

Retaliatory Action

IMPORTANT: Changes to the *Residential Tenancies Act* came into effect on **16 May 2024**. The information in this fact sheet relates to issues or actions taken after this date.

If you think your lessor took retaliatory action **before 16 May 2024**, the information in this fact sheet **will not be applicable** and you should get legal advice about your circumstances.

You can apply to the Magistrates Court if you believe the conduct of your lessor or property manager is retaliatory.

The Magistrates Court may grant relief where the lessor has taken action in response to you enforcing your rights, complaining to a government entity, or where the Court has already made an order about your tenancy.

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

WHEN DOES A TENANT ENFORCE THEIR RIGHTS?

There are lots of different ways a tenant might take action to enforce their rights. Section 26B of the Act provides some examples, such as:

- asking for repairs or maintenance
- giving a breach notice to the lessor or property manager
- asking the lessor to reimburse the tenant for urgent repair costs
- applying to court for an order against the lessor

It also includes if your representative does any of these things – this could be a support worker or an advocate.

WHEN DOES A TENANT COMPLAIN TO A GOVERNMENT ENTITY?

A government entity includes any Commonwealth, State, or Local Government office or representative. This could include Consumer Protection, Department of Health, your local Council or Shire, or an Ombudsman. Non-government bodies such as REIWA or a community legal centre are not government entities.

It is best to have written evidence of any complaint you make.

You can inform the lessor or property manager that you have made the complaint, although you don't have to. However, the lessor or property manager must have knowledge about the complaint before taking action for it to be considered retaliatory action.

WHAT TYPE OF ACTION COULD BE RETALIATORY?

A lessor's action is retaliatory if they were wholly or partly motivated by the tenant taking one or more of the above steps. Retaliatory action could be where the lessor:

- gives a breach notice for anything other than non-payment of rent
- increases the rent
- takes steps to terminate the agreement
- refuses to renew an agreement at the end of a fixed term

There is no strict time limit that the lessor must take action for it to be considered retaliatory, but if there is a long period of time between your action and the lessor's action, it may be harder to prove the lessor was motivated by the steps you took.

SEEKING RELIEF

If you believe your lessor or property manager has taken retaliatory action against you, you can apply to the Magistrates Court.

The Magistrates Court can make orders if satisfied that a lessor took retaliatory action against you. Some examples of orders the Court can make include setting aside a termination notice, or ordering the lessor pay compensation for loss caused by the lessor's action.

The Court doesn't have to make any orders, even if it finds that retaliatory action occurred.

It is a good idea to seek legal advice before commencing any Court application.

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 Energy, Mines, Industry Regulation, and Safety

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 (MIDLAS)

(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 CLS

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 CLS

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