

LEAVING A PLACE IN WA

A guide for Indigenous people in both private
and Department of Housing and Works
rental housing



Designed for use by tenancy and support workers

The Private Mob



The DHW Mob



Introduction

In this book there are two stories.

The first follows the Private Mob as they break their Tenancy Agreement, leave their private rental and deal with a dispute over the bond.



The second (starting on page 12) follows the DHW Mob as they have some problems, leave their DHW house and appeal a tenant liability charge.

Private Mob



Getting ready to leave

The Private Mob have a 6 month fixed term Tenancy Agreement with a private owner. It has been in place for 4 months and has 2 months to run until the expiry date.

They need to break the Tenancy Agreement because Dad hasn't been able to find another job and they can't keep up their rental and hire payments. Even with help from a financial counsellor, they know they can't make ends meet.



A fixed term Tenancy Agreement runs until the expiry date. After that date it can be renewed for another period if both the owner or agent and the tenant agree. If either the owner, agent or the tenant breaks the Tenancy Agreement early they may have to pay money.

Private Mob



Breaking the Tenancy Agreement

Mum talks to the owner, saying they need to break the Tenancy Agreement because they can't afford the rent.

The owner tells them they will need to keep paying rent until he can get new tenants, or until their Tenancy Agreement ends. He also says they will need to pay the costs for advertising for new tenants.

Mum and the owner agree on the date that they will move out. Mum then gets a tenant advocate to help write a letter to the owner.

The letter includes information on when they are going to leave and costs they have agreed to pay.



When a fixed term Tenancy Agreement is broken early by the tenant, the tenant will usually have to keep paying all costs until new tenants move in. These arrangements are always negotiable. The owner or agent must try hard to get new tenants.

Private Mob



Getting ready to leave

Dad reads their Tenancy Agreement to see what they need to do before they leave the house. It says they must organise professional carpet cleaning. This is one more expense they can't afford, so they ask the owner about this. He says professional carpet cleaning is in the Tenancy Agreement and they can't do it themselves, so they have to find a way to pay for it.

Mum rings the phone, gas, water and electricity companies to let them know they are leaving and gives them a date. She knows that if they don't do this, they could be charged for someone else's use.



Make sure you contact the utility companies with the date you are leaving and arrange for a final reading of phone, gas, electricity and water. This protects you against paying bills that are not yours.

Private Mob



Property Condition Report

The Private Mob read through the Property Condition Report they signed when they moved in and check it against the state of the house now.

They had photos taken when they moved in and check these against what they can see now. They take another lot of photos to prove they have cared for the property. They think they should be able to get all their bond back.

The owner agrees to do the final inspection before they leave town.



Tenants must pay for what is damaged unless it is reasonable fair wear and tear. Otherwise the owner or agent can use part of the bond money for this.

Private Mob



Expenses and bond

There is a section of carpet near the door that is worn which Dad sees as fair wear and tear. However, the owner wants the Private Mob to pay for replacing the whole carpet. This issue is not resolved, but they agree with everything else.

Dad knows the owner must provide proof for any charges to be taken out of the bond. Tenants have a right to challenge any charges they see as unreasonable or excessive.

The tenant advocate has checked and found that the bond is held by the Bond Administrator (a service of the Department of Consumer and Employment Protection). They both need to sign for the bond to be released, so agreement is important.



Don't sign a blank Bond Release form. Only sign when you are happy with the completed form. Both parties must sign the completed form before the bond can be released, or the court orders the bond to be released.

Private Mob



Leaving

The keys are handed over.

The owner says he is happy with the cleaning and general condition of the property, but still thinks that Mum and Dad should pay for the damaged carpet because it's worn out too quickly.

The owner and Mum and Dad know there will be more talks about the bond and the carpet.



If you have handed over the keys to the house and let the utility companies know you are leaving, what happens to the place after that is not your responsibility.

Private Mob



Bond negotiations

Dad asks a tenant advocate to help him talk to the owner about the bond. The advocate rings the owner and explains the difference between damage the tenant should pay for and fair wear and tear, which the owner should pay for. The owner still says it's the tenant's responsibility because he believes the carpet wore out much quicker than it should have.

Because the tenant and owner can't agree, the court will need to decide what happens.



The tenant advocate helps Dad fill out an **application form for the Magistrates Court of Western Australia**. Lodging this form at the court will lead to a hearing.

The tenant advocate reassures Dad and Mum and tells them not to panic. The hearing probably won't happen until a couple of weeks after the Private Mob have lodged their application.

Private Mob



The next house

The Private Mob are excited about returning to their old community. They know they have been good tenants, even though they ran into financial trouble along the way.

They asked for references from the owner, the tenant advocate and their neighbours. They know this will help them when they are ready to move back to town.

Even though their problem with the bond is not yet resolved they have always done the right thing. They hope this will help them get another house in the future.



Tenants who breach their Tenancy Agreement may get listed on a tenant data base (or blacklist). Being listed on a tenant database will affect your chances of getting another rental house.

References are a great help in finding a place in the future.

Private Mob



Going to court for the bond

Both the owner and the Private Mob get notices from the court saying when they have to turn up. Dad meets with the tenant advocate who says she's happy to go along to help them on the day. She also says it's really important that they have a copy of the Tenancy Agreement and some evidence that the worn carpet is not their fault.

The photos they took earlier will be used as evidence.

Mum and Dad make sure they are well dressed and at the court before the due time. The kids have been left with Aunty.

The Magistrate lets the tenant advocate speak on their behalf (represent them) in the court. After hearing all the evidence, the Magistrate decides the worn carpet is fair wear and tear and orders the full bond to be repaid to Mum and Dad.





Getting a Breach Notice

The DHW Mob are in trouble. Neighbours have complained to DHW several times in a short period because they had extra family members staying for a long time and the extra people made a lot of noise. The neighbours said there were often loud parties that sometimes resulted in fights on the street.

There were lots of discussions and letters between the DHW Mob and their Accommodation Manager. The family were eventually breached with “causing a nuisance” which is sometimes called anti-social behaviour. Mum and Dad asked DHW to review this decision, but this was not successful.

Even after being sent a Breach Notice, the complaints kept coming, so DHW sent them a Notice of Termination which said they had to leave by a certain date.



A Breach Notice is the first step in the eviction process for private and DHW tenants. The Breach Notice tells you what problem needs fixing. If the problem gets fixed all eviction action should stop.



Termination and eviction

The DHW Mob didn't move out on the date the Notice of Termination said. DHW then applied to the Magistrates Court to get a Court Order to end the tenancy and to take back the property.

This meant they had to appear in court. The DHW mob panicked, because they knew finding another place would be very difficult and that DHW might not house them again.

The DHW Mob arranged to get help from a tenant advocate about assistance with appearing in court.



No one can force you to leave your place without a court order.

Be prepared to go to court. There can be benefits in telling your side of the story.



Preparing for court

The tenant advocate advised the DHW Mob about the importance of attending all appointments in preparation for court.

The tenant advocate worked with Mum and Dad to collect all documents and evidence to be presented to the court. The tenant advocate also worked out who would give evidence on behalf of the DHW Mob and then tried to negotiate with DHW over the issue.

The tenant advocate also told them about the court room and how everything would happen when they appeared in court.



It is important that you dress well for your court appearance and turn up early on the day.

Make sure you attend court so you can tell your side of the story.



Going to court

The tenant advocate met the DHW Mob outside the court and explained there would be a pre-trial conference first. If nothing was sorted out then they would appear before a Magistrate.

She told them that the Magistrate is to be called "Your Honour".

No agreement was reached at the pre-trial conference. Once they were in court the Magistrate heard from the DHW officer, the tenant advocate and witnesses for both sides.

The Magistrate made the decision that the DHW Mob must leave the house.



A pre-trial conference is an opportunity for both parties to talk about problems and come to an agreement.

The Magistrate's decision is final.

DHW Mob



Cleaning and utilities

The DHW Mob were angry about being forced out of their house and were thinking they wouldn't clean up properly before leaving.

The tenant advocate explained that if they didn't leave the house clean and tidy they would face a tenant liability bill. They decided it was a good idea to leave the place clean and tidy.

They advised the phone, gas and electricity companies that they were leaving so they didn't get charged for usage after they had gone.



Notify the utility companies so you don't get charged for services used after you leave.



Final inspections

The DHW Mob hired a skip bin to get rid of the things they didn't want to take with them and any rubbish in the yard. They cleaned the house and tidied the yard.

DHW offered to inspect the house a few days before the family moved out. This is called the pre-vacation inspection. They knew there would be another inspection after they moved.

At the pre-vacation inspection the DHW officer pointed out that the garden needed weeding. He explained that doing this themselves would save the family money.



You are responsible for your rubbish removal. Different councils have different arrangements.

Check with your local council about rubbish arrangements in your area.



Returning the keys

The DHW mob moved the day before the date on the Court Order and handed the keys into the DHW office.

After the final inspection the DHW Mob found out that they were being charged for cleaning the kitchen and painting one bedroom.

They didn't agree with these charges and talked to the tenant advocate about it. The tenant advocate told them that they could challenge these charges through the DHW Housing Appeals Mechanism (HAM) and suggested they make sure they did this within the time limit. They decide to appeal.



It's important to hand over the keys at the end of the tenancy or on the date set by the court. If you don't a bailiff may be called, costing you more money.

DHW Mob



DHW Housing Appeals Mechanism (HAM)

The tenant advocate helps Mum and Dad fill out the form to appeal the tenant liability charges at the HAM. She also helped them write a letter, which they attached, that explained exactly why they believed the decision to charge them for cleaning and painting was wrong.

They sent the application to appeal to DHW and after a week they got a letter telling them that the appeal would be heard in a month's time at the local DHW office.



Not all decisions can be appealed. Some that can be appealed are refusal of a priority application, assessment of tenant liability charges, rental debts, a record of anti-social behaviour on a personal file and water debts caused by maintenance not being carried out.

DHW Mob



Going to the Regional Appeals Committee Hearing (Tier 2)

The appeal was held at the local DHW office. The Regional Appeals Committee, made up of a DHW officer and a community representative, listened to Mum and Dad and the tenant advocate explain why they believed they shouldn't have to pay the extra charges. They looked at all the documents. They asked some questions.

After considering the evidence the Appeals Committee decided that Mum and Dad must pay the tenant liability debt for the painting. But, they agreed the DHW Mob had cleaned the kitchen and didn't have to pay that debt.



The DHW Housing Appeals Mechanism (HAM) has 3 levels. However, not all decisions can be appealed to Tier 3.

TIER 1 is the internal review of the decision before the tenant is advised of the decision.

TIER 2 is the Regional Appeals Committee.

TIER 3 is the Public Housing Review Panel.

DHW Mob



Getting another DHW house

The tenant advocate meets with Mum and Dad after the hearing to talk about their options. She explains about things that might help them get another DHW house in the future.

These include:

- **paying all DHW debts;**
- **getting on with your neighbours; and**
- **looking after the property.**



Having a good DHW tenant history helps with being able to rent from DHW in the future.



IF YOU DEAL WITH PROBLEMS QUICKLY AND PROPERLY IT WILL HELP YOU GET A PLACE IN THE FUTURE.

Wrap-up

The 3 booklets, Getting a Place, Keeping a Place and Leaving a Place were written to help you when renting.

How you deal with these situations is important to your renting experience, whether you are renting privately or through DHW. How you deal with situations now can also influence your ability to get suitable accommodation in the future.

If you have problems in a DHW rental you may be refused housing from them in the future.



You are responsible for your tenancy.



Conclusion

We say goodbye to the families in the stories about Getting a Place, Keeping a Place and Leaving a Place.

We hope their experiences have helped you in learning about renting and the consequences of ignoring notices and going about things the wrong way.

Remember these stories and use the checklists in the booklets to help make your experience of renting a place – either private or DHW – a happy one.

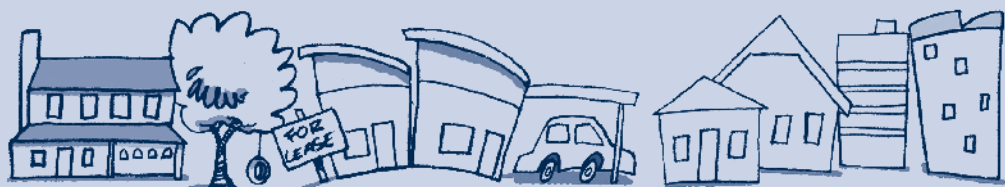


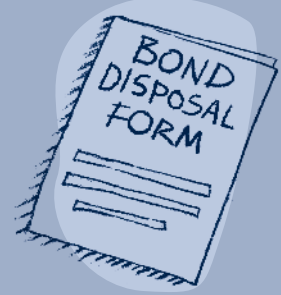
USING THE CHECKLISTS IN THE BOOKLETS IS IMPORTANT.



Things that affect your bond

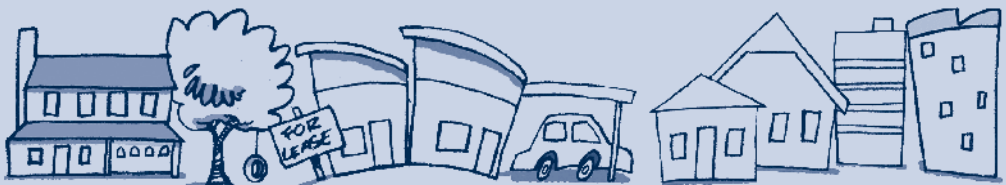
- **Check your Property Condition Report carefully when you move in, or write your own.**
- **'Reasonable fair wear and tear' depends on circumstances such as the size of your family, length of stay, the age of the house and general maintenance done throughout the tenancy.**
- **'Wear and tear' means things that happen over time. These can include worn carpet, faded or worn curtains and blinds and plaster cracking.**
- **Damage is your responsibility. This includes stains on carpets, broken windows and doors, plaster chipped from nails being hammered in and other things caused by the tenant.**
- **Check the state of your house when you are leaving against your Property Condition Report. Photos are a big help.**

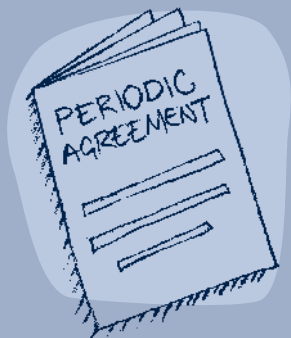




Getting your bond back (private rentals)

- **There are 3 legal ways your bond can be held if you are in a private rental. These are:**
 - 1) by the Bond Administrator (a service of the Department of Consumer and Employment Protection – DOCEP);**
 - 2) in a joint account; or**
 - 3) in the real estate agent’s trust account.**
- **If you disagree with any charges made by the owner or agent, ask for invoices and receipts that prove these charges.**
- **Once you both agree on any charges to be made against your bond, the bond remaining should be paid to you.**
- **Complete the Bond Disposal Form according to your Tenancy Agreement.**
- **The owner or agent can only claim reasonable loss and damage.**
- **If you don’t agree with charges made against your bond, you can refuse to sign the Bond Disposal form. You should apply to the Magistrates Court closest to the rental property for “an order for disposal of the bond money”.**

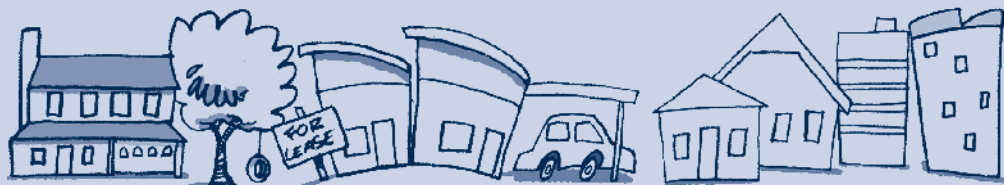




ABOUT ALL TENANCY AGREEMENTS

Periodic agreements:

- **A Periodic Agreement starts on a specified date and runs until either the tenant, owner or agent choose to end it.**
- **Normally, the tenant's written notice to end the Tenancy Agreement is at least 21 days.**
- **Periodic Agreements can be written or verbal.**
- **You still have rights with a verbal agreement.**
- **Normally, owners and agents must give 60 days written notice to end the Tenancy Agreement, but the length of time may vary depending on the reason for ending the Tenancy Agreement.**





Fixed term agreements:

- **A Fixed Term Agreement has a specified start and end date.**
- **Normally, Fixed Term Agreements run for 6 or 12 months.**
- **If you intend to leave, or want another fixed term, it is a good idea to put this in writing to the landlord.**
- **Make sure you talk to your landlord if you need to leave early.**
- **If you need to terminate your Fixed Term Agreement early, you may need to cover rent, advertising for new tenants and other costs.**



IMPORTANT INFORMATION ABOUT THE USE OF THIS GUIDE

The information and stories in this guide are only general information. The situation of you and your family may be different to the situation of the people in the stories. You should get advice about your own situation and not just use this guide.

This guide was written in August 2007 and the information in it comes from the law at that time. Sometimes the law changes, so you should check with your advisor before you rely on the information in this guide.

In these stories the families either deal with “owners”, “agents” or “Accommodation Managers”. An “owner” is a private owner, also called a “landlord”. An “agent” works for a real estate company and is sometimes called a “property manager” or “real estate agent”. An “Accommodation Manager” is the person from the Department of Housing and Works in charge of your property. Remember that tenancy laws apply to all of these people.

CONTACT DETAILS

Consumer Protection	1300 30 40 54
Department of Housing and Works	(08) 9222 4666 1800 093 325 (country callers)
Tenants Advice Service	(08) 9221 0088 1800 621 888 (country callers)
Equal Opportunity Commission	(08) 9216 3900 1800 198 149 (country callers)



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