

# Renting a home in Western Australia

The essential guide



Department of Consumer  
and Employment Protection  
Government of Western Australia

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# Foreword

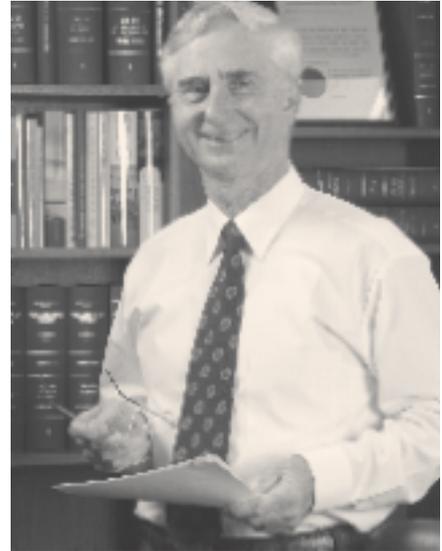
Welcome to the first edition of *Renting a home in Western Australia; the essential guide*.

This new publication from the Department of Consumer and Employment Protection covers the essentials of the *Residential Tenancies Act 1987*, and brings together comprehensive information for residential tenants, in an easy-to-read style. It provides sound advice for people to consider before they sign a rental agreement. It also gives advice on how to cope with the typical problems that can arise during a tenancy.

Over the years rental disputes have consistently formed the largest category of inquiries and complaints received by Consumer Protection. Most of the complaints are the result of either tenants, landlords, or agents not having a sound understanding of their legal rights and responsibilities.

*Renting a home in Western Australia; the essential guide* embodies one of the guiding principles of the State Government's Consumer Justice Strategy. That is, empowering consumers by providing information that allows them to make sound marketplace decisions and – if necessary – exercise their legal rights with confidence.

I strongly recommend that you keep this guide for future reference.



John Kobelke MLA  
Minister for Consumer and Employment Protection

# Introduction

The Department of Consumer and Employment Protection receives thousands of calls a year from tenants and landlords wanting to know their rights and responsibilities.

That's not surprising, given nearly half of all West Australians rent, rather than live in properties they own.

Renting in Western Australia is governed by a set of laws called the *Residential Tenancies Act 1987*. At first glance these laws may seem complicated, but there are many different scenarios that have to be dealt with by the Act – and they definitely do come up!

This guide will explain WA's renting laws in plain English. It will also help you find the right home, avoid common renting pitfalls and also show you how to have a harmonious (and lawful) relationship with your landlord!\*

*\* The title "landlord" in this guide is used as a general description for landlords and/or owners of the property or real estate agents managing the rental property, unless an issue relates to them specifically.*

There are a range of tenancy advice services available in WA:

- The Department's Consumer Protection Advice Line 1300 30 40 54 (8.30am-5.00pm weekdays, at the cost of a local call statewide)
- The Tenancy Advice Service Telephone: 9221 0088 or country callers 1800 62 18 88

## Regional:

### Great Southern

Unit 2/129 Aberdeen Street,  
PO Box 832, ALBANY WA 6330  
Telephone: 9842 8366

### South-West

8th Floor/61 Victoria Street,  
PO Box 1747, BUNBURY WA 6231  
Telephone: 9722 2888

### Mid-West

Post Office Plaza, 50-52 Durlacher Street  
PO Box 1447, GERALDTON WA 6531  
Telephone: 9964 5644

### Goldfields/Esperance

Viskovich House, 377 Hannan Street,  
PO Box 10154, KALGOORLIE WA 6433  
Telephone: 9021 5966

### North-West

Unit 9, Karratha Shopping Centre, Sharpe Avenue,  
PO Box 5, KARRATHA WA 6714  
Telephone: 9185 0900

## Website

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

If after reading this guide you have more questions, check the list at the back of this guide.

# Starting a tenancy

It's important to shop around and avoid making rash decisions about renting.

There are significant up-front costs, so think about what you can afford. If you are young and considering leaving home, make sure it is for the right reasons because it may be simpler and cheaper to continue living with your parents.

Think carefully about whether the property meets your day-to-day needs. These needs might include your capacity to pay the rent, proximity to shops, schools or public transport, even how safe you might feel in the home. Don't forget too that there are hidden costs associated with moving house, such as the expense of moving furniture, etc.

More importantly, to rent a house at \$100 per week could cost up to about \$800 to move in. You would have to find money to pay for:

- rent in advance (two weeks) \$200
- security bond (equivalent to a maximum of four weeks' rent) \$400
- bond for a cat or dog (if you have one) \$100
- real estate agent's letting fee (equal to one week's rent, if applicable) \$100

When you've scoured the newspaper "to let" columns and found what you think is the right property you then need to enter a tenancy agreement.

## Types of agreements

Rental agreements are either **periodic** or **fixed term**.

A periodic tenancy has no pre-determined finish date but continues on with the same terms and conditions until giving the appropriate notice terminates it.

A **fixed term** tenancy is an agreement in which a tenant rents the premises for a set period with a specific start and finish date. It provides more certainty and security for both parties.

## Application forms and option fees

Some landlords, private owners and agents can ask you to complete application forms, so they can assess whether or not to accept you as a tenant. The landlord may also ask for an option fee. If an agreement is signed, this fee can be put towards the rent. If a tenancy is not offered, this should be refunded.

## Put it in writing

Put the tenancy agreement in writing showing your details, the landlord's, any other tenant's. It includes relevant dates, rent requirements and special conditions. Make sure both parties sign it. Don't leave any blank spaces on the agreement paperwork.

If you're dealing with agents, they will provide a form. If not, the State Government sells a Residential Tenancy Forms Kit at a low cost available from the State Law Publisher, Ground Floor, 10 William Street, Perth or get it online at [www.slp.wa.gov.au/options/servicfr.htm](http://www.slp.wa.gov.au/options/servicfr.htm).

# Property Condition Report

When you first move in, make sure you fill in a Property Condition Report.

The Property Condition Report sets down, on a room-by-room basis, the exact contents and condition of the premises at the beginning of the tenancy. It should also point to anything that is broken or in poor condition, (e.g. a torn flyscreen in bedroom one; cracked wall; stained carpet in the lounge; broken door handle in the bathroom).

You and the landlord should both sign the report when it's completed. If the landlord won't sign the document, an independent person can do it.

When it's time to move out, the report will support your case if you are asked to pay for any damage or missing items. The Property Condition Report prepared and agreed at the start of the tenancy can be compared directly with a report prepared when you move out, to avoid or minimise potential conflict.

Remember that, as the tenant, you are not liable for normal wear and tear.

## Children

No person can normally refuse to offer you a tenancy if you intend to have a child live at the premises. The only exceptions are where the landlord lives on the premises or where the landlord lives next door.

## 'Contracting out'

"Contracting Out" means that you and the landlord have agreed not to comply with specific parts of the *Residential Tenancies Act* as long as the tenancy agreement is in writing and is signed by both parties.

A word of warning, not all parts of the Act can be 'contracted out'. Make sure you fully understand what provisions of the Act you are contracting out of before signing a modified tenancy agreement.

## Stamp duty

As from 1 January 2004 stamp duty on Residential Tenancy Agreements has been abolished and should no longer be charged by your landlord.

## Letting fee

A real estate agent handling the rental premises for the owner can charge you a letting fee to a maximum amount of one week's rent. The agent cannot charge you any other fee for entering into a tenancy, or for extending, continuing or renewing an existing tenancy.

The landlord and/or owner of the property cannot charge a letting fee.

## Keep the paperwork

You should keep a copy of the tenancy agreement and the property condition report. The landlord is required to give you a copy of the fully executed agreement and should also give you a copy of the document: "*Information for Tenant*" (*Statement of Rights and Duties*) under the *Residential Tenancies Act*".

### Premises must be clean

When you move in, it is the landlord's responsibility to make sure the premises are vacant and clean on the day agreed for you to move in. You can make it a part of the agreement that the landlord carries out certain tasks.

### Sub-letting

It can be a written condition of a residential tenancy agreement that you cannot assign or sub-let the premises. Alternatively, the landlord can agree to allow you to sub-let the premises and can specify in the agreement that written consent must be obtained.

If this is the case, or if the agreement does not mention sub-letting, the landlord must not refuse to give consent unreasonably.

### Cleanliness and repairs

Check the cleanliness of the premises and things such as pests, weather resistance, building security, the state of doors, windows, taps, hot water system, and fencing. Check if the landlord intends to fix any problems that you discover and get this written into the agreement.

### Who does the Act affect?

As well as private landlords and tenants, Homeswest and its tenants are bound by the *Residential Tenancies Act*, although Homeswest and some employment-related tenancies are exempt from some minor sections of the Act.

The *Residential Tenancies Act* also covers permanent residents of caravan parks and park-home residents, but does not apply to hotels, motels, holiday accommodation, educational institutions, colleges, hospitals, nursing homes, clubs, or eligible organisations operating homes for aged or disabled people.

Boarders or lodgers are not covered by the Act, but they still have rights and responsibilities. For more information, see the chapter about boarders and lodgers later in this guide.

# Bonds and rent

A landlord can ask for a security bond in advance to cover any costs that you may have to pay at the end of a tenancy. This might be to cover any damage you caused to the premises or contents, water charges or unpaid rent.

The bond is your own money and must be held by the landlord in trust until the end of the tenancy. The bond cannot be used by any party or person unless by written agreement or by a court order.

The bond generally cannot be more than four weeks' rent, with some exceptions. These exceptions are:

- where the weekly rent is more than \$500 (any amount of bond can be requested but you should check how much it is before agreeing to a tenancy);
- where the owner of the property was living in it for the previous three months (any amount of bond may be requested); and
- where you have a cat or dog, or both (an extra \$100 can be charged to meet the cost of fumigation that may be required at the end of the tenancy).

## Who holds the bond?

When you or another tenant pay the bond, the landlord must give a receipt on the spot, showing the name of the person who paid, the amount, date and address of the rental premises.

Within 14 days, the landlord must put the bond into a '**Tenancy Bond Account**' with the State Government's Bond Administrator (a section of the Department of Consumer and Employment Protection), or an authorised financial institution (bank, building society, credit union).

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

The bond must be held in a joint account showing your name and the names of the owner. A *Form 8 (Lodgement of Security Bond Money)* must be lodged and signed by you or the person who paid, and the landlord. Financial institutions may have their own version of this form.

If more than one person has paid the bond (eg: in a shared house), it is important that the names of all the parties appear on the lodgement form, to protect their share.

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

It is an offence if the bond is not paid to the Bond Administrator or a financial institution.

## What if the signatories change? (change in ownership)

If the ownership of a rented property changes, you and the bond holder must be notified and the signatures changed over. *Form 9 (Notice of Security Bond)* will notify the bond holder of the full name and address of the new owner or property manager. It must be signed by the new owner and the previous owner.

In situations where joint tenants are named on the lease agreement and one or more decide to leave or is replaced by new joint tenants, with the consent of the landlord, all parties can elect to change the lease agreement and have the bond paid out, then replaced by a new bond.

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

## Refund of bond money

At the end of a tenancy, bond money will only be paid out if you and the landlord agree, or if a court order is obtained from a magistrate.

If there is no dispute over the condition of the property on handing it back to the landlord, or both of you have agreed how the bond money should be divided to pay for any damage etc, a *Form 4 (Joint Application for Disposal of Security Bond)* must be signed by you and the landlord and given to the bond holder.

The form should show the amount to be returned to you and/or the landlord and/or to be refunded to Homeswest if you have received bond assistance from Homeswest.

**IMPORTANT: Landlords and tenants should make sure the form is filled in correctly before signing it. NEVER sign a blank or partially completed form. You wouldn't sign a blank cheque, so don't sign a blank form!**

Agents are required to pay out the bond money within seven days of receiving the *Form 4* signed by both parties.

## Disputes over bond pay-outs

If a dispute arises over how the bond money should be paid out, you can resolve it by negotiation, or by taking action in the Small Disputes Division of the Local Court nearest to the rented premises.

If you go to the Small Disputes Division and the bond money is still held in the joint account, an Application for *Disposal of Bond Money (Form 6)* should be completed. You can get this form from the court.

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

- agree to settle the dispute;
- dispute your application (the landlord lodges a *Notice of Intention to Dispute Application for Disposal of Bond Money (Form 5)* within

seven days), whereby the matter is set down for hearing before a Clerk of Courts or Magistrate; or

- ignore the notice (the court may then issue an order for the release of the bond after seven days).

A landlord may apply to the Small Disputes Division (using *Form 6*) for disposal of the bond money if you refuse to sign the disposal form.

If a dispute goes to court at the end of a tenancy, the Clerk of Courts/Magistrate will make an order as to how the bond money is to be paid out.

Remember, going to court doesn't mean you will face high costs.

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

## Paying rent

A landlord must not ask for more than two weeks' rent in advance before or during the first fortnight of a tenancy. After that, the agreement can provide for rent payments on a weekly, fortnightly, four-weekly or calendar-month basis or any other period as agreed by you and the landlord.

The landlord must not ask for rent until the period covered by the previous payment is finished.

## Receipts and records

Receipts for rent paid must be issued by the landlord within three days.

The receipt must show your name as tenant, the date received, the amount paid, the premises and rental period covered by the payment. Real estate agents receiving rent payments must give you a receipt immediately. A receipt is not required if the rent is paid by agreement directly into an account at a bank or other financial institution.

The landlord must keep a record of the rent paid. You should keep all receipts in case there is a dispute in the future about rent still owing.

### Rent increases

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

In a **periodic** tenancy, rent may be increased only at six-monthly intervals but you must be given at least 60 days' notice in writing, with details of the amount of the rise and the day it takes effect. You only have to pay the increase if proper notice has been given. Rent cannot be increased in the first six months of a periodic tenancy, or less than six months after the previous rise.

Rent in a **fixed term** tenancy cannot be increased during the term of the tenancy unless the agreement says so and it is at least six months since the last increase.

### Excessive Rent - Paying too much?

The amount of rent charged at the start of a new tenancy is generally controlled by market forces, but if you believe the rent is too high you can apply to the Small Disputes Division for a reduction, or to argue against a proposed increase.

The grounds for taking it to court are that:

- since the tenancy began, there has been a significant reduction in the contents or facilities provided with the premises; or
- the landlord was putting up the rent by big amounts to force you out.

### Rent is overdue

Your tenancy may end if you fall behind in paying rent. If a problem arises in making the payments, you should explain your financial situation to the landlord and arrange to pay the arrears in full.

If you're behind in rent payments, or present a bad cheque, landlords are entitled to follow the procedures described in *Service of Notices*.

### A landlord cannot seize your belongings in return for rent owed.

If you reasonably believe you're not behind in rent payments, you can remain in the premises while the matter is sorted out by negotiation, or until the landlord applies for an eviction hearing in the Small Disputes Division, where both parties can put their case (see *Ending A Tenancy*).

A landlord cannot end a tenancy even if you're behind in rent without a court order.

# Who's responsible in a tenancy?

At the start of a tenancy, the landlord must make sure the premises are habitable, clean and in a good state of repair.

During a tenancy, **you** must keep the premises clean and tidy. When a tenancy ends, it's your responsibility to hand back the property in a similar condition to what it was at the start of the agreement, taking into account normal use (ie: fair wear and tear).

You cannot use the premises for any illegal activity, or for creating a nuisance (eg. noise that disturbs neighbours).

## Maintenance and gardening

The landlord must keep the premises in a reasonable state of repair during the tenancy, and make sure it complies with building, health and safety laws.

The landlord is responsible for the upkeep of the property (eg. plumbing, cleaning gutters, tree lopping, stove elements) and the maintenance of contents provided as part of the tenancy (eg. refrigerator, lounge, washing machine, air conditioner).

Mould or mildew caused by faults in gutters or other fixtures should be fixed by the landlord, but you should regularly air out the home to avoid mould problems in winter.

The landlord can contract out of their obligation to look after the property and can include a clause in the agreement requiring you to look after maintenance and repairs, but be careful about accepting this as it could be expensive!

You must not intentionally or negligently damage property. If you have damaged the property, you must notify the landlord as soon as possible, within three days of it happening and expect to pay for repair or replacement of the damaged property.

You are responsible for basic household maintenance (eg: replacing light bulbs, cleaning windows, dusting, removing cobwebs inside and outside) and garden maintenance, such as watering, mowing, weeding, pruning and fertilising. You must also notify the landlord if you are aware of any potential roof damage that could be caused by blocked gutters.

## Urgent repairs

Unless the written agreement states otherwise, you can organise urgent repairs if the damage is likely to cause injury or problems and you've made a reasonable attempt to notify the landlord of the problem. In this case, you must not have caused the problem by failing to keep to the agreement, or causing a problem through willful or neglectful action.

If a notice is served on the landlord requiring urgent repairs to be carried out but it is ignored, you can then have urgent repairs carried out by a tradesperson and claim back the costs from the landlord. This only applies if the agreement does not require you to obtain the landlord/owner's written permission to have repairs done.

Examples of urgent repairs are:

- a burst water pipe or broken hot water system;
- a gas leak or electrical fault likely to endanger people or damage property;
- a sewerage system blockage or broken sewerage fitting;
- damage from flooding, storms or fire; or
- a broken major appliance such as a stove or refrigerator (if included in the tenancy).

You can recover the costs of urgent repairs from the landlord, but these costs must be reasonable and the work must have been carried out by a qualified tradesperson, who should give the landlord a written report on the apparent cause of the problem.

You should get at least two quotes first. Keep in mind that a tenancy agreement prepared by the Real Estate Institute of W.A. (REIWA) does not allow tenants to undertake emergency repairs although other standard tenancy agreements may allow it.

### Wear and tear v Negligence

These examples may help to explain the difference:

normal wear and tear (LANDLORD LIABLE)	neglectful damage (YOU LIABLE)
<ul style="list-style-type: none"> <li>• Curtains faded from years of sun.</li> <li>• Carpet in hall or other areas worn because it is used frequently.</li> <li>• A lock broke because it was old and had worn out.</li> <li>• Paint flaking because it is old or not applied properly.</li> </ul>	<ul style="list-style-type: none"> <li>• Your cat tears the curtains</li> <li>• Stains or burns from things you dropped or placed on carpets</li> <li>• You forgot the key and broke a lock to get in.</li> <li>• Mould/mildew formed because you didn't properly air the dwelling.</li> </ul>

### Rates

Local council rates are paid by the landlord. Water rates are also payable by the landlord however, there may be circumstances where there are remaining unpaid charges. In this case, the Water Corporation has the legal right to recover unpaid amounts directly from you.

### Painting

Painting is the owner's responsibility unless the damage is a result of your negligence. You should only paint if the landlord has given permission, in which case the landlord should probably choose the colour and pay for the paint.

### Alterations and additions

A tenancy agreement may or may not allow you to attach fixtures, renovate, or alter the property. If the agreement says these can be carried out with the landlord's consent, that permission should not be withheld or refused unreasonably. In all cases, get the landlord's permission first.

### Locks and security

The landlord must install and maintain adequate locks and other devices so that the premises are reasonably secure. In general terms, all windows and doors should close securely.

While many people believe that deadlocks and window security locks are required, it may not necessarily mean that the landlord is responsible for fitting them. The landlord's responsibility depends on a number of things, including the age, location and nature of the premises, the number of break-ins in the neighbourhood and whether previous safeguards were shown to be inadequate. If you want to fit additional security, get the landlord's permission before any work is started.

If you're concerned about security at the property you should get advice from Neighbourhood Watch or Community Policing and, if necessary, approach the landlord to see if the problem can be sorted out, perhaps with both parties contributing to the cost. If an agreement is reached, put it in writing and make sure you and the landlord sign it.

Tenants and landlords cannot remove or change locks without the consent of the other. Landlords, agents, or tenants who change locks unlawfully can be fined up to \$4000.

### Pest and vermin control

The landlord is responsible for the treatment of infestations such as fleas, white ants, cockroaches, mice and rats, as well as the annual maintenance inspection. Landlords are not responsible for infestations caused by your activities or lack of cleanliness.

For example, you are obligated to take regular basic pest prevention measures, such as storing food properly and using general household sprays and baits where necessary.

### Insurance

Don't forget to insure your household contents and personal items. The landlord is responsible for taking out insurance for loss or damage to buildings and fixtures and fittings.

### Privacy and quiet enjoyment

The landlord must not interfere with your right to peace, privacy, comfort and enjoyment, except when exercising a legal right to enter the premises (see below).

### Inspections

The landlord has the right to inspect the premises at a reasonable hour, but should give you between seven and 14 days' notice. In case of necessary repairs three days' notice is required. The landlord must let you know in writing of the date, approximate time and reason for entering the property and the period of notice given (see *Service of Notices*).

### Other rights of entry by landlord

The landlord may also enter the premises in the following circumstances:

- in an emergency;
- you give permission at the time;
- to collect the rent if it is paid weekly or less frequently and the agreement allows for collection at the premises;
- to inspect the premises when collecting the rent as above, but not more than once every four weeks;
- to carry out or inspect necessary repairs after giving at least 72 hours' notice;
- to show the premises to prospective tenants in the 21 days before the end of an agreement, after giving the tenant reasonable notice; or
- to show the premises to prospective buyers, after giving reasonable notice.

The landlord must only enter a property at a reasonable hour in these circumstances, except in an emergency, or with your approval. You may wish to be present on these occasions.

If a landlord gives proper notice to enter the premises, the landlord or the agent may use their spare key to enter the property even if you are not there.

If the landlord enters the premises **without** proper notice or authority under the *Residential Tenancies Act*, you can ask that it doesn't happen again, serve a notice on the landlord for not keeping to the agreement, or seek an order from the Small Disputes Division of the Local Court about acceptable access.

Additional rights of entry apply to caravan park owners under the *Caravan Parks and Camping Grounds Act 1995*. If you need specific advice about this, contact the Department of Consumer and Employment Protection on 1300 30 40 54.

# Paying for water

## Service charges

Charges for water are levied in two distinct ways:

- Annual service charges (or “Water Rates”) – levied annually on owners for the supply of water to all properties and for sewerage and drainage services (where applicable). These accounts are issued on 1 July.
- Water consumption charges – the water consumption period for each property is determined by the final meter reading cycle carried out by the Corporation. Water consumption accounts are sent out on a progressive basis every six months in Perth and four-monthly in country areas (including Mandurah).

Annual service charges for residential premises are normally the responsibility of the owner. Water consumption charges for residential premises are normally your responsibility. However, as discussed below, the tenancy agreement can provide for sharing the costs of water consumption.

## Who pays for what?

Tenancy agreements can vary on who pays for the water consumption. When preparing an agreement, it is recommended that you and the landlord negotiate each party’s contribution to the cost of water consumption. Although you can be required to pay 100% of water consumed, some landlords agree to offer a percentage of the bill to cover the cost of maintaining lawns and gardens. Whatever is decided, make sure its in writing.

Landlords can get a special meter reading from the Water Corporation at the beginning and end of a tenancy so that disputes over how much water is used can be avoided. You should make sure the reading is recorded at these times. The Property Condition Report or lease agreement can be used to record the readings.

Landlords should send a written request to the Water Corporation if they want the consumption bill to be in your name.

## Water use accounts

All special meter readings by the Water Corporation for individually metered properties result in an account showing the amount of water used between the special reading date and the previous meter reading.

Where a special meter reading is requested by the landlord, the consumption account will also show any amounts previously billed but not paid. (This may include unpaid water rates).

When given an account by the landlord, make sure that only charges for water consumption are included.

The Water Corporation is now able to issue water consumption accounts directly to tenants, but only after a request is received from the landlord.

The Water Corporation charges for a normal special reading (generally for a reading within 5 working days). A fee is also charged for an urgent reading (generally for a reading within 2 working days). The landlord is usually issued with the account for these costs, although if you request the reading, you may be liable for the cost.

For current charges call the Water Corporation on **13 13 85**.

## No free water

All water consumed in Western Australia is billed on a user-pays basis.

### Metropolitan residential properties

Each kilolitre (kl) of water supplied to a residential property in the metropolitan area is charged at rates based on how much you use.

To encourage careful use of water the Corporation has multi pricing tapers. The higher the use the higher the price per kl.

Current rates are available online at [www.watercorporation.com.au/your-account/content-metrores.asp](http://www.watercorporation.com.au/your-account/content-metrores.asp) or you can call 13 13 85.

### Water consumption billing - Changes of tenancy

Water Corporation recognises when there is a change of tenancy there may be inequity in calculating water costs. A special reading by the Water Corporation is needed as a result. They can then adjust the consumption rate based on a pro-rata calculation to make sure that new tenants are not disadvantaged.

### Country residential properties

There are a number of country areas across Western Australia with different charging scales that in part reflect the cost in maintaining these services. However the same principles apply, including the need for the Water Corporation to take a special reading. For more information contact the Corporation on **13 21 44** or visit [www.watercorporation.com.au/your-account/content-countryres.asp](http://www.watercorporation.com.au/your-account/content-countryres.asp).

# Ending a tenancy

There are various reasons why a tenancy ends, ranging from the tenant simply wanting to move on, to cases where the landlord or tenant has not kept to the terms of the agreement. How to deal with it properly depends on whether the agreement is a fixed term tenancy or a periodic tenancy.

## You want to end a tenancy

You may end a periodic tenancy agreement without having to provide a reason, but you must give a minimum of 21 days' notice in writing. The day that notice is given is taken as the day of personal delivery or the day following the postmark on the letter.

You can give two days' notice to end a tenancy agreement if the premises are destroyed, or are compulsorily acquired by law or become uninhabitable. (this applies to both periodic and fixed term tenancies).

You can seek an order from a magistrate in the Small Disputes Division to end a fixed term agreement if the landlord has not kept to any one of the terms of the agreement and refuses to fix the problem. A fixed term agreement may also be ended by written agreement signed by the two parties.

Apart from the above situations, you are committed to a fixed term tenancy agreement for the duration of that term.

If you break a fixed term agreement without the written agreement of the landlord, you may be liable for rent and maintenance expenses on the property until the landlord finds a new tenant or the original tenancy period expires.

You may also be liable for reimbursement to the landlord for the advertising costs of finding a new tenant. In this situation, the landlord has a duty to take necessary steps to reduce any losses, such as advertising to find a new tenant straight away. If the property is managed by a real estate agent you may be liable for the unexpired portion of any letting fee.

You must also give the landlord a forwarding address at the end of a tenancy.

## The landlord wants to end a tenancy

A landlord may want to give notice to end a periodic or fixed term agreement, or take the matter to court if:

- you're behind in rent payments, or present a bad cheque;
- you fail to keep to the provisions of the tenancy agreement, other than rent arrears (seven days' notice after the tenant has been given 14 full days' notice in writing to put matters right),
- the premises are destroyed, are compulsorily acquired by law, or become uninhabitable (seven full days notice).

In the case of periodic tenancies, notice can also be given by the landlord if:

- the property is to be sold and the contract involves handing over vacant premises (minimum of 30 full days' notice),
- the tenancy is to be ended without giving any reasons (minimum of 60 full days' notice).

The landlord may end a tenancy through the Small Disputes Division of the Local Court if the tenant has intentionally or recklessly injured the landlord, agent, or a neighbour, or caused serious damage to the premises.

Apart from these circumstances, a fixed term tenancy may also be ended:

- by written agreement signed by the two parties, or
- if a magistrate is convinced an owner would suffer undue hardship if the agreement were ended under any other provision of the Act. (In these circumstances the Court will usually order the owner to pay the tenant's costs).

### Eviction

If you receive proper notice to end an agreement but refuse to leave, the landlord can seek an order from a magistrate in the Small Disputes Division of the Local Court to end the agreement and take possession of the premises.

The landlord must apply for the order within 30 days of the moving out date shown on the notice. The order can be enforced with a warrant authorising a Bailiff to evict you. The landlord is not permitted to change locks, turn off the electricity or take any other action to force you out of the property, unless authorised by a court.

You can ask for an order by a Magistrate to be suspended for up to 30 days if the situation is likely to cause you hardship. You have some protection under the Act if you believe that action to evict you was due to complaints you made in the previous six months to a public authority, or other steps you took to enforce your rights. You can remain in the rental property until the matter goes to court and can argue against the ending of the agreement.

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

# Service of notices

When either you as the tenant or the landlord believes there has been a failure to meet parts of the tenancy agreement, notices/forms can be sent by either party informing them of the problem and a time limit for making the changes.

When a notice is served under the *Residential Tenancies Act*, proper procedures must be observed. If the matter in question ends up in court, the person who prepared the required notice may have to prove it was served correctly.

## How to issue a notice

A notice under the Act can be served by personally handing it to the other person or mailing it by ordinary post – **but not placing it in the person's letterbox yourself.**

The Act says that giving notice by mail takes effect from the time the letter would have been delivered in the ordinary course of the post. Certified mail should **not** be used for sending notices.

A notice can be given to:

- the landlord;
- the owner;
- the owner's agent;
- a person appearing to be over the age of 16 who lives with the landlord; or
- the person who usually receives the rent.

A notice to you as the tenant can be given to:

- the person who usually pays the rent; or
- a person appearing to be over the age of 16 who also lives in the rented premises.

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

Any notice that has to be given to a person whose address is unknown, it is regarded as having been served if a copy of it is published in a daily newspaper, which circulates generally throughout the State.

## Counting days

The counting of days for the notice period must **not include** the day on which the notice is served, and the last day of the notice period. Action can be taken on the day following the last day of the notice period.

If a notice is mailed, allow time for the letter to reach the recipient. Make sure you allow time for the mail to be delivered (usually allow two days in Perth and three for the country). Don't forget to take weekends and public holidays into account.

Finally, notices don't necessarily have to relate to rental payment periods.

**This guide contains flow charts illustrating the steps to be followed when serving breach notices. See pages 28 and 29.**

## Proof that notice was served

If a tenancy issue goes to court, the magistrate is likely to require proof that notices were served correctly.

A copy of each notice should be kept, showing the date sent and the method used to serve it. These notations should be signed by the person who sent the notice. This also applies where the notice is handed to the intended person.

# Forms and notices to use

There are various notices (forms) already in existence that tenants and landlords can use in specific situations. Some must be used; in other cases you can simply choose to write a letter. You should check in each case what is required.

Blank copies of various notices can be obtained for a small cost from the State Law Publisher, Ground Floor, 10 William Street, Perth.  
Tel: 9321 7688, fax: (08) 9321 7536 or online at <http://www.slp.wa.gov.au>.

## Rent not paid

If you fall behind in paying rent, the landlord should give notice in writing as soon as the payments are in arrears, warning that the tenancy agreement may be ended if the rent is not brought up to date.

## Other breaches by tenant

If you breach the agreement in ways other than not paying rent, (e.g. premises or contents damaged; property or gardens not being maintained; disturbing neighbours), the landlord must give you notice in writing stating the nature of the problem and requiring that it be remedied within 14 full days.

A landlord must use *Form 20 (Notice of Breach of Agreement)* to notify you of the problem, or they can simply write you a letter with the necessary details.

If you fail to deal with the problem, this can lead to an application by the landlord/owner for a court order to do so, or steps taken to end the agreement.

## Landlord wants to end agreement

If the landlord wants to end an agreement for whatever reason as determined by the Act (see *Ending a Tenancy*), you must be notified in writing.

Where the landlord is seeking to end the agreement for a reason other than for failure to pay rent, a *Form 1C (Notice of Termination)* must be used. 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 sections of the Act governing each of the grounds on which a tenancy can be ended.

## Landlord breaches agreement

The Act provides for tenants to take action if landlords don't keep to their part of the tenancy agreement (e.g. premises aren't maintained in good repair; locks for reasonable security not provided; your privacy is not observed).

You as the tenant can provide notice in writing of the nature of the problem and call on the owner to correct it within 14 days.

A normal letter or *Form 20A (Notice of Breach of Agreement by Owner)* can be used.

If the problem is covered by council by-laws, building health and safety laws, or Western Power or Alinta Gas regulations, advice should be sought from the relevant authority.

You should not hold back rent as a way of making the landlord fix a problem. This is a breach of the agreement and could give the landlord grounds to terminate the tenancy.

If the situation is not dealt with by the landlord, you can apply for an order from a magistrate in the Small Disputes Division of the Local Court for the work to be carried out, or seek assistance from the Department of Consumer and Employment Protection.

## You want to end a periodic tenancy

You must give notice to end a periodic tenancy but don't have to give reasons.

You must notify the landlord in writing of your plan to move out of the property, showing the date on which it will be handed back. You must also make sure that the correct period of notice is given (not less than 21 days).

The notice period does not have to coincide with a rent payment date.

The details can be put in a normal letter, although *Form 22 (Notice by Tenant of Termination)* is available for this purpose. Keep a copy for your records.

In the case of fixed term agreements, if the landlord breaches a fixed term tenancy and refuses to correct the problem, the agreement can be ended by agreement, or an order from a Magistrate in the Small Disputes Division.

## Rent increases

If the landlord wants to increase the rent, you must be given 60 full days' written notice and what the amount of the rise will be (see also: Bonds and Rent).

*Form 18 (Notice to Tenant of Rent Increase)* is available for this purpose, or the owner can write a letter containing the details.

Notice of a rent increase cannot be issued within the first six months of a tenancy agreement and after that, it can be given only once every six months. (In a fixed-term tenancy this would happen only if the agreement provides for rent increases).

## Intended inspection by landlord

The landlord of a rental property has the right to inspect it at a reasonable hour, but must give you seven to 14 days' notice in writing. (see also: *Who's Responsible in a Tenancy?*). You must be notified of the date, time and landlord's reason for entering the premises. The correct period of notice must also be given.

The landlord can put the details in a letter or use *Form 19 (Notice of Intended Inspection)*. This form also provides information under the Act on the circumstances in which the owner may enter the premises.

# Settling disputes in court

Disputes sometimes arise during a tenancy. The best way to resolve disagreements is for both parties to talk it over and come to a solution. You should always attempt this first, before seeking other remedies.

If that fails, consider contacting the Consumer Protection Advice Line for advice (1300 30 40 54 during business hours) or to make a formal complaint. The department can sometimes resolve the differences in a dispute.

When this is not successful or an appropriate course of action, the court system is available to settle your matter.

## Which court?

The Local Court has a section known as the Small Disputes Division which is authorised under the *Residential Tenancies Act* to hear disputes between landlords and tenants relating to tenancy agreements

A hearing in the Small Disputes Division is controlled by a Magistrate or Clerk of Courts (who may sit in the place of Magistrate if both parties agree).

There are costs and fees for taking a matter to the Small Disputes Division. Check with the Local Court for the current rates.

Proceedings in the Small Disputes Division are relatively informal, with landlords and tenants able to represent themselves, or in some instances be represented by agents. Lawyers are allowed only in rare circumstances.

## How to apply for a hearing

*Form 12 (Application)* is used when seeking a hearing for a general dispute, or a dispute over a bond where the amount being sought is greater than the bond.

*Form 6 (Application for Disposal of Bond Money)* is used for disputes at the end of the tenancy where the amount in dispute is not greater than the amount held in the bond account.

Applications must be made (unless by consent) to the Local Court closest to the rental premises.

## Preparing your case

You can help your case through careful preparation. Make sure you keep an orderly file of all paperwork and write down details of what actions you have taken that are directly relevant to the matter at hand.

## Who's who

The person who asks the Small Disputes Division to resolve a dispute is called the Applicant.

The other person involved is called the Respondent. The court documents and records will show you as 'Applicant' or 'Respondent' as the case requires.

## Where to go

The address of the Small Disputes Division where the hearing will take place is shown on a form that will be sent to you by the Local Court.

You should arrive early and let a court official know you are there, then go to the waiting room. It's wise to stay within earshot of the court room in case your matter is called. If you are not there when your case is called, it could start without you and the Magistrate might make an order in your absence.

## Rules of the court

Although proceedings in the Small Disputes Division are relatively informal, certain rules must be observed.

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

(Rules may vary slightly between the courts.)

If both parties are there, a pre-trial conference may be held. This is to shorten proceedings, if possible, by going over the key points under dispute. It can resolve some or all of the matters and make orders with the consent of both parties. Pre-trial conferences are not compulsory and you can choose to go straight to a full hearing.

## How the case is heard

The Magistrate usually conducts the hearing in the following way (except in the case of a Form 6 application where the landlord always proceeds first):

1. The Applicant tells their story (evidence) and presents any documents in support of their case.
2. Then the Respondent questions (cross examines) the Applicant about their evidence.
3. If the Applicant has witnesses, they tell their story.
4. The Respondent can cross examine each witness.
5. The Respondent then tells their story and produces any supporting documents.
6. The Applicant cross examines the Respondent.

7. If the Respondent has witnesses, they tell their story.
8. The Applicant can cross examine each witness.

## Presenting your story to the magistrate

The Magistrate needs to be told about the problem in order to resolve it. You must give your version in court, otherwise the Magistrate may make a decision without knowing your side of the story.

When it is your turn to give evidence, you go into the witness box, take an oath or make an affirmation to tell the truth and present your version of the dispute. Tell your story in the order that events happened. Bring any documents that support your story and show them to the Magistrate at the time you give your evidence.

Don't forget that you cannot read a prepared statement at the hearing, but you may be allowed to refer to notes that help you make your statement. Ask the Magistrate if you are unsure.

When you and your witnesses have told their story and have been cross examined, you have finished presenting your case. You should have told the Magistrate all the important facts as you see them.

## The decision

When both parties have finished telling their side of the story, the Magistrate will make a decision (except in very limited circumstances, the decision is final). Generally, the Magistrate will outline the problem, summarise what has been said and then give an Order.

Listen to what the Magistrate says when making the Order. The Local Court will usually send you a copy of the Order by mail after the hearing. Ask the Magistrate if this will be done, as procedures vary from court to court. If you do not understand the order, make sure that you ask the Magistrate to explain it to you.

## If a court order is ignored

Magistrates can make a variety of Orders that are final and binding on all parties. These can include ending a tenancy agreement, how bond money will be paid out and payments of compensation from one person to another.

If the other party in the dispute is ordered to pay you money but does not pay, you can take action to enforce the order through the Local Court. You can seek legal advice through a lawyer, Legal Aid, the Citizens' Advice Bureau or at one of numerous community legal centres. The Tenants' Advice Service may be able to assist tenants.

### Key numbers:

Consumer Protection Advice Line.

Tel: 1300 30 40 54

Legal Aid. This has offices in Perth, Fremantle, Midland, Broome, Bunbury, South Hedland, Kalgoorlie and Christmas Island.

Tel: 1300 65 05 79

Tenants' Advice Service. Tel: 9221 0088

### Remember:

If you are going to court, make a note of the date of the hearing.

Make sure any witnesses know the hearing date and where they should go. If they are unavailable on the hearing day, check with the court beforehand to see what can be done.

If the witnesses are essential but won't attend voluntarily, you must serve them with a 'Summons to Witness' and give them enough money to cover a return bus or train fare. This should be done at least one week before the hearing.

Practice presenting your story before you go to court.

On the day of the hearing, bring all documents with you, as well as anything else which may support your argument. Have a pad and pen for taking notes about what other witnesses say.

Make sure you have plenty of time to get to court and know where to find the court room.

# Abandoned rental premises or goods

Abandonment by the tenant means the tenancy agreement has ended and the landlord can take control of the premises and possession of its goods. However, the landlord needs to be certain that it has been actually abandoned.

You should always notify the landlord if you are planning on leaving for an extended period of time (e.g. going on holidays or into hospital) and make the appropriate arrangements such as rent payments while you're away.

## Right of owner to compensation

Property owners can seek compensation from you for any loss, including rent, by applying to the Small Disputes Division, but they must take all reasonable steps to minimise any losses. They are not entitled to compensation for any loss that could reasonably have been avoided.

## Goods left behind

There may be unforeseeable circumstances when you are away from your rented property and out of reach.

If you can't be contacted by the landlord after a period of time, usually when rent payments have been missed, the landlord has the right to re-take possession of the premises if there is a belief that the premises have been abandoned.

There may be goods left behind belonging to you. Under these circumstances, the landlord can take action under the Act such as storing, selling or disposing of the goods.

If your goods are being stored by the landlord, you must be notified in writing (where a forwarding address has been given) and a notice published in a newspaper, which circulates generally throughout the State within the first seven days of the 60 day storage period. *Form 2 (Notice to Former Tenant as to Disposal of Goods)* and *Form 3 (Notice as to Disposal ...)* must be filled in to cover these requirements.

If your goods have been disposed or sold by the landlord and you are agrieved about the disposal of your property you should contact the Department's Consumer Protection Advice Line 1300 30 40 54 (8.30am-5.00pm weekdays, at the cost of a local call statewide) OR a local Tenancy Advice Service Tel: 9221 0088.

**Landlords cannot seize your goods or the property as compensation for rent owing.**

# Boarders and lodgers

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

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

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

A right of exclusive possession means the right to exclude anyone, including the landlord, from the premises.

This is different from exclusive 'occupation' or 'use' where you may have your 'own' room in which no one else can stay without your permission.

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

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

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

If you are renting all or part of a house from an existing or 'head' tenant, they should have obtained approval from the landlord before you moved in. If this is the case, whether you are a sub-tenant or lodger depends upon the agreement

reached between you and the head tenant. If you and the head tenant agreed you could have exclusive possession of all or part of the house (where you have the right to exclude anyone, including the landlord), you are a **sub-tenant**. This agreement must have been approved by the landlord before you moved in.

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

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

If your employer provides you with a room in his or her home in return for services such as gardening, cleaning or general handiwork, instead of paying rent, you are likely to be a boarder or lodger. Where you are provided with a room and/or meals as part of your employment, you are also likely be

a boarder or lodger. In both circumstances, your right to live in your employer's home may exist only as long as you continue to be employed.

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

Whatever the arrangement, the Department of Consumer and Employment Protection recommends you put the agreement in writing and make sure it is signed by you and your employer.

### Notice to leave

Your landlord may ask you to leave – without any reason – at any time.

However, they must give you 'reasonable notice' to leave the premises and take your belongings. This may have been agreed to before you moved in – check any written agreement you may have. You should be able to agree a reasonable time with your landlord, but be aware you may have to move out with short notice.

What amounts to 'reasonable notice' depends on the circumstances of each situation, eg: if you need to make arrangements to move furniture.

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

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

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

If you have a problem with your landlord, you should always first try to sort it out by discussing it with him. If this does not work, you should contact one of the agencies listed below.

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

**SAMPLE LETTER FROM TENANT TO LANDLORD/OWNER/AGENT SEEKING RETURN OF BOND No 1**  
**(Request for Inspection of the Property)**

(Your Address)  
(Telephone contact)

Dear Mr/Mrs/Miss/Ms ... (landlord),

Having completed a Residential Tenancy Agreement with you for the property at ... (address of rental property), I would like to begin the necessary steps for the return of my bond money. Please can we arrange a suitable time for both of us to inspect the premises?

Subject to the satisfactory completion of the inspection, I request that we both sign Form 4 (Joint Application for Disposal of Security Bond), to provide for the payment of my bond. This form should show the amount to be returned to me and whether any money should go to you.

Yours sincerely

(tenant)  
(Date)

**SAMPLE LETTER FROM TENANT TO LANDLORD/OWNER/AGENT SEEKING RETURN OF BOND No 2**  
**(Premises Inspected; Bond Money Not Returned)**

(Your Address)  
(Telephone contact)

Dear Mr/Mrs/Miss/Ms ... (landlord),

After a joint inspection of the premises at ... (address of rental property) on ... (date of inspection), there is disagreement over the return of my bond money. You have indicated that \$ ... (amount) should be deducted from my bond as payment for ... (list deductions).

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

I would like to arrange for both of us to sign Form 4 (Joint Application for Disposal of Security Bond) to provide for the release of the bond money.

If I do not receive a written response within 7 days I will seek a hearing in the Small Disputes Division of the Local Court to settle the matter.

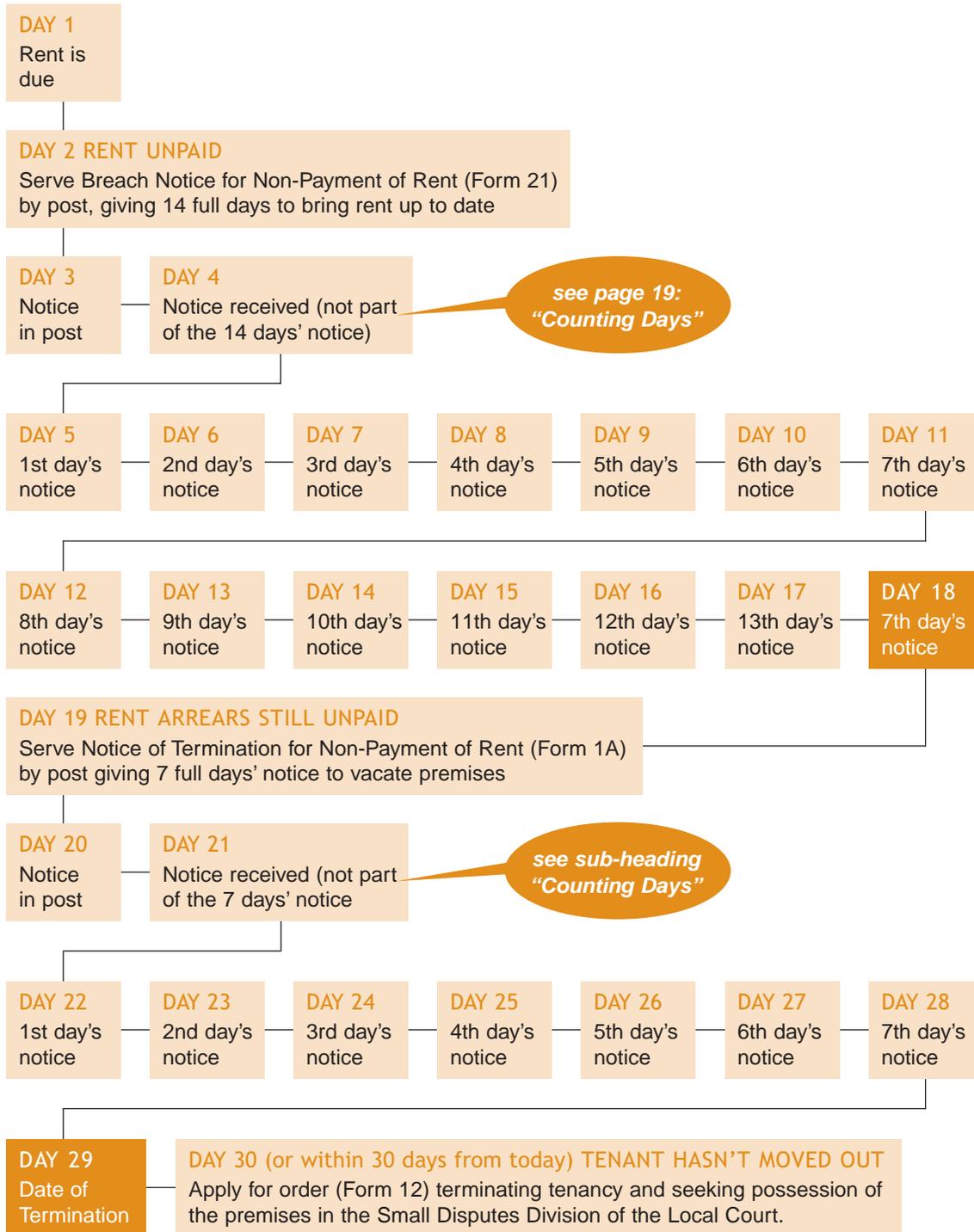
Yours sincerely

(tenant)  
(Date)

# Flow Chart 1

## Alternative One

### Service of Notice of Termination for Failure to Pay Rent



**Note:** Days 3, 4, 20 and 21 are eliminated if the notice is served personally on tenants or occupants.

# Flow Chart 2

## Alternative Two

### Service of Notice of Termination for Failure to Pay Rent



**Note:** Days 3, 4 are eliminated if the notice is served personally on tenants or occupants.

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Department of Consumer  
and Employment Protection

### **Department of Consumer and Employment Protection**

Telephone: 1300 30 40 54 (cost of a local call)

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

Citizens' Advice Bureau: (08) 9221 5711

Tenants' Advice Service: (08) 9221 0088

#### **Regional Offices**

##### **Great Southern**

Unit 2/129 Aberdeen Street,  
PO Box 832, ALBANY WA 6330  
Telephone: 9842 8366

##### **South-West**

8th Floor/61 Victoria Street,  
PO Box 1747, BUNBURY WA 6231  
Telephone: 9722 2888

##### **Mid-West**

Post Office Plaza, 50-52 Durlacher Street  
PO Box 1447, GERALDTON WA 6531  
Telephone: 9964 5644

##### **Goldfields/Esperance**

Viskovich House, 377 Hannan Street,  
PO Box 10154, KALGOORLIE WA 6433  
Telephone: 9021 5966

##### **North-West**

Unit 9, Karratha Shopping Centre, Sharpe Avenue,  
PO Box 5, KARRATHA WA 6714  
Telephone: 9185 0900

#### **For legal advice you can call:**

Legal Aid information line: 1300 65 05 79

#### **For further information**

Community lawyers offer low cost legal advice free of charge or for a fixed fee. They are also available in some regional areas – check with your local council for details of community lawyers in your area.

If you think you have been discriminated against on such grounds as your age, marital status, impairment, gender or race, you should contact the Equal Opportunity Commission on (08) 9216 3900.