

## Disposal of the Bond

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 security bonds 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.

### BOND QUICK CHECKLIST

- From 1 July 2013 **‘Property Condition Reports’** (PCRs) are compulsory when entering and ending a tenancy agreement. When you leave the property, the lessor must give you a copy of the PCR within 14 days of you leaving the premises.
- Take photos of the property at the beginning and end of your tenancy
- Read all documents carefully and never sign a blank or incomplete form
- Keep copies of all rent receipts or a record of your rent payments
- Leave the premises in a clean, similar condition to when you moved in<sup>1</sup>
- Keep copies of receipts for carpet cleaning
- Return the keys when you move out
- Notify the lessor of your forwarding address

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

### VACATING THE PROPERTY

When leaving a tenancy you should leave the property in a reasonable state of cleanliness and in the same condition as it was when you moved in otherwise the lessor can claim part or all of your bond money to cover the cost of cleaning or carrying out repairs.

You will need to clean the property thoroughly, agencies often have their own cleaning lists for you to complete. See our **“Tenant Ending a Tenancy”** checklist for a basic cleaning checklist.

When vacating a property, you must provide in writing a forwarding address. This can be a postal address or, the address you are moving to. Failure to provide this information may result in a \$5000 fine.

**NOTE: Make sure you take photos when you vacate the property so you can show what condition it was in.**

### FINAL INSPECTION

Once you have handed back your keys, the lessor will conduct a final inspection. The final inspection must be conducted and a PCR provided to you as soon as practicable, and in any event within 14 days, of the tenancy ending.

<sup>1</sup> The property should be left in a state that is as close as possible to the state it was in at the start of the tenancy, less fair wear and tear.

The lessor is required to give you reasonable opportunity to be present at the inspection and you should make every effort to attend the final inspection.

If the property needs any further cleaning, the lessor may give you access to the property to do the work yourself. They may not, however, be obliged to do so (it may be reasonable for them to get a cleaner and add the bill to what they claim you owe them)<sup>2</sup>. Similarly you are not obliged to do this work yourself (you can let the lessor sort it out and pay the bill).

## FAIR WEAR AND TEAR

A property will often suffer some deterioration due to **'fair wear and tear'** and you are not responsible for this.

Fair wear and tear is a general term for deterioration that occurs through ordinary use.

Intentional damage (done on purpose) or damage caused by negligence (by someone in your home not taking enough care) is not fair wear and tear and you will be responsible for the costs of these types of repairs.

## FAIR WEAR AND TEAR VS NEGLIGENT DAMAGE

<b>Fair Wear and Tear (Owner/Agent Responsible)</b>	<b>Negligent damage (Tenant Responsibility)</b>
Cracked window pane due to old warped frames	Cracked window pane from carelessly slamming window shut
Curtains faded from years in the sun	The cat tears the curtains
Paint fading and discolouring over time	Paint discolouring through candle smoke
Plaster cracks as building settles	Plaster chipped by nails being hammered in
Worn carpets due to day to day use	Scratches on kitchen bench tops due to cutting food on the surface
A lock that breaks because it is old and worn out	A lock that was broken when you forgot the key and broke into the house
Paint flakes off because it is old or was not applied properly	Mould/mildew formed because you didn't air the property

If you think the lessor is being unreasonable by trying to hold you responsible for damage that you think is "fair wear and tear" you should refer to your PCR and photos to compare the condition of the property when you first moved in to when you vacated.

To avoid going to Court you should then attempt to negotiate a settlement by writing to the lessor explaining what you dispute and giving reasons why.

If there is still a dispute over the bond you should lodge an application to have the matter heard in the Magistrates Court.

## RETURN OF THE BOND

---

<sup>2</sup> Under s.58 of the Act there is a general duty to mitigate loss or damage upon breach of contract, which would apply here, meaning that they ought to take reasonable steps to reduce their loss as a result of the tenant's breach.

The bond money can only be disposed of by consent or court order. Once you have handed the keys back to the lessor and the lessor has conducted a final inspection, you can then seek to have your bond returned.

All of the bond money should be returned to you unless you owe money for outstanding rent, are responsible for property damage, or have outstanding water bills or incurred other costs – such as cleaning.

### 1. WHEN YOUR LESSOR MAKES NO CLAIM AGAINST YOUR BOND, OR YOU AGREE WITH THE AMOUNT TO BE PAID

If all parties agree to the amount of the bond to be disposed, they can complete and sign a Joint Application for Disposal of Security Bond form. Do not sign this form if you disagree with the amount of bond money being claimed or returned and never sign a blank bond form.

Upon receiving the form, the bond administrator will pay the agreed amount to you and the lessor. If the Bond Administrator receives the form in the mail it will usually take 2-3 weeks to distribute the bond money, either by mailing out a cheque (or cheques) or by direct transfer.

However, if you take the completed form to the Bond Administrator in person you may choose to either receive a cash cheque on the spot or wait 2 – 3 days to receive in bank account (if you choose direct transfer).

### 2. IF THE LESSOR MAKES CLAIM AGAINST YOUR BOND THAT YOU DO NOT AGREE WITH

If the lessor is claiming that you owe money they will notify you of this and tell you the amount that they want to deduct from the bond. This may be for damage, cleaning costs, rent or outstanding water bills.

If you do not agree to the amount of bond money being claimed or returned do not sign the bond disposal form. Contact the lessor and tell them why you are disputing each claim. You can refer to your property condition reports, photos or any correspondence between you and the lessor. Try to negotiate an agreement with the lessor.

If there is damage to the property that you are responsible for, you should only be responsible to the extent of your damage. For example: if you spilt red wine, you should only pay for re-carpeting or repair of that one room, not the whole property.

When asking for compensation for damage, the lessor should take into account the age of the item that was damaged and any depreciation.

**NOTE: If the lessor is making a claim for damage, you should request copies of work orders or quotes for any work done. You can also provide the lessor with quotes you have obtained.**

If no agreement can be reached, you or the lessor need to apply to the Magistrates Court for an order for the disposal of the bond money.

### 3. YOU HAVE NOT BEEN ABLE TO CONTACT YOUR LESSOR TO DISPOSE OF THE BOND

If you have vacated the property but have had no contact with the lessor regarding the bond, or have not received any relevant documentation (PCR, bond disposal form), then write to the lessor requesting the disposal of the bond.

Ask them to provide you with a list of what they are claiming (if anything) or a copy of the bond disposal form.

Give them a time frame and inform them that if you do not receive a response you will be lodging an application at the Magistrate's Court for disposal of the bond.

## APPLYING TO THE MAGISTRATES COURT FOR BOND DISPOSAL

You may need to apply to the Court for the disposal of the bond if:

- You have not been able to get your bond money back; or
- You have not been able to reach an agreement with the lessor about how much bond you should get back.

You need to make the application at the Court nearest to the tenancy that you have vacated, using a Form 6: [Application for Disposal of Bond Money](#). If the lessor disputes your application, they must within 7 days respond to the court with the attached Form 5: Notice of Intention to Dispute Application for Disposal of Bond Money. If they do not respond on the form 5 within the 7 days, a court can make an order as per the application without either party present.

List your name and address in the "Applicant" section, and the lessor's name and address in the "Respondent" section. If the property is managed through a real estate agent, you will need to find the lessor's name from your lease agreement. The address will then be the real estate agent's address.

If you are named as the respondent on a Form 6: Application for Disposal of Bond Money, then you have 7 days to dispute their application, by completing the attached Form 5: Notice of Intention to Dispute Application for Disposal of Bond Money. If you do not, it can result in you not having your bond returned.

## RELEVANT FORMS

Form 4: [Joint Application for Disposal of Security Bond](#)

Form 6: [Application for Disposal of Bond Money](#)

Form 12: [Application for Court Order](#)

## 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](http://www.tenancywa.org.au)

**Department of Commerce** 1300 304 054

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