

# Evictions & Illegal Lockout

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 evictions and illegal lockout 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.

## EVICTON WITHOUT COURT ORDER IS PROHIBITED

It is illegal for your lessor to evict you without a court order.

When you are in possession of a rented property, it is illegal for the lessor to personally carry out an eviction or lock you out of the property.

Only the sheriff (or someone acting for the sheriff, such as a bailiff) can evict you and **only when they are acting in accordance with a court order**.<sup>1</sup>

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

## WHAT COURT ORDERS DOES THE LESSOR NEED TO EVICT YOU?

If you do not vacate a property voluntarily, then in order to legally carry out an eviction, the lessor needs to obtain the following three Court orders:

1. Orders terminating your tenancy;
2. Orders for possession of the premises (ie: the day you must move out by); and
3. A Property Seizure and Delivery Order ("PSDO").

This is discussed in more detail below.

## TERMINATION AND POSSESSION ORDERS

The lessor will first need a court order terminating the tenancy and an order for possession of the premises. The court usually makes these two orders at the same time.

The court will give you written notice of the time and place of the termination hearing.

It is always a good idea to get legal advice about your situation before your Court date. In some

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<sup>1</sup> Recovery of possession of premises without a court order is prohibited under s.80 of the Act, and punishable by a fine of up to \$20,000.

cases you may have an argument that the court should not make orders for termination and vacant possession of the premises.

It is important that you attend any Court hearing. If you don't go to the hearing, the Court can proceed in your absence and will likely terminate your tenancy. If you cannot attend Court on the day due to an unforeseen circumstance (such as a medical emergency or a car incident), you should call the relevant Court as soon as possible and notify them of your situation.

If you do not attend Court and the hearing goes ahead in your absence, a decision may be made in your absence. If you want to appeal a decision made by the Court, you should seek urgent advice as you will have only a short period to lodge an appeal.

In some circumstances you can ask the Court to postpone the orders for termination and vacant possession of the premises for up to 30 days on the grounds of hardship. However, your hardship must be greater than any hardship caused to the lessor, and the rental property must not be the lessor's principal place of residence.

The order for possession of the premises will set a date which you must move out by. If you do not move out by that date, then the lessor must obtain one more order before you can be evicted, known as a Property (Seizure and Delivery) Order ("PSDO").

**IMPORTANT NOTE: If you do not go to the hearing, it is most likely that the termination and possession orders will be granted.**

## **PROPERTY (SEIZURE AND DELIVERY) ORDER "PSDO"**

The lessor may obtain a PSDO if you fail to move out by the date specified in orders for termination of the agreement and vacant possession of the premises.

The lessor may obtain a PSDO without notice to you.

A PSDO is valid for 12 months after it is made. It authorises the sheriff to enter the property and evict anyone unlawfully on the premises. The sheriff may use any force and assistance as is reasonably necessary to do so. Bailiffs usually carry out these orders for the sheriff.

If your lessor is granted a termination and possession order, you can contact the bailiff (or lessor) to find out if a PSDO has been granted.

If the lessor has obtained a PSDO, you can contact the bailiff and ask when they plan to carry out the eviction. Usually, the bailiff will come to the property one or more days before the eviction to tell you when they intend to enforce the PSDO;<sup>2</sup> however, they are not strictly required to.

You are liable to pay compensation to the lessor if the lessor suffers any loss as a result of you failing to vacate in accordance with orders for termination of the agreement and vacant possession of the premises. If you are evicted in accordance with a PSDO, you will also usually be liable for the costs of carrying out the order. This can include the costs of hiring the bailiff, and the costs of hiring the locksmiths (if required). This can cost hundreds of dollars.

If you are likely to be evicted, it is a good idea to make arrangements so you will have somewhere to stay, especially if you may be evicted on the same day or at short notice.

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<sup>2</sup> If no one is home, they will usually leave a card.

**If you have nowhere to go, you should contact the following crisis accommodation services:**

- Entrypoint Perth  
Phone: 6496 0001 (1800 124 684)
- CrisisCare  
Phone: 9223 1111 (1800 199 008)
- Centrecare Family Accommodation Services  
Phone: 9325 6644

## **HEARINGS GOING AHEAD IN YOUR ABSENCE**

If you find out that a possession order has been granted but you didn't go to the hearing, you can apply to court to have the possession order set aside, and to get an order suspending the enforcement of the judgment (that is, an order which prevents a PSDO from being carried out until the hearing of the application to have the possession order set aside is heard).

Strictly speaking, you have 14 or 21 days from the date that the order for possession of the premises was made to apply to have the order set aside. However, you should make the applications as soon as possible. That is because you need to do this before the bailiff evicts you. Once you have been legally evicted the courts have no power to allow you back into the property.

You should contact your local Tenant Advocate or Circle Green Community Legal for advice on making these applications, because the process is quite complex, and it is not always advisable to spend your time making these applications. You should contact the lessor and bailiff and ask them to hold off on the eviction until your set aside application is heard in Court.

At the review hearing you will need to show the Court that you had a good reason for not going to the original hearing and that your case has some merit. If the Court accepts your explanation, they will set aside their earlier decision and allow the matter to be reheard.

## **ILLEGAL LOCKOUT – PRACTICAL STEPS**

It is illegal for a lessor to attempt to physically evict you or change the locks when you have possession of the property. **Only the sheriff (or a bailiff) can carry out an eviction, and only with the correct court order.**

If the lessor threatens to illegally evict you or shows up at the property and attempts to evict you, you should call the Police or Consumer Protection on 1300 30 40 54 immediately.

If you have been illegally evicted and want to make a court application, you can seek urgent advice from a tenant advocate. You may be able to seek orders for you to stay at the property, to get your belongings, or for compensation.

[You can lodge a complaint with Consumer Protection.](#) There are penalties for individuals and companies that are convicted of carrying out an illegal eviction.

You can also seek compensation for any inconvenience, costs, loss or damage to your goods

caused by the lessor's illegal actions.

### **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/](http://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](http://www.circlegreen.org.au)

### Department of Mines, Industry Regulation and Safety

[www.dmirs.wa.gov.au](http://www.dmirs.wa.gov.au), **Consumer Protection** for consumer and tenancy related matters

[commerce.wa.gov.au/consumer-protection](http://commerce.wa.gov.au/consumer-protection) | 1300 304 054

#### METROPOLITAN COMMUNITY LEGAL CENTRES

##### Fremantle CLC

(08) 9432 9790

[www.fremantle.wa.gov.au/fclc](http://www.fremantle.wa.gov.au/fclc)

##### Gosnells CLC

(08) 9398 1455

[www.gosclc.com.au](http://www.gosclc.com.au)

##### Midland Information Debt & Legal Advocacy Service

(08) 9250 2123

[www.midlas.org.au](http://www.midlas.org.au)

##### Northern Suburbs CLC (Joondalup)

(08) 9301 4413

[www.nsclegal.org.au](http://www.nsclegal.org.au)

##### Northern Suburbs CLC (Mirrabooka)

(08) 9440 1663

[www.nsclegal.org.au](http://www.nsclegal.org.au)

##### Southern Communities Advocacy & Legal Education Services (SCALES)

(08) 9550 0400

[murdoch.edu.au/School-of-Law/Clinical-Legal-Education-SCALES](http://murdoch.edu.au/School-of-Law/Clinical-Legal-Education-SCALES)

##### Sussex Street CLS

(08) 6253 9500

[www.sscls.asn.au](http://www.sscls.asn.au)

##### Welfare Rights & Advocacy Service

(08) 9328 1751

[www.wraswa.org.au](http://www.wraswa.org.au)

#### REGIONAL COMMUNITY LEGAL CENTRES

##### Albany CLC

(08) 9842 8566

[www.albanyclc.com.au](http://www.albanyclc.com.au)

##### Goldfields CLC

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

[www.gclc.com.au](http://www.gclc.com.au)

##### Kimberley Community Legal Services :

[www.kcls.org.au](http://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](http://www.peelcls.com.au)

##### Pilbara Community Legal Services:

[www.pcls.net.au](http://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](http://www.raw.org.au)

##### South West CLC

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

[www.swclc.org.au](http://www.swclc.org.au)

##### Wheatbelt CLC

(08) 9622 5200

[www.wheatbeltclc.com.au](http://www.wheatbeltclc.com.au)