

Mould

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 mould 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.

MOULD AND TENANCY

Mould needs moisture and organic material to grow. When disturbed or dried out, they release spores that can cause illness in some people. They may cause structural damage if left untreated.

Mould can cause a state of disrepair at rental premises. This can be the result of a breach of the tenancy agreement by the lessor or the tenant.

If the mould appears as a result of fair wear and tear, or a result of a property maintenance issue such as a roof leak, it is the lessor's responsibility to have it cleaned. It is always up to the lessor to ensure the premises are maintained and kept in good repair.

However, if the mould is caused by you, for example by not ventilating a bathroom using an extractor fan or opening a window, it may be your responsibility to clean the mould.

You should talk to the lessor to work out who will clean the mould. If an agreement can't be reached, then either person can lodge an application at the Magistrates Court.

Although the Residential Tenancies Act does not refer specifically to mould, general rules about the responsibility of the lessor to carry out repairs and the tenant to keep the premises reasonably clean apply.

You can read the Department of Health fact sheet on Mould in the home [here](#).

TENANT'S RESPONSIBILITIES

You must:

- keep the premises reasonably clean
- tell the lessor about any damage to the premises as soon as possible
- mitigate loss (take reasonable steps to limit or avoid loss).

LESSOR'S RESPONSIBILITIES

The lessor must:

- provide the premises in a reasonably clean state
- maintain the premises in a reasonable state of cleanliness and repair
- mitigate loss (take reasonable steps to limit or avoid loss).

MITIGATION OF LOSS

Mitigation of loss is taking reasonable steps to limit or avoid loss. An example of mitigation of loss is:

- The tenant avoiding damage to their clothes by removing them from a built in wardrobe where mould is growing.
- A lessor promptly fixing damage to a bathroom wall before mould growth can set in.

An example of who is responsible: if the tenant continually allowed steam to build up in the bathroom without proper ventilation and/or regular cleaning, resulting in mould, then the tenant may be liable. If the mould is a result of a structural issue, e.g. a roof leak, then the lessor would be liable for the repairs.

WHAT TO DO IF YOU ARE WORRIED ABOUT THE TYPE OR EXTENT OF THE MOULD

If you are worried about the health consequences of the mould – contact the Environmental Health Branch of the Western Australian Department of Health on (08) 9388 4999 or contact your local government Environmental Health Officer.

Arrange an inspection and report to be completed outlining the mould and its effects. You can also negotiate with the lessor to arrange a mould expert to attend the property and provide a report.

You can read the Department of Health fact sheet on Mould in the home [here](#).

WHAT TO DO ABOUT MOULD BEFORE MOVING IN

There are many things to consider before you move into a new property but if you're concerned about mould some particular things to consider are:

- Is the property insulated?
- What type of heating is there?
- If there's no heating will it be easy to heat using appliances?
- Is there an extractor fan above stove and in the bathroom?
- Are there signs of leaking near sinks, toilet and/or taps?
- Are there adequate blinds/curtains?

You can request that mould issues be dealt with before you move in. Ensure you get any agreement with the lessor in writing.

WHAT TO DO ABOUT MOULD AFTER YOU HAVE MOVED IN

Your lessor must provide you with a property condition report within 7 days after you have the keys and move in. Carefully inspect the whole property particularly any potential problem areas such as bathroom, kitchen and laundry. Note any potential causes of or presence of mould on the property condition report.

WHAT TO DO WHEN MOULD APPEARS

The easiest way to deal with mould is to try and prevent it forming in the first place, if it is reasonable for you to do so.

Simple ways to prevent mould forming include:

- Use the extractor fan when cooking, showering or doing laundry.
- Leave your curtains/blinds open if the property gets some sunlight during the day.

- Ensure that you use your heating as efficiently as possible.
- Dry your clothes outside if possible and don't put them away until completely dry.
- If you notice condensation on the walls, wipe it down and dry the area thoroughly.
- Open a window and/or door.
- Leave the internal doors open to allow air circulation.

If mould is already present:

- Remove all furniture and other items away from the area.
- Dispose of any items affected by mould immediately or carefully clean and dry them (take photos of these items before disposing of them).
- Remove/clean mould from affected areas yourself if it is reasonable for you to do so.

NOTE: Cleaning mould can potentially be dangerous to your health. If you are concerned you should wear protective clothing and a mask. If you want to try to clean the mould – follow the guidelines in the Department of Health fact sheet.

YOUR OPTIONS

If, despite your best efforts, the mould continues to appear or becomes worse you have a few options.

You may want to:

1. Stay at the rented premises and have the mould rectified.
2. End your tenancy and leave.

If you want to stay, refer to our “Maintenance and Repairs” factsheet

If you are going to move out temporarily while repairs are done, make a clear agreement with your lessor, in writing, about:

- rent reduction
- how long you will be away
- who will be responsible for goods at the premises or how your goods will be stored.

If you want to leave the property, the process for ending the tenancy will depend on the severity of the mould damage.

NOTE: If the mould is not harmful or can be easily fixed by the lessor, but you vacate the property anyway, you may be responsible for break lease costs.

You may be able to terminate by mutual agreement with the lessor. Contact the lessor and provide them with photos or doctors certificates and ask to leave without penalty. Get any agreement in writing.

PREMISES ARE UNINHABITABLE

If the premises or part of the premises are decided to be uninhabitable or unusable (usually by the local council), you or the lessor may be able to terminate the agreement by giving a notice of termination. You are only required to give two days' notice.

You can give the notice in writing or issue the lessor with a [Form 22 – Notice of Termination from Tenant to Lessor](#).

APPLYING TO THE MAGISTRATE'S COURT FOR ORDERS

You can apply for one or more of the following orders:

- That the lessor do the repairs you have specified.
- That the rent is reduced from when you told the lessor about the need for the repairs until the repairs are done.
- That the lessor compensate you for the losses you suffered because they did not do the repairs (damage to personal belongings).
- Termination of the tenancy agreement.

You will need to provide evidence to the Magistrates Court. This may include expert reports on the presence of mould in the premises – from a mould expert, council building/health inspector or builder.

Reports can be costly so you may need to rely on other evidence. The property condition report is important evidence of the state of the property at the start of the tenancy. Other evidence may include:

- your tenancy agreement
- correspondence with the lessor
- photos and drawings of the premises
- samples of the mould
- receipts for expenses
- printed materials (such as fact sheets) about mould and its effects.

For further information regarding mould contact:

- Health Department of WA
- Your local council

RELEVANT FORMS

[Form 22 – Notice of Termination from Tenant to Lessor](#)

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.gosclc.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.nsclc.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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