



Department of Local Government,  
Industry Regulation and Safety



# Renting out your property

## A landlord's guide



A guide that explains your  
rights and responsibilities  
as a landlord.



## Disclaimer

The information, including advice (information) in the Department of Local Government, Industry Regulation and Safety's (department) *Renting out your property – a landlord's guide* (the Guide), is provided by the officers of the department in good faith and derived from sources believed to be accurate and reliable at the time of publishing. Changes in circumstances after information is published in the Guide may influence its continued accuracy over time. The information provided is of a general nature only and is provided solely on the basis that you are responsible for making your own verification and assessment of it. If necessary, you should obtain your own independent advice and legal advice in relation to your own particular circumstances.

The information provided should not be understood to waive any legal obligations of persons/entities to you, including persons who provide financial and real estate services.

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# What we do

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

The department's role is one of mediation and conciliation. For most disputes about keeping a pet or making a minor modification, the Commissioner may make a decision to resolve the dispute. For other matters, if a dispute arises between the landlord and the tenant and the dispute cannot be resolved, either party may apply to the Magistrates Court.

The department is however legislated to provide a bond management service for landlords/agents and hold the tenant's money. All new bonds must be lodged with the Bond Administrator. This is a free service.

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

Our website [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au) 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*, the *Residential Tenancies Regulations 1989* and the *Residential Tenancies Amendment Act 2024*.

This publication is free. The department has no objection to landlords/agents, tenants or others copying parts or all of the text.

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

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# Introduction

If you are currently renting out a residential property in Western Australia or thinking of doing so soon, the information in this Guide will help you avoid many common renting pitfalls.

Renting in Western Australia is governed by a set of laws called the *Residential Tenancies Act 1987* (the Act), *Residential Tenancies Regulations 1989* (the Regulations) and the *Residential Tenancies Amendment Act 2024*. You can view or download copies of the Act and Regulations online at [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au). We advise you to periodically check for updates.

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

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

## The Act covers:

- the role of the department and the Magistrates Court;
- prescribed tenancy agreements and other prescribed/required documents/forms;
- documents you are required to give to the tenant;
- use of the rental property;
- discrimination against applicants with children;
- options for tenants affected by family and domestic violence (FDV);
- urgent repairs;
- fixtures, renovations, alterations and additions;
- right of entry by the landlord;
- payment of rent and rent increases;
- security bonds;
- assignment and subletting;
- who pays rates and taxes;
- ending a tenancy;
- giving of notices;
- rent bidding;
- retaliatory action;
- pets; and
- Commissioner's determination.

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

This publication covers agreements entered into from 29 July 2024.

For agreements entered into prior to 29 July 2024 contact Consumer Protection on 1300 30 40 54 or email [consumer@lgirs.wa.gov.au](mailto:consumer@lgirs.wa.gov.au)

## Please note

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

- boarders/lodgers (see below);
- holiday accommodation;
- most long-stay residential park tenants;
- hotels/motels;
- colleges;
- educational institutions (unless a for-profit organisation prescribes the accommodation);
- hospitals/nursing homes/clubs; or
- certain homes for aged or disabled persons.

If you have any doubts about whether your rental situation is covered by the Act please contact Consumer Protection on 1300 30 40 54.

## Boarders and lodgers

To understand your legal obligations and to avoid costly court disputes, you should work out if you are providing accommodation to a tenant, boarder or lodger. Boarders and lodgers are a special group of home dwellers in terms of the law. Unlike most people who rent, they are not covered by the Act, however, it is important to know they still have certain rights under common law.

A tenant is a person who pays rent and in return is granted a right to occupy a residential property, whether exclusively or not, as long as they are not a boarder or lodger. A boarder or lodger is an occupant who stays in another person's house, and pays for accommodation and domestic services, such as cooking and cleaning.

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

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

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

## Your obligations to boarders and lodgers

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

Your obligations as a service provider to boarders and lodgers are also covered by the *Fair Trading Act 2010*, which incorporates the Australian Consumer Law (ACL).

For more information, please contact Consumer Protection on 1300 30 40 54, or visit [Boarders and lodgers](#)

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

## Residential parks, long-stay tenants

The Act also covers residential park tenants who 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 tenants of residential parks who started long-stay tenancy agreements after 3 August 2007.

Several publications and more information can be found at [Residential parks](#)



# Getting started

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

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

## Agent or DIY?

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

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

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

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

## Using an agent

### Selecting an agent

Real estate agents (agents) must be licensed and the sales representatives and property managers, who work under their supervision, must be registered.

If you choose to use an agent, then consider:

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

When seeking an agent to manage your property it is a good idea to seek recommendations from friends and family.

### What to expect of an agent

If you decide to engage an agent, you will need to give the agent written authority to act on your behalf. The document, 'Exclusive Authority to Act as Managing Agent for Residential Premises' (Management Authority), is generally used for this purpose. The agent will have a copy of the agreement they use and it provides for you to nominate a fixed term for the management of your property by the agent.

The Management Authority must include:

- the services to be provided;
- the address of the property to be managed;
- the method by which any payment to be made by you is calculated and an example of that calculation; and
- a clause advising you that where there is a dispute between you and the agent relating to the payments charged, you may seek assistance from Consumer Protection.

You will need to consider what role you want the agent to take in the management of your rental property and make sure that is reflected in the Management Authority.

You will generally pay a "letting fee" at the start of any new agreement with a tenant. Also, if you use an agent just to find a tenant and to deal with the bond, then you need to ensure that the terms of the Management Authority you sign with the agent specify just that arrangement or you may find yourself responsible for additional costs including advertising.

If you use an agent to manage the property and/or collect the rent, then there will be a fee for that. That fee is generally charged monthly and called a management fee. The management fee can be a set dollar amount per month or could be a percentage of monies collected. Those monies could include rent and payments received for utilities.

Some expenses associated with your rental property, including fees paid to your agent, may be tax deductible. The Australian Taxation Office provides information about [deductions](#) that may be made for a rental property or you can seek taxation or financial advice from an accountant or a licensed taxation adviser.

**Be aware** that if you use another agent to find your tenants after you have given exclusive authority to one agent, you could be liable to pay a fee to each agent.

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

- advice on matters such as rental values, rent reviews, insurance and any repairs that should be done before the property can be let;
- advertising for tenants;
- selecting tenants and letting the property;
- collecting and lodging the bond with the Bond Administrator (the department) in accordance with the Act;
- collecting rent payments;
- preparing a property condition report at the start of the tenancy and checking the property's inventory;
- inspecting the property and ensuring it is suitably maintained;
- paying accounts, such as water service charges, council rates;
- providing you with regular financial statements;
- attending court on your behalf in any disputes with tenants;
- submitting applications to the Commissioner for Consumer Protection's determination process; and
- at the end of the tenancy, preparing a final property condition report and finalising matters relating to the bond.

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

- How often do you want inspections to take place? (The Act allows for four routine inspections in a 12-month period.)
- How do you want to receive your copy of the property condition reports and inspection reports?
- If a rental payment is late, when do you want to be told?
- How do you want to receive information?
- Will you or the agent pay any expenses related to the property, e.g. regular maintenance, water bills, local government rates or landlord insurance?
- Does the agent provide an internal dispute resolution process?

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

Make sure the agent gives you a copy of the agreement and that you keep it in a safe place.

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

You can find additional information in the publications [You and your property manager](#) and [Real estate fees – negotiating with an agent](#), which are available from the department's website.

## When things go wrong

The Management Authority you sign to authorise an agent to manage your property is a legally binding contract. This means that both you and the agent are obliged to fulfil the requirements of the Management Authority.

The Management Authority can vary between agencies, so it is important you read the contract carefully. Although many agents are part of Real Estate Institute of Western Australia's (REIWA) membership, and use a REIWA contract, the terms are able to be negotiated, altered or struck out with the agreement of both parties. To avoid misunderstandings or problems later on, it is important to include all agreements between you and your agent in the Management Authority. You and the agent should sign and date any special requirements that are added to the standard contract. If you believe the agent is not fulfilling their obligations under the Management Authority, there are steps you can take to enforce your rights.

Generally a dispute resolution process would involve the following steps:

### Step 1

Have a discussion with the agent and explain that the service is not meeting your expectations as they are set out in the Management Authority. Offer an acceptable solution and give a timeframe for when you expect the issue to be resolved.

Follow this up in writing and include the clauses of the Management Authority that have not been satisfied, as they are set out in the Management Authority.

### Step 2

If you are not satisfied with the response provided you should escalate your complaint to the Licensee or the person in bona fide control of the agent.

### Step 3

If a solution is not able to be reached that is satisfactory to you, refer back to the Management Authority for information about how to terminate the agreement. You can generally terminate the Management Authority if the agent has failed to substantially perform its obligations under the Management Authority and does not address that failure within 28 days after you have provided written notice of the failure to the agent.

You should keep a copy for your correspondence. It may also assist to post a copy to the agent. If you terminate an agreement without providing the proper notice and without adequate reason, the agent may seek damages to which it would otherwise have been entitled. The extent of damages that may be claimed should be expressed in the Management Authority e.g. an amount equal to 50 per cent of the management fee.

An agent also has the ability to terminate the Management Authority.

The department regulates certain aspects of conduct by a licensed agent however, not all complaints will be investigated.

It is important to remember that you have a Management Authority with the agent and if you are having difficulties enforcing the Management Authority, or where you are seeking to be compensated for anything, this is a civil matter between you and the agent.

You may need to consider your own legal action if you are unable to resolve the matter with them and you should consider seeking legal advice prior to taking any action. You may also wish to consider whether or not to terminate the Management Authority with your agent and either seek to manage the property yourself or appoint a new managing agent.

### **Terminating a Management Authority at the end of a fixed-term period**

If your agent uses the REIWA standard Management Authority, you will need to provide 28 days' notice in writing to the agent of your intention to terminate the agreement. After that date the previous managing agent will be unable to accept any payments in relation to the property as they do not have authority to do so. During the notice period you will be responsible to engage another agent or, if you intend to manage the property yourself you will need to notify the tenant in writing of the new arrangements for the payment of rent and the date the new arrangements will commence.

If your agent does not use the REIWA standard Management Authority you should refer to the relevant clause on terminating the agreement on how notice is to be provided and what time frames apply.

You should have copies of existing agreements and property condition reports from the commencement of an existing tenancy. If you have previously elected not to receive copies of these documents, it is reasonable for the previous managing agent to provide electronic copies to you upon your request. The previous managing agent should also advise you of the status of the rent ledger at the end of the agreement and pay out any monies held in the trust account.

## **Managing the property yourself**

### **Advertising your property for rent**

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

Listing your property online allows you to list your rental property by location, size, rental cost etc., and include a photo/s. If your property is vacant, it is a good idea to provide only general details of the location (such as the suburb).

### **Choosing tenants**

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

The 'ideal' tenant will:

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

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

- get references – employment and personal – and photo identification and check them;
- meet the tenant at the property to discuss their references and the property; and
- you can also check the tenant's previous rental history.

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

You cannot refuse a tenancy because the tenant intends to have a child live at the property.

The *Equal Opportunity Act 1984* prohibits discrimination, including discrimination against potential tenants, on a range of grounds including age, sex, race, impairment, marital status, pregnancy, family responsibility or family status, pregnancy, religious or political conviction, sexual orientation, gender history or the publication of details on the Fines Enforcement Registrar's website.

## Minors

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

## Tenancy databases

### What is a residential tenancy database?

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

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

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

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

If you usually use a tenancy database to check a tenant's rental history, you must give each applicant for a tenancy agreement a written notice containing certain information. A sample notice ([Form 18A](#)).

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

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

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

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

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

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

For more information on tenancy databases see section 'Tenancy databases'.

### Inform prospective tenants about the property

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

You should disclose to prospective tenants what services, amenities or appliances in the property are or are not available or functioning and if you intend to fix these items, before entering into the tenancy agreement. See section [Who's responsible in a tenancy?](#) for more about maintenance requirements.

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

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

If there is an impediment or inability to connect services like telephone or internet at the property, you should disclose this to the prospective tenant. If the property is not connected to scheme water or gas is not mains connected, the tenant will need to know its availability and the average annual cost so they can make an informed decision. See section [Water, gas and electricity bills](#) for more information.

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

### Non-sewered properties

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

It is also a good idea to provide your tenant with information about what cannot be disposed when using a septic system to prevent misuse of the system.

### Option fees

An option fee is money paid by prospective tenants to the landlord or agent when lodging a rental application.

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

The amount that you can charge depends on the weekly rent and the property's location, as shown below:

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

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

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

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

### Rent bidding

Landlords and their agents are prohibited from asking or pressuring prospective tenants to pay more than the advertised rent.

Rental properties must be advertised or offered at a fixed amount and not in a range or "from" a particular amount.

Landlords or their agents may accept above the advertised rate if freely offered by the prospective tenant.

### Fixed-term or periodic tenancy?

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

#### Fixed-term tenancy

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

A fixed-term tenancy agreement may also state whether the tenant can automatically renew the tenancy at the end of the original period and/or provide for renewal of another fixed term. The fixed-term agreement should state the conditions for an option to renew, including the maximum extent of any rent increases that may apply.

If the tenancy agreement contains an option to renew for a further period, the choice is usually the tenant's, unless the written agreement states otherwise.

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

If a new tenancy agreement has not been agreed, and neither party has issued a notice to terminate the fixed-term tenancy agreement prior to the expiry date, the tenancy will automatically become a periodic tenancy. The rent cannot be increased for the first 30 days of the periodic tenancy.

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

A fixed-term agreement provides more secure rental income but you have less flexibility to end the agreement, for example a sudden change in your circumstances may mean you want the tenants to leave before the end of the term and they may not agree to do so.

## Periodic tenancy

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

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

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

**Note:** Notices for a periodic tenancy differ from fixed-term agreements. See section [When things don't work out](#).

## Prescribed tenancy agreement

If you enter into a written residential tenancy agreement (fixed-term or periodic) you must use the prescribed [Residential tenancy agreement](#) (Form 1AA). Please check the Consumer Protection website for updated forms.

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

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

In 2013, the Organisation for Economic Co-operation and Development (OECD) reported that 12.6 per cent of Australian adults were unable to determine the meaning of a simple sentence, so taking the time to explain the terms of the agreement to your tenant(s) could be important.

The clauses in a prescribed tenancy agreement must not be altered. You can insert additional clauses in Part C of the agreement. These clauses cannot contradict the provisions of the Act as it is against the law to contract out of any section of the Act (except where the Act specifically provides otherwise).

An agreement entered into before 1 July 2013 is exempt for the life of that agreement regarding obligations that were legitimately contracted under the former legislation.

Any additional conditions should also comply with the unfair contract term provisions of the *Fair Trading Act 2010* incorporating the ACL. For further information about unfair contract terms call the Consumer Protection Contact Centre on 1300 30 40 54.

[Residential tenancy agreements and forms](#) are available for free to download from our website. You should always download a new copy of the agreement at the start of each tenancy, as the form may have changed.

## Sub-letting

In the tenancy agreement you should indicate whether you will agree to a sub-letting arrangement and whether your agreement is required to be in writing.

Sub-letting is when a tenant rents out all or part of the property to someone else. The letting tenant becomes the head tenant. The relationship between the head tenant and the sub-tenant is the same as the relationship between the landlord and the tenant, in that the head tenant takes on the responsibilities of a landlord. These responsibilities include:

- collecting money for rent, bond and other bills;
- property condition reports and inspections; and
- organising repairs and maintenance (through their own landlord/agent).

You should ensure that any tenancy agreement between a head tenant and a sub-tenant is not for a period longer than the head tenant's agreement.

If a head tenant ends their tenancy, the sub-tenants may not have the right to remain in the property without your permission.

Any remaining sub-tenant/s wishing to remain in the property at the end of the head tenant's tenancy agreement will need to negotiate a new tenancy agreement with you, or the person replacing the head tenant. The bond held by the head tenant would then need to be varied using a [Variation of Security Bond](#) form.

## Penalties

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

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

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

## Rent increases

Rent can only be increased during a fixed-term tenancy if the tenancy agreement stipulates the amount of the increase or method of calculating the increase. Where a fixed-term tenancy agreement exceeds a period of 12 months the amount or method of calculating subsequent rent increases should be included in Part C of the tenancy agreement.

Rent can only be increased twelve months from the commencement of the tenancy agreement or twelve months from the commencement of the last rent increase.

To increase the rent an agent or landlord must use the Notice to tenant of rent increase (Form 10) (except where the rent is calculated based on the tenant's income) to give at least 60 days' notice of a rent increase. The notice includes details of the amount of the increase and the day it will take effect. For more information on rent increases see section [Rent increases](#) in [Once the tenancy begins](#).

## Security bond

A security bond is a payment made in advance by the tenant to cover any costs for which the tenant may be liable at the end of the tenancy, for example unpaid rent, outstanding water use charges, damage to property or chattels including common areas and chattels within a common area, where relevant.

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

If more than one person has paid money as part of the bond, it is important the names of all the parties appear on the lodgement form, to protect each person's share (see section [Co-tenancy](#) in [Shared tenancies](#)).

If you have more than one rental property, or more than one tenancy agreement per property, you must have a separate bond for each tenancy agreement (see [Rooming arrangements](#) in [Shared tenancies](#)).

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

## Pet bond

A landlord or agent can use the pet bond of \$260 in addition to the regular bond to clean mess and fix damage a pet has caused. The pet bond is not just for fumigation. A pet bond cannot be taken for assistance dogs.



### Note:

The keeping of certain dogs, such as American Pit Bull Terriers is restricted under the Dog Regulations 2013. For advice on the legality of any pet your tenant may want to keep, contact your local council ranger, vet or the Department of Local Government, Industry Regulation and Safety.

## Receiving and depositing the security bond

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

All security bonds, including partial payments, must be lodged with the Bond Administrator (a section of the department) as soon as practicable and in any event within 14 days of receipt. If you do not pay the bond money to the Bond Administrator within 14 days of the receipt of the bond you will be in breach of the Act and can be prosecuted.

The Bond Administrator will send you and the tenant a record of the payment. Bonds can be lodged by email to [bondsadmin@lgirs.wa.gov.au](mailto:bondsadmin@lgirs.wa.gov.au), by post or in person at 303 Sevenoaks Street, Cannington or one of the regional offices listed on the back page of this guide. Alternatively, if you are eligible to use [BondsOnline](#), bonds can be lodged electronically using eTransactions.

The service is free and the interest on residential tenancy bond accounts goes towards the cost of administration, dispute resolution and tenancy education, such as this Guide.

For more information on lodging bonds with the Bond Administrator you can obtain the publication [Bond administration](#) from the department's website.

## Department of Communities (Housing)

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

### Property condition reports

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

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

At a minimum the property condition report should be in the same format and contain all the information stated within the [Property condition report](#) (Form 1) available free from the department's website. You can add more detail to this form if you wish.

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

It is advisable for the report to describe the condition of any lawns or garden beds, including shrubs and trees, plus the type and number of garden sprinklers and the condition of the bore or reticulation system. Don't forget to include sheds and fences.

If there is a swimming pool or spa, it's a good idea to record its condition and note the accessories and cleaning equipment and check it complies with pool safety laws. For more information on swimming pools, see section [Swimming pools and spas in Safety and Health](#).

### Provide two copies to the tenant

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

The tenant then has a further seven days to mark any disagreement on the two copies of the property condition report and return one marked up and signed copy to you. If the parties do not agree, the property condition report is not considered to reflect the condition of the property at the commencement of the tenancy.

You and the tenant(s) may wish to meet to view the property jointly and compare the differences in an attempt to resolve any disagreement. If there is a dispute at the end of the tenancy, a court may look at the marked up copy and other evidence.

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

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

The tenant is not liable for normal wear and tear. See section [Who's responsible in a tenancy?](#)

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

### Documents and information you must give to the tenant

At the commencement of the tenancy you must give the tenant:

- A copy of the prescribed [Residential tenancy agreement](#) (Form 1AA) (if using a written residential tenancy agreement):
  - when the tenant signs it; and
  - within 14 days of all parties signing the agreement.
- A copy of the [Information for tenant](#) (Form 1AC):
  - If there is a written tenancy agreement, the Form 1AC is to be provided at the time of entering into agreement.
  - If there is a verbal tenancy agreement, the Form 1AD must be provided within 14 days after the tenant takes possession of the property.
- A copy of any applicable strata or community titles by-laws.
- Two copies of a completed [Property condition report](#) (Form 1), as detailed above.

- If the tenant is paying a security bond, you must provide them with a completed [Lodgement of security bond](#) form to sign so it can be lodged with the Bond Administrator. If you are eligible to use [BondsOnline eTransactions](#), this can be done electronically and the tenant will be sent an email asking them to approve the details online.
- A receipt for the security bond must also be provided showing the date, amount, who paid and the address of the property.
- Your full name and address. If the property is managed by a real estate agent, they will provide your name but their address.

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

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

## Water, gas and electricity bills

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

The prescribed tenancy agreement requires you to indicate whether the electricity, gas and water services to the rental property are separately metered. If there is no separate metering for any of these services, the prescribed tenancy agreement requires you to include a calculation showing how the tenant's costs will be worked out. For example, a calculation for electricity may be as follows:

$$\begin{array}{|c|} \hline \$ \\ \hline \text{total} \\ \text{amount} \\ \text{of bill} \\ \hline \end{array} \div \begin{array}{|c|} \hline \text{total} \\ \text{number of} \\ \text{bedrooms} \\ \text{in the} \\ \text{apartment} \\ \text{block} \\ \hline \end{array} \times \begin{array}{|c|} \hline \text{number of} \\ \text{bedrooms} \\ \text{in the rental} \\ \text{property} \\ \text{in this} \\ \text{tenancy} \\ \text{agreement} \\ \hline \end{array}$$

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

It is also important to note, regardless of whether these services are separately metered or not, the tenant is only obliged to pay a utility bill if you have provided the tenant with written notice of the charge, within 30 days of you receiving the bill from the public utility provider.

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

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

1. If the property is separately metered:
  - total charge for the tenant's consumption;
  - the meter readings and the charge per metered unit; and
  - the amount of GST payable.
2. If the property is not separately metered:
  - total charge for the tenant's consumption;
  - the charge calculated by the method previously agreed to in writing by you and the tenant (either in the prescribed tenancy agreement or in a separate written agreement); and
  - the amount of GST payable.

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

Unless you provide the tenant with the notice of the utility charge within 30 days of receiving the bill from the provider the tenant is not responsible to make the payment.

## Special meter reading – water

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

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

## Water where there is no mains supply

Where there is no mains water supply you are responsible for maintaining the water storage facilities. The tenancy agreement should specify who has responsibility for ensuring the supply of and payment for the supply of drinkable water. An agreement may also include a term which requires a tenant to leave a full tank of drinkable water at the end of a tenancy agreement if a full tank was provided at commencement.

## Gas cylinders

If the tenancy agreement stipulates that gas is separately metered and there is no mains supply the responsibility for costs will depend on whether the gas account is in your name or the tenant's. The agreement should state if you or the tenant is responsible for the supply of gas.

Where the tenant is required to engage a gas cylinder supplier the tenant will be responsible for paying all charges imposed by the supplier and should ensure that the account is finalised at the end of the tenancy. As gas cylinders remain the property of the supplier, the vacating tenant is entitled to have the cylinders relocated (by the gas cylinder supplier) to another property at the end of the tenancy.

If you maintain the gas bottle supply to the property in your own name you can only pass costs to the tenant if the method of calculating the gas consumption charges are included in the tenancy agreement. If the agreement does not include references to charges for consumption, portage costs or supply you are responsible for these costs.

An agreement may also include a term which requires a tenant to leave a full gas cylinder at the end of a tenancy agreement if there was a full gas cylinder provided at commencement.

## Before tenants move in

Aside from anchoring furniture to ensure the safety of a child or a person with a disability, you can specify in the tenancy agreement whether or not you allow the tenant to attach fixtures, renovate or alter the property. This could include the right to hang pictures etc.

If the agreement says these changes can be carried out only with your consent, that permission should not be withheld or refused unreasonably. The tenant should obtain your permission first and preferably in writing, other than when necessary to prevent family and domestic violence (see section [Tenants affected by family and domestic violence](#)).

## Before tenants move in

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

What you **must** do:

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

What you **should** do:

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

It is your responsibility to ensure the rental property is safe to live in. Under common law, you have a duty of care to tenants as well as anyone the tenant invites onto the property.

## Keys

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

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

## Minor modifications

To help make a rental feel like a home, small, personalised changes (known as minor modifications) will be allowed in most cases, however tenants must seek permission.

If the modification is on the list that is prescribed in the Residential Tenancies Regulations, you will only be able to refuse consent in limited circumstances.

You will be able to refuse the request without making an application to the Commissioner for Consumer Protection in a few situations, such as where the modification would disturb material containing asbestos or a written law or scheme by-laws prohibit making the modification.

You will be able to make an application to the Commissioner for Consumer Protection to refuse in other circumstances such as where the modification would result in additional maintenance costs, would make the property unsafe or the action required to reverse the modification is not reasonably practical.

You may also impose reasonable conditions on making the modifications. For some modifications this includes that the work must be undertaken by a qualified person.

Unless otherwise agreed, the tenant will be required to either restore the property to the condition it was in immediately before the changes were made (allowing for fair wear); or pay an amount equal to the reasonable cost of restoring the property.

Visit the [Making changes to a rental home](#) page for more information including the list of modifications.



## Safety and health

### Minimum levels of security

Residential tenancy laws in Western Australia have always required landlords to provide and maintain locks or other devices to ensure a rental property is 'reasonably secure'. Minimum levels of security standards have now been defined with regard to door locks, window locks and exterior lights and your rental property must meet these standards.

These security measures include:

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

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

Exclusions apply, including residential properties that are on the Register of Heritage Places, and land zoned for agricultural or rural use under a local planning scheme.

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

Further information is available from the department's website and in the fact sheet [Minimum levels of security](#).

## Residual current devices (RCDs)

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

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

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

For more information visit [RCD safety switches](#) or call Energy Safety on 1300 48 90 99.



## Smoke alarms

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

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

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



### Note:

A smoke alarm must be replaced when it reaches its expiry date, or, if there is no expiry date, when it is 10 years since installation.

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

For more information, visit the [Department of Local Government, Industry Regulation and Safety – Building and Energy](#) or the [Department of Fire and Emergency Services](#) websites.

## Swimming pools and spas

In Western Australia, private swimming pools and spas with water that is more than 300mm deep must have a compliant barrier installed. This is intended to help prevent the drowning deaths and injury of young children under the age of five years.

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

It is your responsibility to ensure safety barriers are compliant and in a workable condition and to provide any equipment to properly maintain and take care of the pool or spa, such as scoops or vacuums. At the start of the tenancy, you should make sure the water is clean, chemically balanced and the pool and equipment are serviceable.

Unless the written agreement states otherwise, it is the tenant's responsibility to keep the pool or spa clean and maintained, including the ongoing chemical supplies. It is also their responsibility to keep the safety barrier shut and ensure objects that can be climbed on, such as garden furniture, are kept away from pool and spa fences. The tenant must ensure gates and latches are in good working order and advise you if the barrier is damaged or not working properly and you must repair it as soon as practicable.

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

If the tenant sets up a portable pool or spa that is capable of holding more than 300mm of water, they are responsible for any safety requirements such as pool barriers. It is advisable to include in any tenancy agreement that the tenant would need to obtain permission to erect any pool over 300mm and that if approved the tenant would also be required to provide regulation fencing. The tenant must ask the landlord for permission to install a portable pool or spa and barrier, and must comply with any local government requirements.

Further publications can be found at [Swimming pool and spa safety barrier requirements](#)

## Internal blinds, curtains and window fittings

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

Mandatory requirements for corded internal window coverings were implemented in January 2004, due to the risk of strangulation to children through curtain and blind cord fittings.

Under common law you have a duty of care to tenants, as well as anyone the tenant invites into the property and must ensure the property is safe to live in.

You need to check for hazards on existing cords or strings, even if they were installed before the order was made. If a cord or chain for a blind or curtain hangs lower than 1.6m from the floor then it must be secured by a safety device.

More information is available in the publication [Obligations of landlords – corded internal window coverings](#) which is available on the department's website.

## Affixing furniture

Tenancy laws now allow tenants to anchor furniture in the property with your permission to ensure the safety of a child or a person with a disability. You may only refuse permission if the property is on the Register of Heritage Places, is under strata laws which prevent the anchoring, or if the anchoring would disturb asbestos material.

The tenant must submit a [Request to landlord to affix furniture](#) (Form 24) if they wish to anchor any furniture.

Aside from anchoring furniture to ensure the safety of a child or a person with a disability, you can specify in the tenancy agreement whether or not you allow the tenant to attach fixtures, renovate, or alter the property. If the agreement says these changes can be carried out only with your consent, that permission should not be withheld or refused unreasonably. The tenant must obtain your permission first and preferably in writing.

The tenant is responsible for removing any affixed items from the walls when they vacate the property and for either repairing or paying for repairs to any damage caused to the property by affixing the furniture.

Where a rental property is furnished, you are responsible to secure any furniture that may pose a hazard. See information on [affixing furniture](#)

## Gas and electrical safety

If there is an urgent issue with the electrical supply at the property such as receiving shocks from electrical plugs or taps, fallen power lines or another dangerous situation, if the tenant has not done so already you should immediately contact the network supplier. The network supplier in metro areas is Western Power; phone 131 351, for much of regional WA phone Horizon Power on 132 351 and in some towns it may be Rio Tinto; phone 1800 992 777.

For a gas emergency such as a smell of gas you should advise the tenant to immediately turn off the gas supply and if on mains supply contact ATCO Gas Australia on 131 352. If the property has bottled gas again advise the tenant to immediately turn off the gas supply and the tenant should contact the gas supplier.

Only once the immediate electrical/gas hazard has been addressed should the tenant report the issue to you or the agent.

## Illegal drug activity

Illegal drug activity is cause for concern for tenants, landlords and agents due to the potential health and safety risks to occupants and surrounding properties. Of primary concern are rental properties which have been used to manufacture, grow or smoke illegal drugs.

Clandestine laboratories (clan labs) are places where illegal drugs (commonly methylamphetamine or meth) are secretly manufactured often in an unsafe manner. Clan labs can pose a number of risks to human health, including exposure to the production residue of meth and also from toxic and/or flammable gasses used in its manufacture. While the police may remove the raw chemicals and equipment from a property, contaminant residues can be absorbed into the building structure and furnishings.

Cannabis grow houses are properties which have been extensively modified to grow large crops of cannabis hydroponically. Structural damage and mould infestation can result.

Smoke houses are properties in which illegal drugs such as meth, heroin and cannabis, are smoked regularly but not manufactured. Generally drug residues in these properties tend to be much lower than those used for manufacture.

As a general practice you should be alert to any illegal drug activities that may affect a property you own. The routine inspection or engagement process with tenants is a great way to check for signs of questionable activity.

You have a responsibility to ensure the property is safe and clean for new occupants. If you believe or suspect that there has been a clan lab or smoke house at your property, you are required to undertake the necessary cleaning before reletting the property. Should any new tenant become ill from the effects of a clan lab, they may be able to lodge a claim for compensatory damages. Symptoms of exposure range from behavioural changes, sleep disturbance and respiratory problems.

Properties which have been used for growing or manufacturing illegal drugs can also expose tenants to physical harm caused by unsafe electrical systems. If you think that your property has been used in this way you should engage the services of a licensed electrician to check that the electrical system is safe.

Unless a property has been used to manufacture drugs, a thorough clean is often all that is required. There is no need for routine testing between occupancies, but if you have evidence testing is warranted, you should only use Department of Health (Health) accredited forensic companies listed at [www.healthywa.wa.gov.au](http://www.healthywa.wa.gov.au). You may choose to adopt a cleaning regime for all new tenancies as a precautionary measure.

The Health guide, [Illegal Drug Activity in Homes: Managing Risk A Guide for Occupants, landlords, Property Managers and Agents](#), helps you identify and manage illegal drug contamination in residential properties in order to reduce the risk of exposure to occupants and protect your interests.

## Pets

In most cases pets are allowed, however tenants must seek permission. Tenants will need to fill in an approved form to give to the landlord or agent.

A landlord can place 'reasonable conditions' on having a pet – for example a bird must remain in a cage, or the carpets must be professionally cleaned at the end of the tenancy.

You can refuse a pet if a law specifically prevents them eg. Strata by-law.

You can also apply to the Commissioner to refuse a pet if you can prove one of the following reasons:

- The property is unsuitable for keeping the pet.
- Keeping the pet would exceed a reasonable number of pets being kept at the property.
- Keeping the pet at the property is likely to cause damage to the property that could not be repaired for less than the amount of the security bond.
- Keeping the pet at the property would pose an unacceptable risk to the health and safety of a person.
- Keeping the pet at the property is likely to cause the landlord undue hardship.
- The pet is a 'dangerous dog' as defined in the *Dog Act 1976 (WA)*.

For more information on keeping a pet, visit [Renting with Pets](#)



# Shared tenancies

Shared tenancies are when two or more generally unrelated tenants live in a rental property. There are multiple variations of shared tenancies and they can be more complex than individual tenancies in terms of administration and management.

## Co-tenancy

In a co-tenancy, two or more people (co-tenants) rent together on a shared tenancy agreement, often in a share house. Co-tenants are recognised as one party to the tenancy agreement, so they share responsibility for things like paying rent and looking after the property.

## Rent and other bills

In a co-tenancy, administration of payments for rent and utilities are dealt with in the same manner as individual tenancies.

Co-tenants need to arrange between themselves who covers what share of the rent and how they will ensure it is paid to you on time. If the rent or other payments are not paid in full and on time the tenants are collectively in breach of the tenancy agreement (see section [When things don't work out](#)).

## Bond

You only need to lodge one bond for a co-tenancy, however it needs to list the name of each co-tenant.

You should try your best to work with the co-tenants to determine who is responsible for the cost of any damage to avoid potential disputes.

Costs for damage caused by one co-tenant can be recouped from the general bond sum as all tenants are jointly liable for the condition of the property.

## Changing co-tenants during the term of the tenancy

Sometimes co-tenants will want to end their tenancy during the term of the tenancy agreement, and invite a new tenant to take over the agreement for them.

Co-tenants are not able to change during the term of the tenancy agreement without your permission, except in certain circumstances (see section [Ending a fixed-term tenancy agreement](#)).

If you agree to a change you will need to vary the tenancy agreement and the bond so that the details reflect the correct co-tenants. You can vary the bond using a [Variation of Security Bond](#) form.

If a co-tenant moves out but has not negotiated to have their name removed from the tenancy agreement, their obligations do not change.

If you agree to remove a co-tenant from the tenancy agreement, you must issue:

- an outgoing property condition report (see section [Final inspection, property condition reports and bond](#)) for the departing co-tenant within 14 days of the end of the tenancy; and
- if there is a new co-tenant, an ingoing property condition report for the new co-tenant within seven days of them moving into the property.

An incoming tenant cannot be held liable for the condition of the property before they moved in.

The property will likely not be vacant when you conduct the inspection due to the belongings of the remaining co-tenants, so you should work cooperatively with them to determine any changes in the condition of the property.

Any costs for cleaning, repairs and maintenance found to be the responsibility of the vacating tenant can be recovered from their bond contribution (see section [Who is responsible in a tenancy](#)).

Bond monies can be settled privately between co-tenants when necessary. They should only sign a [Variation of Security Bond](#) form when monies are settled.



## When a co-tenancy ends

When all co-tenants vacate the property, it is the same as when a typical tenancy ends, i.e. outgoing property condition report, bond disposal and cleaning (see section [Final inspection, property condition reports and bond](#) in [Ending a tenancy](#)). Each tenant named on the tenancy agreement remain jointly responsible for the condition of the property at the end of the tenancy and is responsible for providing their forwarding details to you.

## Rooming arrangements (separate tenancy agreements)

In a rooming arrangement, tenants live in the same property but are on separate tenancy agreements. Where possible, you should clearly designate which part of the property each tenancy agreement pertains to. For example, you might have a house with three bedrooms: Room A, B and C. Each tenancy agreement should stipulate that the tenant is renting one of those rooms with use of specified common areas.

## Lodging bonds for rooming arrangements

It is important that you lodge separate bonds for each of these tenancy agreements that stipulate which part of the property the bond is for, as per each tenancy agreement.

## Condition of common areas

The condition of common areas should be checked in routine rental inspections. If you discover damage to a common area caused by negligence, you will need to work with the tenants to determine who is responsible for the cost of repairs.

## Other matters

Rooming arrangements simplify a range of rental matters between tenants and a landlord because there is less reliance on private agreement between the tenants. All parties' rights and responsibilities under the Act are much clearer. The majority of other administrative and management matters should proceed similarly to an ordinary tenancy.

The table below outlines the differences between shared tenancy agreements and separate tenancy agreements.

|                               | Co-tenancy (shared tenancy agreements)                                                                                                                                      | Rooming arrangements (separate tenancy agreements)                                                                                                                                                                                             |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Rent and bills</b>         | Payments for rent and utilities are generally made to the landlord/agent in one payment.                                                                                    | Each tenant pays the landlord/agent their share directly.                                                                                                                                                                                      |
| <b>Missed payments</b>        | All co-tenants are liable if a co-tenant misses a payment, meaning their share must be paid by the other tenants or they all risk being in breach of the tenancy agreement. | Each tenant is only responsible for their payments.                                                                                                                                                                                            |
| <b>Bond</b>                   | All co-tenants contribute to one bond.                                                                                                                                      | Each tenant pays a separate bond.                                                                                                                                                                                                              |
| <b>Damage to the property</b> | Liability for the condition of the entire property is shared. If damage is caused to the property by one co-tenant's negligence, all co-tenants are liable.                 | Liability for the condition of areas of the property is outlined in each tenancy agreement. For example, one tenant may be renting Room A, so is liable for the condition of Room A. There remains joint liability for damage to common areas. |

# Once the tenancy begins

## Minimising problems

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

If you experience a problem, please refer to the list of contents at the front of this Guide and read about the topic before making any decisions. If you need any further information or advice, please contact Consumer Protection on 1300 30 40 54.

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

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

It is important to recognise:

- Tenants have the right to complain about aspects of the tenancy they believe are not in accord with the tenancy agreement or the Act.
- Tenants have the right to have their complaints dealt with fairly.

The following tips should assist in ensuring minor issues do not blow out into major conflicts and end up in court.

## Retaliatory Action

If a tenant believes their landlord or agent is taking action against them for exercising their rental rights (known as retaliatory action), they can challenge that action in the Magistrate's Court.

For example, a tenant thinks their rent was deliberately increased, or their agreement not renewed, just because they asked for some basic maintenance or made a complaint about their landlord or agent.

Retaliatory action is action taken by the landlord or agent as payback or because the tenant sought to enforce their rental rights. Action by a landlord or agent that might be considered retaliatory includes:

- Issuing the tenant with a breach notice (other than for non payment of rent).
- A rent increase.
- Commencing termination action.
- Non-renewal of the tenancy agreement.

Only the Magistrates Court can decide if the action by the landlord or agent is retaliatory.

## Get the paperwork right

Verbal agreements are a major source of residential tenancy disputes. It is best that all agreements with your tenants are detailed within a written prescribed [Residential tenancy agreement](#) (Form 1AA) that covers property maintenance, fixtures and fittings.

Fully explain the conditions of the tenancy agreement at the start, especially to people who have never been tenants before. Remember: you must give tenants a copy of [Information for tenants](#) (Form 1AC) or where there is no written agreement a copy of the [Information for tenants](#) (Form 1AD).

Issue accurate rent receipts promptly within three days of receiving the rent (not required if the tenant pays by electronic transfer).

Keep proper records of rent (date rent is received, name of the person paying, amount paid, the period of the tenancy in respect of which the payment is made and address of the rental property). These will be necessary in court disputes about rent.

For a full list of all the documents to provide to your tenant at the commencement of the tenancy see the section '[Documents and information you must give to the tenant](#)' in '[Getting started](#)'.

## Varying the security bond

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

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

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

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

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

If there is more than one tenant at the property, and one or more of the tenants leave or are replaced, it is advisable for all parties to agree to amend the tenancy agreement. For varying the bond in shared and co-tenancies, see section [Shared tenancies](#).

Alternatively, you could all choose to end the tenancy agreement and enter a new agreement and have the bond disbursed, then complete a new [Lodgement of security bond](#) form signed by all parties.



**Note:**

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

### Have a good approach to solving problems

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

### If problems continue

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

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

### Who's responsible in a tenancy?

You and your tenants have shared responsibilities.

At the start of a tenancy, you must provide the property to the tenant in a reasonable state of cleanliness and repair.

The tenant must keep the property in a reasonable state of cleanliness and hand it back in a similar condition to how it was at the start of the agreement, taking into account normal use, in other words fair wear and tear. The tenant must not intentionally or negligently damage the property including common areas and chattels within a common area, where relevant, and must notify you as soon as possible if any damage occurs.

### Maintenance inside

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

The tenant is responsible for basic household maintenance like replacing light globes unless special equipment may be needed to access the light fitting (for example where a light is over a stairwell), vacuuming, cleaning windows, dusting and removing cobwebs inside and out.

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

If there is mould or mildew caused by faults in gutters or other fixtures, then you must fix it. On the other hand (where the property allows), the tenant must ensure there is adequate ventilation throughout to help avoid mould problems occurring. Mould can be a health risk. Health provides a publication on mould, [Guidelines for Managing Mould and Dampness Related Public Health Risks in Buildings](#).



## Maintenance outside

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

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

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

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

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

Before the start of a tenancy, it is a good idea to leave clear instructions on the proper use of any reticulation system. In addition, your tenant should always have access to the system's timer box.

Setting and locking the timer yourself means your tenant has no control over the system, and can argue that because of your unnecessary use of water, you should pay the cost.

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

## State of cleanliness

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

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

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

At the end of a tenancy, the tenant is required to hand the property back in a similar condition to the start of the tenancy less fair wear and tear. Compulsory property condition reports at the start and at the end of a tenancy help to avoid disputes.

It is a good idea to give your tenant the use of tip passes so they will clear their rubbish from your property.

## Neglectful damage versus wear and tear

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

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

| Fair wear and tear – landlord is liable                                                                                          | Neglectful damage – tenant is liable                                   |
|----------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| Carpet wear in corridors or other areas used frequently.                                                                         | Stains or burns from things dropped or placed on carpets.              |
| A lock broke because it was old and had worn out.<br>Paint flaking because it is old or not applied properly.                    | The tenant forgot the key and broke a lock to get in.                  |
| Curtains faded from years of exposure to sunlight.                                                                               | Tenant's pet tears the curtains.                                       |
| Mould/mildew has formed because there is no adequate way of ventilating the property such as windows which open or exhaust fans. | Mould/mildew has formed because the property was not aired adequately. |

## Who is responsible for damage?

If the tenant causes damage including to common areas and chattels within a common area (where relevant), they are responsible for any necessary repairs.

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

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

## Urgent repairs

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

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

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

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

When the tenant advises you about an urgent repair, you must contact a repairer to arrange (not complete) urgent repairs to essential services within 24 hours and other urgent repairs within 48 hours. Unless you are a licensed electrician or plumber, then you cannot lawfully undertake this sort of work. This means you need to contact a suitable repairer to arrange to have the problem fixed.

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

The tenant can arrange urgent repairs themselves if they have been unable to contact you in the 24 or 48 hour timeframes or, if after they have contacted you, the repair is not carried out as soon as practicable. The tenant can only arrange for the repairs to be carried out to the minimum extent necessary and must use a suitably qualified repairer.

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

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

## Pest and vermin control

As a general rule, any outbreak or infestation (of rats, mice, possums, cockroaches, termites, ants, spiders, wasps or bees), requiring attention by a pest control operator is your responsibility and not the tenant's. You are also responsible for any annual maintenance inspection. However, you are not responsible for infestations if there is evidence they were caused by the activities of the tenant or their pets.

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

The Environmental Health Directorate of Health can provide advice on [Pesticide Safety](#) and how to deal with substantial infestations.

## Rates

You are responsible for paying local council rates.

## Painting

Tenants must seek permission to make small, personalised changes (known as minor modifications) to a rental property. Landlords can require a qualified tradesperson make these modifications, which includes painting. Visit the [Making changes to a rental home](#) page for more information including the list of modifications.

## Insurance

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

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

## Tenant's conduct on the property

The tenant must not use the property (including common areas) for any illegal activity, or be responsible for a nuisance, such as excessive noise that disturbs neighbours.

The tenant must notify you as soon as possible about any damage to the property.

## Inspections

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

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

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

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

A reasonable time for entering the property is defined by the Act as being between 8.00am and 6.00pm on a weekday, 9.00am and 5.00pm on a Saturday or any other time agreed between you and the tenant.

The notice must stipulate if the inspection will be before or after midday; however, to maintain goodwill with the tenant it is recommended that you provide a more specific time if you can, such as 'between 3.00pm and 4.00pm'.

If it would unduly inconvenience the tenant for you to enter the property on the day/time specified in the notice you must make a reasonable attempt to negotiate a day and time that does not unduly inconvenience the tenant. The tenant has the right to be present when you or the agent are entering the property for the purpose of showing the property to a prospective tenant or purchaser.

Under the Act, you have the right to enter the property:

- to conduct routine inspections at a reasonable time (no more than four routine inspections in any 12-month period). Written notice must be given no less than seven days and no more than 14 days before the proposed entry and indicate before or after midday;

- to collect the rent at a reasonable time if it is paid not more frequently than weekly and the agreement allows for it to be collected at the property;
- to carry out or inspect necessary repairs and maintenance at a reasonable time after giving at least three days' (72 hours) written notice;
- to inspect the property and assess any damage, in the event that a tenant has filed a notice of termination of tenant's interest in residential tenancy agreement on grounds of family and domestic violence (Form 2) or where an application has been made to have a tenant's interest in the tenancy agreement terminated on the grounds of family and domestic violence (see section [Tenants affected by family and domestic violence](#));
- to show the property to prospective tenants at a reasonable time in the 21 days before the end of an agreement, after giving the tenant reasonable written notice;
- to show the property to prospective buyers at a reasonable time, after giving reasonable written notice;
- to inspect and secure abandoned property after 24 hours' written notice left at the property and the tenant's last known place of employment (see section [Abandoned properties](#));
- in any case of emergency;
- if the tenant consents at the time, or immediately beforehand.

## Pets

The tenant will be responsible for any nuisance caused by a pet kept at the property, and the tenant is responsible for repairing any damage caused by the pet. Visit the [Renting with Pets](#) page for more information.

## Rental payments

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

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

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

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

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

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

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

You must keep an accurate record of rent paid. The record must show the fact that the payment is for rent, date the rent is received, name of the person paying the rent, amount paid, address of the property and the rental period covered by the payment.

Sample receipt

**Rent receipt**

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

Rent receipt No. XXX

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

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

(\$.....)

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

.....

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

Rent due        \$.....

Rent paid        \$.....

Any arrears     \$.....

With thanks     .....

## Sample rent record

Example: Tenancy Agreement at \$800 per fortnight commencing 4 March 2020.

| Property at: 23 Sample Street, Sample Town |           |                   |              |            |
|--------------------------------------------|-----------|-------------------|--------------|------------|
| Period                                     | Date Paid | Rent Received(\$) | Rent paid by | Rent owing |
| 04/3-17/3                                  | 04/3/20   | \$800             | John Renter  | \$0        |
| 18/3-31/3                                  | 18/3/20   | \$800             | John Renter  | \$0        |
| 01/4-14/4                                  | 01/4/20   | \$800             | John Renter  | \$0        |
| 15/4-28/4                                  | 15/4/20   | \$800             | John Renter  | \$0        |
| 29/4-12/5                                  | 29/4/20   | \$800             | John Renter  | \$0        |
| 13/5-26/5                                  | 13/5/20   | \$800             | John Renter  | \$0        |
| 27/5-09/6                                  | 27/5/20   | \$800             | John Renter  | \$0        |

## Rent increases

For most tenancies, you should use the required form [Notice to tenant of rent increase \(except for rent calculated by tenant's income\)](#) (Form 10) to give the tenant at least 60 days' notice about a rent increase. The notice includes details of the amount of the increase and the day it will take effect.

In rare cases where the tenant's income is used to calculate their rent (such as when an employer provides rental property and charges a percentage of the tenant's income as rent) the [Notice to tenant of rent increase calculated by tenant's income](#) (Form 11) should be used where the method of calculating the rent paid is changed.

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

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

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

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

If a fixed-term agreement is being renewed for the same tenants\* at the same rental property and you wish to increase the rent, you have to give your tenant 60 days' written notice.

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

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

See section [All about notices – What to issue and how to do it](#) for how to issue a notice. If you don't provide the required notice, the tenant is not required to pay.

You cannot propose excessive rent increases as a way of getting rid of your tenant. If your tenant thought this was the case, they could take the matter to the Magistrates Court for a ruling. Refer [Retaliatory Action](#).

If there is a significant reduction in the amenities provided as part of the rental agreement, you may wish to consider decreasing the rent required for the

\*Note: At least one tenant remains the same.

time the amenities are unavailable. Alternatively, the tenant could also apply to the Magistrates Court for a rent reduction.

For details about what you can do if the rent is not paid, see section [If the rent is overdue](#) in [When things don't work out](#).

## **Bond increase may follow a rent increase**

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

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

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

## **Tenancy databases**

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

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

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

A tenant cannot be listed on a tenancy database if they fell into rent arrears during the emergency period (30 March 2020 to 28 March 2021) due to financial hardship caused by the economic impact of the coronavirus (COVID-19) pandemic.

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

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

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

You must advise the tenant in writing if you propose to list them in a tenancy database.

You also must either:

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

You can do this by sending an email if they have provided you with an email address, sending a letter to their new address (if known) and/or to the address of the rented property (in case they are having their mail redirected).

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

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

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

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

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

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

The real estate agent or landlord who listed the information must notify the database operator about how to amend the information or remove it within seven days of them becoming aware the information needs to be changed. This notice must be in writing.

The database operator then has 14 days to have it removed or amended. The landlord or real estate agent must keep any written notice given to a database operator for one year from the date it was given.

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

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

# When things don't work out

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

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

## Formal notices

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

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

There is a standard procedure for counting of the days specified for various actions and special requirements for serving the notices on tenants (see section [All about notices – What to issue and how to do it](#)).

## If the rent is overdue

You can have the tenancy terminated if the tenant falls behind with the rent and doesn't correct the situation within an agreed time.

However, there are legal procedures you must follow.

You have two alternatives:

### Option 1

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

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

### Option 2

Not less than one day after the rent should have been paid but was not received, you may give the tenant a [Notice of termination for non-payment of rent](#) (Form 1B). This notifies the tenant that unless the outstanding rent is paid within the following seven days, the agreement will terminate and the tenant will be required to vacate at the completion of the seven day notice period. Should the tenant refuse to leave, you may apply to the Magistrates Court for an eviction order.

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

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

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

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

## Which alternative to choose?

Because the procedures are somewhat complex, we have drawn up flow charts for the two alternatives.

If this is the first time the tenant has fallen in arrears, or has a previous history of late payments but you would still like to keep them as a tenant, then the chart at [Appendix 5](#) may be more appropriate.

If your primary object is to obtain the rent as quickly as possible, or your tenant has fallen behind with the rent and you don't think they'll catch up, then the chart at [Appendix 5](#) may be more appropriate.

Regardless of which option you choose, if the tenant does not move out you cannot force a tenant out of your property without a court order ending the agreement and requiring vacant possession by a set date.

Tenants who reasonably believe they are not behind in the rent can stay in the property while you negotiate the alleged arrears, or until you apply for an eviction hearing in the Magistrates Court, where both parties can put their case (see section [Eviction – obtaining an order for possession](#)).

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

## Breaches of the tenancy agreement

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

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

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

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

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

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

**Step 2:** If your tenant fails to rectify the situation within the 14-day period, your next option is to issue a [Notice of termination](#) (Form 1C). This seeks to end the tenancy no sooner than seven full days after the notice is received.

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

As this procedure is complex, we have prepared a chart to assist, which you will find at [Appendix 3](#).

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

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

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

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

## Serious damage to the property or injury to the landlord

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

Serious damage includes:

- damage to common areas and chattels in common areas, if relevant to the property; or
- injury to you or your agent or any person in occupation of or permitted on adjacent properties.

For information on serving notices, see section [All about notices – What to issue and how to do it](#) and for information about taking your dispute to court, see section [Going to court](#).



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

There are various reasons why a tenancy ends other than disagreements. If both you and your tenant agree in writing that the tenancy agreement be ended and agree on the date, this is acceptable and none of the formal procedures such as issuing notices need apply.

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

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

## Ending a periodic tenancy agreement

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

### No particular reason

You can, without any reason, give written notice to the tenant ending the tenancy not sooner than 60 full days from the date you give them the notice. Use [Notice of termination](#) (Form 1C).

A tenant may also end a periodic tenancy agreement without having to provide a reason, but is required to give a minimum of 21 full days' notice in writing. The 21 days commences from the day after the day of personal delivery or if posted, at the time when the letter would have been delivered in the ordinary course of post.

### Sale of the property

If you sell the property and the Offer and Acceptance contract requires you to give vacant possession to the purchaser at settlement, you may give notice to your tenant on a [Notice of termination](#) (Form 1C), ending the tenancy no sooner than 30 full days after the date you give them the notice. This form of notice may be served only after the acceptance of the offer on the property becomes a binding contract on both the seller and buyer and only if there is a periodic tenancy agreement in place. Where a fixed-term tenancy is in place the agreement cannot be terminated because the property is sold unless the tenant agrees.

### Where an agreement is frustrated

A tenant can give two full days' notice to end a tenancy agreement if the property is destroyed, is compulsorily acquired by law or becomes uninhabitable. As the landlord, you must give the tenant seven days' notice on a Form 1C under these circumstances.

## Ending a fixed-term tenancy agreement

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

The 30 days' written notice must be given before the expiry date on the tenancy agreement. If the notice is given less than 30 days before the expiry date, for example, 15 days before the tenancy agreement is due to expire, the possession day (the day by which the tenant needs to have moved out) will be extended by the balance of the 30 days.

However, if you issue the notice less than 30 days before the expiry day, and the tenant does not issue a notice, they can move out at any time between the original expiry date stated in the tenancy agreement and the balance of the 30 days' notice and that day will be taken to be the day on which the tenancy agreement expires.

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

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

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

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

A tenant can give two full days' notice to end a tenancy agreement if the property is destroyed, compulsorily acquired by law or becomes uninhabitable. As the landlord, you must give the tenant seven days' notice in writing.

### **If you need to break the tenancy agreement**

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

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

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

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

You must never try to force a tenant out of the property or change locks without an order from the court. Any other method of eviction is unlawful under the Act and penalties apply.

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

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

- job relocation;
- redundancy;
- personal and family illness.

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

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

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

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

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

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

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

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

### **Eviction – obtaining an order for possession**

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

You will need to lodge an application to the Magistrates Court online. See section [Going to court](#) for more information.

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

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

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

If you reasonably suspect the tenant has abandoned the property you may enter and secure the property without a court order. See section [Abandoned properties](#).

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

### **If the rental property is destroyed or taken over by an authority**

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

You may give seven days' notice to the tenant, [Notice of termination](#) (Form 1C), if:

- the property is wholly or partially destroyed, for example by a cyclone or serious fire; or
- the property cannot be lived in; or
- is acquired by any authority by compulsory process.

Similarly, the tenant may give you or your agent two days' notice ending the tenancy under these circumstances.

In this circumstance rent is no longer payable. Generally, it is for the local government to determine if a property is habitable or uninhabitable.

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

### **Final inspection, property condition report and bond**

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

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

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

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

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

Work out any outstanding liabilities of your tenant such as:

- rent arrears;
- outstanding water, gas and electricity bills;
- cleaning costs (if the property was not left in a clean condition); or
- damage to the property, including common areas and chattels within common areas, where relevant, as well as any damaged or missing contents belonging to you.

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

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

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

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

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

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

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

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

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

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

Once you have calculated and agreed with your tenant on a reasonable amount of money to deduct from the security bond, complete a [Joint application for disposal of security bond](#) form and both sign it. The form should show the amount to be returned to the tenant and/or the landlord and/or to be refunded to the Department of Communities (Housing) (if applicable).

Once the form has been signed by all parties, it should be scanned and emailed to the Bond Administrator at [bondsadmin@lgirs.wa.gov.au](mailto:bondsadmin@lgirs.wa.gov.au).

If you are eligible to use BondsOnline eTransactions, the [Joint application for disposal of security bond](#) form can be submitted electronically and the tenant will be sent an email asking them to agree to the details online.

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

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



**Note:**

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

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

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

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

If you are unable to reach an agreement with the tenant(s), or you cannot contact your outgoing tenant, you may apply to the Magistrates Court and ask the magistrate to award you the costs of your application. The tenant can also apply to the Magistrates Court.

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

- agree to settle the dispute;
- dispute the application within seven days; or
- ignore the application (the court may then issue an order for the release of the bond after seven days).

If a dispute goes to court, the magistrate or registrar will make an order as to how the bond money is to be paid out (see section [Going to court](#)).

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

## Department of Communities (Housing) bonds

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

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

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

## Abandoned properties

Tenants sometimes abandon a property without giving any notice.

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

If you want to check and secure the property and have reasonable grounds to suspect a tenant has abandoned the property you can issue a [Notice to tenant of abandonment of premises](#) (Form 12). See section [Counting days](#).

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

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

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

The notice must be delivered to the property and the tenant's last known place of employment if known.

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

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

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

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

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

## Enforcement in the Magistrates Court

It is important to note that, if the court finds in your favour but the tenant does not pay you, further court action will be needed to enforce payment of any debt that has been awarded to you in a court order.

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

## Abandoned goods (excluding documents)

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

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

- newspapers and magazines;
- cardboard boxes, plastic bags, household rubbish etc.;
- personal items of low value e.g. toiletries, perfume, make up, medicines and pharmaceuticals;
- cleaning products, paint, solvents, oil, chemicals; and
- perishable and non-perishable foodstuffs.

## Items requiring special consideration

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

- Money: you can contact the Department of Treasury for information on how to deal with unclaimed money.
- Animals and pets: you can contact an animal shelter or refuge for information on what to do with abandoned animals and pets.
- Firearms, illegal drug paraphernalia or equipment: you must report any firearms, illegal drug paraphernalia or equipment to the police.
- Rental items belonging to a third-party commercial supplier: contact the third-party commercial supplier to arrange the return of any item that belongs to them. This may include rented white goods, Foxtel units, rented furniture, shopping trolleys etc.

## Vehicles, motorcycles, caravans, trailers or boats

If your tenant abandoned a vehicle at your property, your first course of action should be to check with the police to see if the vehicle(s) is/are stolen. Vehicles that are currently licensed should also be reported to the police and all reasonable means taken to have the vehicle's owner remove the vehicle.

You can use the Department of Transport's online [vehicle licence expiry date enquiry](#). All other states and territories have similar online facilities to check vehicle licences. These checks will provide ownership information.

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

If you are unable to identify the owner or the identified owner is not willing to remove the vehicle you should seek legal advice.

## Goods of little or no value

If the estimated value of the goods left by your tenant is less than the estimated cost of removal, storage and sale of the goods, you can choose to dispose of the goods.

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

## Goods of value

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

Within seven days of storing the goods, you must notify the former tenant in writing, choosing one of the following methods, as appropriate:

- If you know the tenant's forwarding details, you must complete [Notice to former tenant as to disposal of goods](#) (Form CP2) and give it to the former tenant ("give" means personally, by post or electronically).
- If you don't know the tenant's forwarding details you must complete [Notice as to disposal of goods](#) (Form 3) and publish a copy within seven days after the day on which the goods were stored, and place a copy in a prominent position on the property within nine days.

You should keep a record of these forms in case you need to prove in court that you performed these actions.

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

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

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

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

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

## Abandoned documents

If the tenant leaves behind important documents then you will be required to store them. These include official documents, photographs, correspondence or other significant documents you would reasonably expect a person to keep.

This may include digital storage devices such as laptops, smartphones, gaming consoles and USBs that may contain documents or photos.

You need to take care of the documents for 60 days and take reasonable steps to notify the tenant where to collect the documents. You can be reimbursed by the former tenant for any reasonable costs incurred by storing the documents in accordance with the Act. If the documents remain unclaimed after 60 days, you can dispose of them.

# Tenants affected by family and domestic violence

## What is family and domestic violence?

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

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

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



### Important:

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

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

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

- a domestic violence order;
- a family court injunction or an application for a family court injunction;
- a copy of a prosecution notice or an indictment detailing a charge relating to family violence having been committed against the tenant; or

- an official [Consumer Protection family violence report – Evidence form](#) signed by a designated professional who can be:
  - a doctor;
  - a psychologist;
  - a social worker;
  - the person in charge of a women's refuge;
  - a police officer;
  - a child protection worker;
  - a family support worker; or
  - a person in charge of an Aboriginal health, welfare or legal organisation.

You cannot challenge your tenant's request to break the agreement if the notice and supporting evidence have been completed properly and provided to you with at least seven days' notice. If the documents are not completed properly you may, within seven days after receiving the notice, apply to the Magistrates Court to review whether the notice was validly given.



### Note:

You must keep any FDV evidence (e.g. [Consumer Protection family violence report – evidence form](#), copy of restraining order, family court order) provided by the tenant in a safe and secure manner. You must not disclose any of the FDV evidence to any other person except in accordance with the Act or another written law. Penalties may be applied for a failure to do so. If you disclose the details, for example to a co-tenant, you can be prosecuted and could be putting a victim's life at risk.

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

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

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

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

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

### Dealing with debt and liability

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



#### **Note:**

This provision can only be used if a tenant's interest in the tenancy has been terminated due to FDV circumstances.

The court can also make an order to pay out some of the security bond to any tenant who is leaving the tenancy, if they don't owe you any money, and/or to you if you are owed money for any damages and/or debt.

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

### Tenants can change locks without permission

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

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

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

### When the tenant wants to make security upgrades

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

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

The security upgrades include such renovations, alterations and additions as are necessary to:

- install security alarms and cameras;
- install locks, screens and shutters on windows;
- install security screens on doors;
- install security lights;
- install locks on gates; and
- improve visibility around the property by pruning shrubs and trees.

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

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

For more information about the tenancy laws regarding FDV, visit [Safe tenancy](#).



#### **Important:**

If your tenant wants to know how to use the tenancy laws to leave a tenancy for FDV reasons, they can contact Consumer Protection on 1300 30 40 54 or their local Community Legal Centre for help.

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

## What to issue

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

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

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

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

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

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

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

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

### **Breach of agreement**

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

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

Use [Notice of termination](#) (Form 1C). This form details the various grounds for ending a tenancy, one of which must be specified, and the period of notice. The reverse of the form explains the grounds on which a tenancy can be ended.

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

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

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

Use the [Notice of termination to tenant if premises abandoned](#) (Form 13) or apply to the Magistrates Court.

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

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

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

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

## The tenant believes you have breached the tenancy agreement

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

## The tenant abandons goods of value

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

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

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

## Application for immediate termination of a tenancy

Apply online to the [Magistrates Court](#).

## Other forms you will need or will find useful

All forms are available from the department unless otherwise stated.

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

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

[Lodgement of security bond money](#) form is used to lodge bond money.

[Joint application for disposal of security bond](#) form is used at the end of the tenancy to return the bond money to the tenants, Housing and/or the landlord.

[Application for disposal of bond money](#) (Magistrates Court Form 6) is filled out automatically when you make an online application to the Magistrates Court if your tenant refuses to sign the disposal form, or you cannot contact your outgoing tenant.

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

[Bond Administration](#) provides information on tenancy bond lodgements, variations and disposals.

[Variation of security bond](#) form can be used for variations relating to the record of bond payment details, the amount of the bond, or when there is a change of tenant, landlord or agent.

Department staff can help you with any queries or concerns about the types of notices required under a residential tenancy agreement. You can visit department offices, visit the website, or call Consumer Protection on 1300 30 40 54.

## How and when to issue notices

When a notice is served under the Act, proper procedures must be observed. If the matter in question ends up in court, the person who prepared the notice will have to prove it has been served correctly otherwise the magistrate may reject your claim and order the process to restart from the beginning, with the correct service of notices.

## How to issue a notice

Under the Act you can serve a notice by hand delivering it to a person, emailing (if the parties have agreed to this in the tenancy agreement) or mailing it by ordinary post. The Act says that serving a notice by mail takes effect from the time the letter would have been delivered by ordinary post.

The count of days for the notice period must exclude the day on which the notice is served, and the last day of the notice period. This means that the action required, such as a property inspection or requirement to vacate, should take place on the day following the last day of the notice period (see section [Counting days](#) or [Appendix 5](#)).



A notice to a tenant can be given to:

- the person who usually pays the rent; or
- a person who looks to be more than 16 years of age living in the property.

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

- you;
- your agent;
- a person who looks to be more than 16 years of age and who lives with you; or
- the person who usually receives the rent.

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

Notices under the Act may be served by email as long as the parties have agreed they will correspond electronically. Check the tenancy agreement to see if the tenants have consented to receive notices electronically.

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

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

### When to serve a notice

If the tenant breaches the agreement by not paying the rent you have two alternatives which were explained earlier (see section [If the rent is overdue](#) in [When things don't work out](#) and [Appendix 5](#)).

If the tenant breaches the agreement by any action other than not paying the rent, you can take appropriate action (see section [Breaches of the tenancy agreement](#) in [When things don't work out](#) and [Appendix 5](#)).

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

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

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

### Counting days

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

The counting of days for the notice period must exclude both the day on which the notice is served, and the last day of the notice period. This means that the action should take place on the day following the last day of the notice period (see section [Counting days](#) or [Appendix 5](#)).

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

You can serve a notice by email but you need to have prior written agreement between yourself and the tenant for notices to be serviced via email.

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

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

### Proof notice was served

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

### Standard forms for use under the Act

Please refer to [Appendix 4](#) for a table of standard forms commonly used under the Act.

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

# Going to court

If disputes about rental property issues cannot be resolved privately, by using Consumer Protection's free conciliation service, you may need to apply for an order from the Magistrates Court. The Magistrates Court will then make an order.

It is important for all parties to keep detailed records throughout a tenancy.

## What to expect

Disputes between landlords/agents and tenants are dealt with under a special minor case category for disputes of not more than \$10,000.

Proceedings are generally private and informal so a tenant or landlord can represent themselves. The court will almost always try to resolve the issue with a registrar before the case goes to trial before a magistrate.

### Common Magistrates Court terms:

**Case:** A dispute between two or more parties/people, which may be resolved by the court.

**Applicant/Claimant:** The person who applied for the court order.

**Defendant/Respondent:** The person responding to the claims of the applicant.

**Hearing:** A meeting of all the parties in court with a magistrate. The facts of the dispute are heard and decisions are made for the next steps of the dispute or to finalise the dispute.

**Party:** One of the participants in the dispute/case. For tenancy disputes the parties are generally the landlord/agent and/or the tenant.

**Pre-Trial Conference:** Sometimes called conciliation conference, mediation or negotiation, a confidential meeting to try and settle the dispute with the assistance of a registrar instead of going to trial.

**Registrar:** A court official who is not a magistrate but can make orders.

**Trial:** Formal legal proceedings before a magistrate. A dispute will not always go to trial.

**Proceedings:** Something that happens in court. Could be a conference or a trial.

Helpful resources if you are going to court:

- [Tips for going to court](#) (Legal Aid WA) including expected conduct in court
- [A list of Magistrates Court fees](#)
- [A Magistrates Court fact sheet on understanding civil proceedings \(including residential tenancy claims\)](#)
- [Appendix 5 Flowchart: Going to court for residential tenancy disputes](#)

## Applying for a court order

All applications to the Magistrates Court must be made online using the Electronic Document Lodgement Service. Supporting documents must also be submitted electronically before the court date via the [eCourts Portal](#) (eCourts). An exemption to this rule can sometimes be obtained by contacting the Magistrates Court.

When applying online, the information you provide will be used to fill out the appropriate form for the dispute type, either:

- Form 6 – Application for disposal of bond money; or
- Form 12 – Application for court order.

During the application process you may be asked to enter the bond reference number and party details. You can find these on your bond lodgement certificate. If you do not have your lodgement certificate, email [bondsadmin@lgirs.wa.gov.au](mailto:bondsadmin@lgirs.wa.gov.au) to request a copy.

The magistrate will only consider the items listed in the application, so give clear and concise details of the issues and orders being sought (for example: an order for rent arrears to be repaid or for a tenant to vacate the property). Failure to do so may mean the proceedings may be put off until another time.

If your rental property is being managed by an agent you can seek to have them represent you in any proceedings.

Both tenants and landlords are entitled to be represented by a person employed or engaged by a not-for-profit organisation. This could be a disability support worker or other advocate. To have representation you must lodge an [Authorisation for an agent to present a party's case](#) (Form 24) (residential tenancies forms) via eCourts **before** the date of the hearing. The representative must have sufficient knowledge of the issue and authority to act on your behalf.

### Date and location

The case will generally be heard at the Magistrates Court that is nearest to the rental property. A list of court locations and contacts is available on the Magistrates Court website.

The setting of the hearing date depends on whether it is a Form 6 or Form 12 matter.

- Form 6: a date is set if the matter is to be disputed by the tenant. If the application is not disputed the court can make the orders in the application in the absence of all parties.
- Form 12: a date is chosen during the application process from 14 days or if this is not possible as soon as possible after the application is made.

### How to prepare

You should understand the section(s) of the Act your case relates to. You should read the Act or seek general advice from the department. You can obtain legal advice.

Dedicate sufficient time to the preparation of evidence. Lodge your evidence through eCourts as 'supporting documents' after you apply and before your court date. Only lodge what is relevant to the claims in your application and make sure the documents are labelled accurately.

Evidence might include:

- a rent ledger showing dates of rent payments and which periods each payment covered (preferred over receipts and bank statements alone);
- served notices and evidence of the service of the notice (such as the email it was attached to);
- the tenancy agreement;
- property condition reports;
- bond lodgement certificate and any other bonds forms; or
- general correspondence including emails, texts or instant messages.

Bring copies of evidence to court for your own reference, or a laptop or tablet that you can use to access copies. Ensure everything is sorted properly for ease of use. Before you attend court, make an orderly list of the points you need to make. Any evidence that is digital but cannot be uploaded through eCourts may be provided on a USB stick. You will need to complete a security declaration prior to the hearing, available at the registry of the Magistrates Court.

If you are unable to attend the court proceedings for strong personal reasons, such as illness or being interstate/overseas, or if you can't represent yourself, the court can appoint an appropriate person to represent or assist you. This can happen as long as the other party will not be disadvantaged by the representation.

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.

### On the court day

For an overview of the whole court process, see [Appendix 5 Flowchart: Going to court for residential tenancy disputes](#).

Arrive for court before the listed hearing time. Let the court orderly located in the courtroom know you are there and follow their direction for where you are to wait. A hearing can proceed without you if you do not show up or if the orderly does not know you are there.

There may be other matters listed at the same time as your hearing, so you may need to be patient and account for extra time.

If only one party is present, the matters may proceed in the absence of the other party.

Although proceedings in the Magistrates Court are relatively informal, [certain rules must be observed](#).

The court will likely attempt to manage your case through a [pre-trial conference](#) with a registrar instead of going straight to trial. If the matter is likely to be settled in this way, it is important to be aware that any settlement reached is final and binding on both parties.

The court will send you a copy of any orders made after the conference.

Generally the court will not award costs apart from the fee required to start an application.

An order made by a registrar can be appealed using either:

- [Application to vary or set aside order](#) (Form 16) (residential tenancies forms) if a party was absent when the order was made; or
- [Appeal against registrar's decision](#) (Form 1B) (Magistrates Court (General) Rules 2005 forms) if the party was present when the order was made.

Witnesses are not required for hearings other than trial hearings.

### **If the case is listed for trial**

If the case is listed for trial, the magistrate or registrar will make programming orders beforehand. Programming orders indicate what you need to do to prepare for trial, such as writing and filing a witness statement. Failure to comply with any programming orders may prevent you from presenting your evidence.

Before trial, the magistrate may try again to settle the matter by reaching an agreement.

You can use this checklist to help prepare yourself for trial:

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

Orders handed down by the magistrate can include:

- ending a tenancy agreement;
- how bond money will be paid out;
- an action to be 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;
- a reduction in rent payments for a period of time; and
- payment of rent into the court until you carry out the magistrate's order to remedy a breach or for compensation.

There are no appeals against the decision of the magistrate, except on the grounds the court did not have jurisdiction to hear the case or natural justice was denied (such as if you can show you weren't given the opportunity to state your case).

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

If a party does not pay an amount ordered by the magistrate, you can take action to enforce the order. See the publication [If they don't pay – What happens if court/tribunal orders are not paid?](#)

The successful party has the right to recoup court fees paid.

You can seek legal advice through a lawyer.

# Appendices

## Appendix 1

### Renting out your property: A checklist for managing the property yourself

You will want your investment property to be profitable and the tenancy arrangements to be hassle free. Here is a final checklist to help make that a reality if you decide to handle matters yourself.

#### Before a tenant moves in

- ☐ Ensure you have adequate funds set aside to meet unexpected costs such as repairs to the property or to cover times when no rent is coming in.
- ☐ Choose your tenants carefully:
  - Use the Consumer Protection [Application to rent residential premises](#) (Form 18).
  - If you use a [tenancy database](#), use [Form 18A](#) to let prospective tenants know and comply with the rules for listing tenants and updating information about tenants.
  - Sight original copies of driver's licences used for identification. Check if the driver's licence is authentic by doing a demerit point check online using the following links:
    - Department of Transport WA [Driver's demerit point enquiry](#)
    - Queensland Government [Check demerit points](#)
    - NSW State Government [Check demerit point service](#)
    - South Australian Government [Demerit points](#)
    - Vic Roads, Victorian Government [Check demerit points](#)
    - Tasmanian Government – [Demerit points](#)
- ☐ Decide whether you are going to offer a periodic or fixed-term tenancy.

- ☐ Check the following comply with the requirements:
  - Curtain and blind cords/chains.
  - Pool fencing and portable pool safety.
  - Smoke alarms (hard wired/new batteries).
  - Safety switches (RCDs).
  - Security of rental property.
- ☐ Check whether the electrical wiring is safe.
- ☐ Check that all plumbing is in a workable condition.
- ☐ Check whether safety glass is required (in bathroom, for example).

#### Starting the tenancy

- ☐ Make sure you use the [prescribed tenancy agreement](#).
- ☐ You must give your tenant a copy of the information for tenants form, either:
  - tenants with written agreement [Information for tenant](#) (Form 1AC); or
  - tenants with verbal agreement [Information for tenant with non-written residential tenancy agreements](#) (Form 1AD)
- ☐ Make sure the property is in good condition and ready for your tenant to move in.
- ☐ Complete a property condition report containing the minimum information on the required [Property condition report](#) (Form 1) and provide two copies to the tenant within seven days of the start of the tenancy. Spend time and effort on the property condition report. It can help to avoid a lot of disagreements later.
- ☐ Provide the tenant with a receipt when you receive the bond.
- ☐ [Lodge the bond money](#) with the Bond Administrator as soon as possible, but within 14 days of receiving it from the tenant.

## During the tenancy

- ☐ Remember your tenant's rights, especially to quiet enjoyment of the property. Use [Notice of proposed entry to premises](#) (Form 19) and provide the correct amount of notice to the tenant if you wish to enter the property.
- ☐ Respond promptly to any requests for [maintenance](#) and [repairs](#) that are your responsibility, particularly urgent and essential repairs. You are required to arrange repairs with a suitable qualified repairer within 24 hours of being notified of repairs required to restore an essential service and 48 hours for urgent repairs.
- ☐ Deal promptly and fairly with any disputes and be prepared to negotiate a compromise solution.
- ☐ If the rent falls into arrears take action promptly using either the process described in [Chart 1](#) or [Chart 2](#) to prevent the arrears amount from increasing and to ensure you get paid.
- ☐ Make sure you know the correct [notices](#) to use for each purpose and allow the correct [notice period](#) for each notice/s.
- ☐ Make sure you know and understand the rights and responsibilities for tenants and landlords under the [family and domestic violence](#) laws.

## Ending the tenancy

- ☐ Make sure you give the tenant a minimum of 30 days' written notice using [Notice of termination](#) (Form 1C) if you want a fixed-term tenancy to finish on the end date.
- ☐ Give the tenant a reasonable opportunity to be present at the final inspection.
- ☐ Carry out a thorough final inspection. Discuss sensibly any items of dispute with your tenant and provide them with a copy of the final [Property condition report](#) (Form 1) within 14 days of the tenancy ending.
- ☐ If you have to go to court, make sure you understand the procedures and prepare your case well. For more information see section [Going to court](#).

## Appendix 2

### Glossary of terms in common use

**Agent:** An agent may be either a representative of a landlord or a person who is licensed under the *Real Estate and Business Agents Act 1978*.

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

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

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

**Chattels:** Goods belonging to the landlord forming part of the tenancy agreement.

**Common area:** An area that is accessible to, or provided for the common use of all tenants and/or residents. Usually associated with a strata or community titled property.

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

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

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

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

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

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

**Mortgagee:** A bank or moneylender holding security over the property.

**Option fee:** A fee charged to the prospective tenant when lodging a rental application. Option fees are capped at a maximum.

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

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

**Property:** 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 property is situated.

**Prescribed form:** The approved, standard form or document a landlord must use.

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

**Quiet enjoyment:** The right of the tenant to be able to occupy, use and enjoy the property in reasonable privacy and without undue interference by you or your agents.

**Rent:** The money the tenant pays the landlord for the right to live at the property.

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

**Sub-let:** A rental agreement where the head tenant rents out all or a part of the property to another person usually called a sub-tenant.

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

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

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

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

- agreement;
- the provisions of the Act; or
- a court order.

## Appendix 3

### Contact details

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

### Magistrates Courts

General enquiries 9425 2222

#### Metropolitan

|                  |           |
|------------------|-----------|
| Armadale Court   | 9399 0700 |
| Fremantle Court  | 9431 0300 |
| Joondalup Court  | 9400 0700 |
| Mandurah Court   | 9583 1100 |
| Midland Court    | 9250 0200 |
| Perth Court      | 9425 2222 |
| Rockingham Court | 9599 5100 |

#### Regional

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

## Appendix 4

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

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

You can download these forms from the department's website [Renting a home](#). If you do not have internet access, public libraries and community resource centres often offer free or low cost access, or you can call Consumer Protection on 1300 30 40 54 for advice.

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

Residential tenancy agreement (Form 1AA)

Information for tenant (Form 1AC)

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

Property condition report (Form 1) (Note: This is the minimum content that must be provided. Additional details can be added but no content can be deleted)

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

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

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

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

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

Notice as to disposal of goods (Form 3)

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

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

Notice to tenant of abandonment of premises (Form 12)

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

Notice to vacate from mortgagee to tenant (Form 14)

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

Notice of proposed entry to premises (Form 19)

Request to landlord to affix furniture (Form 24)

Family violence report – Evidence form

#### **Bonds**

Lodgement of security bond form

Variation of security bond form

Joint application for disposal of security bond form

#### **Suggested helpful forms**

Application to rent residential premises (Form 18)

Written notice about use of tenancy databases (Form 18A)

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

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



#### **Note:**

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

## Appendix 5

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The charts below can be accessed here [Counting days charts for landlords](#)

### **Landlord Chart 1**

Service of a breach notice for non-payment of rent

### **Landlord Chart 2**

Service of notice of termination for non-payment of rent

### **Landlord Chart 3**

Service of breach notice other than for failure to pay rent

### **Landlord Chart 4**

When your tenant terminates their interest in an agreement on grounds of family and domestic violence

### **Landlord Chart 5**

When the court orders termination of perpetrator tenant's interest in an agreement on grounds of family and domestic violence

### **Landlord Chart 6**

Service of notice of termination for periodic tenancy agreements

### **Landlord Chart 7**

Service of notice of termination for fixed-term tenancy agreements

### **Landlord Guide**

Going to court for residential tenancy disputes

Government of Western Australia  
**Department of Local Government,  
Industry Regulation and Safety**

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

**Regional offices:**

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

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