

Renting out your property

an owner's guide



An easy-to-read guide that explains your rights and responsibilities as a private property owner.



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



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

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

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

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

Our website www.commerce.wa.gov.au/tenancy has a wealth of information on tenancy laws and other matters.

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

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

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

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Introduction

If you are renting out a residential property in Western Australia or thinking of doing so soon, the information in this guide will help you avoid many potential problems.

Renting in Western Australia is governed by a set of laws called the *Residential Tenancies Act 1987* (the Act) and the Residential Tenancies Regulations 1989 (the Regulations). You can buy copies of the Act and Regulations from the State Law Publisher, 10 William Street, Perth - telephone 9426 0000, or download them from www.slp.wa.gov.au. At the date of publication (2010) the Act was being reviewed. We advise you to check whether any changes have been introduced.

This guide doesn't take the place of the Act, nor does it cover everything; but it will give you a good working knowledge of your rights and responsibilities as a private property owner.

The Act covers:

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



PLEASE NOTE

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

- boarders/lodgers;
- holiday accommodation;
- long-stay caravan and park home residents*;
- hotels/motels;
- colleges;
- educational institutions;
- hospitals/nursing homes/clubs; and
- certain homes for aged or disabled persons.

If you have any doubts about whether your rental situation is covered by the Act please contact the Consumer Protection Advice Line on 1300 30 40 54 for the cost of a local call.

BE AWARE

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

BOARDERS & LODGERS

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

*CARAVAN AND PARK HOME RESIDENTS

The Act also covers permanent residents of caravan parks and park home residents who have entered into or renewed a fixed-term long-stay tenancy agreement prior to 3 August 2007. The *Residential Parks (Long-stay Tenants) Act 2006* covers residents of caravan parks and park home residents who commence on long-stay tenancy agreements after 3 August 2007. The Department produces several publications regarding residential parks long-stay tenancy. These are available on our website or ring our Advice Line on 1300 30 40 54 and we will post them to you.



Getting started

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', look at renting out your property as running a small business and your tenants as your customers. If you do this and follow the steps in this guide, there is no reason why it shouldn't be an enjoyable venture as well as a profitable one.

However, as with any other business, you must expect and plan for some losses or unforeseen expenses and also accept that 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 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.

Using an agent

Selecting an agent

Real estate property managers must be registered real estate sales representatives operating under the supervision of a licensed real estate agent.

If you choose to use a property manager, then consider:

- the person's experience in property management. Ask about the agency's management portfolio and the types of properties the agency manages;
- the property manager's approach to managing your property for example frequency of inspections;
- the property manager's manner in dealing with people; and
- the level of fees charged.

What to expect of an agent

If you use an agent just to find a tenant and deal with the bond, then you will pay the agency a 'letting fee'. If you use an agent just to manage the property and/or collect the rent, then there will be a fee for that.

However, any fees you pay to an agent (and some other expenses) are likely to be tax deductible.

If you decide to engage a property manager, 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*, is generally used for this purpose. The agent will have a copy of this agreement. It provides for you to nominate a fixed term for the management of the property.

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 in accordance with the Act;
- collecting rent payments;
- preparing 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; and
- at the end of the tenancy, checking the premises and inventory with the tenant 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 agreement. For instance, before signing the agreement you should ask yourself these questions:

- How often do you want inspections to take place?
- Do you want a copy of the property condition report and inspection reports?
- If a rental payment is late, do you want to be told?
- Do you want the property manager to accompany prospective tenants when inspecting the property instead of handing them a key so they can inspect it alone?

Once you sign an 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.

Remember that 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 published by the Real Estate and Business Agents Supervisory Board and are available free from the Department of Commerce.

BE AWARE

If you use another agent to find your tenants after you give the initial agent exclusive authority, you could be liable to pay a fee to each agent.



Managing the property yourself

Advertising your property for rent

Most tenants will look in newspapers to find somewhere to rent; so consider state and local newspapers.

The Internet is also an option. You can list your rental property by location, size, rental cost etc, and include a photo. If your property is vacant, it is a good idea to provide only general details of the location (such as the suburb) so as not to invite burglars.

Choosing tenants

When you are seeking a tenant, the Department has an application form you can use. You can download it from our website or we can post you one.

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 make sure you check them; and
- if you use a real estate agent, ask them to 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, employer.

Companies can be tenants, providing the right of occupancy is for someone using the premises as their residence.

You cannot normally refuse a tenancy because the tenant intends that a child should live on the premises. You can refuse only if the home was your principal place of residence or if you or your agent lives in adjoining premises.

IMPORTANT

The *Equal Opportunity Act 1984* prohibits discrimination on a range of grounds including sex, race, age, disability, marital status, pregnancy, family status or responsibility, religious or political beliefs, spent convictions, sexual orientation or gender history.

However, it may not be unlawful for you to refuse to enter into a contract with a person who is a minor (under 18), because leases with minors are not generally enforceable under common law. The only exception is where no-one over the age of 18 is involved in the tenancy and where the rental accommodation is for a 'necessity of life'. For example, it may be essential for a young person to rent because of their employment or study.

Sub-letting

Sub-letting (or 'assigning') the rental property, is where the tenant rents out all or a part of the premises to another person.

You can make it a written condition of the tenancy agreement that the tenant is not to assign or sub-let the premises. On the other hand, you can agree to allow the tenant to sub-let but stipulate in the agreement that your written consent must be obtained first. If this is the case, or if the agreement does not mention sub-letting, then you must not withhold consent unreasonably.

Option fees

An option fee is money paid by prospective tenants to show that their rental application is genuine. You hold the money in trust while you check references and decide whether to offer them the tenancy.

Make sure the application form makes it clear whether you intend to keep all or part of the option fee to cover any rent losses you incur if the tenant pulls out after you have told him or her that their application was successful.

If you don't offer them a tenancy, the fee must be returned in full.

If the tenancy goes ahead, you should return the option fee in full or credit it towards the first rent payment.

If the tenants decide not to rent after you've offered them tenancy, you may not automatically keep the fee and they may apply to the Magistrates Court for it to be returned.

Changes to the *Residential Tenancies Act 1987* and *Real Estate and Business Agents Act 1978* effective 5 April 2007 abolished tenant letting fees. It is now **an offence** for anyone to charge a residential tenant in Western Australia a letting fee.

Fixed-term or periodic tenancy?

You will need to decide whether you are going to offer a fixed-term or periodic tenancy.

A **fixed-term tenancy** specifies in writing (with a start and finish date) the minimum length of time a tenant has agreed to stay in the property.

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

The fixed-term agreement should state the conditions for an option to renew – including the maximum extent of any rent increases that may apply. If the tenant stays on at the property after the initial period has expired and with your permission, but another fixed-term tenancy agreement is **not** signed, the tenancy will automatically become a periodic tenancy. If no new conditions are agreed upon and put in writing, all conditions from the previous fixed-term agreement will continue to apply.

Most fixed-term agreements are for six or 12 months, but they can be for any time. Because fixed-term agreements have expiry dates, tenants don't need to give notice if they don't intend to renew the lease. The owner/agent may not add clauses that require such notice.

ADVANTAGES

Your rental income is more secure.

DISADVANTAGES

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.



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

ADVANTAGES

It provides greater flexibility if your circumstances change and you need to end the tenancy. You have to give a minimum of 60 days notice (except where your tenant is in breach of the agreement or you sell the property).

DISADVANTAGES

Your tenant can move out just as easily (minimum 21 days notice in writing). Looking around for new tenants could mean your rental income is less assured.

The written agreement

A written tenancy agreement means there can be little argument over the terms and conditions agreed at the outset between you and your tenants. It needs to be a comprehensive, well thought-out document.

This agreement (or lease) becomes a key document between you and your tenant and covers most of the matters concerning your relationship and the leasing of the property. It is important to ensure that your tenant understands the provisions in the agreement.

You can download sample periodic agreements *Residential Tenancy Agreement (Form 24B)* and fixed-term agreements *Residential Tenancy Agreement (Form 24A)* from our website. If you do not have internet access, ring our Advice Line on 1300 30 40 54 and we will post them to you.

You (and your tenant) can delete any terms you find inappropriate, or insert agreed additional

terms, provided that in so doing you do not breach the Act.

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.

Having said that, the Act can permit the property owner/agent and the tenant to agree not to comply with specific sections of the Act, as long as the tenancy agreement is in writing and signed by both parties. This is known as 'contracting out'. Make sure you highlight any special conditions (such as sub-letting) and ensure both parties understand the agreement.

However, we recommend that you **do not contract out of any section of the Act** without a very good reason. Unless the agreement specifies suitable replacement provisions to each of the appropriate sections, the courts may not uphold the terms. You may wish to contact a lawyer if you need further advice on this issue.

If you would like more information on which sections of the Act can be contracted out of under section 82 of the Act, ring our Advice Line on 1300 30 40 54.

Apart from these very specific cases, it is an offence to make an agreement that attempts to override the Act. There are severe financial penalties for doing so.

If you are not using a sample agreement (Forms 24A or 24B), then it is good sense to check your document with a solicitor. The written agreement you draw up should include (as a minimum):

- the address and a description of the premises;
- the names, addresses and contact numbers of you and your tenant;
- relevant dates (check that the time period is in words, eg 12 months, and matches the dates);
- rent requirements, such as the rental amount, frequency of payments, due dates and, if applicable, how you want the rent to be paid;
- any special conditions that the parties agree to; and
- provision for renewal after the initial period (if required).

If an interpreter is needed, call the Translating and Interpreting Service on 13 14 50. Charges may apply.

You must give your tenant a copy of the written agreement; preferably when you both sign it, but at least within 21 days of signing (or such longer period as is reasonable in the circumstances). Any costs incurred are your responsibility.

Documents and information you must give to the tenant

In addition to a copy of the tenancy agreement you have both signed, you must also give the tenant the form titled *Schedule 2 - Information for tenant (A statement of your rights and duties)*. You can download this from our website or ring our Advice Line on 1300 30 40 54 and we will post one to you.

So that the tenant can advise you of any urgent problems, you must provide your full name and residential address or that of your real estate agent. If more than one person owns the property, you must nominate someone to be head lessor and give the tenants their name and address.

If the owner is a company or other body corporate, you must provide the name and business address of the secretary of the owning company.

NOTE

If the property ownership changes, the tenant must be notified in writing within 14 days.

You must also give the tenant a receipt for the security bond money showing the date, amount, who paid and the address of the premises for which it was paid. There are clear rules under the Act about the security bond (see the *Security bonds* section).

All the above must be given to the tenant at the time the agreement is signed.



Property condition report

We strongly advise you to prepare a property condition report showing the contents of the premises and their condition and have it signed by your tenants within the first week of the tenancy if possible. You will be referring to this report when it comes time to settle the bond at the end of the tenancy.

You can download a sample property condition report from our website or ring our Advice Line on 1300 30 40 54 and we will post one to you.

Work cooperatively with the tenant in compiling the report. It should list all the contents and brief descriptions of the condition they are in, plus a description of anything damaged or in bad condition; for example, a cracked ceiling, torn flyscreen, stained carpet, dirty or chipped walls.

The report should also 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.

If there is a swimming pool, its condition should be recorded and the accessories and cleaning equipment noted.

It is a good idea to take photographs or make a video recording showing the condition of areas and the date the record was made.

If your tenant will not sign the property condition report, you can always get someone independent to inspect the property, check your report and sign it.

When the tenant moves out, you'll be able to check each item on the original property condition report to see if there has been any damage or if items are missing.

Remember, the tenant is not liable for normal wear and tear (see the *Who's responsible in a tenancy?* section).

TIP

Even if a real estate agent writes the property condition report for you, it is always a good idea to check it over anyway, just to be on the safe side.

Telephones and TV aerials

You do not have to provide a telephone or TV aerial, but they may make your property more attractive to rent.

If such facilities were (or appeared to be) available when your tenant inspected the property, it is your responsibility to ensure the service is maintained.

For example, if a telephone point is installed but the phone is not connected, it could be argued that it was your responsibility to advise the prospective tenant of this before the tenancy agreement was made. In such cases, for example if some facility is not working or connected, you should include this information in the rental agreement.

The same goes for hot water systems. If prospective tenants see a solar hot water system on the roof it may be reasonable for them to assume it is working – unless they are told otherwise. Should the tenants later discover the system has been disconnected, they may have a claim against you for any unexpected additional water heating costs.

Residual current devices

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 their rental properties **before** any new tenancy agreement.

Even if the rental property is not re-leased, RCDs must be fitted by 8 August 2011. For common areas of strata schemes at least one RCD is to be fitted to protect power points and lighting circuits. Properties constructed from the year 2000 should already be compliant.

Penalties of up to \$15,000 for individuals and \$100,000 for bodies corporate may apply if the RCDs are not fitted.

You should 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 www.energysafety.wa.gov.au/RCD or call EnergySafety on 9422 5200.

Smoke alarms

You must ensure your 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-story buildings), approved battery-powered smoke alarms must be fitted **before** any new tenancy agreement, or by October 2011 if the premise is not re-leased before then.

Even mains-powered smoke alarms contain rechargeable batteries (in case of blackout) so both kinds must be less than 10 years old (the whole alarm – not just the battery). The year of installation should be visible upon removal of the cover. It's likely that all of the alarms in a home built in the year 2000 would now need to be replaced.

If need be, an electrical contractor can confirm whether a dwelling's smoke alarms are installed in compliance with Australian Standard 3786. Non-compliance can attract fines of up to \$5,000. Detailed information is available from www.fesa.wa.gov.au.

Before tenants move in

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

What you **must** do:

- Make certain the rental premises are 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 condition of the property complies with all laws relating to buildings, health and safety.

What you **should** do:

- Make sure carpets and windows are clean.
- Mow lawns, trim edges and make any garden beds neat and tidy. If the home and garden is in a neat condition when your tenants take possession, you stand a much better chance that they will keep it that way.

Security bonds

A security bond is a payment made in advance by your tenant to cover any costs for which the tenant may be liable at the end of the tenancy, for example damage to property or chattels included in the lease, outstanding water charges or unpaid rent.

The bond money must be held by the owner/agent 'in trust' until the end of the tenancy. It cannot be used by any party or person unless by written agreement or by a court order.

Generally the security bond must not be more than four times the weekly rent and if you permit the tenant to keep cats or dogs on the property, an additional amount of no more than \$260* (regardless of the amount of pets) can be charged as a pet bond to meet the cost of fumigation at the end of the tenancy, unless:

- the weekly rent is more than an amount set by regulation (\$1,200 as at 1 June 2011 - for agreements made before 1 June 2011 the amount was \$500); or

- the property was the private residence of the owner for at least three months immediately before the agreement was made.

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

You do not have to ask for a security bond. If you do, you must immediately issue a receipt when payment is received. The receipt must show the name of the person who paid, the amount paid, the date of payment and the address of the rental premises.

Note: The keeping of certain dogs (such as American pit bull terriers and Brazilian mastiffs) is restricted under the Dog (Restricted Breeds) Regulations 2002 (s53 of the *Dog Act 1976*). For advice on the legality of any pet your tenant may want to keep, contact your local council ranger, your vet or the Department of Local Government.

Depositing the bond

If you collect a bond you may ask for only one bond and you must lodge it within 14 days with either the Bond Administrator or in a prescribed account with an authorised financial institution such as a bank, building society or credit union. Note: Some institutions do not accept bond money and some will charge for depositing money.

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 a bond account with the Bond Administrator.

The Bond Administrator is located at 219 St Georges Tce, Perth 6000. You can also lodge bonds at a Department of Commerce regional office. 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 the cost of this free booklet.

For more information on lodging bonds with the Bond Administrator you can get *Bond administration – a guide* from the Department.

The bond must be held in a joint account showing the names of all tenants and the names of the owner. You can use the Department's Combined Form 1 and

8 (*Record of payment of security bond/Lodgement of security bond money*) available from our website or by ringing our Advice Line. Financial institutions may have their own version of this form.

Once you know the account details, these should be recorded on the Form 1 (*Record of payment of security bond*). You 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 the tenant must be given a copy of the lodgement form. The Department has combined Form 1 (*Record of payment of security bond*) with its own Form 8 (*Lodgement of security bond money*) for ease of use, however financial institutions may have their own version.

You must give a copy of this record to your tenant within 28 days of paying the money to the bond holder. If the Bond Administrator holds the bond, then the tenant will receive a record of the payment directly from the Department. If the bond is held in a financial institution, you should give the tenant a copy of the lodgement form as the record of payment required under the legislation.

If more than one person has paid money as part of the bond, it is important that the names of all the parties appear on the lodgement form, to protect their share. If one or more of these joint tenants leaves or is replaced, it is advisable for all parties to agree to amend the lease agreement. The security bond money should then be refunded to **all** the original tenants (after any necessary deductions). A new security bond should then be deposited in the names of the owner and the names of each of the new tenants listed on the amended lease.

If you have more than one rental property, you must have separate bond accounts for each one.

If you do not pay the bond money to the Bond Administrator or into an approved account with a financial institution within 14 days of the receipt of the bond you will be in breach of the Act and can be prosecuted.

You can use Form 9 *Notice of variation of security bond* for any variations which may arise that affect the record of payment details or the 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 household may decide to move out;
- the ownership of the property may change; or
- an owner may employ a different managing agent.

You can download Form 9 from our website or ring our Advice Line on 1300 30 40 54 and we will post one to you. You must keep a record of the bond payment, including the owner and names of each of the new tenants listed on the amended lease.

Bond assistance from the Department of Housing (previously Homeswest)

Some tenants will arrange for the security bond to be paid to you on their behalf by the Department of 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.

Keys

The keys you give the tenant should include those to any door, window, garage or letterbox. Only hand over the keys to tenants after all bond and rent in advance has been paid, and all documents have been signed. You cannot charge your tenants a deposit for keys, but may charge for the actual cost of replacing any keys.





Once the tenancy begins

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

Get the paperwork right

- Make sure all agreements with your tenants are detailed within a **written** lease agreement that covers property maintenance, fixtures and fittings. Verbal agreements are a major source of residential tenancy disputes.
- 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 the form *Schedule 2 - Information for tenant (A statement of your rights and duties)*.)
- Always fill out a property condition report at the beginning and end of the tenancy.
- Issue accurate receipts promptly and lodge bonds correctly. If you don't, you may not be able to claim any deductions from the bond should a dispute end up in court.

Minimising problems

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

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

Your rental property is probably an investment. If it is, then 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 the need for complaints, but if they do arise, to resolve them as quickly and amicably as possible.

It is important to recognise that:

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

Have a good approach

- Try to resolve problems by calm discussion. Plan beforehand what you want to say and listen respectfully to your tenant's concerns. If necessary, ask a third party to mediate.
- Consider and suggest that a problem may have arisen from a misunderstanding, rather than implying that 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 *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 fix 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 ring (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 property owner 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.
- Improve your skills in dealing with disputes through a short course in practical dispute resolution.
- Have an agent take over management of your property.

Who's responsible in a tenancy?

Owners/agents and their tenants have shared responsibilities.

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

The tenant must keep the premises clean and tidy and hand it back in a similar condition to how it was at the start of the agreement, taking into account normal use, in other words fair wear and tear. The tenant must not intentionally or negligently damage property and must notify you within three days if any damage occurs.

TIP

It's always a good idea to give your tenant the use of tip passes – so they'll clear **their** rubbish from **your** property.

Maintenance inside

You must keep the premises 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, 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 contents already provided such as the refrigerator, stove, lounge, 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 in winter.

Maintenance outside

You are responsible for cleaning gutters, tree lopping, cutting back overhanging branches (such as those near power lines) and maintaining fire breaks, unless the agreement states otherwise.

Your tenant is responsible for garden maintenance, such as mowing and edging lawns, weeding, pruning and fertilising, but must notify you if they are aware of any potential damage to gutters through leaf blockages. 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 that water is leaking, you are responsible for the cost.

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 costs.

If you prefer to have sole access to an 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 the lease agreement before signing.

Swimming pools and spas

If the property has a swimming pool or spa, the tenant is responsible (unless the written agreement states otherwise) for routine day-to-day maintenance and upkeep, such as cleaning and maintaining the chemical balance of the water (including buying pool chemicals).

You are responsible for ensuring that the pool is secure (particularly that it is child safe) and complies with pool safety standards. Local government authorities enforce requirements for swimming pool and spa enclosures in WA, contained in Part VIII of the *Local Government (Miscellaneous Provisions) Act 1960* and Part 10 of the Building Regulations 1989. The Building Commission Division of the Department of Commerce provides several publications that are available on its website www.buildingcommission.wa.gov.au/bid/Pool_Barriers.aspx regarding the interpretation of pool fencing laws.

You should make sure the water is clean and chemically balanced at the start of the tenancy and that the pool and equipment are serviceable; and provide the necessary tools and equipment for day-to-day maintenance, such as vacuums, hoses, brushes and scoops.

TIP

Before the tenancy begins, give your tenant clear instructions on how to use and care for the pool or spa and the equipment and get a chemical reading check from your local pool shop to provide proof of the water balance at the start and end of the tenancy.

Urgent repairs

Provided that the written agreement does not state otherwise, the tenant can initiate urgent repairs if the damage is likely to cause injury or undue inconvenience and a reasonable attempt has been made to notify you of the problem.

The tenant must not have caused the problem by failing to keep to the agreement, or through wilful or neglectful action, such as breaking the front door because he forgot his key or burning out the electrical wiring by replacing a fuse with a nail.

Examples of urgent repairs are works necessary to fix:

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

If the tenant serves you with a Notice requiring urgent repairs to be done and you ignore it, the tenant can then have the repairs carried out by a qualified tradesperson and claim back the costs from you.

The urgent repair costs must be reasonable and the tradesperson must give you a written report on the apparent cause of the problem. It is a good idea to give your tenants a list of preferred tradespeople at the start of the tenancy in order to avoid possible

disputes if you cannot be contacted at the time of the emergency.

If you are using a tenancy agreement prepared by the Real Estate Institute of WA, you will find that it does not allow the tenant to undertake emergency repairs.

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 OWNER/AGENT LIABLE

Carpet wear in corridors or other areas used frequently.

A lock broke because it was old and had worn out.

Curtains faded from years of sun.

Paint flaking because it is old or not applied properly.

NEGLECTFUL DAMAGE TENANT LIABLE

Stains or burns from things dropped or placed on carpets.

Tenant forgot the key and broke a lock to get in.

Mould/mildew has formed because the dwelling was not aired adequately.

The tenant's pet tears the curtains.

Who is responsible for damage?

If the tenant causes damage, he or she is responsible for any necessary repairs.

However, if your property is damaged by a third party not directly connected with your tenant or who was not invited to the premises 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.

NOTE

You are not responsible for damage or loss to your tenant's own property unless the damage was caused by a problem with the property – such as a ceiling collapsing or leaks from the roof.

Water

You must pay the annual service charges (water rates) for the supply of water to the rental premises. The Water Corporation issues these accounts early in July each year.

The tenant generally pays for water used each day, unless your agreement provides for sharing the costs (such as watering lawns and gardens).

The Water Corporation bills water consumption on annual usage. The accounts are sent out on a progressive basis every six months in Perth and four months in country areas (including Mandurah).

Where there are individual water meters on a property, the Water Corporation (upon your written or verbal authorisation) will send water consumption accounts directly to your tenant. However, be aware that if the account is not paid, you will be responsible for amounts owing.

We strongly recommend you get a special meter reading from the Water Corporation at the start and end of a tenancy and record this in the property condition report or lease agreement. Please apply for this service.

A special meter reading will provide the cost of (and produce an account for) the water used between the previous reading and the special reading. The account will show any amounts billed previously but not paid, including any unpaid service charges. The Water Corporation will claim from you any unpaid charges that were the responsibility of the previous tenant.

The Water Corporation will automatically charge the new tenant on a pro-rata basis at the rate that applied at the start of the annual billing cycle. To encourage careful use of water, the Water Corporation has a sliding scale of charges. The higher the use, the higher the price for each kilolitre. A kilolitre is 1,000 litres.

Requesting a special meter reading ensures that incoming tenants are not disadvantaged.

TIP

Since all water consumed is chargeable to your tenant, it's a good idea to include a clause in your agreement that a given percentage of the water bill will be paid by you. This will encourage your tenant to water lawns and gardens. Whatever you decide – put it in writing.

For rural properties not connected to scheme water, it is usually considered reasonable for the tenant to pay the cost of water used. Details about the cost of water to non-serviced properties, including transport costs, should be included in your agreement.



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

To find out which Class your town is in, either telephone the Water Corporation on 13 13 85 or visit their website for further information: www.watercorporation.com.au.

Tenants who hold a Pensioner Concession Card or State Concession Card should be encouraged to register with the Water Corporation, as they may be eligible for reduced water charges.

For further information on special meter reading fees, water consumption charges or water conservation measures contact the Water Corporation on 13 13 85 or go to www.watercorporation.com.au on the Internet.

Electricity and gas

If you have separate meters for electricity and gas, it is normal for the tenant to be billed directly. Otherwise, you should read the meters as soon as your tenant moves in.

You must make sure there is a fair allocation of costs for power charges in common areas (such as a shared laundry, reticulation or outside lights). You can charge only for the actual costs of obtaining these accounts, and only if this is provided for in the tenancy agreement. We suggest your agreement says something like: 'The rate and charge for electricity will be \$x per unit (as charged by your electricity provider) plus a meter reading charge of \$x per account.'

In relation to permanent caravan park residents, and some strata titled residents a Power Price Equity Scheme ensures that permanent

residents pay the same for their power as other domestic customers and are also eligible for energy rebates. The scheme also ensures that permanent residents receive itemised electricity accounts that clearly separate electricity charges from other fees, including rental charges. Further information is available from Synergy at www.synergy.net.au.

Rates

You are responsible for paying local council rates.

Painting

You are responsible for painting, unless the damage is caused by the tenant's negligence.

The tenant should paint the property only if you have given permission, in which case it is probably wise if you choose the colour and pay for the paint.

Alterations and additions

If the tenancy agreement says alterations and additions (attaching fixtures; renovating or altering the property) can be carried out by the tenant with the owner's consent, then you should not withhold permission unreasonably. In all other cases, the tenant must obtain your consent first, preferably in writing.

Locks and security

You 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 by law, it is not always the case that the owner is responsible for fitting them. Basically, to comply with the Act, you need only provide normal locks to external doors and





ensure all opening windows can be secured by catches on the inside.

The degree of security you provide will depend on a number of factors, including the age, location and nature of the premises, the incidence of break-ins in the neighbourhood and whether previous safeguards have been shown to be

inadequate. Having a property that is secure will make it more attractive to tenants and easier to rent out.

If the tenant is concerned about security and approaches you about installing additional security features, such as alarms and external security lighting, it may be in the best interests of you both to discuss sharing the costs in an agreed percentage. If you reach an agreement, put it in writing.

Tenants cannot change the locks without your consent and you cannot remove or change them without the tenant's consent. Changing the locks without agreement renders you or the tenant liable to a heavy fine.

Pest and vermin control



As a general rule, any outbreak or infestation (of rats, mice, possums, cockroaches, termites, ants, spiders, wasps and bees), requiring attention by a pest control operator is your responsibility and not the tenant's. You are also responsible for the annual maintenance inspection.

However, you are not responsible for infestations if there is evidence that they were caused by the activities of tenants 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.

NOTE

The Health Department of WA's Pesticide Safety Section can give you advice on how to deal with substantial infestations.

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.

Tenant's conduct on premises

The tenant must not use the premises for any illegal activity, or be responsible for a nuisance (for example excessive noise that disturbs neighbours).

Inspections

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

Periodic inspections are best carried out at about three-monthly intervals. This way you can note any maintenance required and ensure that your tenants are looking after the property. Such periodic inspections will help later in determining what is 'fair wear and tear' and what is 'damage'.

The Act says that tenants are entitled to the 'quiet enjoyment of the property'. Therefore, when you exercise your right of entry, you must be careful not to interfere with their privacy or use of the premises.

Basically, as the owner, you have the right to enter your rental property at 'reasonable' times and for good reasons as long as you give the tenant the necessary notice. You must not interfere with the tenant's peace, privacy, comfort and enjoyment, but you do have legal rights (as below).

You have the right to inspect the rental premises:

- if the tenant gives permission at the time;
- in an emergency;
- at a 'reasonable' hour; but you must give the tenant seven to 14 days notice in writing, providing the date, the approximate time you'll be coming, your reason for entering the property and the period of notice given;
- to collect the rent if it is paid weekly or less frequently and the agreement allows for it to be collected at the premises;
- when collecting the rent as above, but not more than once every four weeks;
- to carry out or inspect necessary repairs at a 'reasonable' hour after giving at least 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.

To maintain good relations, keep your notice of inspection time as clear as possible, for example 'Between 9am and 9.30am' rather than 'Between 9am and 5pm'.

WHAT IS 'REASONABLE'

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

If you negotiate with your tenant and then put what you agree on in writing, there should be few problems. If you and the tenant cannot agree about access, it may be necessary to take the matter to court for a magistrate to determine what is 'reasonable'.

A summary - who's responsible in a tenancy?

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

Generally, you are responsible for	Generally, the tenant is responsible for
The premises being provided in a habitable and reasonable state of cleanliness and repair; complying with building, health and safety laws.	The premises being kept clean and tidy and handing it back in a similar condition to that which it was in at the start of the agreement.
Major repairs (eg plumbing) and maintenance of contents provided such as a refrigerator or washing machine.	Basic household maintenance - replacing light globes, vacuuming.
Major garden maintenance (tree lopping, maintenance of fire breaks). Provision and maintenance of sprinklers etc.	General garden maintenance (mowing, weeding, 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 (vacuums, scoops).	Day-to-day maintenance and upkeep of any swimming pool or spa.
Costs arising from fair wear and tear (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, (break-ins, traffic accidents).	Loss or damage to your personal property unless caused by a problem with the premises.
Annual water services charges (water rates).	Payment of water used unless agreed otherwise.
Costs being allocated fairly for power charges in common areas if there is any shared areas such as a shared laundry or outside lights.	Payment for electricity and gas used.
Pest and vermin control (rats, mice, termites).	Pest infestations such as fleas caused by their pets. 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.
Locks to external doors and internal catches on windows being installed and maintained.	Replacing lost keys.

Rental payments

During the first two weeks of a tenancy agreement, you cannot require your tenant to pay you more than two weeks rent in advance.

After two weeks, the tenancy agreement can change to an advance payment (if this is set out in the written agreement), with payments on a weekly, fortnightly, four-weekly or calendar monthly basis or any other period as agreed by you and your tenant.

You cannot ask for post-dated cheques, nor insist that 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 \$300:

Bond	\$1200 (4 weeks rent)
Pet bond	\$100
Rent in advance	\$600 (2 weeks rent)
Total	\$1,900

If the rent is paid into an account at the bank, building society or credit union, you do not have to issue a receipt. The bank 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 working days. The receipt must show the name of the person paying the rent, the date received, the amount paid, the premises and rental period covered by the payment.

Sample receipt

Rent receipt

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

Rent receipt no. xx
Date / /

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

being weeks/months rent for premises situated at:
.....
.....

from (date) to (date)

Rent due \$.....
Rent paid \$.....
Any arrears \$

With thanks,
.....

You must keep an accurate record of when the rent is due and when it is paid – see sample. You will find such records useful when preparing your tax return or if you ever need to present the rental payment history to a court.



Sample rent record

RENT RECORDS

Property at: 23 Sample Street, Sample Town			
Example: Lease Agreement at \$600.00 per fortnight commencing 4/3/09			
Period	Rent Receipt	Rent Received	Rent Owning
04/3 – 17/3	01	\$600.00	-
18/3 – 31/3	02	\$600.00	-
01/4 – 14/4	03	\$300.00	\$300.00
15/4 – 28/4	04	\$900.00	-
29/4 – 12/5	05	\$600.00	-
13/5 – 26/5	06	\$200.00	\$400.00
27/5 – 09/6	07	\$800.00	\$200.00
10/6 – 23/6	08	\$700.00	\$100.00
24/6 – 07/7	09	\$700.00	-
08/7 – 21/7	10	\$450.00	\$150.00

Rent increases

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

You may increase the rent as long as you have given your tenant at least 60 days notice in writing, with details of the amount of the increase and the day it takes effect. If you don't give such notice the tenant does not have to pay the increase.

You do not have to wait until the six months is up before giving the 60 days notice, but the increase cannot take effect earlier than six months.

In a fixed-term tenancy you cannot increase the rent unless the agreement says so and it has been at least six months since the last increase.

You don't have to give your tenant 60 days notice if their fixed-term tenancy agreement is being renewed, because you can renegotiate all conditions (including rent) at that time. However, it is a good idea to warn your tenant of the intended increase some weeks before signing the new lease, so you can start looking for new tenants if your tenant does not accept the proposed increase.

You can provide for pre-arranged rent increases by putting a special clause in the written agreement with your tenant at the start of the tenancy. For example, 'After six months the rent will increase by \$10 per week to \$310 per week from etc'.

All notices of intended rent increases must be given in writing; see sample letter below.

Sample rent increase letter

Dear Mr/Mrs/Ms (tenant)

Please accept this letter as notice of an intended rent increase for the premises at

 (address of rental property).

It is my/our intention that the rent be raised from the current amount of

\$..... (amount) per week/fortnight/calendar month to the sum of

\$..... (amount).

This notice, which is not less than 60 days, takes effect from (date).

Please feel free to contact me if you have any queries.

Yours sincerely

.....
 (your name)

IMPORTANT

You cannot propose excessive rent increases as a way of getting rid of your tenant. If your tenants thought this was the case, they could take the matter to the Magistrates Court for a ruling.

If there was a significant change in the amenities provided as part of the rental agreement, the tenant could also apply to the Magistrates Court for a rent reduction.

For details of what you can do if the rent is not paid, please see the next section *When things don't work out*.





When things don't work out

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, or if they present a bad cheque.

However, there are legal procedures you must follow.

You have two alternatives:

1. If you want the tenant to remain but to pay rent arrears then, 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 does not require a prescribed form, but must be in writing, state the tenant's name and the address of the rented property. It must also state the current amount of money owing and request payment within 14 days.

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 premises within the next seven days.

NOTE

Should the tenant refuse to leave the property after this period, it is essential that you apply to the Magistrates Court for an order to have them evicted. It is illegal to try to force the tenant out yourself. Even if the tenant brings the rent up to date, you can still apply to the Magistrates Court to have them evicted if the tenant has a history of continuously falling behind with the rent.

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

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.

The Act requires that you issue formal Notices to your tenants to deal with a number of important circumstances, such as if you believe there has been a breach of the agreement.

You can get these Notices from the Department by downloading them from our website or ringing our Advice Line on 1300 30 40 54. When filling them in, it is important to **complete all details**, including the name of the tenant, address of the property, the date the rental agreement was signed, and the nature of the breach.

There is a standard procedure for counting of the days specified for various actions (see *How and when to issue Notices*) and special requirements for serving the Notices on tenants (see *All about Notices*).

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 warns the tenant that unless the outstanding rent is paid within the following seven days, you may apply to the Magistrates Court for an order to terminate the agreement.

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* (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.

Which alternative to choose? Our advice is as follows:

If this is the first time the tenant has fallen in arrears, or has a previous history of late payments but you'd still like to keep them as a tenant, then you should choose alternative 1.

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, you should choose alternative 2.

Because the procedures are somewhat complex, we have drawn up flow charts for the two alternatives. You can find Flowchart 1 and Flowchart 2 in the Appendices.

Regardless of which option you choose, you cannot force a tenant out of your property without a court order ending the agreement.

Tenants who reasonably believe they are not behind in the rent can stay in the premises while you both negotiate, or until you apply for an eviction hearing

in the Magistrates Court, where both parties can put their case (see *Ending a tenancy*).

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. For example:

- keeping a cat or dog on the premises 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 (see *Serious damage to the premises or injury to the owner*);
- changing the locks without approval;
- causing a nuisance to neighbours;
- failing to water or maintain the garden and lawns; or
- using the premises for an illegal purpose or 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 giving a *Notice of breach of agreement – by tenant* (Form 20). This gives your tenant 14 full days to rectify the situation.

Step 2: If your tenant fails to rectify the situation within the 14 day period, your next option is to issue a *Termination notice* (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 terminating 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 flow chart (Flowchart 3) which you will find in the Appendices.

Should your tenants refuse to move out after the issue of the *Termination notice*, you cannot personally evict them. You must then seek an order from the Magistrates Court – see *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 write you a letter or use a form specifically designed for the purpose, a *Notice of breach of agreement – by owner* (Form 20A).

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 premises or injury to the owner

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

To apply to the Magistrates Court, use their Form 12 application and ask the manager of the court registry for an urgent hearing. Under these circumstances, the waiting time for a court listing is usually much shorter than for a normal hearing.

You will find information on serving Notices in the section *All about Notices* and there is also a chapter on taking your dispute to court.

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

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, do make sure that 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 prescribed 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:

1. 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 *Termination notice* – Form 1C).

NOTE

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 of personal delivery or the day following the postmark on their letter.

2. Sale of the rental premises. If you intend to sell the property, then the agreement may be terminated after you have followed the proper procedure. If you sell the premises and the Offer and Acceptance form requires vacant possession to the purchaser, you may give notice to your tenant on a *Termination notice* (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 owner and buyer.

A tenant can give two full days notice to end a tenancy agreement if the premises are destroyed, are compulsorily acquired by law or become uninhabitable. (This applies to both periodic and fixed-term tenancies.) As the property owner, you must give the tenant seven days notice in writing.

Ending (or extending) a fixed-term agreement

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

It makes sense for you to contact your tenant about one month before the expiry date, to establish whether or not the term of the tenancy is to be renewed. Although this is not a legal requirement, it can prevent some serious misunderstandings. Be aware that your tenant could leave on the last day of the fixed-term without giving you any prior notice.

Following discussions with your tenant, you may either prepare a new tenancy agreement for your tenant to sign or give them written notice to leave.

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

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

Although you cannot require a fixed-term tenant to vacate the property before the tenancy expiry date if the property is sold, 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 property owner responsibilities upon sale, or the house can be sold with vacant possession to occur at the time the existing fixed-term lease expires.

During the 21 days before the fixed-term tenancy expires, you are entitled to show prospective new tenants through the property (after having given your tenant reasonable notice). There is, of course, a limit to the number of times you can do this and you

should always select a reasonable hour of the day.

Regardless of whether you have issued the correct notice and have turned up at the property at the appointed time, if the tenant informs you that you may not enter the property, then you cannot force an entry. If you do, you may be guilty of trespass. If you are unable to gain cooperative entry on the day after you have served the correct notice, you may wish to renegotiate a suitable time with your tenant and issue another notice. If after a further attempt, you are still denied access, then you may want to consider applying to the Magistrates Court for an order granting you access.

Obtaining an order for possession

If you have sought to end a tenancy by giving the proper notice, or a fixed-term tenancy comes to an end and your tenant does not leave the premises, you have 30 days to apply for an order of possession from a magistrate. If you do not apply within 30 days the *Termination notice form* (Forms 1A, 1B or 1C) will expire.

You would need to contact the Magistrates Court nearest the rental premises and lodge your application on an *Application to the court* (Form 12) with the appropriate fee. The court will supply the form.

If, after this process the tenant refuses to leave 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.

You must never try to force a tenant out of the premises or change locks without an order from the court.

If your tenant has clearly abandoned the premises, you may re-occupy without a court order – please refer to *Abandoned premises or goods*.

If you need to break the lease

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 and 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 premises, 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 lease. 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. It is likely, in such circumstances, that you would be ordered to compensate the tenants for their additional cost incurred, such as payment of removal expenses.

If the tenant wants to break the lease

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

- job relocation;
- redundancy;
- personal or family illness; or
- family violence.

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 the lease being broken. Therefore, you should make it clear to your outgoing tenants that they will be responsible for any advertising costs incurred in finding suitable new tenants. You can only charge a tenant for such costs if this is specified in the rental agreement and justifiable by the circumstances.

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

If your tenant does break the lease without prior agreement, the Act requires you '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 rental agreement or refuse to remedy a problem, the tenant can seek an order from a magistrate to end a fixed-term agreement.

Apart from the above situations, 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 the owner a forwarding address at the end of a tenancy.

Eviction

If a tenant receives proper notice to end an agreement but refuses to leave, you can seek an order from a magistrate to end the agreement and take possession of the premises. You 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 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 have some protection under the Act if they believe that 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. They can remain in the rental property until the matter goes to court and 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.



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 'unlawful coercion' is a breach of the *Fair Trading Act 1987* and can attract severe penalties.

The rental property is destroyed or taken over by an authority

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

The owner may give seven days notice to the tenant (*Termination notice*, Form 1C) if:

- the rental property is wholly or partially destroyed, for example by a cyclone or serious fire; or
- the property cannot be lived in.

Similarly, the tenant may give to the owner two days notice ending the tenancy under these circumstances.

If the property is taken over by any authority by legal process (such as by a mortgage provider or as the result of a court order), the authority may take on the role of 'landlord' and must then comply with the normal rules of the lease agreement under the Residential Tenancies Act. The tenant may apply to the Magistrates Court for an order that the tenancy be reinstated.

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

Tenants may lodge an application in the Magistrates Court to have the status of their lease agreement clarified.

The final inspection

You are entitled to expect your property to be 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'.

Disputes between owners and their tenants often arise because the property was not inspected at the time the lease expired. 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.

TIP

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

Using the property condition report that you both signed when the tenant moved in, compare the condition of each item with the original details and discuss any problems, including breakages, items missing etc.

If you have completed the recommended periodic inspection reports during the tenancy, you will find it easier to agree on what has been fair wear and tear.

If your tenant has not cleaned the property to your reasonable satisfaction, or if minor repairs are needed, you may elect to undertake the work yourself. However, if you decide to repair or clean the property yourself you may claim from the tenant only 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 tenants are 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 that you may need to replace the carpet. In such a case, your tenants 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 Taxation Department to obtain instructions for calculating depreciation.

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 and/or contents belonging to you.

Make every effort to agree with your outgoing tenants the amount of any deductions from the security bond. In the event of a disagreement, compromise is always the best policy.

TIP

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 inspection report). Keep all these documents for future reference.

Your tenant is responsible for returning all copies of keys given to them at the start of the tenancy. If they don't return keys they can be held responsible for the cost of changing the locks and be charged rent until the keys 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 4) and both sign it. The form should show the amount to be returned to the tenant and/or the owner and/or to be refunded to the Department of Housing.

Present the original form to the Bond Administrator or the financial institution holding the funds. They will pay out the bond money only if the owner and tenant apply jointly, or if one of you obtains a court order from a magistrate.

You should return the bond money to your tenants as soon as possible after the end of the tenancy agreement. If you are employing an agent, and the security bond is held in the real estate agent's tenancy bond trust account, the agent must pay out the bond money within seven days of receiving the Form 4 signed by both parties.

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;
- a receipt or bank record for bond money paid has not been issued by the owner/agent; or

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

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 by lodging an *Application for disposal of bond money* (Form 6) within seven days and with the appropriate fee. You can get this form from the court. On it you can ask the magistrate to award you the costs of your application.

If the tenant doesn't respond when sent a copy of this, the Magistrates Court may then issue an order for the release of the bond after seven days.

If your tenant completes a Form 6 application, you will receive a copy. You will have three options:

- agree to settle the dispute;
- dispute the tenant's application by lodging (within seven days) a *Notice of intention to dispute Application for disposal of bond money* (Form 5); or
- ignore the Notice.

If a dispute goes to court, the magistrate will make an order as to how the bond money is to be paid out. (See *What happens in court?*)

A magistrate may order your 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 premises being abandoned.

If the original security bond was paid by the Department of Housing then, at the end of the tenancy, it is generally repayable direct to the Department of Housing. When the tenancy ends, we suggest you ask your tenant what the

arrangements are to be and confirm these with the Department of Housing.

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

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

Abandoned premises or goods

Tenants sometimes abandon a property without giving any notice, or they may leave behind some of their possessions. If they do so, it means the tenancy agreement has ended.

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

However, before you take any action, you must be certain the premises or goods have actually been abandoned – your tenant may have gone on holiday or been taken to hospital! Check with the neighbours, next of kin (if known) and local schools; and check the mail box for uncollected post.

Only when you are certain the property has been abandoned, are you entitled to take possession and secure the property.

If you are not certain, you should apply to the Magistrates Court using *Court Form 12* for an order stating that the tenant has abandoned the premises.

We can advise you on all the procedures you must follow before you attempt to dispose of goods abandoned by your tenants. However, the following will be of help:

Perishable foodstuffs: You may dispose of these after two days.

Goods of little or no value: If the estimated value is less than it would cost for you to remove, store and sell them at public auction, the Department can issue an indemnity certificate to protect you from being sued for compensation later. To get a certificate, you must provide brief details of the circumstances of the abandonment and a comprehensive list of the goods.

To obtain an indemnity certificate, you will need to provide the Department with:

- the title (that is Mr, Ms), name and telephone number of the person requesting the certificate (probably you);
- the name of the tenant and the tenant's contact details (if known);
- the rental address;
- the date the property was vacated (attach a copy of the court order if applicable);
- an itemised list of the goods you wish to dispose of;
- colour photograph(s) of the goods; and

You may also require a valuation by an authorised person (such as a second-hand dealer), but don't do this until we ask you, as it may not be necessary.

Once you have all the above details, and depending on the value of the goods, we will advise you whether an indemnity certificate will be provided, or if you need to store the goods in accordance with the Act. If we issue an indemnity certificate, you may dispose of the goods in any way you wish.



Goods of higher value: For goods of higher value, you must store them at once in a safe place and manner for at least 60 days. Within the first seven days of that period, you must notify the former tenant in writing (where a forwarding address has been given) and have a Notice published in a newspaper that circulates generally throughout the State. You must also complete Form 2 (*Notice to former tenant as to disposal of goods*) and Form 3 (*Notice as to disposal of goods*).

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 paid into the Rental Accommodation Account on 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 previous tenancy (rent; damages etc), you can use the Form 11 to claim from the money deposited.

Apart from these provisions (detailed in Section 79 of the Act), 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.



All about Notices

What to issue and how to do it

What to issue

There are a number of Notices under the *Residential Tenancies Act 1987* to help you, your agent 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) such as damage to property; gardens not maintained – use the *Notice of breach of agreement* (Form 20). This is the step to take to get a problem remedied (not to remove your tenant).

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 (see above). This form seeks to terminate the tenancy agreement and requires the tenant to vacate the premises 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. Should the tenant pay all rent owing no later than one day before the court action, then the action will not proceed.

You want to end the tenancy for any reason other than the tenant failing to pay rent – you must 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.

The tenant wants to end a periodic agreement – the tenant may give you a *Notice by tenant of termination* (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 in less than 21 days).

The tenant believes you have breached the tenancy agreement – the tenant may give you a *Notice of breach of agreement by owner* (Form 20A), or they can simply write to you stating the problem and calling on you to correct it within 14 days. If you don't fix the problem, the tenant can

apply for an order from a magistrate for the work to be carried out, or seek assistance from us (the department). They can't hold back the rent to try to make you fix the problem (that would break the agreement and you could apply to terminate the lease).

The tenant abandons goods of high value – use *Notice to former tenant as to disposal of goods* (Form 2) and *Notice as to disposal of goods* (Form 3) to notify the tenant.

The above forms are available from the Department. You can download them from our website or ring our Advice Line on 1300 30 40 54 and we will post them to you.

Our staff can help you with any queries or concerns about the types of Notices required under a tenancy agreement. You can visit one of our offices or phone our Advice Line.

Disposing of the proceeds from the sale of abandoned goods – use the Magistrates Court's *Proceeds of sale of abandoned goods* (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

– use the Magistrates Court's *Application for court order* (Form 12) application to get an urgent hearing.

Other forms you will need or will find useful

You must give the tenant the form titled *Schedule 2 - Information for tenant (A statement of your rights and duties)*. Available from the Department.

Lodgement of security bond money (Form 8). This form can be used to lodge bond money. Available from the Department combined with Form 1. Financial institutions may have their own version.

Record of payment of security bond (Form 1). This is used for making variations relating to the record of bond payment details or the amount of the bond. Available from the Department combined with Form 8.

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

Application for disposal of bond money (Form 6). This is used if your tenant refuses to sign the disposal form, or you cannot contact your outgoing tenant. Available from the Magistrates Court.

Notice of intention to dispute Application for disposal of bond money (Form 5). This can be used if your tenant completes a Form 6 application and you disagree with the details. Available from the Magistrates Court on the last page of Form 6.



Bond Administration a guide – this is a guide to tenancy bonds and how to lodge them with the Bond Administrator and get them paid back. Available from the Department.

Notice of variation of security bond (Form 9) – this form can be used for variations relating to the record of bond payment details, the amount of the bond, or when ownership or management (by an agent) of the rented property changes. Available from the Department.

Residential tenancy agreement (Form 24A) – a sample fixed-term agreement. Available from the Department.

Residential tenancy agreement (Form 24B) – a sample periodic agreement. Available from the Department.

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

How and when to issue Notices

When a Notice is served under the *Residential Tenancies Act 1987*, proper procedures must be observed. If the matter in question ends up in court, the person who prepared the Notice would have to prove that it had been served correctly.

How to issue a Notice

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

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

A Notice to a tenant can be given to:

- the person who usually pays the rent; or
- a person who looks to be over 16 living in the rented premises.

If the tenant is giving a Notice to an owner, it can be given to:

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

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

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

When to serve a Notice

If the tenant breaches the agreement by not paying the rent you have two alternatives which are explained earlier under *When things don't work out* (if the rent is overdue) and in the Flowcharts (1 and 2) in the Appendices.

If the tenant breaches the agreement by any action other than not paying the rent, you can take action as described earlier under *When things don't work out* (breaches of the tenancy agreement) and in Flowchart 3 in the Appendices.

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 the Notice – *Notice of termination* (Form 1C) – as required by the Act and as described above.

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 that certain periods of notice are required for certain actions.

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

In counting the days, you will find it helpful to refer to the flow charts in the Appendices.

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

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

Proof that Notice was served

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

Standard forms for use under the Residential Tenancies Act

Please refer to Appendix 1 for a table of standard forms in common use under the *Residential Tenancies Act 1987*. You will find some forms you must use (those prescribed under the Act) and others you can use, although you may prefer to write a letter.

GOING TO COURT



Court procedures and outcomes

About the courts

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

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

Whatever the dispute, the most important thing for you to remember is that you need to keep detailed records of your conduct and your tenant's conduct in relation to the tenancy agreement.

Disputes between property owners and tenants are dealt with by the Magistrates Court of Western Australia under a special minor case category. At present, minor cases are defined as involving disputes of not more than \$10,000.

For minor case hearings there are some rules that are designed to keep the proceedings 'private and informal'.

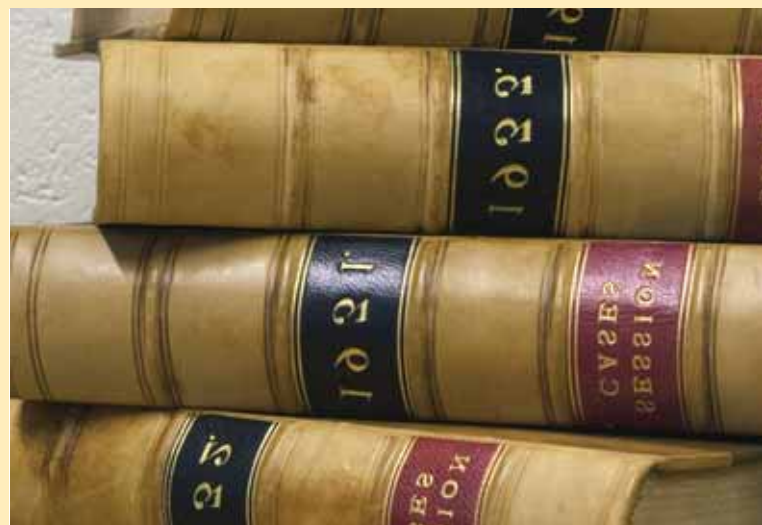
Unless the court gives its approval, the disputing parties may not be represented by an agent (by a lawyer). However, a body corporate may be represented by one of its officers.

You will be expected to attend the court hearing unless you can give a good reason, such as being too ill or away interstate or overseas. If this happens, you can 'seek leave of the court' to be represented by an agent and must show the court that your agent has sufficient knowledge of the issue and your authority to act on your behalf. The magistrate may impose conditions on the hearing to ensure that no one will be disadvantaged by one party being represented by an agent.

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

The successful party in a minor case is entitled to an order to recoup their 'allowable costs'.

There are no appeals against the decision of the magistrate, except on the grounds that the court did not have jurisdiction to hear the case or that natural justice was denied.



Applying for a court hearing

Applications must be made to the court closest to the rented premises, unless the parties in the dispute agree to a different arrangement. Check with the court as to how this can be done.

The fee for hearing is relatively small. Check with the court for the current rate.

The address of the court where the hearing will take place is shown on a form, which will be sent to you. Court staff will advise you on the correct form to lodge for a hearing or to defend a matter in dispute, and tell you what the application fees are. However, they cannot give you advice about the strength of your case, the possible result or what evidence you might need.

When applying for a hearing, you should complete **either**:

- *Application for disposal of bond money* (Form 6) is used for bond disputes where the amount in dispute is not more than the amount held in the bond account, and the bond has not been paid out.
- *Application for court order* (Form 12) is used for general disputes (eg rent not paid, damage to property) or a dispute where the amount being sought is greater than the bond.

Make sure you use the right form. Ask the court staff if you are still unsure.

Usually the magistrate will only consider the items listed in the application, so give full details of the order you are seeking from the court, such as an order to terminate the tenancy agreement and gain possession of the premises.

NOTE

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

Court staff will check the application and enter it as an official court document. With a Form 12 application, a hearing date will be set automatically.

In the case of a bond dispute (Form 6), a hearing date will be set if the matter is to be disputed by the other party. Where the matter is not disputed and evidence of the expense incurred has been provided, the court will authorise payment of the bond as requested in the application. This is usually when the whereabouts of a tenant or owner is unknown and one of the parties has not signed the bond release.

Preparation is important

Whether you win or lose in court may depend on whether you followed the correct procedures in handling the dispute, from the beginning to the court stage and how thorough you are in preparing your evidence.

Make sure you have records of all Notices, receipts and other relevant documents that will support your case. Take both the original documents and photocopies to court.

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

If you intend to call witnesses to support your case, give them details of:

- the hearing date;
- the court they should go to; and
- any documents that they should bring.

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

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

Use this checklist:

- Can I establish that I had the right to let the premises, or an authority to act if I am not the owner?
- Do I have a copy of the tenancy agreement?
- Did I lodge the bond correctly?
- Have I kept proper 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?
- When the rent fell behind, did I serve a Notice on the tenant on the correct day?
- Did I follow correct procedures when serving a Notice to end the tenancy agreement?
- Have I arranged for witnesses to appear at the hearing (if required)?
- Have I gone through my evidence thoroughly?

NOTE

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

On the day

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

Arrive for the hearing on time or a little earlier. Let a court official know you are there, then go to the waiting room. Remain within hearing distance of the court room. If you are not there when your case is called, it could start without you and the magistrate might make an order which may not have been made if you had been there.

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

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

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

Such a conference can be held to:

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

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

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

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

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

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

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

How the case is heard

The magistrate usually conducts the hearing in the following way (except in the case of a Form 6 *Application for a bond dispute*, where the owner always proceeds first):

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

Presenting your story to the magistrate

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

Tell your story in the order that events happened.

Show any documents that support your story to the magistrate at the time you give your evidence.

Make sure you tell the magistrate **all** the important facts as you see them.

When you and your witnesses have told their story and have been cross-examined, you have finished presenting your case.

The decision

When both parties have finished telling their stories, the magistrate will make a decision, which is final.

Generally, the magistrate will outline the problem, summarise what has been said and then give the decision, known as an Order.

Listen to what the magistrate says when making the Order. The court will usually send you a copy of the Order by mail after the hearing. Ask the magistrate if this will be done, as procedures vary from court to court.

If you do not understand the Order, ask the magistrate to explain it to you. Orders handed down by the magistrate can include:

- ending a tenancy agreement;
- how bond money will be paid out;
- action being carried out in accordance with the tenancy agreement;
- stopping any action which breaches the tenancy agreement;
- payment of compensation by the person in breach of the agreement, for loss or injury (other than personal injury), caused by the breach; and

- payment of rent into the court until the owner carries out the magistrate's Order to remedy a breach or for compensation.

If an Order is granted and the tenant can demonstrate that they would suffer hardship if it was effective immediately, they can ask the magistrate to suspend the Order for up to 30 days.

If the tenant does not pay an amount ordered by the magistrate, you can take action to enforce the Order. There are different actions and the most common are explained in the Department's publication *If they don't pay* (contact us for a copy or go to our website). You can seek legal advice on the best course of action through a lawyer, Legal Aid, the Citizens Advice Bureau or a Community Legal Centre.





A final checklist

You will want your investment property to be profitable and the tenancy arrangements to be hassle free.

Here is a final checklist that will help make that a reality.

- 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.
- Decide whether to use an agent or whether you are confident enough to handle matters yourself.
- Choose your tenants carefully.
- Decide whether you are going to offer a periodic or fixed-term tenancy.
- Make sure you have a written tenancy agreement.
- You must give your tenant a copy of the form titled *Information for tenant (A statement of your rights and duties) Schedule 2*.
- Make sure the property is in good condition ready for your tenant to move in.
- Check important safety items, such as electrical wiring, pool fencing, plumbing, safety glass (eg in bathroom), smoke alarms and safety switches (RCDs).
- Spend time and effort on the property condition report. It can save a lot of disagreements and heartache later.
- Lodge the bond money correctly.
- Remember your tenant's rights, especially to quiet enjoyment of the property.
- Respond promptly to any request to fix items that are your responsibility.
- Deal promptly and fairly with any disputes and be prepared to negotiate a compromise solution.
- Take action promptly if the rent falls into such arrears that it may become a real problem for your tenant and not get paid.
- Carry out a thorough final inspection and discuss sensibly any items of dispute with your tenant.
- Make sure you know what Notices to use for various procedures.
- If you have to go to court, make sure you understand the procedures and prepare your case well.

Glossary of terms in common use

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

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

Bond: Money paid by the tenant and held in trust by an independent third party as security against damage to the premises.

Breach of agreement: The breaking of a term or condition of the tenancy agreement, in other words doing something the agreement or Act says the owner/agent or tenant cannot do, or not doing something the agreement or Act says the owner/agent or tenant should do.

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

Deposit: Rent in advance.

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

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

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

Landlord: See 'owner' (next column).

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

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

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

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

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

Premises: A general term for a residence. It can mean a house, duplex, unit, flat, apartment or caravan site, caravan or park home and can include the land on which the premises are situated.

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

Property condition report: A list of the contents of the property and their condition, as well as the condition of the fixed parts of the property such as walls, ceilings and doors.

Quiet enjoyment: The right of the tenant to be able to occupy, use and enjoy the premises in reasonable privacy and without undue interference.

Rent: The money the tenant pays the owner/agent for the right to live in the premises.

Security bond: See 'Bond' above.

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

Contact details

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

Tenancy bond: See 'Bond' above.

Tenant: The person who rents accommodation from the owner.

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

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

Citizens Advice Bureau 9221 5711

Department of Local Government 9217 1500
Caravan Parks & Camping Grounds Act 1995

Department of Housing 9222 4666
(formerly Homeswest) or 1800 093 325

Landlords' Advisory Service 9316 8533

Law Society 9322 7877

Pesticide Safety Section of the Health Department of WA 9285 5500

Property Owners' Association 9384 7583

State Law Publisher 9426 0000

Translating and Interpreting Service 13 14 50

Water Corporation 13 13 85

Magistrates Courts

General Enquiries 9425 2247

Metropolitan

Armadale Court 9399 0700

Fremantle Court 9431 0300

Joondalup Court 9400 0700

Mandurah Court 9581 4000

Midland Court 9250 0200

Perth Court 9425 2222

Rockingham Court 9527 6433



Regional Magistrates Courts

Albany Court	9845 5200
Broome Court	9192 1137
Bunbury Court	9781 4200
Busselton Court	9754 9666
Carnarvan Court	9941 1082
Cocos (Keeling) Islands Court	9162 6600
Collie Court	9734 2061
Derby Court	9191 1406
Esperance Court	9071 2444
Geraldton Court	9921 3722
Kalgoorlie Court	9093 5300
Karratha Court	9185 2922
Katanning Court	9821 1177
Kununurra Court	9168 1011
Manjimup Court	9771 1316
Merredin Court	9041 1064
Moora Court	9651 1407
Narrogin Court	9881 1722
Northam Court	9622 1035
Roebourne Court	9182 1281
South Hedland Court	9172 9300

**Building and Tenancy Industries Branch
of the Department of Commerce**

Head Office: 219 St Georges Terrace,
Perth WA 6000

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

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

Email: consumer@commerce.wa.gov.au

National Relay Service: 13 36 77

Regional offices:**Great Southern**

Unit 2/129 Aberdeen Street, Albany WA 6330
Tel: (08) 9842 8366

South-West

8th Floor, 61 Victoria Street, Bunbury WA 6230
Tel: (08) 9722 2888

Mid-West

Shop 3, 50-52 Durlacher Street
Geraldton WA 6530
Tel: (08) 9920 9800

Goldfields/Esperance

Suite 4, 37 Brookman Street
Kalgoorlie WA 6430
Tel: (08) 9026 3250

North-West

Unit 9, Karratha Shopping Centre, Sharpe Avenue
Karratha WA 6714
Tel: (08) 9185 0900

Kimberley

Woody's Arcade, Office 7/15 Dampier Terrace
Broome, WA 6725
Tel: (08) 9191 8400

APPENDIX 1

Standard forms for use under the Residential Tenancies Act

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

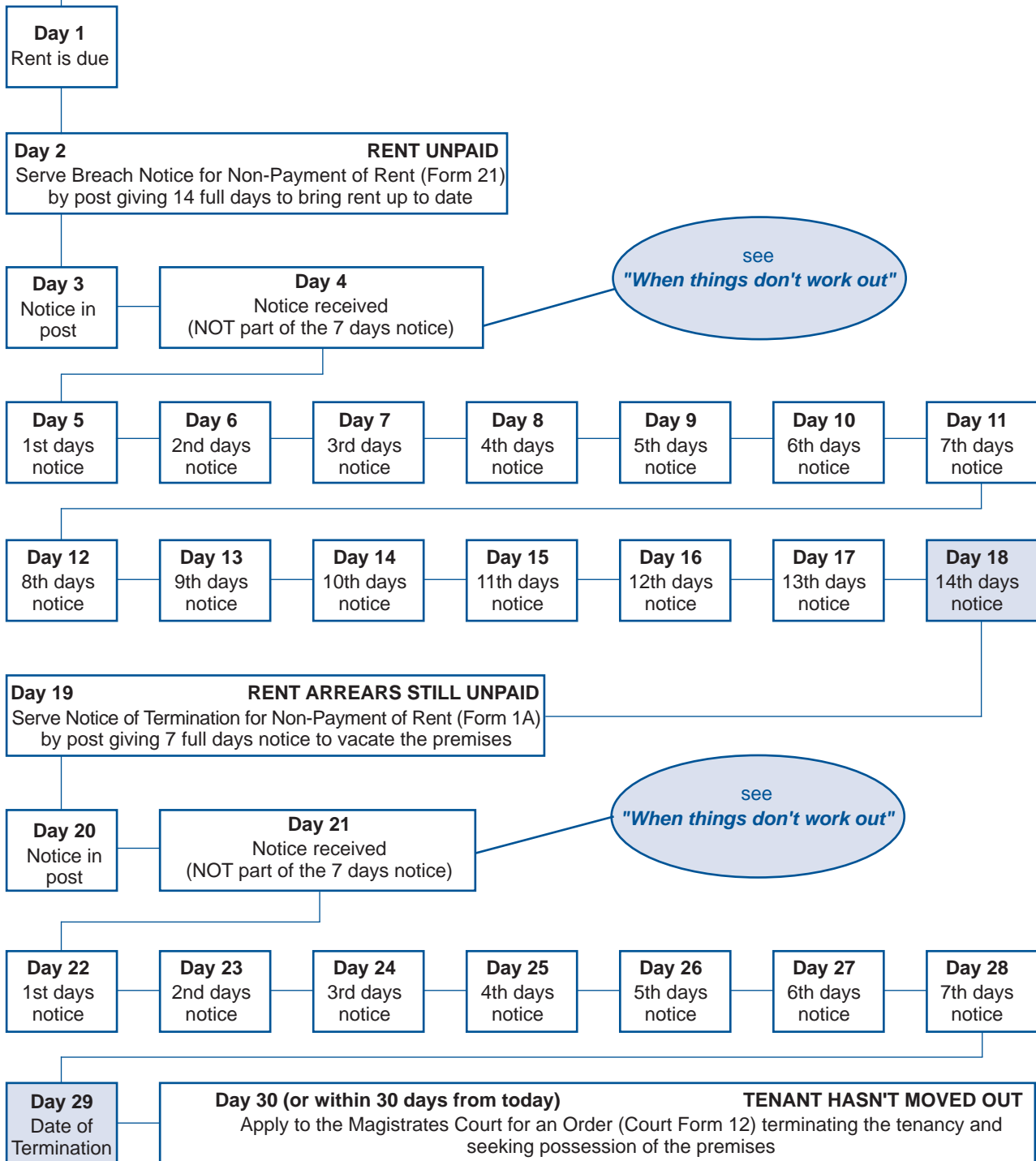
You can download these forms from the Department of Commerce website at www.commerce.wa.gov.au/tenancy or phone the Consumer Protection Advice Line on 1300 30 40 54 to request a copy.

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

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

ALTERNATIVE ONE - SERVICE OF BREACH NOTICE FOR FAILURE TO PAY RENT

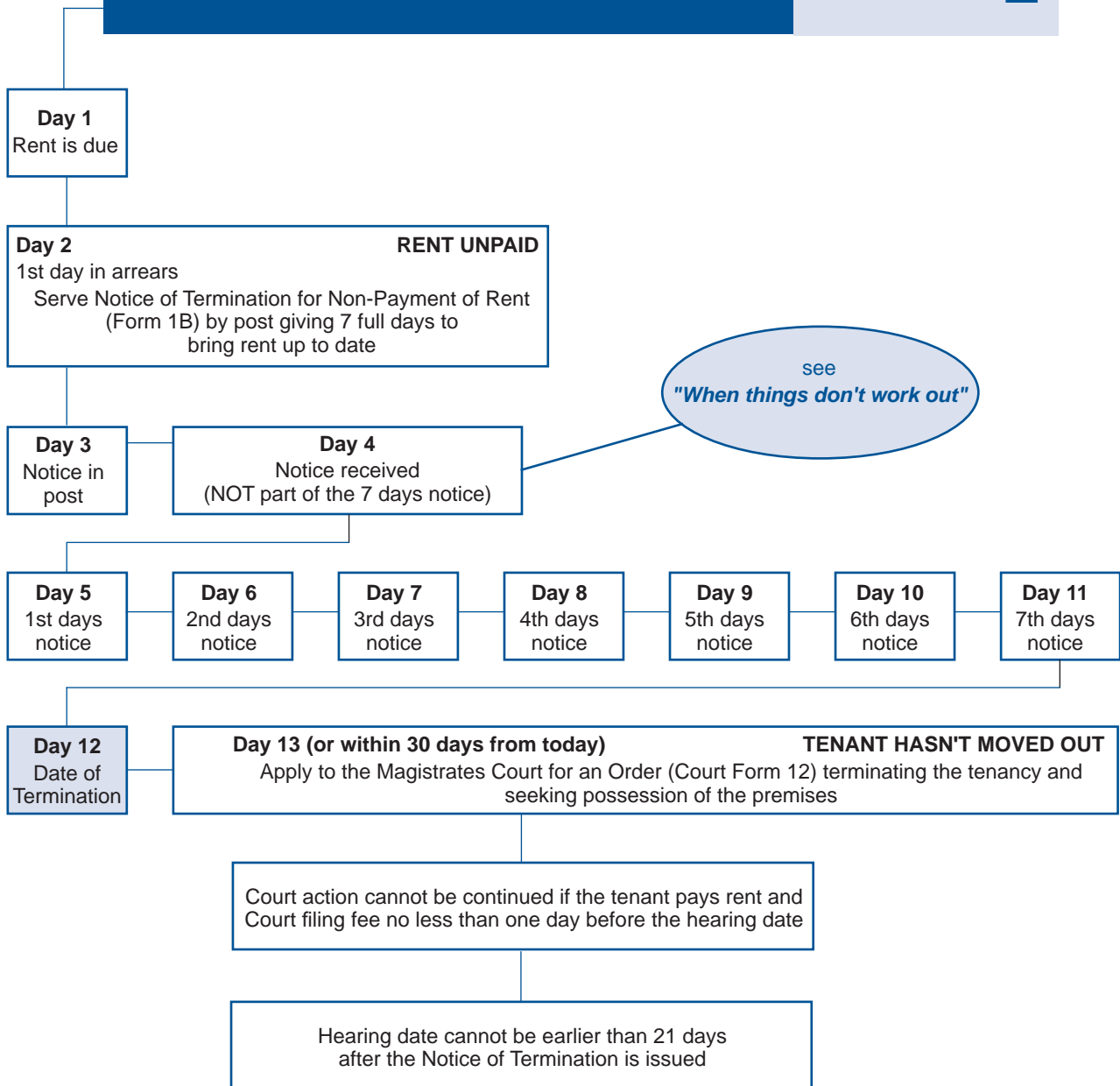
FLOWCHART 1



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

ALTERNATIVE TWO - SERVICE OF NOTICE OF TERMINATION FOR FAILURE TO PAY RENT

FLOWCHART 2

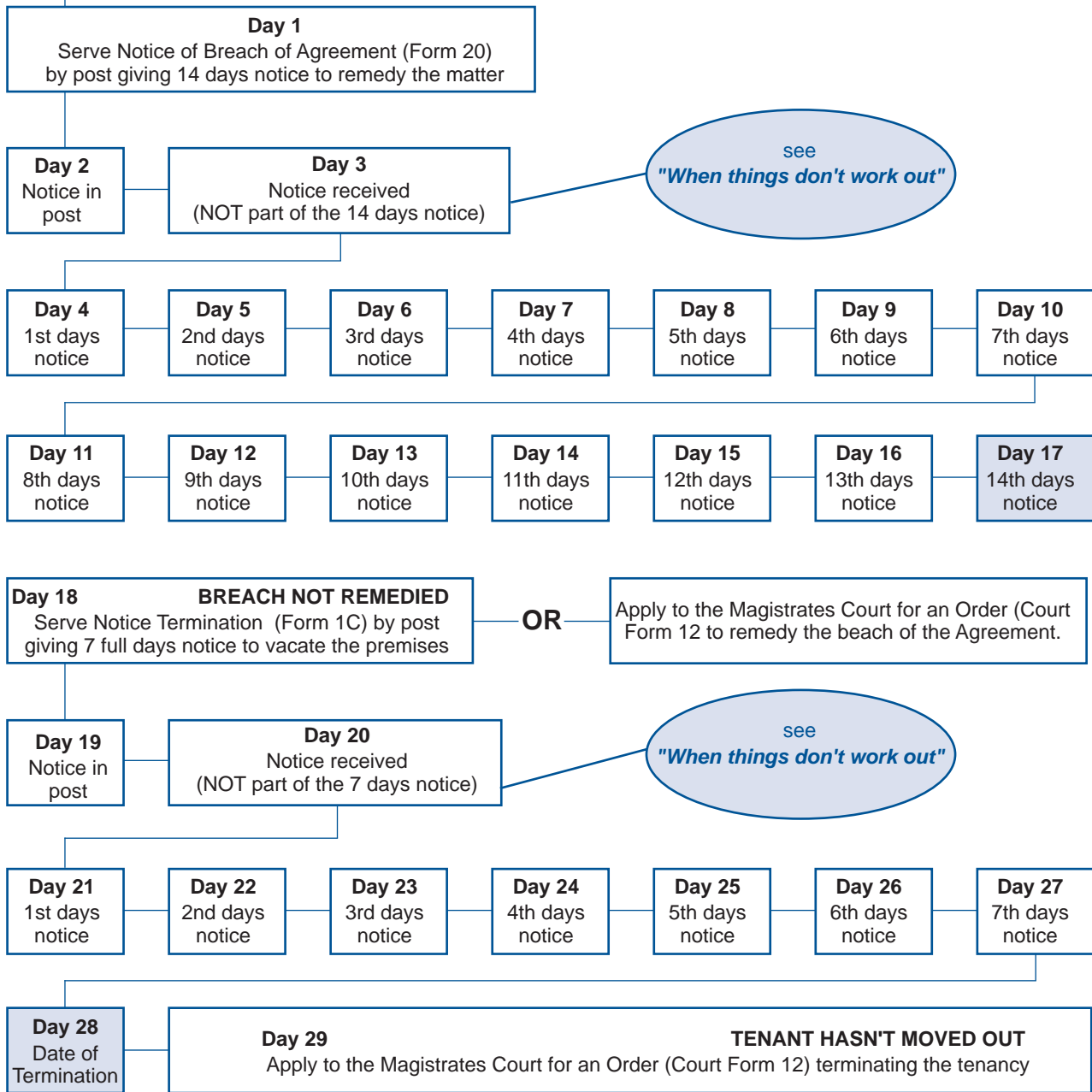


Note: Days 3, and 4 are eliminated if the notice is served personally on tenants or occupants.



SERVICE BY OWNERS OF BREACH NOTICES OTHER THAN FOR FAILURE TO PAY RENT

FLOWCHART 3



Note: Days 2, 3, 19 and 20 are eliminated if the notice is served personally on tenants or occupants.

Department of Commerce Consumer Protection

Forrest Centre
219 St Georges Terrace
Perth Western Australia 6000

Advice Line (for the cost of a local call).....1300 30 40 54
Facsimile9282 0854

Translating and Interpreting Service
ask for connection to 1300 30 40 54131 450

National Relay Service13 36 77

Postal address Locked Bag 14 Cloisters Square WA 6850

Email addressconsumer@commerce.wa.gov.au

www.commerce.wa.gov.au/tenancy

REGIONAL OFFICES

Great Southern

Unit 2/129 Aberdeen St
ALBANY WA 6330
PO Box 832
ALBANY WA 6331
Ph: 9842 8366

South West

8th Floor,
61 Victoria St
BUNBURY WA 6230
PO Box 1747
BUNBURY WA 6231
Ph: 9722 2888

Mid West

Shop 3, Post Office Plaza
50-52 Durlacher St
GERALDTON WA 6530
PO Box 1447
GERALDTON 6531
Ph: 9920 9800

Goldfields/Esperance

Suite 4, 37 Brookman St
KALGOORLIE WA 6430
PO Box 10154
KALGOORLIE WA 6433
Ph: 9026 3250

North West

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

Kimberley

Woody's Arcade,
7/15 Dampier Terrace
BROOME WA 6725
PO Box 1449
BROOME WA 6725
Ph: 9191 8400