

Tenancy Laws in Western Australia

Part 1 – Getting Started

00:04 In this video presentation on tenancy laws in Western Australia, administered by Consumer Protection, we will outline the rights and responsibilities of both tenants and property owners, or their agent, and include changes which came into effect on 1st July 2013.

00:20 The renting of a home is covered by the Residential Tenancies Act, which sets out the rules relating to such things as tenancy agreements, inspections, maintenance or repairs, rent increases and how disputes can be resolved.

00:33 Almost a third of homes in Western Australia are rented, that's why it's important that there are laws in place which protect the rights and interests of tenants and property owners. We will cover a range of issues which you may need to consider at different stages of a tenancy.

Option fees

00:50 When a prospective tenant has found a property that suits their needs and budget, they may be asked to submit an application form and may have to pay an Option Fee to prove that their offer is genuine. There are now limits placed on this fee, also known as an application fee.

01:06 For properties under \$500 per week, the option fee is capped at \$50; and for properties up to \$1,200 per week, the option fee can be no more than \$100. In the north of Western Australia above the 26th parallel, which is near Carnarvon, the option fee limit for all properties with a weekly rent of more than \$500 is \$100.

01:27 The option fee must be refunded to the prospective tenant within 7 days if the application is unsuccessful. If the application is successful, the fee can either be refunded or go towards the first rent payment. Tenants should be warned though that the fee may be kept by the property owner if the property is offered to them but they change their mind.

Tenancy databases

01:29 The property management industry and private property owners often subscribe to residential tenancy databases, where they can check a tenant's history before accepting their application. These databases record if a tenant has been evicted; left a damage bill or didn't pay rent during previous tenancies.

02:07 Laws are now in place that give the tenant the right to access this information if their application is rejected due to their rental history.

02:15 The property owner or agent must advise all applicants in writing which databases they use, even if they don't intend to use them on this occasion. Information on how the applicants can apply to have out-dated or incorrect information removed or amended must also be given.

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Discrimination

02:34 Under the Equal Opportunity Act, it is illegal to discriminate against people in the rental market based on sex, race, age, disability, marital status, religious or political beliefs, family status, pregnancy, spent convictions or sexual orientation. Tenants can't be refused because they will have children living in the house.

Tenancy agreements

02:57 If the application is successful, a standard residential tenancy agreement setting out the period of the tenancy, the amount and frequency of rent payments and any other conditions, must be completed. A copy of the agreement signed by both parties should be sent to the tenant within 14 days.

03:13 Clauses in the standard agreement cannot be deleted and clauses can only be added if agreed by both parties and they don't contradict the Residential Tenancies Act or any other relevant law. Don't rely on verbal agreements; get any special conditions agreed to in writing!

03:31 There are two types of rental agreements – fixed term and periodic. Fixed-term sets out specific start and end dates and may contain an option to renew. These agreements normally provide tenants with added security and the rent cannot be increased during this period, unless it is specified in the agreement.

03:52 A periodic agreement states the start date only and can be terminated at any time by the tenant giving 21 days' notice to end the tenancy or the property owner giving 60 days' notice. The property owner can give less notice if there is a breach of the agreement. The rent can be increased at any time, but the tenant must be given 60 days' notice and can only happen at six-monthly intervals.

Rent and Bonds

04:18 At the beginning of the tenancy, the tenant can only be charged two weeks rent in advance and a security bond of no more than one month's rent. In some cases, a pet bond may apply.

04:31 All new security deposits must now be lodged with the Bond Administrator at the Department of Commerce and should not be retained by the property owner or their agent. The tenant should contact the Department if they don't get confirmation within a month that their bond has been lodged by the owner or agent.

04:47 The agreement sets out how frequently the rent should be paid. The property owner cannot require more than two weeks in advance, but the tenant can choose to pay more at any time.

04:59 If not specified in the agreement, rent can be paid either by cash, cheque or bank transfer and the tenant should receive a receipt for all payments made.

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Property Condition Reports

05:11 It is compulsory that a standard Property Condition Report is filled out at the beginning of a tenancy, listing room by room the contents and their condition, taking special note of any existing damage.

05:22 The property owner must send the tenant two copies of the condition report within seven days of moving in, which tenants should check carefully and change anything that may not be correct. Tenants keep a copy of the changes they have made, and send a copy back within seven days of receiving it; otherwise it will be assumed the tenant has agreed to the original one.

05:42 This report may be used to at the end of the tenancy to decide if any damage has been caused by the tenant and how much security bond should be returned to the tenant.

05:50 For added protection, tenants may wish to take photographs or video of the property that clearly shows the date of recording.

05:59 Now that all the paperwork has been done and money paid, the tenant is ready to move in.

Part 2 – Moving In

06:07 Now that the property has been rented, the tenant has the basic right to move into a home that is clean and in good condition, and be able to quietly enjoy living in the home with reasonable privacy.

06:18 The tenant should pay their rent on time and take good care of the property. The property owner is entitled to expect that the home at the end of the tenancy is in the same condition as at the beginning of tenancy.

06:28 To prevent any disputes during the tenancy, there are ongoing rules that apply relating to maintenance and repairs and how inspections can be carried out.

Maintenance & repairs

06:40 Maintenance of the property is a joint responsibility for both the property owner and tenant. The owner is responsible for what can be described as normal 'wear and tear' to the home. They have an obligation to ensure the home's essential services – such as plumbing, gas and electricity – are in good working order, as well as other appliances provided such as the stove and air conditioning.

07:02 The tenant is responsible for basic household duties to ensure the home is kept clean and mould-free. Maintaining gardens and the pool are generally the tenant's responsibility and the owner must provide the equipment necessary for this work to be carried out. Major garden maintenance such as tree lopping is the owner's responsibility.

07:20 The tenant will have to pay for any damage caused by neglect, such as stains on the carpet. But if the damage is caused by a third party not connected to the tenant, such as a tradesman, then it becomes the owner's responsibility. This can also include damage caused by a burglar or a storm.

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Minimum security

07:40 It's also the responsibility of the property owner to provide minimum security for the premises, such as lockable windows, deadlocks on external doors and exterior lighting, to ensure the safety of tenants.

07:53 If the tenant wants extra measures such as burglar alarms or security screens that are not already installed, they may need to pay for these if the owner won't cover the cost, but the owner must give their approval first.

Smoke alarms/RCDs

08:09 Rental properties in Western Australia must now have mains-powered smoke alarms installed as well as two Residual Current Devices or RCDs, which are circuit breaker switches that cut the power to prevent electrocutions. These are vital safety requirements the property owner must now legally provide.

Emergency/urgent repairs

08:28 There may be times during the tenancy when emergency repairs to essential services need to be carried out. The property owner or their agent need to make arrangements for the repairs within 24 hours or, in the case of other urgent repairs, within 48 hours. The repairs do not have to be finished in this timeframe.

08:47 Emergency repairs are defined as a fault or damage to essential services that can cause the home to be unsafe and likely to cause injury to the tenants. For example, plumbing faults such as water or sewerage leaks or blocked toilets; a gas leak or dangerous electrical faults.

09:05 Urgent repairs are those that don't affect an essential service but, if not fixed, could over time cause injury, property damage or affect the tenant's standard of living.

09:14 Emergency or urgent repairs should be organised by the owner or property manager within 24 or 48 hours. However, if immediate action is not taken or they can't be contacted within that time, the tenant can arrange for minimal repairs to be carried.

Inspections

09:30 Another major source of disputes can be the frequency and circumstances of inspections by the property owner or property manager, so there are some clear rules that balance the owner's right to inspect their property and the tenant's right to enjoy it without too many interruptions.

09:45 Under tenancy laws, the property owner or their agent are not allowed to inspect the property more than four times a year and must make a reasonable effort to find a day and time that is suitable to the tenant.

09:58 The tenant is given at least seven days' but no more than 14 days' notice in writing, stating the proposed date and time, and must say whether it will be before or after 12 noon. The tenant can be present during the inspection. Surprise visits without notice are illegal, so the tenant can refuse entry under these circumstances.

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10:16 Tenants are reminded that they are not allowed to make any alterations to the property or change the locks without the permission of the owner.

Anti-social behaviour/Sub-letting

10:25 It's the responsibility of the tenant not to cause a nuisance to neighbours. Anti-social behaviour by the tenant or their visitors, whether in private or public housing, can be the basis for eviction.

10:38 It's also a good idea for tenants to get permission from the property owner before allowing someone else to move in with them on long-term basis and advise if they wish to sub-let the premises, provided it is not prohibited under the tenancy agreement, as written consent may be required.

10:54 So there are some clear rules that apply during the tenancy, and also when it's time to move out.

Part 3 – Ending a Tenancy

11:04 When it comes time to end the tenancy for whatever reason, it's important that tenants leave the home with a good reputation and get their security bond back.

11:11 If there is rent owing greater than the bond, or a Court has terminated the agreement, the tenant may have their name placed on a tenancy database, which may jeopardise their ability to rent properties in the future.

11:23 Property owners or their agents must abide by the notice periods outlined in the Residential Tenancies Act and be reasonable when making claims on the tenant's security bond.

Notice periods

11:35 A tenant or owner on a fixed-term lease, who doesn't want to renew, needs to give 30 days' notice before the lease expires. If neither tenant nor owner give notice to terminate, the fixed-term lease will automatically become a periodic lease, when 60-days' notice of termination is required.

11:54 If a tenant on a fixed-term lease needs to vacate the property before the expiry date, they will have to pay rent until a replacement tenant is found and also compensate the property owner for any other reasonable costs, such as advertising.

12:08 For a periodic lease to be terminated the tenant must give at least 21 days' notice and the owner or agent must give 60 days' notice. During this period, prospective tenants can be shown through the property after giving the existing tenant reasonable notice. The tenant is entitled to be present during these "home opens".

12:29 In cases where a home has been repossessed by the mortgagee, such as a bank, a tenant will be given 30 days' notice to move out.

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Rent increases

12:39 If the tenant wants to renew the lease for another fixed term, the property owner may decide to increase the rent, depending on market conditions. However, if the tenant considers the rent increase to be excessive or unreasonable, under certain conditions the rent hike can be challenged in the Magistrates Court.

In any event, the rent increase cannot take effect until after the first 30 days of the new agreement.

Final inspection

13:02 The greatest number of complaints received by Consumer Protection each year relate to tenants not happy with the amount of bond money they get back. That's why it's important to have a Property Condition Report that clearly outlines the existing damage to the property at the beginning of the tenancy in case there are any disagreements at the end of the tenancy.

13:22 The property owner or their agent need to give tenants an opportunity to be present during the final inspection and provide an updated Property Condition Report within 14 days of the tenancy ending.

13:32 The tenant may be liable for the cost of cleaning, minor repairs or replacement of items if the property is not in the same clean and undamaged condition as at the start of the lease.

13:43 If disputes over the bond can't be resolved by negotiation, tenants can go the Magistrate Court.

Breach notices & Evictions

13:51 If the tenant or property owner believes the tenancy agreement has not been honoured, they can issue a breach notice which specifies at least 14 days for the breach to be rectified. For example, this could be a notice from the tenant demanding payment from the owner for urgent repairs, or a notice from the owner demanding outstanding rent be paid by the tenant.

14:12 If no action is taken, the matter can go before the Magistrates Court to issue an order, which may be for the owner to compensate the tenant for repairs, or for the tenant to be evicted for non-payment of rent.

14:23 Evictions cannot occur in Western Australia without a Court order and property owners and managers must have reasonable grounds for the eviction; such as non-payment of rent for a lengthy period, excessive damage, nuisance caused, or evidence of criminal activity.

14:39 If a tenancy agreement is terminated by a Court order, this information may be placed on a tenancy database. A tenant's name may also be put on the database if they vacate the property with outstanding rent which is greater than the amount of the security bond. So it's always a good idea to leave on good terms.

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14:47 Consumer Protection has a range of factsheets and information booklets on tenancy laws that provide more detail for tenants, property owners and property managers.

15:07 Further information and downloadable standard forms can be found on the Consumer Protection website, or you can contact us by email at consumer@commerce.wa.gov.au or by calling 1300 30 40 54.