

6. Renting

Renting is when an owner of a home lets a tenant live in the home, in exchange for money (rent). The law in Western Australia about renting a home is the *Residential Tenancies Act 1987*.

You may rent a home because you cannot afford to own a property, because it suits your lifestyle or while you are waiting for another form of housing. You may wish to rent out your home as a way of funding a move to a new locale. Renting also gives the opportunity to try a new locale before buying, with the option of returning to your own home.

When looking for a property to rent, shop around and avoid rash decisions. Think carefully about whether the property meets your needs. These needs might include your capacity to pay the rent, proximity to shops or public transport, even how safe you might feel in the home.

Information provided here is written from the perspective of you as a tenant. However, it is equally relevant if you wish to rent your home to another person. The Department of Commerce provides information and publications for both tenants and owners.

Cost of renting

To move into a rental property, you will need to have money to pay for:

- rent in advance (two weeks);
- security bond (maximum of four weeks rent); and perhaps
- a pet bond (if you have a cat or dog).

The amount of rent you pay depends upon location, amenity and whom you are renting from. You usually rent a home from one of three main types of owners or managers:

- *Private rental* is when you rent from the owner or their real estate agent.
- *Public housing* is when you rent from the Department of Housing.
- *Community housing* is when you rent from a community housing provider as the owner or manager.

Private market rents are determined by the market place. Public and community housing (social housing) can be cheaper than private rental because it is often subsidised and based on about 25 to 30 per cent of your income. Applications for public and community housing are subject to both income and assets eligibility criteria. There can be a long wait to be offered a property, even if you are eligible. To find out more, contact your nearest Department of Housing Office.

National Rental Affordability Scheme (NRAS) properties are owned and managed by community housing or the private rental sector. Rents are set at least 20 per cent less than the normal market rent and applications are subject to income eligibility. Some properties have been set aside for tenants over 55. NRAS properties are usually identified as such in real estate advertisements.

Assistance

If you are on a pension, you may be eligible for Commonwealth Rent Assistance to help with the cost of rent. To find out more, contact Centrelink on 13 2300.

The Department of Housing offers bond assistance and two weeks rent in advance as an interest-free loan to help people obtain accommodation in the private rental market. Limits apply to the amount you can borrow. The rent must not be more than 60% of your income. To obtain this assistance, visit any Department of Housing office (no appointment is necessary). You will need to supply documents to show proof of your income, identity and rent.

Types of agreements

Rental agreements are either periodic or fixed term. A periodic tenancy has no pre-determined finish date but continues on with the same terms and conditions until either the owner or the tenant terminates the tenancy agreement by giving the other party the appropriate notice.

A fixed term tenancy is an agreement in which a tenant rents the premises for a set period with a specific start and finish date. It provides more certainty and security for both parties.

The tenancy agreement should be in writing showing your details, the owner's and any other tenants. The agreement should include relevant dates, rent requirements, responsibilities and special conditions.

Don't leave any blank spaces on the rental agreement and make sure all parties sign it.

The owner can contract out of their obligation to look after the property and include a clause in the agreement requiring you to do repairs and maintenance. Be careful about accepting this clause, as it could be expensive!

All tenants **must** be given a copy of the booklet, *Information for Tenants* (Schedule 2) either before or at the time of entering into a tenancy agreement. You can download Schedule 2 at www.commerce.wa.gov.au/ConsumerProtection/Content/Property_renting/Renting_and_tenancy/Landlords/Landlords_pack.html

Application forms and option fees

You may be asked to complete an application form, to assess whether or not to accept you as a tenant. The owner may also ask for an option fee. This is a fee paid by you to show that your rental application is genuine.

If an agreement is signed, this fee can be put towards the rent. If a tenancy is not offered, the fee should be refunded. If you decide not to rent the property after being offered the tenancy, the option fee may not be returned.

Bonds

An owner can ask for a security bond. In most circumstances, the bond can be no more than four weeks rent. If you have a cat or dog, an extra

\$260 may be charged. The bond is your money and must be held by the owner in trust until the end of the tenancy. When you pay the bond, the owner must give a receipt on the spot, showing your name, the amount, date and address of the rental premises.

Within 14 days, the owner or manager must put the bond into an account with the Bond Administrator (a section of the Department of Commerce), or an authorised financial institution. The bond must be held in a joint account in the owner's and your name.

At the end of a tenancy, bond money will only be paid out if you and the owner agree, or if a court order states what should be done with the bond. If a dispute arises over the bond, you can resolve it by negotiation or by taking action in the Magistrates Court.

To help prevent disputes, when you move in, take pictures of the state of the property and get someone to witness them.

Paying rent

An owner must not ask for more than two weeks rent in advance before or during the first fortnight of a tenancy. After that, rent payments can be weekly, fortnightly, monthly or any other period agreed to. The owner must not ask for rent until the period covered by the previous payment is finished.

Receipts for rent paid must be issued within three days, unless you pay rent electronically, in which case a receipt will not be issued. You should keep receipts or records of your rent payments in case there is a dispute in the future about rent.

Rent increases

The laws relating to rent increases vary, depending on what type of tenancy you have:

- rent in a periodic tenancy may be increased only at six-monthly intervals and you must be given at least 60 days notice in writing. You only have to pay the increase if proper notice has been given. Rent cannot be increased in the first six months of a periodic tenancy.

- rent in a fixed term tenancy cannot be increased during the term of the tenancy unless the agreement says so and it is at least six months since the last increase. You must also be given at least 60 days notice in writing.

If you believe the rent is too high you can apply to the Magistrates Court for a reduction, or to argue against a proposed increase. The grounds for applying to the court are that:

- since the tenancy began, there has been a significant reduction in the contents or facilities provided; or
- the owner is putting up the rent by big amounts to force you out.

If your rent is overdue

Your tenancy may be terminated if you fall behind in paying rent. If a problem arises in making the payments, you should explain your financial situation to the owner and arrange to pay the arrears in full. An owner cannot seize your belongings in return for rent owed.

If you reasonably believe you are not behind in rent payments, you can remain in the premises while the matter is sorted out by negotiation, or until the owner applies for an eviction hearing in court, where both parties can put their case.

An owner cannot end a tenancy without a court order, even if you are behind in rent.

Urgent repairs

If the need for an urgent repair arises, you must notify the owner and ask for the repairs to be carried out. If the owner is not contactable, or refuses to have the repairs attended to, you must make a reasonable effort to inform the owner that you intend to incur expenses to repair the premises. Unless your tenancy agreement says otherwise, you can then have urgent repairs carried out by a tradesperson and claim back the costs from the owner.

Examples of urgent repairs are:

- a burst water pipe or broken hot water system;
- a gas leak or electrical fault likely to endanger people or damage property;

- a sewerage system blockage or broken sewerage fitting;
- damage from flooding, storms or fire; or
- a broken major appliance such as a stove (if included in the tenancy).

If you intend to recover the costs of urgent repairs from the owner, the costs must be reasonable and the work must have been carried out by a qualified tradesperson, who should give the owner a written report on the apparent cause of the problem. You should get at least two quotes first.

If your tenancy agreement doesn't permit you to have urgent repairs undertaken, you can apply to the Court for an order requiring that the owner arrange for the repairs.

Keep in mind that the tenancy agreement prepared by the Real Estate Institute of WA (REIWA) does not allow tenants to undertake urgent repairs although other standard tenancy agreements may allow it.

Ending a tenancy

How to deal with the end of a tenancy depends on whether the agreement is a fixed term tenancy or a periodic tenancy.

You want to end a tenancy

You may end a periodic tenancy agreement without providing a reason, but you must give a minimum of 21 days notice in writing.

You are committed to a fixed term tenancy agreement for the duration of that term, unless:

- ended by written agreement signed by the two parties; or
- you seek an order from the Magistrates Court to end the agreement because the owner has not kept to the terms of the agreement and refuses to fix the problem.

If you break a fixed term tenancy without written agreement or a court order, you may be liable for rent and expenses until the owner finds a new tenant or the original tenancy expires.

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You can give two days notice to end an agreement if the premises are destroyed, or become uninhabitable. This applies to both periodic and fixed term tenancies.

The owner wants to end a tenancy

An owner may give notice to end a periodic or fixed term agreement if:

- you are behind in rent payments;
- you fail to keep to the provisions of the tenancy agreement (seven days notice after being given 14 days notice in writing to put matters right); or
- the premises are destroyed or become uninhabitable (seven days notice).

In the case of periodic tenancies, notice can also be given by the owner if:

- the property is to be sold and the contract requires handing over vacant premises (minimum of 30 days notice); or
- the tenancy is to be ended without giving any reasons (minimum of 60 days notice).

The owner may seek to end a fixed term tenancy through the Magistrates Court if you have recklessly injured the owner, agent or a neighbour; or caused serious damage to the premises. A fixed term tenancy may also be ended:

- at its natural conclusion, i.e. at the end of a fixed term without notice;
- by written agreement signed by the two parties; or
- if a magistrate is convinced an owner would suffer undue hardship if the agreement were not ended.

Eviction

If you receive proper notice to end an agreement but refuse to leave, the owner can seek a court order to end the agreement and take possession of the premises. The owner must apply for the order within 30 days of the moving out date shown on the notice. The order can be enforced with a warrant authorising a bailiff to evict you.

You can ask for an order by a magistrate to be suspended for up to 30 days if the situation is likely to cause you hardship. You cannot be forced out of a property without a court order. Any other method of eviction is unlawful.

Where can I get more information?

The Department of Commerce has the following guides:

- *Renting a home in Western Australia: a tenant's guide*
- *Renting out your property: an owners guide*

To obtain a copy, contact the Consumer Protection Advice Line on 1300 30 40 54 or download the booklets at www.commerce.wa.gov.au/ConsumerProtection/PDF/Publications.

Tenants Advice Service (08) 9221 0088 or 1800 621 888 (country)