

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. We strongly encourage you to get appropriate legal advice from your local tenancy service about what your rights are.

In most cases, when a lessor wants to end a tenancy and wants you to move out, they must give you a notice of termination. In some circumstances, they can apply directly to the Court to end the tenancy.

If you receive a termination notice, first check that it is valid. Check that the form used and amount of notice are correct, and it has been given properly. The rules about giving a notice of termination are quite strict in the Act.

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

Where notice of termination is required, it must:

1. Be in writing and in the prescribed form;
2. Be signed by the lessor or a property manager;
3. Identify the rented property (in most cases by stating the address);
4. State the date they would like you to move out by. This is also known as the date of “vacant possession”; **and**
5. State the reason (or “ground”) the lessor is terminating the tenancy.

The prescribed form for notice of termination on grounds other than rent arrears is [Form 1C](#), which may be found in the *Residential Tenancies Regulations 1989* (WA). An online version of the Form may be found on the [Consumer Protection website](#).

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 on in the property after the ‘vacant possession date’ in the notice. In other words, you don’t have to move out just because the lessor asks you to do so.

If you do stay, the lessor will then need to apply to the Court for a termination and vacant possession order if they want to evict you. 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 (evict you) without a court order. The lessor must follow one of the processes outlined below before you can be evicted.

If you move out after receiving a termination notice, your tenancy will end on the date you leave or the vacant possession date on the notice of termination, whichever is later. If you move out before the vacant possession date on the notice of termination, you will still be liable for rent until the vacant possession date.

You can contact your local tenant advocate or [Circle Green Community Legal](#) if you receive a termination notice.

ENDING A PERIODIC TENANCY AGREEMENT WITHOUT GROUNDS

In a periodic tenancy (an agreement with no set end date), the lessor can take steps to end the tenancy without providing a reason. If the lessor wants to end the tenancy agreement without providing a reason, they must give you a minimum of **60 days' written notice**.

As a tenant, you also can end a periodic tenancy agreement without having to provide a reason. If you want to do this, you must give the lessor a minimum of **21 days' written notice**. See our [Ending a Tenancy by Giving Notice fact sheet](#) for more information.

ENDING A FIXED TERM TENANCY AGREEMENT WITHOUT GROUNDS

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

The date for moving out of the property in the notice ('vacant possession date') can be on or after the expiry date of the fixed term agreement (not before).

If the lessor, for no lawful reason, tries to end the fixed term tenancy early without your consent, you do not need to move out unless the lessor obtains a court order (such as if the lessor is suffering undue hardship and needs to move back into the property). If this happens, you may seek to claim compensation for your reasonable losses. Reasonable costs would include removalist costs, disconnection/connection fees for utilities, costs of looking for a new property (inconvenience).

RENT ARREARS

A lessor may take steps to terminate the agreement when you have fallen behind in your rent. See our [Rent Arrears fact sheet](#) for more information.

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 not less than **14 days** to fix the issue.

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

If you do not move out and the lessor wants to evict you, the lessor must then apply to the Magistrates Court for a termination order. If they do apply to court, you should attend the hearing, otherwise the matter can be decided in your absence, and it is likely the court will order you to move out.

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 (serious enough) to justify termination.

Breaches that are commonly used as reasons for a termination applications are: damage, sub-letting without the lessor's consent, nuisance and rent arrears (note that for rent arrears the lessor must follow a different process for termination which is explained in our [Rent Arrears fact sheet](#)).

If the breach is quite minor and/or it's the first time you've been in breach, you can tell the court that you don't think the breach justifies termination and ask the court not to terminate.

If the Court decides to make an order terminating the tenancy and ordering you to move out (orders for termination and vacant possession of the premises), and you can show that you are likely to suffer hardship as a result, at the hearing you can ask for the Magistrate to "suspend" (delay) the order for 30 days. However, the Magistrate can't suspend the orders where the property is the lessor's principal place of residence.

SALE OF PREMISES

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 to the purchaser, they can give you not less than **30 days'** notice of termination.

In a **fixed term agreement**, the lessor cannot force you to move out before the end of the fixed term if they sell the property, even 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 and you are happy to leave, you should try to negotiate a mutual agreement that compensates you for the inconvenience of having to move out early. If you come to an agreement, make sure it is in writing and signed. See the 'The Lessor is Selling the Property' fact sheet for more information.

UNDUE HARDSHIP

The lessor can apply to court to end the tenancy in special circumstances where they would otherwise suffer undue hardship if they had to continue with the tenancy. In this situation, you can ask the lessor to pay you compensation for reasonable costs, such as moving fees, connection fees, and costs involved with looking for a new property. If the Court orders that you move out, sometimes the Court can make orders that the lessor pays you reasonable compensation.

PROPERTY IS ABANDONED

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

MORTGAGEE REPOSSESSION

A tenancy terminates where a mortgagee (a type of lender, often a bank) takes possession of the property. That can happen if the lessor fails to pay mortgage payments to their mortgagee.

You must receive at least 51 days' notice of mortgagee repossession. This consists of the following:

1. The mortgagee must give you 30 days' written notice on a [Form 17](#) that the mortgagee intends to commence proceedings to recover possession of the property.
2. After the 30 days' notice has expired, the mortgagee may commence proceedings to recover possession by:
 - a. Issuing a writ of summons in the Supreme Court. The writ must state the time permitted for entering an appearance and this must be at least 10 days.
 - b. Once the writ has been served on the lessor, it will take at least 11 days for the mortgagee to file a request to enter default judgment and an affidavit setting out how it has complied with the requirements to give 30 days' notice of its intention to commence recovery proceedings.
3. The mortgagee must also give you 30 days' notice to vacate the property on a [Form 14](#). This 30 days' notice may be issued at the same time as the [Form 17](#) such that they overlap. This final 30-day period is 'rent free' and if you have paid any rent in advance for this period, you should ask the lessor to return it to you.

If you receive a notice that the mortgagee intends to recover possession of the property, 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* (WA).

RETALIATORY ACTION BY THE LESSOR

If you think the lessor is terminating your agreement because you've taken steps to enforce your rights or complained to a government department, you may be able to apply to Court for relief on the basis that the termination is retaliatory.

For more information see our Retaliatory Action factsheet.

ILLEGAL LOCKOUT

A lessor cannot lock you out or threaten to lock you out of the rental property. They must follow one of the procedures set out above (e.g. they may need to give you a notice of termination and must apply to court first). 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 \(for breach other than rent arrears\)](#)

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

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

[Form 17: Proposed Recovery of Premises by Person with Superior Title](#)

[Form 20: Notice to Tenant of Breach of Agreement \(other than failure to pay rent\).](#)

Disclaimer

This fact sheet only contains general information. This fact sheet is not legal advice and should not be relied on as a substitute for legal advice. You may wish to seek advice from a lawyer regarding your own particular circumstances. We are not responsible for any consequences arising from your use of, or reliance on, the information contained in this fact sheet.

Further information about our disclaimer and your use of this fact sheet can be found here: www.circlegreen.org.au/disclaimer/

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FURTHER HELP – TENANTS’ ADVICE AND ADVOCACY

Circle Green Community Legal

(08) 6148 3636

www.circlegreen.org.au

Department of Mines, Industry Regulation and Safety

www.dmirs.wa.gov.au, **Consumer Protection** for consumer and tenancy related matters

commerce.wa.gov.au/consumer-protection | 1300 304 054

METROPOLITAN COMMUNITY LEGAL CENTRES

Fremantle CLC

(08) 9432 9790

www.fremantle.wa.gov.au/fclc

Gosnells CLC

(08) 9398 1455

www.goscl.com.au

Midland Information Debt & Legal Advocacy Service

(08) 9250 2123

www.midlas.org.au

Northern Suburbs CLC (Joondalup)

(08) 9301 4413

www.nsclegal.org.au

Northern Suburbs CLC (Mirrabooka)

(08) 9440 1663

www.nsclegal.org.au

Southern Communities Advocacy & Legal Education Services (SCALES)

(08) 9550 0400

murdoch.edu.au/School-of-Law/Clinical-Legal-Education-SCALES

Sussex Street CLS

(08) 6253 9500

www.sscls.asn.au

Welfare Rights & Advocacy Service

(08) 9328 1751

www.wraswa.org.au

REGIONAL COMMUNITY LEGAL CENTRES

Goldfields CLC

(08) 9021 1888 | 1300 139 188 (if outside Kalgoorlie-Boulder)

www.gclc.com.au

Great Southern CLS

(08) 9842 8566

www.gscls.com.au

Kimberley Community Legal Services :

www.kcls.org.au

- **Kununurra**
(08) 9169 3100 | 1800 686 020 (freecall)
- **Broome**
(08) 9192 5177

Peel CLS

(08) 9581 4511

www.peelcls.com.au

Pilbara Community Legal Services:

www.pcls.net.au

- **Karratha**
(08) 9185 5899
- **Newman**
(08) 9140 1613
- **Roebourne**
(08) 9185 5899
- **South Hedland**
(08) 9140 1613

Regional Alliance West

(08) 9938 0600

www.raw.org.au

South West CLC

(08) 9791 3206 | 1800 999 727 (freecall)

www.swclc.org.au

Wheatbelt CLC

(08) 9622 5200

www.wheatbeltclc.com.au