning and fertilising. The owner/agent 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 owner/agent. If the leak is obvious and you fail to report it, you may be liable for the costs of water lost. The owner/agent is responsible for maintenance to any garden reticulation system, cleaning gutters, 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, the owner/agent must ensure they are secure. Pool fencing laws changed in 2006. The Building Commission Division of the Department of Commerce produces several publications that are available on its website www.buildingcommission.wa.gov.au/bid/pool_barriers.aspx regarding the interpretation of pool fencing laws contained in Part VIII of the *Local Government (Miscellaneous Provisions) Act 1960*, Part 10 of the Building Regulations 1989 and the Australian Standard AS1926.1.

At the start of your tenancy, the owner/agent should make sure the water is clean and chemically balanced and the pool and equipment are serviceable. You should be provided with the necessary tools and equipment for day-to-day maintenance, eg vacuums and hoses.

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



Urgent repairs

Provided that the written agreement does not state otherwise, you can initiate urgent repairs

if the damage is likely to cause injury or undue inconvenience and you have made a reasonable attempt to notify the owner/agent of the problem. In such a case, you must not have caused the problem by failing to keep to the agreement, or through wilful or neglectful action.

You should advise the owner/agent of any urgent repairs that need to be done. You can write, telephone or serve them with a 'Notice'. If you can't contact them after making reasonable attempts, or you contact them and they take no action, you can then have the repairs carried out by a qualified tradesperson and claim back the costs. You should get at least two quotes. The urgent repair costs must be 'reasonable' and the tradesperson must give you a written report on the apparent cause of the problem.

Examples of urgent repairs are works necessary to fix:

- a burst water pipe or broken hot water system;
- a gas leak or electrical fault likely to endanger people or damage property;
- a sewerage system blockage or broken sewerage fitting;
- a serious roof leak;
- damage from flooding, storms or fire;
- a broken major appliance, such as a stove or refrigerator, if included in tenancy; or
- a broken air conditioning system if the property is in an area where it gets very hot.

If your tenancy agreement has been prepared by the Real Estate Institute of WA, you will find that it does not allow you to undertake emergency repairs.

NOTE

If you are a Department of Housing tenant you may not arrange your own emergency repairs as that department provides a 24-hour emergency repair service.

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:

Neglectful damage (You are liable)	Fair wear and tear (The owner/agent is liable)
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 sun.

Who is responsible for damage?

You must not intentionally or negligently damage property. If you cause damage, you must notify the owner/agent as soon as possible, at least within three days of it happening, 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 owner/agent's responsibility.

If your own property is damaged by a problem such as a ceiling collapsing or leaks from the roof, you may be able to claim the costs from the owner/agent.

Water

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

The owner/agent is responsible for paying the annual service charges (water rates).

Water Corporation bills are based on annual usage. The accounts are sent out every six months in Perth and every four months in country areas, including Mandurah. 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 will automatically charge you on a pro-rata basis at the rate that applied at the start of the annual billing cycle.

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 start of your tenancy.

The owner/agent 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 that it is recorded in writing – preferably in the property condition report or tenancy agreement.

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

Although you can be required to pay for all the water you use, some owners/agents will agree to pay part or all of the bill to cover the cost of maintaining lawns and gardens. Whatever is decided, make sure it is put in writing in your tenancy agreement.

To ensure that 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 want to know which Class your country town is in and what the rate is, either telephone the Water Corporation on 13 13 85 or visit their website: www.watercorporation.com.au for further information.

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 or water conservation measures contact the Water Corporation on 13 13 85 or go to www.watercorporation.com.au on the internet.



Electricity and gas

If there are separate meters for electricity and gas, you will probably be billed direct. If the property has common areas such as a shared laundry, reticulation or outside lights, the owner/agent must make sure there is a fair allocation of costs for power charges.

In relation to permanent caravan park residents, and some strata titled residents a Power Price Equity Scheme ensures that permanent residents pay the same for their power as other domestic customers and are also eligible for energy rebates. The scheme also ensures that permanent residents receive itemised electricity accounts that clearly separate electricity charges from other fees, including rental charges. Further information is available from Synergy at www.synergy.net.au.

Rates

Provided that the written agreement doesn't say otherwise, the owner/agent is responsible for paying local council rates.

Painting

The owner/agent is responsible for painting, unless you caused the damage.

You can carry out painting only if you have the owner/agent's permission. In such circumstances the owner/agent 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 owner/agent's consent, that permission should not be withheld or refused unreasonably. In all cases, get the owner/agent's permission first, and preferably also in writing.

Locks and security

The property should have adequate locks and other devices so that the premises are reasonably secure. Basically, to comply with the Act, there should be normal locks to external doors and all opening windows should be able to be secured by catches on the inside.

While many people believe that deadlocks and window security locks are required, it may not necessarily mean that the owner/agent is responsible for fitting them. The owner/agent's responsibility depends on a number of things, including the age, location and nature of the premises, the number of break-ins in the neighbourhood and whether current security devices are inadequate.

If you are concerned about security at the property and want additional security, such as alarms and external security lighting, get advice from Neighbourhood Watch online at www.nhw.wa.gov.au or Community Policing and get the owner/agent's permission. It may be in the best interests of both of you to discuss sharing the costs in an agreed percentage. If you reach an agreement, put it in writing.

You must not change the locks without the owner/agent's consent. Nor can the owner/agent remove or change them without your consent. There are large fines (up to \$4,000) for doing this.

The owner/agent is responsible only for taking out insurance for loss or damage to buildings and fixtures and fittings. This doesn't cover your household contents and personal items.

Pest and vermin control

As a general rule, any outbreak or infestation requiring treatment by a pest control operator is the responsibility of the owner/agent, who is also responsible for the annual inspection. Examples of infestation may be rats, mice, fleas, possums, cockroaches, termites, ants, spiders, wasps or bees.

Owners/agents are not responsible for infestations caused by your activities or lack of cleanliness. It is a good idea to guard against pests by storing food properly and using sprays and baits.

Your conduct on the premises

You must not cause a nuisance, for example making excessive noise that disturbs neighbours. You must not use the premises for any 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.

Generally, you are responsible for	Generally, the owner/agent is responsible for
The premises being kept clean and tidy and handing it back in a similar condition to that which it was in at the start of the agreement.	The premises being provided in a habitable and reasonable state of cleanliness and repair; complying with building, health and safety laws.
Basic household maintenance, replacing light globes, vacuuming.	Major repairs (eg plumbing) and maintenance of contents provided such as a refrigerator or washing machine.
General garden maintenance (mowing, weeding, pruning).	Major garden maintenance (tree lopping, maintenance of fire breaks). Provision and maintenance of sprinklers etc.
Day-to-day maintenance and upkeep 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 (vacuums, scoops).
Carpet stains and burns, breakages etc.	Costs arising from fair wear and tear (carpet wear, paint flaking).
Loss or damage to your personal property unless caused by a problem with the premises.	Repair of damage caused by a third party or events outside the tenant's control, (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 if there is any shared areas 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 (rats, mice, termites).
	Payment of local council rates.
	Locks to external doors and internal catches on windows being installed and maintained.

Inspections

The Act says that tenants are entitled to the 'quiet enjoyment of the property', ie your peace, privacy and comfort. However, the owner/agent has the right to inspect the premises:

- if you give permission at the time;
- in an emergency;
- at a 'reasonable' hour; but the owner/agent must give you seven to 14 days notice in writing, providing the date, the approximate time he or she will be coming, their reason for entering the property and the period of notice given;
- to collect the rent if it is paid weekly or less frequently and the agreement allows for it to be collected at the premises;
- when collecting the rent as above, but not more than once every four weeks;
- to carry out or inspect necessary repairs at a 'reasonable' hour after giving at least three days (72 hours) notice;
- to show the premises to prospective tenants in the 21 days before the end of an agreement, after giving you 'reasonable' notice; or
- to show the premises to prospective buyers, after giving 'reasonable' notice.

WHAT IS 'REASONABLE'

The Act doesn't define 'reasonable', as circumstances differ for all tenants. For example, some tenants are shift workers or have small children that sleep during the day. Therefore, what is 'reasonable' for one tenant can be very inconvenient for another. The solution is to reach mutual agreement about inspection times.





When things don't work out

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

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

The Act requires that formal Notices are 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 owner/agent has breached the agreement, you can write a letter or use a Form 20A *Notice of breach of agreement – by owner*. 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 20A is available from the Department website or phone the Consumer Protection Advice Line 1300 30 40 54 for a copy. It is important to complete **all** details, including your name (as the tenant), 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;
- the end of 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 owner/agent increases the rent by what you believe is an unreasonable amount, you can apply to the Magistrates Court for a reduction or to argue against a proposed increase.

The grounds for you going to court about rent might be that:

- since the tenancy began, there has been a significant reduction in the contents or facilities provided with the premises; or
- the owner/agent is putting up the rent to force you out.

If the rent is overdue

If a problem arises in making the rent payments on time, you should explain your financial situation to the owner/agent and arrange to pay the outstanding amount in full.

If you are behind in rent payments, or present a bad cheque, owners/agents can issue formal Notices under the *Residential Tenancies Act 1987*.

One day after the rent should have been paid, the owner/agent 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, then 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 owner/agent may issue a *Breach notice for non-payment of rent* (Form 21), requiring you to get up-to-date within 14 days or have the matter dealt with in court.

If you don't pay within 14 days, they 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.

An owner/agent cannot seize your belongings in lieu 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 owner/agent applies for an eviction hearing in the Magistrates Court, where both parties can put their case.

In this case an owner/agent 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 cat or dog on the premises when this hasn't been agreed to;
- sub-letting 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; or
- failing to water or maintain the garden and lawns.

If you breach the agreement the owner/agent can apply to the Magistrates Court seeking a court order saying you must fix the problem. Alternatively, they can give you 14 full days to rectify the situation by issuing a *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 an owner/agent has breached the agreement, you can serve a *Notice of breach of agreement – by owner* (Form 20A) in order to have the breach rectified.

If you cause serious damage to the premises, or your behaviour is such that the owner/agent believes you are likely to cause such damage or injury to the premises or to them, they may apply to the Magistrates Court for an order to end the agreement.



Ending a tenancy

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

If both you and the owner/agent 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 that 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 notice to end either a periodic or fixed-term tenancy. In such circumstances, the owner/agent must give you at least seven days notice in writing.

There are rare occasions when an owner applies to the Magistrates Court for the rental agreement to be ended on the grounds that, if it continues, they would suffer 'undue hardship'. In these circumstances the court will usually order the owner to pay some costs to the tenant.

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

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. The 21 days start from the day of personal delivery or the day following the postmark on your letter to the owner/agent.

If the owner/agent wants you to leave, they must give you a minimum of 60 days notice using a Form 1C *Notice of Termination*. 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.

Ending (or extending) a fixed-term tenancy agreement

A fixed-term agreement may be ended by written agreement signed by all parties. Although a fixed-term tenancy agreement is a legally binding contract, unforeseen circumstances may arise that mean you need to break the lease. For example:

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

In such situations, you are legally obliged to keep paying rent until the end of the fixed term, but there are ways to get a better outcome.

First, approach the owner/agent, explain the situation and seek their understanding and cooperation. Second, offer to try to find potential replacement tenants.

Be aware that, even if the owner/agent is cooperative and new tenants are found reasonably quickly, you may still have to pay for any loss of rent. Also you may have to pay for costs, eg advertising, incurred by the owner/agent in finding new tenants if this is specified in the rental agreement and justified by the circumstances.

If you wish to extend the tenancy, it makes sense for you to contact the owner/agent about one month before the expiry date, to agree whether or not the term of the tenancy is to be renewed.

Following discussions, you may sign a new tenancy agreement or confirm that you will leave on the expiry date.

If the fixed-term tenancy expires without other arrangements having been agreed, and if the rental payments continue unchanged, the tenancy will automatically become a periodic tenancy.

The periods of notice to end an agreement for periodic tenancies vary for each party, ie tenant or owner/agent. See the previous section 'Ending a periodic tenancy agreement'.

Some fixed-term tenancy agreements contain a clause requiring the tenant to give an amount of notice that they will be leaving. This is not legally correct and unlikely to be upheld in court.

During the 21 days before a fixed-term tenancy expires, the owner/agent is entitled to show prospective new tenants through the property after having given you reasonable notice.

The final inspection

The owner is entitled to expect his or her property to be returned to them in a clean and undamaged condition at the end of your tenancy.

Disputes between owners and tenants often arise because the property was not inspected at the time the lease expired. It is in your interest to make sure there is a joint inspection at the time you move out.

Sample letters you can send to the owner/agent are provided at the end of this section.

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 be charged rent until the keys are returned.

Using the property condition report that you and the owner/agent signed when you moved in, compare the condition of each item with the original details and discuss any problems, such as breakages, items missing etc.

If the owner/agent believes you have not cleaned the property to his or her satisfaction, or if minor repairs are needed, you will probably have to meet the costs involved to fix a problem .

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

REMEMBER

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

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

The 'rule of thumb' is that if the damage can be reasonably repaired, you only have to meet the repair costs.

If there are burns or stains, eg on a carpet, the owner/agent 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 that the carpet needs to be replaced, then you would be charged the cost of a replacement carpet of similar quality.

If it is agreed to change 'new for old', the owner/agent should allow for depreciation.

Once you have calculated and agreed with the owner/agent on a reasonable amount of money to deduct from the Security Bond, complete a *Joint application for disposal of security bond* (Form 4) and both sign it.

The form should show the amount to be returned to you and/or the owner/agent.

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



SAMPLE LETTER 1

from tenant to owner/agent seeking return of bond (request for inspection of the property)

(Your address)

(Telephone contact)

Dear Mr/Mrs/Miss/Ms (owner/agent)

Having completed a Residential Tenancy Agreement with you for the property at ... (address of rental property), I would 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, I request that we both sign Form 4 *Joint Application for Disposal of Security Bond*, 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)

SAMPLE LETTER 2

from tenant to owner/agent seeking return of bond (premises inspected: bond money not returned)

(Your address)

(Telephone contact)

Dear Mr/Mrs/Miss/Ms (owner/agent)

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).

I believe deductions of \$... (amount) for ... (if any) are fair because ... (give reasons).

Or: I disagree with your deductions because ... (give reasons).

I would like to arrange for both of us to sign Form 4 *Joint Application for Disposal of Security Bond*, 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. This applies to all tenants. Any other method of eviction is unlawful under the Act.

If you receive proper notice to end an agreement but refuse to leave, the owner/agent 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 owner/agent 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 that 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 *Fair Trading Act 2010* and can attract severe penalties.

Getting your bond back

At the end of a tenancy, bond money will only be paid out if you and the owner/agent agree, or if either party gets a court order.

If there is a dispute over how the bond money should be paid out, you can resolve it by negotiation or, if you are unable to reach an agreement with the owner/agent, by taking action in the Magistrates Court nearest to the rented premises. The Court will make an order as to how the bond money is to be paid out.

REMEMBER

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

If there is no dispute over the condition of the property, or you and the owner/agent have agreed how the bond money should be divided to pay for any damage, you and the owner/agent must sign a Form 4 *Joint Application for Disposal of Security Bond* and give it to the bond holder, eg bank. If the security bond is held in a real estates 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 4 signed by both parties.

NOTE

If you have received bond assistance from the Department of Housing the Form 4 should show the amount to be returned to you and/or the owner/agent and/or to be refunded to the Department of Housing.

If either you or the owner/agent refuse to sign the Form 4 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* (Form 6) for a decision on how the bond money should be allocated.

Once the *Application for Disposal of Bond Money* (Form 6) 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* (Form 5) 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).

Remember, going to court doesn't mean you will face high costs (see 'Going to court').

Abandoned premises or goods

If you abandon the premises without notice, then the Act says that the tenancy agreement has ended and the owner/agent can take control of the premises and possession of its goods, eg, furniture, clothing.

However, the owner/agent has to make certain that the premises have truly been abandoned, ie you haven't gone on holiday or suddenly been taken to hospital. Therefore, always notify the owner/agent if you are planning on leaving for an extended period of time and make the appropriate arrangements such as rent payments while you're away.

NOTE

If the owner/agent is certain that you have abandoned the premises, they may apply to the Magistrates Court for an Order to take possession and change the locks. Such an Order means you will not be able to move back in and could have to pay compensation for the costs involved in re-letting the premises and the loss of rental income while that happens.

The owner/agent cannot seize your goods or property as compensation for rent owing. This is against the law and may be considered theft.

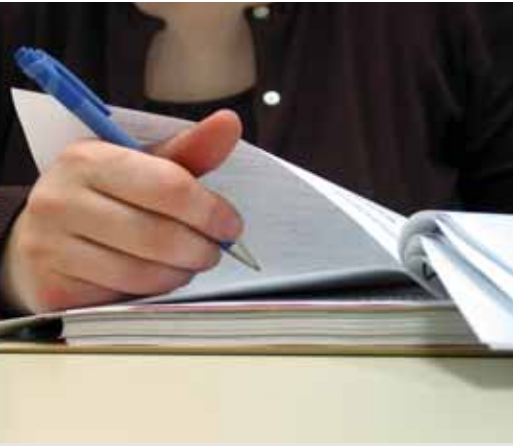
If you leave goods that belong to you at the property, the owner/agent should take action under the Act such as storing, selling or disposing of the goods.

If the goods are of little value, the owner/agent can apply to the Department for a certificate allowing them to dispose of the goods. If there are items of some value, the owner/agent 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 the owner/agent disposes of your goods and you disagree that he or she was entitled to do so, you should phone the Consumer Protection Advice Line on 1300 30 40 54 or the Tenants Advice Service on 9221 0088.

Right of owner to compensation

Property owners 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.



All about notices

What to issue

If either you or the owner/agent believes there has been a failure to meet parts of the tenancy agreement, 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 owner/agent.

NOTE

When a Notice is served under the *Residential Tenancies Act 1987*, 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 correctly.

Forms you may issue

For the following matters, use the form indicated:

If you believe the owner/agent has not kept to their part of the tenancy agreement – you may give the owner/agent a Form 20A *Notice of breach of agreement by owner*, or you can simply write stating the problem, eg, premises aren't maintained in good repair; locks not provided; your privacy is not observed and call on them to correct it within 14 days. Keep a copy for your records.

If they don't fix the problem, you can apply for an order from a magistrate for the work to be carried out, or seek assistance from, the Department. You can't hold back the rent to try to make them fix the problem that would break the agreement and they could apply to end the lease.

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 owner/agent a *Notice by tenant of termination* (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 in 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 owner/agent 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 owner/agent may issue

There are also a number of Notices and forms that owners/agents can use to deal with issues.

If they intend to inspect the premises they must give you seven to 14 days notice in writing. They can put the details like time, date and reason for entering in a letter or use Form 19 *Notice of intended inspection*. This form also details the circumstances in which the owner may enter the premises.

If they believe you have breached the agreement (other than by not paying the rent) eg damage to property; gardens not maintained, they may use the *Notice of breach of agreement* (Form 20) or they can simply write you a letter with the necessary details. If you fail to deal with the problem, they can apply for a court order to ensure that you do so, or take steps to end the agreement.

If they believe you have breached the agreement by not paying or are late paying the rent 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.
- *Notice of termination for non-payment of rent* (Form 1A). This is used if the outstanding rent is not paid within the 14 days. 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, then 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, then the action will not proceed.

If they want to end the tenancy for any reason other than you failing to pay the rent they may use *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 they want 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 they want 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 issue a Notice

Under the *Residential Tenancies Act* you can serve a Notice by handing it to the intended person or mailing it by ordinary post, but not by placing it in the tenant's letterbox yourself. The Act says that serving a Notice by mail takes effect from the time the letter would have been delivered by ordinary post.

You **should not** use certified mail for sending Notices.

If you are giving a Notice to an owner, you can give it to:

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

Where there are two or more owners, you need to give a notice only to one of them, although it 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 that has to be given to a person whose address is not known is regarded as having 'been served' if a copy of it is published in a daily newspaper which circulates generally throughout the State.

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 time for the letter to reach the recipient by ordinary post (usually allow two days in the Perth metropolitan area and more days for the country), but weekends and public holidays should be taken into account before the Notice period starts.

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

Proof that a Notice was served

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

Other forms that may affect you

The owner/agent must give you the form *Schedule 2 - Information for tenant (A statement of your rights and duties)* when you both sign the agreement at the start of the tenancy.

Security bond lodgement/record of payment (combined Form 1 and 8). This form is used to lodge bond money. Financial institutions may have their own version.

Record of payment of security bond (Form 1). This is used by owners/agents to inform you of the details of the account where your bond is held. If your bond is lodged with the Bond Administrator, a Form 1 will be sent to both you and the owner.

Joint application for disposal of security bond (Form 4). This is used at the end of the tenancy to return your bond money to you, to the Department of Housing or the owner.

Notice of intention to dispute application for disposal of bond money (Form 6). This can be used if you disagree with the way the owner/agent wants to dispose of your bond money. Available from the Magistrates Court.

Notice of Variation of security bond (Form 9). This form is used by agents when ownership or management (by an agent) of the rented property changes, for making changes to the record of bond payment details and for changes to tenant details.

Residential tenancy agreement (Form 24A) – a sample fixed-term agreement.

Residential tenancy agreement (Form 24B) – a sample periodic agreement.

Property condition report – a very comprehensive and useful sample form showing the contents of the premises and their condition. You can delete what is not relevant and add what is.

NOTE

The listed Notices and forms are available from the Department unless otherwise stated. You can download them from our website at www.commerce.wa.gov.au/tenancy or phone the Consumer Protection Advice Line on 1300 30 40 54 and we will post them to you.

Helpful advice

Bond Administration – a guide: this publication is a guide to tenancy bonds and how to lodge them with the Department's Bond Administrator and how to have them paid back. It is available from our website or by phoning 1300 30 40 54.



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 that you need to keep detailed records of your conduct and the owner's/agent's conduct in relation to the tenancy agreement.

Disputes between property owners 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 that are designed to keep the proceedings 'private and informal'.

The disputing parties may only be represented by an agent, eg by a lawyer, if the court agrees.

You will be expected to attend the court hearing unless you can give a good reason, such as being too ill or away interstate or overseas. If this happens, you can 'seek leave of the court' to be represented by an agent and must show the court that your agent has sufficient knowledge of the issue and your authority to act on your behalf.

The court may impose conditions on the hearing to ensure that no one will be disadvantaged by one party being represented by an agent.

If the court considers that a dispute could be resolved through mediation, the court may order the appointment of a registrar or someone else to be a mediator. The disputing parties may also agree to go to mediation, if the 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 that the court did not have jurisdiction to hear the case or that natural justice was denied, for example, you can show that 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 as to how this can be done.

The fee for the 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**:

- *Application for disposal of bond money* (Form 6) 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.
- *Court application* (Form 12) is used for general disputes, eg 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 consider only the items listed in the application, so give full details of the order you are seeking from the court, such as your privacy is not being observed.

Court staff will check the application and enter

NOTE

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

it as an official court document. With a Form 12 application, a hearing date will be set automatically.

In the case of a Form 6 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 owner 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 that you understand the section(s) of the Act on which you are basing your application or your defence, you may want to read the *Residential Tenancies Act 1987* or seek advice from the Department. We can give you general advice, but not legal advice. You can obtain legal advice from Community Legal Centres.

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 that they should bring.

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

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

Use this checklist:

- Do I have a copy of the tenancy agreement?
- Was the bond lodged correctly?
- Have I kept proper records of the rent I have paid and the date of the last payment?
- Did I receive receipts for rent paid, and are they in order for quick reference by the magistrate?
- If the rent was paid directly into a bank account, do I have the appropriate statements?
- Have I arranged for witnesses to appear at the hearing (if required)?
- Have I gone through my evidence thoroughly?

NOTE

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

On the day

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

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

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

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

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

Such a conference can be held to:

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

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

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

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

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

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

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

How the case is heard

The magistrate usually conducts the hearing in the following way (except in the case of a Form 6 *Application for a bond dispute*, where the owner 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 that 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 stories and have been cross-examined, you have finished presenting your case.

The decision

When both parties have finished telling their stories, 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.

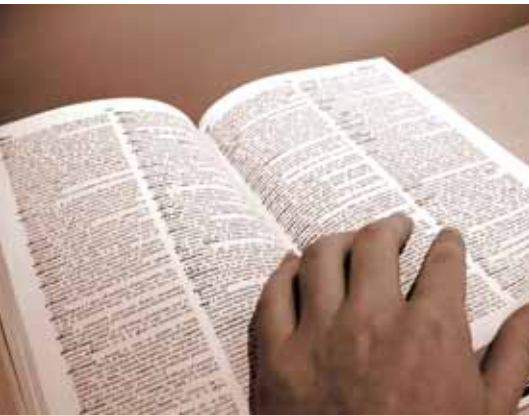
Orders handed down by the magistrate can include:

- 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 owner 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 you money but does not pay, 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*'. Contact the Consumer Protection Advice Line for a copy or go to our website to download a copy.

You can seek legal advice through a lawyer, Legal Aid, the Citizens Advice Bureau or at a Community Legal Centre – you may have to qualify for such assistance. The Tenants Advice Service may also be able to help you.



Glossary of terms in common use

Assign the premises:

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

Boarder:

An occupant who shares the owner's house, pays rent and receives some services from the owner, such as cooking or cleaning.

Bond:

Money paid by the tenant and held in trust by an independent third party 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 Act says the owner/agent or tenant cannot do or not doing something the agreement or the Act says he owner/agent or tenant should do.

Contract out:

To include a clause within a written agreement that excludes, modifies or restricts a provision of the Act.

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 sub-lets to another person (who is known as a 'sub tenant').

Landlord:

See 'owner', below.

Lease:

Another word for a tenancy agreement. A lease can be verbal or it can be in writing. A written lease should clearly state the terms and conditions of occupying the premises that have been agreed between both parties.

Lodger:

A lodger is similar to a boarder, has permission to occupy part of the premises under some degree of control and pays rent. Unlike a boarder, a lodger does not generally receive services such as cooking.

Option fee:

A fee charged to the prospective tenant while their application is being considered.

Owner:

The person who owns the property and who is entitled to collect rent. The owner can appoint an agent, but the agent has the same responsibilities as the owner.

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.

Property

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

Property condition report

A list 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.

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 owner/agent for the right to live in the premises.

Security bond

See 'Bond' above.

Sub-let

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

Sub tenant

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

Tenancy bond

See 'Bond' above.

Tenant

The person who rents the accommodation.

Termination of a tenancy

When the tenant, the owner/agent or the court ends a tenancy by:

- a) agreement; or
- b) the provisions of the *Residential Tenancies Act 1987*; or
- c) a court order.



Contact details

(details are correct at the time of publishing)

Tenants Advice Service	9221 0088
AlintaGas	13 13 58
Citizens Advice Bureau	9221 5711
Department of Commerce (Building Commission - pool fencing laws).....	1300 489 099
Department of Housing (formerly Homeswest).....	9222 4666 or 1800 093 325
Department of Local Government.....	9217 1500 or 1800 620 511
<i>(Caravan Parks & Camping Grounds Act 1995)</i>	
Law Society	9322 7877
Legal Aid (in Perth, Fremantle, Midland, Broome, Bunbury, South Hedland, Kalgoorlie and Christmas Island)	1300 650 579
Office of State Revenue	9262 1400
Pesticide Safety Section of the Health Department of WA	9285 5500
State Law Publisher	9426 0000
Translating and Interpreting Service.....	13 14 50
Water Corporation	13 13 85
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
Carnarvan Court.....	9941 1082
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



Further information

Department of **Commerce**
Consumer Protection Division
Building and Tenancy Industries Branch

Head office:

219 St Georges Terrace, PERTH WA 6000

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

Website:..... www.commerce.wa.gov.au/tenancy

Email:..... consumer@commerce.wa.gov.au

National Relay Service: 13 36 77

Regional offices

Goldfields/Esperance

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

Mid-West

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

Great Southern

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

South-West

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

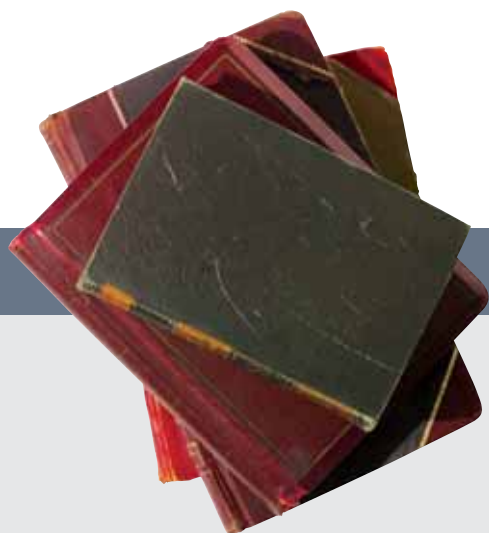
Kimberley

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

North-West

Unit 9, Karratha Village Shopping Centre
Sharpe Avenue, Karratha WA 6714
Administration: 9185 0900

A p p e n d i x



S t a n d a r d f o r m s

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 of Commerce website at www.commerce.wa.gov.au/tenancy or phone the Consumer Protection Advice Line on 1300 30 40 54 to request a copy.

Prescribed forms (must be used)	Suggested forms (can be used)
Form 1: <i>Record of payment of security bond</i> the Department has combined Form 1 and 8 however financial institutions may have their own version of this form	Form 8: <i>Lodgement of security bond money</i> (combined with Form 1 with the Department)
Form 1A: <i>Notice of termination for non-payment of rent</i> (to be used only if a (14 day) breach notice has been issued)	Form 18: <i>Notice to tenant of rent increase Pursuant to Section 30</i>
Form 1B: <i>Notice of termination for non-payment of rent</i> (to be used only if a (14 day) breach notice has not been issued)	Form 19: <i>Notice of intended inspection</i>
Form 1C: <i>Notice of termination</i> (for all reasons other than the non-payment of rent)	Form 20: <i>Notice of breach of agreement</i> (by tenant)
Form 2: <i>Notice to former tenant as to disposal of goods</i>	Form 20A: <i>Notice of breach of agreement</i> (by owner)
Form 3: <i>Notice as to disposal of goods</i>	Form 21: <i>Notice for breach of agreement to pay rent</i>
Form 4: <i>Joint application for disposal of security bond</i>	Form 22: <i>Notice by tenant of termination</i>
Form 9: <i>Variation of security bond money</i>	Form 24A: <i>Fixed-term tenancy agreement</i>
Schedule 2 <i>Information for tenant (A statement of your rights and duties)</i>	Form 24B: <i>Periodic tenancy agreement</i> (no fixed term)

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.



Government of **Western Australia**
Department of **Commerce**

Consumer Protection Division

Forrest Centre
219 St Georges Terrace
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
Facsimile9282 0854

Translating and Interpreting Service
ask for connection to 1300 30 40 64131 450

National Relay Service13 36 77

Email addressconsumer@commerce.wa.gov.au

www.commerce.wa.gov.au/consumerprotection

REGIONAL OFFICES

Goldfields/Esperance

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