

Eviction – Lessor is Ending your Tenancy

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 ending a tenancy by eviction 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 most cases when a lessor wants to terminate a tenancy, they must give you notice of termination. In some circumstances they can apply directly to the Court for termination.

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

If you receive a termination notice, first check that it is valid. Check that the form used and period of notice are correct and it has been given properly.

FORM REQUIRED FOR NOTICE OF TERMINATION

Where notice of termination is required it must:

1. Be in writing and in the prescribed form; **and**
2. Be signed by the lessor or a property manager **and**
3. Identify the rented property (in most cases by stating the address) **and**
4. Specify the date on which the lessor requires you to give vacant possession of the property **and**
5. State the ground on which the lessor is terminating the tenancy.

The prescribed form for notice of termination on grounds other than Rental Arrears is Form 1C, which may be found in the **Residential Tenancies Regulations 1989**. An interactive version of the Form may be found on the Department of Commerce website at www.commerce.wa.gov.au.

RECEIVING A NOTICE OF TERMINATION

Even if it is valid, a termination notice itself does not terminate your tenancy, and you are entitled to stay after the 'vacant possession date' in the notice.

If you do stay, the lessor will then need to apply to the Court for a termination and vacant possession order. The lessor must make the Court application within 30 days after the vacant possession date on the notice of termination.

NOTE: The Lessor is not allowed to take possession of the property without a Court Order. The Lessor must follow one of the processes outlined below before you can be evicted.

If you do move out because you have received a termination notice, your tenancy will end on the date you leave. You can move out before the termination date and you do not have to give the lessor a termination notice. You will be liable for rent until the termination date if you do choose to leave earlier.

You can contact your local tenant advocate or Tenancy WA on 9221 0088 if you receive a termination notice.

ENDING A PERIODIC TENANCY AGREEMENT WITHOUT GROUNDS

In a periodic tenancy (no set end date), the lessor can issue a no grounds termination – they do not need to provide a reason for terminating the agreement. If the lessor wants to end the tenancy agreement they must give you a minimum of **60 days' written notice**.

You also can end a periodic tenancy agreement without having to provide a reason, you must give the lessor a minimum of **21 days' written notice**. See our fact sheet “**Ending a tenancy by giving notice**” for more information.

ENDING A FIXED TERM TENANCY AGREEMENT WITHOUT GROUNDS

A fixed term agreement (has a set end date) does not automatically end on the expiry date. The lessor must give at least **30 days' notice** of termination in writing.

The date identified as the date you will move out of the property can be on or after the date of the expiry of the fixed term agreement (not before). If you and the lessor nominate different days, then the earliest day is the day you must move out of the property.

If the lessor, for no lawful reason, ends the fixed term tenancy early without your consent, you may claim compensation for your reasonable losses. Reasonable costs would include: removalist costs, disconnection/connection fees for utilities, costs for looking for a new property (inconvenience).

RENT ARREARS

A lessor may terminate the agreement when you have fallen behind in your rent. See our “**Rent Arrears**” fact sheet for more information.

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BREACH BY TENANT

If you are in breach of your tenancy agreement (other than Rent Arrears), your lessor must first give you a breach notice clearly explaining the issue and giving you **14 days** to fix the issue.

If the breach is not fixed, the lessor can issue a Form 1C: [Notice of Termination](#) giving you **7 days** to vacate the property.

If you do not vacate, the lessor must then apply to the Magistrate's Court for a termination order. If they do, you should attend the hearing.

If you can show you have fixed the breach or taken steps to fix it, the Court may decide not to end the tenancy.

The Court may make an order for termination if it finds that:

- You breached the agreement and
- The breach is sufficient to justify termination.

Breaches that are commonly used as reasons for a termination application are: damage, sub-letting without the lessor's consent, nuisance and rent arrears.

If the Court grants an order for termination, and you can show that you are likely to suffer hardship as a result, you can ask for the Magistrate to suspend the order for 30 days.

SALE OF PREMISES

In a **fixed term agreement**, the lessor cannot force you to vacate before the end of the fixed term if it is a term of the contract of sale. If the property is sold while you are still living there, the new owner purchases the property subject to your tenancy and takes over the rights and responsibilities of your previous lessor.

If the lessor wants you to move out, you should try to negotiate a mutual agreement that compensates you for the inconvenience. If you come to an agreement, make sure it is in writing and signed.

In a **periodic agreement** if the lessor has entered into a contract for sale of the premises that requires them to provide vacant possession of the premises, they can give you a **30 day** termination notice.

UNDUE HARDSHIP

The lessor can apply for termination in special circumstances where they would otherwise suffer undue hardship if they had to continue with the tenancy. In this situation, you can request the lessor to pay you compensation for reasonable costs, such as moving fees, connection fees, and costs involved with looking for a new property.

PROPERTY IS ABANDONED

If the lessor has reason to suspect that you have abandoned the property, they can issue the property with a Form 12: [Notice to Tenant of Abandonment of Premises](#). If you do not respond within 24 hours, the lessor may enter the property and take steps to terminate the tenancy. See our fact sheet "**Abandoned Property and Goods**" for more information.

MORTGAGEE REPOSSESSION

If the property has been repossessed, the mortgagee (bank or other lender) must give you **30 days'** notice to vacate on a Form 14: [Notice to Vacate from Mortgagee to Tenant](#).

You should not be charged rent for the first 30 days' of the notice period and if you have paid rent in advance, the mortgagee should repay you.

REPOSSESSION BY PERSON WITH SUPERIOR TITLE

Where a person having superior title to that of the lessor seeks possession of the property, you must be given at least 30 days' written notice of the court proceedings to recover possession.

It may be possible for you to apply to the courts to continue to rent the property under section 81 of the *Residential Tenancies Act 1987*.

RETALIATORY EVICTION

If the lessor acts to end the tenancy after you have tried to enforce your legal rights (e.g. you have issued the lessor with a breach notice) the Magistrates Court may find this to be retaliatory eviction.

It may declare a termination notice to have no effect and/or refuse to make a termination order. If the lessor gave you notice of termination within 6 months of you trying to enforce your legal rights, the lessor has the burden of proving that it was not a retaliatory eviction.

This cannot be used where the lessor has decided to end the tenancy at the end of a fixed term agreement.

If you believe the lessor is evicting you in retaliation for you trying to enforce your legal rights, contact your local tenant advocate or Tenancy WA on 9221 0088 for further advice.

ILLEGAL LOCKOUT

A lessor cannot lock you out or threaten to lock you out of the rental property. They must follow the correct procedure. Only a bailiff can evict you from the property. If the lessor does turn up without the bailiff, you do not have to leave. For more information see our **“Eviction and Illegal Lockout”** fact sheet.

RELEVANT FORMS

Form 1C: [Notice of Termination \(other than non-payment of rent\)](#)

Form 12: [Notice to Tenant of Abandonment of Premises](#)

Form 14: [Notice to Vacate from Mortgagee to Tenant](#)

Form 20: [Notice to Tenant of Breach of Agreement](#)

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>

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