

I am experiencing family violence and I want to stay in my tenancy

This fact sheet is about:

- your rights if you experience family and domestic violence while renting;
- how to stay safely in your tenancy; and
- where to get help and assistance.

If you want to know how to leave your tenancy, please refer to please refer to our other fact sheets on family and domestic violence. Whatever you decide to do, your safety is paramount and there is help available

WHAT IS FAMILY AND DOMESTIC VIOLENCE?

Family and domestic violence (**FDV**) can happen when someone:

- uses violence or threats of violence against you;
- coerces or controls you; or
- causes you to be fearful.

It can also happen when someone does one of these things to your family member.

FDV has a broad definition and is not limited to physical violence. Some examples of things that could be FDV:

- a) Damaging or destroying personal property;
- b) Sexual assault or other sexually abusive behaviour;
- c) Causing death or injury to a pet;
- d) Unreasonably withholding financial support needed to meet the reasonable living expenses for you or your child;
- e) Preventing you from connecting with family, friends, or culture;
- f) Causing a child to be exposed to any of the above.

There are other examples in the full definition set out in the *Restraining Orders Act*.

For behaviour to be FDV, you must have a **family relationship** with the person who is committing the violence. You might have a family relationship with the person if:

- you have or have had an intimate personal relationship with them (including a spouse, ex-spouse, de facto partner, or ex-de facto partner);
- you are their parent or guardian;
- you are their child;
- you are related to them.

If you are not sure whether you are experiencing FDV or whether your relationship would be considered a family relationship, please consider getting legal advice or support from one of the services listed at the end of this document.

HOW DO I REMOVE THE PERPETRATOR OF FDV FROM THE TENANCY AGREEMENT?

You can apply to Court to have a perpetrator of FDV removed from the tenancy agreement. Your tenancy agreement will continue on the same terms, but without that tenant on the agreement. This means you, and any other remaining co-tenants, will need to pay the full amount of rent.

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

There are some pros and cons to removing a tenant who committed FDV from the tenancy agreement. There are circumstances where you might need the tenant who committed FDV to remain on the agreement and remain responsible for paying rent. This may be because you have not yet made arrangements to be able to pay the full rent yourself – for example, getting a housemate or family member to help, or arranging child support payments.

Applying to have a tenant removed from the agreement is a civil process. Once the Court has made an order to remove the tenant from the agreement, they no longer have any rights to live at the property or to be there without your permission. If they come to the house or refuse to leave, they are trespassing, and you could call the police.

If you have concerns about your safety or if the person who has committed FDV against you isn't willing to just leave the property and stay away, you may wish to consider getting a Family Violence Restraining Order to protect you.

How do I apply to Court?

You can apply to Court online using the [eCourts Portal](#). If you cannot apply online, you can make an application using the [Form 12 Application for Court Order](#), with permission of the Court needed to lodge in person.

You must list all parties on the agreement in the application. The lessor and the perpetrator of FDV must both be listed as Respondents. You should also list any other co-tenants as Respondents too.

There is a fee associated with lodging the application, which can be reduced if you have a healthcare card or otherwise facing financial hardship – you can contact the Court to find out if you are eligible for the reduced fee.

What evidence will need to be shown at Court?

The Court will need to be satisfied that either:

- A Family Violence Order is in force against the perpetrator of FDV; or
- The perpetrator has committed FDV against you or your dependants during the tenancy period

A Family Violence Order includes:

- A Domestic Violence Order – being a Family Violence Restraining Order, an interim Family Violence Restraining Order, an interstate Restraining Order, or Police order;
- A Family Court injunction; or
- Any other Court Orders that do not allow the perpetrator to be at the property.

If you do not have a Family Violence Order, you will need to prove that the perpetrator has committed FDV against you or your dependant during the tenancy. You can do this by providing supporting documents.

These might be:

- Record of charges or convictions relating to FDV offences
- Police orders
- Copies of text messages with threats or abuse
- Statements from a support worker, psychologist, doctor etc who know about your situation

The court will need to be satisfied that FDV has occurred during the tenancy.

What will the Court consider when making an order?

The Court will also consider the following factors before making a decision about removing a person from the tenancy agreement:

- The best interests of any children living at the property (this will be the primary concern of the Court);
- Your best interests (if the property is social housing, this may include your ability to meet eligibility criteria without the other tenant);
- The impact on the lessor and other tenants at the property;
- The impact on any pets at the property; and
- The fact that perpetrators of FDV might seek to misuse these protections to further their violence.

The Court is also required to determine the rights and liabilities of parties as affected by the termination, so they can make the perpetrator liable for damage to the property, for example.

For further information, see our fact sheet on bond, court and FDV.

We also have fact sheets on going to court to resolve a tenancy issue on our website.

WHAT CHANGES CAN I MAKE AT THE PROPERTY TO MAKE ME SAFER?

You can change the locks and make certain other changes to prevent the perpetrator of FDV from entering the property after their interest in the agreement has ended, or to prevent FDV from occurring at the property.

Changing The Locks

If necessary to prevent a person committing FDV, you can change or add any locks to the house without the lessor's permission.

You must give a key to the lessor within 7 days after you change the locks, unless the lessor is the perpetrator of FDV, in which case you don't need to give them the new keys.

You can tell the lessor in writing not to give the new key to the perpetrator of FDV, and the lessor is then required by law to not give the keys to them, even if they are still on the tenancy agreement.

Other Safety Measures

You can make other security changes to the property to prevent FDV. These are:

- Installing security alarms and cameras
- Adding locks, screens and shutters on windows
- Adding security screens on doors
- Installing exterior lights
- Adding locks on gates
- Pruning shrubs and trees to improve visibility

If you make any of these changes, you must:

- Tell the lessor in writing before you make the changes
- Make sure the work is done by a suitable tradesperson
- Give the lessor a copy of the invoice from the tradesperson within 14 days of the changes being completed

There is more information about this in our making modifications fact sheet on our website.

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

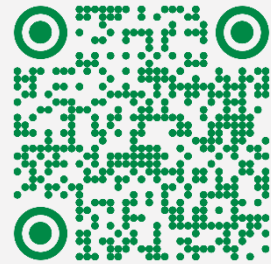
Department of Energy, Mines, Industry Regulation, and Safety

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>



Disclaimer:

This factsheet only contains general information. This factsheet 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 factsheet.

Further information about our disclaimer and your use of this factsheet can be found here:

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