

Abandoned Property and Goods

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 abandoned property and goods 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.

WHAT HAPPENS IF YOU ABANDON A PROPERTY?

If you stop paying rent and permanently leave the rental premises during the term of the tenancy, this is called 'abandonment' and the agreement terminates when you leave (see our "**Break Lease**" fact sheet for more information).

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

WHAT IF YOU LEAVE WITHOUT TELLING THE LESSOR?

If you abandon the property, and don't tell the lessor, they will not know if the agreement has terminated. The lessor cannot simply re-let the property without being liable to compensate you if it turns out your absence is temporary, and the rental agreement was actually not terminated. Similarly the lessor has no right to re-enter the property unless you have actually abandoned possession.

The Act provides a mechanism for permitting the lessor to re-enter the premises to inspect and secure them, in these circumstances. It also provides a means by which the lessor may obtain a court order terminating the agreement for abandonment, and a means by which possession may be deemed to have been abandoned.

NOTE: If you are going away for a long period of time, it is best to let the lessor know in writing so they do not think you have abandoned the property, and ensure your rent is paid whilst you are away.

LESSOR ENTERING THE PROPERTY

A lessor who believes on **reasonable grounds** that its rental property has been abandoned may give 24 hours' notice to enter for the purposes of inspecting and securing them. The notice must be given by leaving copies both at the rental property and at your last known place of employment. It must be in a Form 12: [Notice to tenant of abandonment of premises](#). If you do not contact the lessor within 24 hours, then they can enter the property to inspect and secure it.

WHAT ARE "REASONABLE GROUNDS"?

The Act defines reasonable grounds as meaning that a tenant has **failed to pay rent and** at least one of the following has occurred -

- (a) uncollected mail, newspapers or other material at the premises;
- (b) neighbours or others have reported that the tenant has abandoned the premises;
- (c) the absence of household goods at the premises;
- (d) the disconnection of services (including gas, electricity and telephone) to the premises.

TERMINATING A TENANCY WHERE IT IS SUSPECTED THAT THE PROPERTY HAS BEEN ABANDONED

If a lessor suspects on **reasonable grounds** that you have abandoned the property, it may:

- (1) Issue you with a Form 13: Notice of Termination to Tenant if Premises Abandoned; or
- (2) Apply to Court for an order declaring that the premises were abandoned on the day stated in the order. If such an order is made then you are taken to have abandoned the premises on that date, and the agreement will be taken to have been terminated on that date.

IF YOU HAVEN'T ABANDONED A PROPERTY AND AN ORDER HAS BEEN MADE OR A FORM 13 HAS BEEN SENT?

If there has been an order made by the court that the property was abandoned, you have **28 days** from the date of the court order to apply for a review.

If you have been sent a Form 13 from the lessor, you have **7 days** to make an application to the magistrates' courts to set aside the notice or for compensation. If you do not make this application, it will be taken as you having abandoned the property (and the tenancy will terminate at that point).

If you make the application **within 7 days** of receiving the notice, the court may make an order setting aside the notice.

If you don't make the application within 7 days, you can make an application **within 28 days** for the court to make one of the following orders:

- Terminate the agreement
- An order requiring the lessor to pay you compensation
- Any other order the court considers appropriate

ABANDONED GOODS

WHAT HAPPENS TO YOUR BELONGINGS IF THE PROPERTY HAS BEEN DECLARED ABANDONED OR AFTER THE TENANCY ENDS?

- The lessor can dispose of perishable goods and your belongings that have an estimated value less than the estimated cost of removal, storage and sale **2 days after** termination of the tenancy.
- If your belongings have a higher value, the lessor must store your belongings for **60 days**.
- The lessor is required to notify you that they are storing your belongings within the first **7 days**. They must send a notice to the forwarding address you have provided **and** place a notice in a State-wide newspaper.
- The lessor must notify you with the following forms to let you know what they are doing with your belongings, Form 2: [Notice to former tenant as to disposal of goods](#) and Form 3: [Notice as to disposal of goods](#)
- If you have left behind documents such as, photographs, official documents, letters or any other documents which it would be reasonable to expect that a person would want to keep, then the lessor must store these documents for **60 days** and must take reasonable steps to contact you to arrange collection. Documents includes documents stored electronically – for example on a USB thumb drive, the hard drive of a computer, or a CD or DVD.

HOW CAN YOU RECLAIM YOUR BELONGINGS?

- You can reclaim your belongings/documents before the **60 days** but you will be liable for costs associated for removing and storing your belongings and documents.
- Payments need to be reasonable, you have the right to ask for receipts of removing and storage fees to ensure the lessor is requesting a reasonable amount for costs.

WHAT HAPPENS TO YOUR BELONGINGS AFTER 60 DAYS?

- If you have not collected **documents** after 60 days, the lessor can dispose of them but this must be done in a way that does not result in your personal information becoming public.
- If you have not collected your **personal belongings**, the lessor can sell your belongings at a public auction and deduct from the proceeds of the sale any amount that you owe them for removing and storing your belongings.

WHAT CAN YOU DO IF A LESSOR DISPOSES OF YOUR BELONGINGS, AND THEIR ESTIMATED VALUE WAS NOT LESS THAN THE ESTIMATED VALUE OF REMOVAL, STORAGE AND SALE?

You can apply to the court for the lessor to pay you compensation for the loss of your goods. The lessor might apply for a certificate from the Department of Commerce. This means that if you are entitled to compensation, the lessor can claim seek reimbursement of the compensation from the Department of Commerce. The certificate does not affect your right to compensation, if your goods were worth more than the cost of removal, storage and sale. If the lessor tells you they have a certificate from the Department of Commerce you should seek advice from a tenant advocate or lawyer.

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

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