

Responsibilities for charges and damage arising due to family violence

This fact sheet is about:

- a) What happens with the bond when a tenant leaves under family violence provisions
- b) What if there are rent arrears, damage to the property, or other charges
- c) When the lessor can inspect the property
- d) Where to get help and assistance

The information is relevant for all tenants and is not specific to whether you are the tenant staying or leaving the tenancy. If you want to know how to safely leave or stay in your tenancy, please refer to the other fact sheets on our website.

BOND WHEN SOMEONE LEAVES DUE TO FAMILY VIOLENCE

If a tenant has terminated their interest in a tenancy due to family violence, but the tenancy is continuing with other co-tenants, there are ways for a partial bond refund to be completed.

If the leaving tenant's bond is returned, the remaining tenants will likely need to top up the bond. It is also important that the leaving tenant's name is removed from the bond paperwork and any new tenants are added, otherwise this might cause difficulty for the remaining tenants at the end of the lease (as everyone's signatures are required for disposal).

If everyone agrees (the lessor and all co-tenants) about how much bond the leaving tenant should get back, then:

1. Everyone can complete the Joint Application for Bond Disposal to agree to the partial disposal of the bond to the leaving tenant. This can be submitted online via BondsOnline, by post, or in person.
2. Complete the Bond Variation Form to take the leaving tenant's name off. Any new tenants' names and any top up amount can be included on this form.
3. If the bond is being topped up or new tenants are being added later, then the remaining tenants can use a second Bond Variation Form to add the top up money and the new name(s).

Important:
You should not sign a bond variation form to remove your name until you have been paid your share of the bond.

If everyone can't reach an agreement about the bond, or it isn't safe to attempt to reach an agreement, then the leaving tenant can make a Court application for the Court to determine the rights and liabilities of the parties to the agreement.

The starting position for the Court is that each co-tenant is entitled to an equal share of the bond. However, parties can make an argument to the Court about why this should be different, and they should get more (or less) than an equal share.

If the person accused of FDV has left, they can apply to have their share of the bond back. The lessor and other co-tenants can either agree to this or provide reasons why they do not agree. For example, if the bond money should go towards rent arrears or damage.

If a Court application is made, the Court will send all parties the paperwork so they can be involved in the process. See more information on Court below.

WHO IS RESPONSIBLE FOR CHARGES DUE TO PROPERTY DAMAGE OR RENT ARREARS?

After a person's interest in an agreement is terminated on the grounds of FDV then any tenant can apply to Court for a decision on who is responsible for certain costs. This application can only be made if a Family Violence Termination Notice has been issued or the Court has made an order terminating someone's interest in the tenancy due to FDV (not if parties have come to a mutual agreement to vary or end the tenancy agreement).

Some examples of orders that the Court could make:

- a) order that the perpetrator of FDV is responsible for the cost of damage done to the property;
- b) order that the perpetrator is responsible for any rent arrears;
- c) order that the perpetrator is responsible for paying the cost of changing the locks or increasing security;
- d) if someone who is not on the lease causes damage through FDV, order that the victim is not liable for the cost of repairing the damage.

The Court cannot order any tenants to pay compensation for terminating the tenancy early (such as break lease fees).

The Court also cannot order that anyone pay any amount for personal injury (e.g. if someone is physically or mentally hurt).

The Court needs to consider the following principles when deciding what orders to make:

- e) that family violence is a fundamental violation of human rights and is unacceptable in any form;
- f) the need to prevent further victimisation of a person who has experienced family violence through the unjust application of the principle of joint and several liability or the principle of vicarious liability;
- g) the need to maximise the safety of persons who have experienced family violence by reducing any financial burden arising from the family violence;
- h) the need to prevent, or reduce to the greatest extent possible, the consequences of family violence;

- i) the need to protect the wellbeing of children by preventing them from being subjected or exposed to further family violence;
- j) the need to encourage perpetrators of family violence to accept responsibility for their behaviour and the effect it has on others.

CAN THE LESSOR DO INSPECTIONS TO CHECK ANY DAMAGE?

Where the family violence provisions have been used, the lessor has certain rights to inspect the property and any damage. The inspections are not a requirement, but they are probably a good idea if a party is worried that the property might be damaged further.

In these circumstances, the lessor can do the following inspections:

Reason	When?	How much notice is required?
A tenant has given a family violence termination notice	In the 7 days after the notice has been given	Not less than 3 days
A co-tenant has given notice to terminate their interest in the lease (after the lessor gave them a copy of their co-tenant's family violence termination notice)	In the 7 days after the notice has been given	Not less than 3 days
A tenant has applied to Court to remove a co-tenant from the agreement	In the 10 days before the Court hearing	Not less than 3 days

WHAT IF THE LESSOR HAS MADE A CLAIM AGAINST ME?

If the lessor applies to Court against you (as a tenant or previous tenant) for rent arrears or costs for damage related to FDV, you could make your own application for the Court to make a determination of liabilities under the FDV provisions. This application can only be made if a Family Violence Termination Notice has been issued or the Court has made an order terminating someone’s interest in the tenancy due to FDV (not if parties have come to a mutual agreement to vary or end the tenancy agreement).

On your application you should ask that it be ‘heard jointly’ with the lessor’s application. The Court can then decide whether you owe money to the lessor or which co-tenant should be responsible for each of these costs. You should seek legal advice if you need to make this application.

GETTING HELP WITH COURT

If possible, you should seek legal advice before applying to Court or if someone else has applied to Court against you. You can contact your local [tenant advocate service](#) for advice and to see if they run a duty lawyer service and can assist you at Court.

If you have concerns for your safety when appearing at Court, you can call the Court ahead of time to see if they can assist you.

It is important to go to Court because otherwise the Court may decide the application without you there, based on the information available to them. This applies for all parties. For example, if the lessor or real estate agent is there but a co-tenant is not, then the Court can still make orders.

The Court can make orders about the liability as discussed above, or an order to take someone off the lease if they have committed family violence.

If you miss Court and the Court has dismissed the application or made an order in your absence, you should get legal advice as soon as possible about whether you have any options to appeal or set aside the decision.

For further information about preparing for court and going to court, please see our other fact sheets on our website.

RESIDENTIAL TENANCIES DATABASE

The *Residential Tenancies Act* states that it is unjust to be listed on a tenancy database (“blacklist”) if the circumstances relating to the listing result from the tenant being subjected to family violence. You can apply to a Magistrates Court for an order the removal of the listing if the inclusion of the personal information is unjust. See our fact sheet on [residential tenancies databases](#) for more information.

WHERE CAN I GET MORE HELP?

FDV can result in lots of legal issues. You may want advice about restraining orders, family law for children's arrangements and for property settlement, advice about child support, support as a victim of crime, advice about criminal injuries compensation, and possibly advice about child protection law too.

You can call the [National Domestic Family and Sexual Violence Counselling Service](#) on **1800RESPECT** to help you identify what you can do and to find the right services and support for you.

Legal information, advice and referrals:

Legal Aid WA: 1300 650 579

Your local Community Legal Centre or an appropriate specialist service – a full list is available at the [Community Legal WA](#) website.

If you are at risk of homelessness:

Entrypoint - entrypointperth.com.au/ - referral service for people at risk of homelessness. Phone (08) 6496 0001 or 1800 124 684.

Crisis Care - Telephone (08) 9223 1111 or 1800 199 008 (country free call).

FURTHER HELP – TENANTS ADVICE AND ADVOCACY

Circle Green Community Legal

(08) 6148 3636

www.circlegreen.org.au

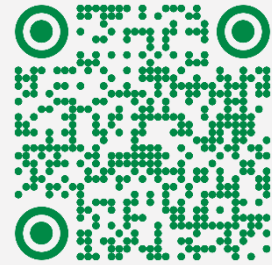
Department of Energy, Mines, Industry Regulation, and Safety

Consumer Protection for consumer and tenancy related matters

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

To find a tenant advocate in your area,
visit our website or use the QR code →

<https://circlegreen.org.au/resource/find-a-tenant-advocate>



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