

Entry and Privacy

As a tenant you have rights and responsibilities under the *Residential Tenancies Act 1987* (the Act). This fact sheet explains the law in Western Australia about the right of entry and incorporates the changes made to the Act, which came into effect on 1 July 2013. Please note that while changes were made to the Act effective 1 July 2013, some of the old laws may still apply to you. If, for example, you entered into a lease prior to 1 July 2013, the old laws may still be valid. Accordingly we strongly encourage you to get appropriate legal/tenancy advice from your local tenancy service concerning the application of the new laws.

In the Residential Tenancies Act the landlord is referred to as the lessor.

QUIET ENJOYMENT

As a tenant you have a right to quiet enjoyment and reasonable peace, comfort and privacy of the property. The lessor or anyone acting on their instructions (e.g. a tradesperson or a property manager), are not permitted to enter the property unless you have been given correct notice beforehand.

WHEN CAN THE LESSOR ENTER THE PROPERTY?

The lessor may enter the property in the following circumstances:

Purpose	When can they enter premises?
In an emergency	At any time
Conducting routine inspections (or for any other purpose)	At a reasonable time, after giving at least 7 and not more than 14 days' written notice
Collecting rent	At any reasonable time (if agreed it is to be collected at premises)
Lessor suspects that you have abandoned premises	24 hours after giving the correct written notice
Necessary maintenance and repairs	72 hours after giving written notice
Show prospective tenants	Only in the last 21 days of the agreement. At a reasonable time, on a reasonable number of occasions after giving you reasonable written notice
Show prospective buyers	At a reasonable time, on a reasonable number of occasions after giving you reasonable written notice

A lessor may also enter if you agree at or immediately before the time of entry.

The written notice must state the day of the entry and whether the entry will be before or after 12pm.

The lessor must make reasonable attempts to negotiate a day and time for entry that does not unduly inconvenience you.

HOW OFTEN CAN THE LESSOR CONDUCT ROUTINE INSPECTIONS?

A lessor may only conduct four routine inspections in any 12 month period. This includes what some property managers call “re-inspection”.

WHAT IS A “REASONABLE TIME”?

Reasonable time means:

- between 8.00am and 6.00pm on a weekday
- between 9.00am and 5.00pm on a Saturday
- any other time agreed between you and the lessor.

WHAT IS REASONABLE NOTICE?

The *Residential Tenancies Act 1987* states what notice period is required for inspections, maintenance or if the lessor suspects you have abandoned the premises.

The Acts does not define “reasonable notice” or “reasonable number of occasions” for showing prospective tenants and buyers through the property. If the lessor wishes to take prospective buyers through the property frequently you may be able to negotiate a reduction of rent to compensate you for the inconvenience.

YOU HAVE A RIGHT TO BE PRESENT WHEN THE LESSOR ENTERS THE PROPERTY

You have the right to be present when the lessor/third party enters the property but there is no rule stating that you **must** be present. If you have been given the correct notice and you have failed to negotiate an alternative time, the lessor can use their spare key to enter the property.

If you cannot be present at the time stated on the notice, and you cannot negotiate an alternative time you can ask a friend or a relative to be there instead.

WHAT IF YOUR BELONGINGS ARE DAMAGED BY THE LESSOR ENTERING THE PROPERTY?

You must be compensated by the lessor if they or any other person accompanying them causes damage to your belongings on the property.

YOU DO NOT HAVE TO PAY FOR INSPECTIONS

Lessors cannot ask tenants to pay additional money other than rent and security bond. The lessor cannot pass on any administration, re-inspection fees or other charges to the tenant.

The lessor can request compensation if the tenant has breached the agreement and they can show they suffered additional costs as a result of the breach.

For example, a tenant may be charged a portion of the final inspection fee in a break lease situation as the lessor has had to pay the additional costs due to the tenant breaking the contract. A lessor cannot ordinarily charge a final inspection fee as it is a term of the tenancy agreement that the lessor is to carry out an inspection and property condition report at the end of the tenancy.

INTERFERENCE WITH YOUR PRIVACY

Examples of this include:

- the lessor coming to the property for no reason and without notice
- a tradesperson coming to do non-urgent repairs without proper notice

- prospective buyers being shown the property without notice or written consent from the lessor.

WHAT CAN YOU DO IF THE LESSOR INTERFERES WITH YOUR PRIVACY?

If the lessor enters the property without giving the required notice, or enters so often that your quiet enjoyment of the property is being affected, there are a number of options available to you:

1. Write to the lessor and inform them that your privacy is being violated and request that in the future the correct notice is given. If your complaint is about a real estate agent, tell your landlord about the agent's behaviour.
2. If the property is managed by an agent, you may request a meeting with the Principal of the real estate agency and discuss the problem with him/her.
Be clear about how much notice you require before each entry taking into consideration what notice you are entitled to under the *Residential Tenancies Act 1987*.
3. Apply to the Magistrates Court for orders:
 - a. To stop the lessor entering the property.
 - b. To specify or limit the days and times on which, and purposes for which, the lessor or other authorised person can enter.
 - c. To end your tenancy (must be a serious breach).
 - d. For compensation for loss of or damage to your goods.
4. Report trespass to the police.
5. Make a complaint to the Department of Commerce about the lessor or property manager's behaviour.
6. If you find that you are not getting anywhere with your negotiations then contact your local tenant advocate for assistance.

NOTE: if you choose to end the tenancy early because the lessor has entered the property unannounced and you have not followed the above steps, you could be liable for break lease fees.

USE OF PHOTOGRAPHS IN A RESIDENTIAL TENANCY

It is common practice for Real Estate Agents to take photos of a rental property. The two primary reasons for use of photos are:

1. Photographic evidence to show the lessor the condition of the property.

Photographic evidence may form part of the Property Condition Report and can be used to monitor the property standards. Photos taken during a routine property inspection may also be used for issuing a Breach Notice.

2. For advertising the property to prospective buyers.

When and in what circumstances photographs may be taken may be covered in the tenancy agreement.

Most Real Estate Agents are covered by the Privacy Act 1988, and have to comply with the Australian Privacy Principles when handling images which contain personal information.

FURTHER HELP – TENANTS’ ADVICE AND ADVOCACY

Tenancy WA provides state wide telephone advice services and referrals.

Metro: (08) 9221 0088 • Country: 1800 621 888 (free call) • www.tenancywa.org.au

Department of Commerce 1300 304 054

METROPOLITAN COMMUNITY LEGAL CENTRES	REGIONAL COMMUNITY LEGAL CENTRES
<p>Fremantle CLC (Western Suburbs) 9432 9790 www.fremantle.wa.gov.au</p> <p>Gosnells CLC (South Eastern Suburbs) 9398 1455 www.gosclc.com.au</p> <p>MIDLAS (Eastern Suburbs) 9250 2123 www.midlas.org.au</p> <p>Northern Suburbs CLC (Northern Suburbs) 9440 1663 www.nsclc.org.au</p> <p>SCALES (South Western Suburbs) 9550 0400 www.law.murdoch.edu.au/scales</p> <p>Sussex Street CLS (South Central Suburbs) 6253 9500 www.sscls.asn.au</p> <p>Welfare Rights & Advocacy Service (North Central Suburbs) 9328 1751 www.wraswa.org.au</p>	<p>Albany CLC (Great Southern) 9842 8566 www.albanyclc.com.au</p> <p>AccordWest (South West) 9729 9000 www.accordwest.com.au</p> <p>Geraldton Resource Centre (Mid-West/Gascoyne) 9938 0600 www.grc.asn.au</p> <p>Goldfields CLC (Goldfields) 9021 1888 www.gclc.com.au</p> <p>Kimberley CLS (Kimberley) 9169 3100</p> <p>Peel CLS (Peel) 9581 4511 www.peelcls.com.au</p> <p>Pilbara CLC (Pilbara) Karratha - 9185 5899 Newman - 9175 0148 Roebourne - 9182 1169 South Hedland - 9140 1613 www.pcls.net.au</p> <p>Wheatbelt CLC (Wheatbelt) 9622 5200 www.wheatbeltclc.com.au</p>

Disclaimer: This fact sheet is intended as general information only and should not be relied on as a substitute for legal advice. You may wish to seek advice from a tenant advocate or lawyer about your particular circumstances. Tenancy WA does not accept responsibility for any consequences, including damage or loss, arising from your use of, or reliance on, the information contained in this publication. Tenancy WA does not accept responsibility for the accuracy of any information obtained from third party website links. © Tenancy WA