

COMMISSIONER'S GUIDELINES - MINOR MODIFICATION REQUESTS IN A RENTAL

For landlords, real estate agents, property managers and tenants

INTRODUCTION

The *Residential Tenancies Act 1987 (WA)* (RTA) gives the Commissioner for Consumer Protection (the Commissioner) powers to decide some rental disputes. This process is known as 'Commissioner determinations'.

The Commissioner decides disputes as an independent authority and will hear from both parties (tenants and landlords) before making a decision. Applications for Commissioner determinations can be made online.

Since 29 July 2024, a process under the RTA allows tenants to make minor modifications in their rental premises, subject to the landlord's approval.

This publication provides tenants, landlords, property managers and real estate agents with guidelines on the Commissioner determinations for a minor modification request in a rental home. Visit the [Commissioner determinations for pets and minor modifications](#) webpage for more information.

WHAT IS A MINOR MODIFICATION?

The *Residential Tenancies Regulations 1989 (Regulations)* lists what type of changes are a minor modification under the RTA. ¹:

- painting a room;
- installing (which includes replacing, but not altering):
 - o a picture hook;
 - o a screw for a wall mount, shelf or bracket;
 - o a wall-anchoring device;
 - o a water-efficient shower head;
 - o a hand-held shower head;
 - o a lever-style tap;
 - o a security light, alarm system or security camera;
 - o a wireless doorbell;
 - o a window covering;
 - o an adhesive child-safety lock on a drawer or door;
 - o a pressure-mounted safety gate;

¹ *Residential Tenancies Regulations 1989* r. 71(2).

- o a lock on a gate;
- o a child-safety device on a window;
- o a lock on a letterbox;
- o draughtproofing;
- o a telephone or internet connection;
- o an LED light bulb which does not require a new light fitting;
- o an anchor for a blind or cord;
- o non-permanent window film;
- o a flyscreen on a door or window; or
- o a vegetable garden or herb garden.

Anything not included on this list is **not** a minor modification and is **not** subject to this process.

Information on changes that are not a minor modification is available on Consumer Protection's website [Making changes to a rental home - Consumer Protection - LGIRS](#).

MINOR MODIFICATION REQUEST PROCESS FOR TENANTS AND LANDLORDS

Tenants are allowed to make minor modifications at their rental home unless the landlord can prove, with evidence, that one of the grounds for refusal listed in the RTA applies.

To make a minor modification at a rental home, tenants must follow the steps below. The only exceptions are:

- Where the tenant wants to affix furniture to a wall (such as a chest of drawers or TV) for the safety of a child or person with a disability. For this type of change, a Request to lessor to affix furniture - [Form 24](#) must be sent to the landlord.²
- Where the tenant wants to install a security camera, alarm, or a lock on a gate to prevent family violence. Information about the process for security modifications to prevent family violence can be found on the Consumer Protection website [Safe Tenancy WA - Consumer Protection - LGIRS](#).³

Tenant requests minor modification:

If a tenant wants to request to make a minor modification during their tenancy, they must use the approved form and send this to the landlord. The approved form is the Minor Modification Request Form - [Form 26](#).

Once the tenant has completed the form, they should keep a copy for their own records and give the form to the landlord.

A minor modification is only allowed at a rental home if the landlord or the Commissioner have approved the tenant's minor modification request (the request). A landlord's approval may be automatic [in some cases](#).

To prevent a breach of the tenancy agreement, tenants should wait until the minor modification is approved before making changes to the rental home.

The tenant should receive a written response from the landlord within 14 days of the request being made.

² Residential Tenancies Act 1987 (WA) s. 50K.

³ Residential Tenancies Act 1987(WA) s. 50M.

If a tenant disagrees with a landlord's [refusal on a ground that does not require Commissioner approval](#) or [condition that does not require Commissioner approval](#), the tenant can [apply online](#) to the Commissioner to challenge the landlord's decision.

Landlord responds:

1. Responding to a minor modification request from a tenant

The landlord has 14 days after receiving the Minor Modification Request Form to respond to the tenant with their decision.⁴ This response must be in writing and must include minimum information, depending on the decision being made by the landlord.

The landlord can:

- **Approve the request.** If the landlord approves the request with no conditions, the landlord must inform the tenant that they can make the minor modification at the rental property.⁵
- **Approve with conditions** (some conditions need [Commissioner approval](#)). If the landlord imposes a condition that does not require Commissioner approval, they must:⁶
 - o provide confirmation to the tenant that the landlord approves the request; and
 - o notify the tenant of the condition(s) that are being set.

Where the landlord proposes a condition that does require Commissioner approval, they must notify the tenant:⁷

- o that they approve the request;
 - o that they intend to apply to the Commissioner to impose a condition(s) on their approval; and
 - o the details of the proposed condition(s).
- **Refuse the request** (some reasons for refusal need [Commissioner approval](#)). If the landlord refuses for a reason that does not require Commissioner approval, they must notify the tenant:⁸
 - o that they refuse the request;
 - o the ground(s) for refusal; and
 - o the reason they believe each ground for refusal applies.

Where the landlord refuses for a reason that does require Commissioner approval, they must notify the tenant that they intend to apply to the Commissioner for approval to refuse the request.⁹

2. Applying for Commissioner approval (if needed)

If the landlord's reason for refusal or proposed condition requires Commissioner approval, they must also apply to the Commissioner within the 14 days after receiving the Minor Modification Request Form.

The landlord can [apply online](#).

AUTOMATIC APPROVAL OF A MINOR MODIFICATION REQUEST

A tenant's minor modification request is considered **automatically approved** by the landlord if:¹⁰

- The landlord does not respond to the tenant in writing, with the minimum information, within 14 days after receiving the request; **and**

⁴ Residential Tenancies Act 1987 (WA) s. 50O(3).

⁵ Residential Tenancies Act 1987 (WA) s. 50O(4)(a).

⁶ Residential Tenancies Act 1987 (WA) s. 50O(4)(b).

⁷ Residential Tenancies Act 1987 (WA) s. 50O(4)(c).

⁸ Residential Tenancies Act 1987 (WA) s. 50O(4)(d).

⁹ Residential Tenancies Act 1987 (WA) s. 50O(4)(a).

¹⁰ Residential Tenancies Act 1987 (WA) s. 50O(5).

- If the landlord refuses the request on grounds that need Commissioner approval, and where necessary they fail to apply to the Commissioner within 14 days after receiving the request.

The landlord is responsible for undertaking both of these steps.

IMPOSING CONDITIONS ON A MINOR MODIFICATION REQUEST

Landlords may approve a minor modification request with conditions. These conditions must follow the rules outlined in the RTA and some won't apply without Commissioner approval.

Where a landlord wants to set a condition, they must:

- Respond to the tenant in writing, with the minimum information, within 14 days after receiving the request; **and**
- If the landlord's condition requires Commissioner approval, apply to the Commissioner within 14 days after receiving the tenant's request.

The landlord is responsible for undertaking both of these steps.

If the landlord's condition requires Commissioner approval, and they fail to apply to the Commissioner within 14 days after receiving the request, the tenant's request is considered to be approved without these conditions.

Conditions which do not need Commissioner approval

A landlord **does not** need to apply to the Commissioner for the approval of a reasonable condition about:

- the minor modification works being carried out by a person who is appropriately qualified to carry out that type of work, and the tenant providing a copy of the invoice for that work to the landlord, **but only for one or more of the following** minor modifications:¹¹
 - o painting a room;
 - o installing:
 - a lever-style tap;
 - a hardwired alarm system, security camera or security light;
 - a telephone or internet connection; or
 - non-permanent window film.
- the tenant providing the landlord with the codes to an alarm system;¹² and
- the tenant providing the landlord with copies of keys for locks on gates or letterboxes.¹³

If the tenant believes a condition about one of the above is unreasonable, they can [apply](#) to the Commissioner to challenge the condition.¹⁴

Conditions which do need Commissioner approval

A landlord **must** apply to the Commissioner for approval before enforcing any condition that does not fall into one of the categories listed under "Conditions which do not need Commissioner approval".¹⁵

In making a decision, the Commissioner is guided by the following factors when considering if a condition should be imposed:

¹¹ Residential Tenancies Act 1987 (WA) s. 50P(a) and Residential Tenancies Regulations 1989 r. 12BD and 12BE(c).

¹² Residential Tenancies Act 1987 (WA) s. 50P(b) and Residential Tenancies Regulations 1989 r. 12BE(a).

¹³ Residential Tenancies Act 1987(WA) s. 50P(b) and Residential Tenancies Regulations 1989 r. 12BE(b).

¹⁴ Residential Tenancies Act 1987 (WA) s. 50V(1).

¹⁵ Residential Tenancies Act 1987 (WA) s. 50T(2).

- does the condition address or alleviate a ground for refusal under s. 50S of the RTA? (example condition, where the tenant has requested to install a security camera: camera to be installed on the rendered wall, not the exposed brick)
- is the proposed condition appropriate, reasonable and proportionate to the risk?
- is the proposed condition covered under any other law? (such as Strata by-laws or local council law)
- do the parties agree to the proposed condition?

Because approved conditions become an enforceable term of the lease, any proposed conditions must be clear and precise in their wording.

If a landlord seeks to impose a condition that the minor modification be undertaken by a 'qualified' or 'licenced' person, then they need to be able to identify what type of qualification or licence would be required. Many minor modifications can lawfully be installed without any specific licence or qualification. Where a licence is required by law to perform a minor modification, then the Commissioner is unlikely to grant the condition given that the obligation already exists.

REFUSING A MINOR MODIFICATION REQUEST

The landlord can only refuse a tenant's request on specific grounds set out in the RTA.

Certain grounds **do not** require the Commissioner's approval. However, in most circumstances, the landlord **will be required** to apply to the Commissioner for approval.

A landlord **must not refuse** a tenant's request for a minor modification that is reasonably required to enable a person with a disability to access and use the premises, if refusing would breach:¹⁶

- the Equal Opportunity Act 1984 section 66L(2)(d); or
- the Disability Discrimination Act 1992 (Commonwealth) section 25(2)(d).

Refusal grounds which do not need Commissioner approval

A landlord **does not** need to apply for the Commissioner to refuse a minor modification on the following grounds:¹⁷

- making the modification would disturb material containing asbestos;
- the rental property is entered in the State Register of Heritage Places;
- if the rental property is a lot in a community titles scheme or strata titles scheme **and** the scheme by-laws prohibit making the modification;
- making the modification would be contrary to a written law; or
- a prescribed ground (currently no prescribed grounds).

If the landlord has refused on a ground listed above, and the tenant believes the ground of refusal is not valid, the tenant can [apply](#) to the Commissioner for a review of the refusal.¹⁸

If the rental property is subject to by-laws that require approval from a council or body of owners to make the requested minor modification, the landlord may refuse the tenants request if the tenant does not already have this approval, as it would be a breach of that by-law to make the minor modification. Tenants should obtain the approval of the council or body of owners before submitting their Form 26 to the landlord.

Refusal grounds which do need Commissioner approval

¹⁶ Residential Tenancies Act 1987 (WA) s. 50R.

¹⁷ Residential Tenancies Act 1987 (WA) s. 50Q(a) – (d) and (f).

¹⁸ Residential Tenancies Act 1987 (WA) s. 50U(1).

The landlord **must** apply to the Commissioner if they wish to refuse a minor modification on any of the following grounds:¹⁹

- the landlord would suffer undue hardship if the modification were made;
- the modification would be unsafe or make the rental property unsafe;
- the rental property is a lot in a community titles scheme or strata titles scheme **and** the modification is likely to require modification to other residential premises rental property or common property of the scheme;
- the modification would result in additional maintenance costs for the landlord;
- removing the modification, or restoring the rental property to their original condition, when the residential tenancy agreement ends;
 - o would not be reasonably practicable; or
 - o is likely to cost more than the amount of the security bond for the agreement;
- the tenant has been given a valid notice of termination of the residential tenancy agreement;
- making the modification is otherwise unreasonable in the circumstances; or
- a prescribed matter
 - o the minor modification involves nailing, drilling or permanently altering a tile, exposed brick or exposed concrete surface; **and**
 - o there is a significant risk of damage from this minor modification.

If the landlord fails to make their application within 14 days of receiving the request, then the minor modification will be deemed to be approved by the landlord.²⁰

The application must address one or more of the above grounds, as these are the only grounds on which refusal may be permitted, other than those listed in “Refusal grounds which do not require Commissioner approval”.

For an application for refusal to be approved, the landlord will need to satisfy the Commissioner that one of these grounds applies. The landlord should provide reasonable evidence to support their application, such as third-party quotes on the cost of restoration or ongoing maintenance of the modification. A landlord’s personal opinion as to estimated costs or other factual matters is likely to be insufficient.

We will now consider each ground of refusal in more detail.

HOW THE COMMISSIONER DECIDES IF A REFUSAL GROUND APPLIES

REFUSAL GROUND 1: The landlord would suffer undue hardship if the modification were made²¹

The term ‘undue hardship’ is not defined in the RTA.

The Macquarie Dictionary defines the terms as:

- Undue: unwarranted; excessive; not proper, fitting or right; unjustified.
- Hardship: a condition that bears hard upon one; severe toil, trial, oppression or need.

The NSW Supreme Court has previously concluded that the phrase “undue hardship” means “greater hardship than the circumstances warrant”.²² This means that hardship alone is not sufficient, it must be a level of hardship that is not proportionate to the situation.

¹⁹ *Residential Tenancies Act 1987 (WA)* s. 50S(3).

²⁰ *Residential Tenancies Act 1987 (WA)* s. 50O(5).

²¹ *Residential Tenancies Act 1987 (WA)* s. 50S(3)(a).

²² *State of New South Wales v Austeel Pty Limited* [2004] NSWSC 81, [22], quoting *Liberian Shipping Corporation v A King & Sons Ltd* [1967] 1 Lloyd’s Rep 302 at [307].

Often a landlord's concerns would be more appropriately addressed by one of the other grounds. If not, then, in order to satisfy the Commissioner that this ground applies, the landlord would need to demonstrate:

- what particular hardship is the landlord concerned about. It is not sufficient to state that the minor modification may cause a hardship to the landlord;
- why is the hardship *likely* to arise; and
- an explanation (and any evidence) to justify why the hardship would be undue.

REFUSAL GROUND 2: The modification would be unsafe or would make the rental property unsafe²³

For the Commissioner to be satisfied that this ground was met, the landlord would need to address:

- what is the hazard caused by the minor modification;
- what would be the potential outcome from that hazard; and
- what is the reasonable likelihood of that outcome occurring.

A minor safety issue, or a risk that can be reasonably alleviated by imposing a condition, may not be sufficient for this ground to be met.

REFUSAL GROUND 3: If the rental property is a lot in a community titles scheme or strata titles scheme — the modification is likely to require modification to other residential premises or common property of the scheme²⁴

To meet this ground, the landlord must demonstrate:

- the requested minor modification will likely require changes to other premises or common property; and
- how the other premises or common property will likely need to be changed as a result of the tenant's minor modification request.

Most minor modifications are internal to a premises, and so this ground could only apply for a few types of modifications.

REFUSAL GROUND 4: The modification would result in additional maintenance costs for the landlord²⁵

For the Commissioner to be satisfied that this ground was met, the landlord would need to address:

- what maintenance the landlord is concerned about. The claim cannot relate to maintenance of the minor modification, as this is the tenant's responsibility;²⁶
- why that maintenance would be required; and
- what the cost of that maintenance would be.

As minor modifications are usually removed at the end of a tenancy, the landlord would need to show the maintenance costs will arise during the tenancy.

REFUSAL GROUND 5(a): Removing the modification, or restoring the rental property to their original condition, when the residential tenancy agreement ends²⁷ —

(i) would not be reasonably practicable; or

For the Commissioner to be satisfied that this ground was met, the landlord would need to demonstrate why it was not reasonably practicable to restore the rental property back to their original condition.

²³ Residential Tenancies Act 1987 (WA) s. 50S(3)(b).

²⁴ Residential Tenancies Act 1987 (WA) s. 50S(3)(c).

²⁵ Residential Tenancies Act 1987 (WA) s. 50S(3)(d).

²⁶ Residential Tenancies Act 1987 (WA) s. 50ZB(2).

²⁷ Residential Tenancies Act 1987 (WA) s. 50S(3)(e).

REFUSAL GROUND 5(b): Removing the modification, or restoring the rental property to their original condition, when the residential tenancy agreement ends²⁸ —

(ii) is likely to cost more than the amount of the security bond for the agreement

For the Commissioner to be satisfied that this ground was met, the landlord would need to:

- provide third party quotes for the work needed to return the rental property to their original condition; and
- justify why that level of work would be required – e.g. to patch up a hole left by a wall anchor may not require the entire wall to be repainted, and so a quote to repaint the entire wall would be more than what is required to restore the wall. Additionally, some works may not require a professional tradesperson to perform them, such as minor wall patching.

REFUSAL GROUND 6: The tenant has been given a valid notice of termination of the residential tenancy agreement²⁹

For the Commissioner to be satisfied that this ground was met, the landlord would need to provide a copy of the notice of termination and provide evidence that it was issued on valid grounds.

If a landlord issues a termination notice to a tenant because a Form 26 was submitted, this may be considered retaliatory action and could lead to the Magistrates Court of Western Australia deciding the termination is not valid.³⁰

REFUSAL GROUND 7: A prescribed matter³¹

Currently the only prescribed matter is that the minor modification poses a significant risk of damage as it involves drilling, nailing or permanently altering a tiled, exposed brick or exposed concrete surface.

For the Commissioner to be satisfied that this ground was met, the landlord would need to address:

- what surface would be affected by the minor modification;
- how the minor modification would permanently alter the surface;
- what is the risk of damage by performing the minor modification; and
- why is the risk significant.

Only the listed surface types apply for this ground, so a brick wall which has been plastered or had plasterboard installed on top of it would not come under this ground.

REFUSAL GROUND 8: Making the modification is otherwise unreasonable in the circumstances³²

For the Commissioner to be satisfied that this ground was met, the landlord would need to demonstrate why it was unreasonable for the minor modification to be installed.

If the reason could fit under another ground already dealt with above, then it would be unnecessary to also apply under this one.

TENANT OBLIGATIONS WITH MINOR MODIFICATIONS

Installation of minor modification

If a minor modification is approved, the tenant is responsible for:

- paying for the minor modification.³³

²⁸ Residential Tenancies Act 1987 (WA) s. 50S(3)(e).

²⁹ Residential Tenancies Act 1987 (WA) s. 50S(3)(f).

³⁰ Residential Tenancies Act 1987 (WA) s. 26B(4)(a).

³¹ Residential Tenancies Act 1987 (WA) s. 50S(3)(g).

³² Residential Tenancies Act 1987 (WA) s. 50S(3)(h).

³³ Residential Tenancies Act 1987 (WA) s. 50ZB(1)(a).

- maintaining the minor modification.³⁴
- making sure the minor modification has regard to the age and character of the rental property and complies with all legal requirements, including any strata by-laws.³⁵ This may require the tenant to ensure the modification has a similar style to existing fixtures at the rental property.

End of tenancy

At the end of the tenancy, the tenant can choose to either:³⁶

- get a written agreement from the landlord allowing the minor modification to stay for the next tenancy;
- return the premises, at their expense, to the condition it was in before the minor modification was made (this may include removal of something attached to the premises); or
- compensate the landlord for the reasonable cost incurred by the landlord to restore the rental property to the condition it was in before the minor modification was made.

If the restoration is carried out by a tradesperson, then a copy of the tradesperson's invoice must be given to the landlord within 14 days by the tenant.³⁷

If damage to the rental property is caused in the removal of the minor modification, then the tenant must notify the landlord in writing. The landlord can then require the tenant to repair the damage or compensate the landlord for the reasonable costs of the required repairs.³⁸

³⁴ *Residential Tenancies Act 1987 (WA)* s. 50ZB(2).

³⁵ *Residential Tenancies Act 1987 (WA)* s. 50ZC.

³⁶ *Residential Tenancies Act 1987 (WA)* s. 50ZD(1).

³⁷ *Residential Tenancies Act 1987 (WA)* s. 50ZD(3).

³⁸ *Residential Tenancies Act 1987 (WA)* s. 50ZE.