Circle Green Community Legal

Entry and Privacy

QUIET ENJOYMENT

During your residential tenancy agreement, you should have 'quiet enjoyment' of the property, and the lessor should not interfere with your reasonable peace, comfort and privacy in your use of the property.

The lessor, and anyone acting on behalf of the lessor (e.g. a tradesperson or a property manager), are only allowed to enter the property in certain circumstances.

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

WHEN CAN THE LESSOR ENTER THE PROPERTY?

The lessor may enter the property for the following purposes, in the following circumstances.

Purpose	**When Can They Enter Premises?**
In an emergency	At any time
Entering after you give consent to the entry	When you consent to the entry at, or immediately before, the time of entry.
Conducting routine inspections (or for any other purpose)	At a reasonable time, after giving at least 7 and not more than 14 days' written notice
Collecting rent	At any reasonable time, but only if you and the lessor have agreed that rent is to be collected at premises, and only when rent is payable once a week or less
Lessor suspects that you have abandoned premises	24 hours after giving the correct written notice (see our fact sheet on "Abandoned Property and Goods" for further details)
Inspecting or conducting necessary maintenance or repairs	After giving at least 72 hours notice in writing

To conduct modifications that you have consented to	After giving at least 72 hours written notice (subject to any additional reasonable condition/s about entry i.e: day or time)
Showing property to prospective tenants	Only in the last 21 days of the agreement. At a reasonable time, on a reasonable number of occasions, after giving you reasonable written notice.
Showing property to prospective buyers	At a reasonable time, on a reasonable number of occasions, after giving you reasonable written notice
Inspecting premises and assessing any damage after a tenant has terminated their interest in the agreement under the family violence provision of the Act	After giving at least 3 days notice in writing to each tenant. Not more than 7 days after a tenant issues a notice to terminate their interest. If the lessor inspects at this point, this can count as the outgoing property condition report.
Inspecting premises and assessing any damage where there is an application to Court to take a tenant off the lease, after committing family violence	After giving at least 3 days notice in writing to each tenant. Not more than 10 days before the hearing of the application to remove a tenant from the lease.

If written notice is required to be given to you, the notice must generally be in a Form 19 (Notice of proposed entry to premises) and state the day of the entry and whether the entry will be before or after 12pm.

If your tenancy is affected by family violence, see our Family Violence fact sheets for more information.

HOW OFTEN CAN THE LESSOR CONDUCT ROUTINE INSPECTIONS?

A lessor may only conduct four routine inspections in any 12 month period.

After a routine inspection, your lessor or property manager may want to conduct a “re-inspection”. When a property manager/lessor wants to “re-inspect” a premises, it will generally be because they believe you have breached the agreement and want to check whether you have fixed the problem. It is unclear if the “re-inspection” counts as one of the four routine inspections allowed. There is no explicit right for the lessor to conduct “re-inspections” under the Act.

This issue is discussed in further detail in the Residential Tenancy Law and Practice Manual for WA if you wish to find out more. If you are concerned about the number of re-inspections taking place, you may wish to seek advice.

WHAT IS A "REASONABLE TIME" FOR ENTERING THE PROPERTY?

Reasonable time means:

- Between 8.00am and 6.00pm on a weekday;
- between 9.00am and 5.00pm on a Saturday; or
- Any other time agreed between the tenant and the lessor.

WHAT IS REASONABLE NOTICE TO ENTER THE PROPERTY?

The Act sets out the specific amount of notice that the lessor must give you before entering for routine inspections, maintenance, when the lessor suspects you have abandoned the premises, after termination of a tenant's interest on the grounds of family violence, or after an application to terminate a tenant's interest on the grounds of family violence.

When the lessor wants to show the premises to prospective tenants or purchasers, the lessor must give you "reasonable notice" prior to entering. "Reasonable notice" is not defined in the Act. What is "reasonable notice" will depend on the circumstances.

WHAT IS A REASONABLE NUMBER OF OCCASIONS FOR ENTERING THE PROPERTY?

When the lessor wants to show the premises to prospective tenants or purchasers, the lessor may only do this on a "reasonable number of occasions". "Reasonable number of occasions" is not defined in the Act. What is "reasonable" will depend on the circumstances.

YOU HAVE A RIGHT TO BE PRESENT WHEN THE LESSOR ENTERS THE PROPERTY

The lessor should not make you leave when the lessor enters the property. You have a right to be present. However, there is no rule stating that you must be present. If the lessor has given you the correct notice, then the lessor can use their spare key to enter the property, even if you are not at the property.

If you want to be present when the lessor enters the property, but you cannot be present at the time stated on the notice, and you cannot negotiate an alternative time for the lessor to enter, then you could ask a friend or a relative to be there in your place.

WHAT IF IT IS INCONVENIENT FOR THE LESSOR TO ENTER THE PROPERTY?

If it would unduly inconvenience you for the lessor to enter the property at the time that they have set out in a written notice, you should write to the lessor to let them know. It may be a good idea to suggest alternative days and times for the entry that do not inconvenience you.

The lessor must make a reasonable attempt to negotiate a day and time for the entry that does not unduly inconvenience you.

WHAT IF YOUR BELONGINGS ARE DAMAGED BY THE LESSOR ENTERING THE PROPERTY?

The lessor must compensate you if the lessor (or any other person accompanying them) causes damage to your belongings on the property.

YOU DO NOT HAVE TO PAY FOR INSPECTIONS

The lessor cannot pass on any administration and re-inspection fees, or other charges to the tenant.

The lessor can request compensation if the tenant has breached the agreement and the lessor can show they suffered additional costs because of the breach. For example, a tenant may be charged a portion of a final inspection fee after a tenant abandons the property, because the lessor has had to pay the additional costs due to the tenant abandoning the property (see our Break Lease fact sheet for more information). However, a lessor cannot ordinarily charge a final inspection fee.

INTERFERENCE WITH YOUR REASONABLE PEACE, COMFORT AND PRIVACY

Examples of this include:

- The lessor coming to the property for no reason and without notice.
- A tradesperson coming to do non-urgent repairs without proper notice.
- Prospective buyers being shown the property without notice.

WHAT CAN YOU DO IF THE LESSOR INTERFERES WITH YOUR REASONABLE PEACE, COMFORT AND PRIVACY?

If the lessor enters the property without giving the required notice, or enters so often that your quiet enjoyment of the property is being affected, there are a number of options available to you:

1. Keep a written record of the occasions that the lessor enters the property, including dates, times, and what happens.
2. Write to the lessor or property manager about the problem. Set out why the lessor's entry is not reasonable (e.g. insufficient notice, excessive number of occasions). Set out what your expectations are (e.g. required notice period, what you consider to be a reasonable number of occasions). You may wish to refer to specific notice periods required to be given under the Act.
3. If the property is managed by an agent, you could consider requesting a meeting with the Principal of the real estate agency and discuss the problem with them.
4. If the problem continues, you could give the lessor a breach notice.
5. If the problem still continues, you could apply to the Magistrates Court for orders:
    a. To specify or limit the days and times on which, and purposes for which, the lessor or other authorised person can enter.
    b. To end your tenancy (you must prove that the breach justifies termination of the agreement in all the circumstances).
    c. For compensation for loss of or damage to your goods.
6. Make a complaint to Consumer Protection about the lessor or property manager's behaviour.

7. If you find that you are not getting anywhere with your negotiations, then contact your local tenant advocate for assistance.
8. If the lessor is entering without having given you a notice first, and refuses to leave, you could consider calling the Police.

USE OF PHOTOGRAPHS IN A RESIDENTIAL TENANCY

It is common practice for real estate agents to take photos of a rental property. The two main reasons for taking photos are:

1. **To show the lessor the condition of the property.**

   The lessor will usually want to monitor the property standards, and a property manager might take photos of the property to assist the lessor with this.

2. **For advertising the property to prospective buyers:**

   If the lessor wants to sell the property, the lessor will usually want to take photos of the property for the purpose of including in advertisements.

Most real estate agents are covered by the *Privacy Act 1988* (Cth) and have to comply with the Australian Privacy Principles when handling images which contain personal information. However, this is really only relevant where the agent publishes images where you can be identified (e.g., photos of people, degrees, certificates).

If you have an issue with your lessor taking photos in your premises, you may wish to raise this with the property manager and try to negotiate an agreement about the photographs to be taken (e.g., not to include any identifying items). When the lessor enters the property, they must do so in a 'reasonable manner'. However, to avoid any dispute, you should also try to remove any valuable or identifying items from the area to be photographed ahead of time.

If you have experienced family or domestic violence, there is a strong argument that the agent or lessor should not take or publish photos of items by which you can be identified by a perpetrator, including belongings such as furniture or children's toys.

If you feel the lessor has mishandled your personal information, you should make a complaint and await their response. If they do not respond to your complaint within 30 days or you are not happy with the response then you may lodge a complaint with the Office of the Australian Information Commissioner at www.oaic.gov.au.

FURTHER HELP – TENANTS ADVICE AND ADVOCACY

Circle Green Community Legal
(08) 6148 3636
www.circlegreen.org.au

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 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/

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