

## Rent Arrears

You will be in rent arrears as soon as you don't pay rent on time. If you are in rent arrears, the lessor can take immediate legal action to terminate your tenancy. If you are unable to pay rent, it is important that you contact the lessor to explain your financial situation and what arrangements you will make to pay the arrears. If the lessor does agree to you repaying the arrears by a certain date or by instalments, get any agreement in writing.

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

**NOTE: Only a bailiff can carry out an eviction, and only after the lessor has obtained the correct court orders from the Magistrates Court.**

The lessor has two options available to terminate the residential tenancy agreement on the grounds that you are in rent arrears. Both options require the lessor to use prescribed forms. A 'prescribed form' is a form that must be used.

### OPTION ONE – USING FORM 1A

1. You fall into rent arrears
2. As soon as you fall into rent arrears, the lessor can issue you with a breach notice. The breach notice can be a letter or a [Form 21 - Breach Notice for Non-Payment of Rent](#) and must give you 14 days to pay the rent owing.
3. If you pay the rent owing within the 14 days, the lessor cannot take any further action.
4. If you do not pay the rent within 14 days, the lessor can issue you a [Form 1A - Notice of Termination for Non Payment of Rent](#). This notice of termination must give you 7 days to vacate the property.
5. If you do not vacate the property within 7 days, the lessor can apply to court for orders terminating your tenancy (and orders that the rent arrears are paid). The lessor must apply to court within 30 days of the vacant possession date on the Form 1A – Notice of termination for Non Payment of Rent. Note that the lessor can still apply to Court to evict you, even if you paid the rent in full after the 14-day notice period has expired.

### OPTION TWO – USING FORM 1B

1. You fall into rent arrears.
2. As soon as you don't pay rent on time, the lessor may issue you with a [Form 1B - Notice of Termination for Non Payment of Rent](#). The lessor does not need to give you a breach notice first.

3. If you pay the rent owing in full the day before the vacant possession date in the notice, the lessor cannot take any further action.
4. If you do not pay the rent owing within 7 days of the notice, the lessor may apply to court for orders terminating your tenancy, and an order for the rent arrears to be paid. The lessor can apply to Court after the Form 1B-Notice of Termination for Non Payment of Rent expires.
5. The court date must be at least 21 days after you were given the [Form 1B](#).
6. If you pay the full rent due plus the court application fee one clear day before the Court date, the lessor cannot continue with the application.

## WHAT TO DO IF YOU GET A NOTICE ABOUT RENT ARREARS FROM THE LESSOR

- Check that the notice given is in the correct prescribed form as discussed in the options above.
- Remember that you do not need to leave the property on the vacant possession date of the notice of termination – you cannot be evicted without a Court order.
- Check the notice to see which option the lessor is following and how long you have to respond before further action can be taken.
  - If it is a [Form 21](#) Breach notice, the lessor is following Option 1 and will probably give you a [Form 1A](#) Notice of Termination if the rent is not paid within 14 days as specified in the breach notice.
  - If the notice is a [Form 1B](#) Notice of Termination, this means the lessor is following Option 2.
- Check that the lessors calculations are correct. Ask the lessor for a copy of the rental ledger and compare your rent records and bank statements to the lessors.
- Let the lessor know straight away if you think you are not in arrears.
- If you think the lessor's calculations are wrong, write a letter and explain why. Include a copy of your rent receipts and/or documents that support your calculations. Always keep your original rent receipts, and keep a copy of your letter or email.
- If you are in rent arrears, try and pay the rent arrears before the lessor takes further action. You may wish to negotiate an agreement with the lessor to stop the lessor from taking further action. Get this agreement in writing.
- If you are in rent arrears and you are unable to pay the rent, explain to the lessor why you are in arrears. Tell them when you can pay the arrears. You may wish to ask if the lessor is willing to give you extra time to pay the rent owing or agree to a payment plan. If you come to an arrangement with the lessor, make sure this is confirmed in writing.

## YOU HAVE A RIGHT TO HOLD OVER AND YOU CANNOT BE EVICTED WITHOUT A COURT ORDER

- If you decide to move out in accordance with a notice of termination, your tenancy will terminate on the date you move out and hand the keys back.
- However, if you have received a notice of termination and don't want to move out, you do

not have to vacate the property on the vacant possession date in the notice. You can continue to live in the property past the vacant possession date in the notice. This is called 'holding over'.

- Once the notice of termination expires and you start to hold over, the lessor then has 30 days to apply to Court for orders terminating your tenancy.
- The lessor cannot carry out an eviction without obtaining a termination order and then a property seizure and delivery order in Court. You cannot be evicted unless the lessor has obtained these court orders.

## FINANCIAL COUNSELLORS

If you are having trouble paying your rent, there are a number of agencies that can assist with financial counselling and support. You may also be able to receive emergency relief. Contact your local council or tenant advocate for more information.

To find your local financial counsellor call the [Financial Counsellors Association](#) on 1800 007 007.

It is important that you **always pay your rent**, even if you are in dispute about another issue to do with your tenancy. If your dispute is resolved in your favour and you are out of pocket, you will be entitled to be reimbursed any excess rent that you paid.

## RELEVANT FORMS

[Form 1A Notice of Termination for Non-Payment of Rent](#)

[Form 1B Notice of Termination for Non-Payment of Rent](#)

[Form 21 Breach Notice for Non-Payment of 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:

<https://circlegreen.org.au/disclaimer/>

© Circle Green Community Legal.

## 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.gosnellsclc.com.au](http://www.gosnellsclc.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)