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Expiry of fixed term tenancies under the *Residential Tenancies Act 1987*

The Department of Commerce is aware some confusion has arisen in the industry concerning the new provisions of the *Residential Tenancies Act 1987* (RT Act). The new provisions do not take effect until [1 July 2013](#). As you are aware, amendments to the RT Act are the focus of a mandatory CPD activity for both real estate agents and property managers during 2013. There will also be an ongoing program providing information about the amendments and any issues that arise. Clarification has been requested in relation to ending a fixed-term tenancy and specifically to the application of section 70A and section 76C when the new legislation commences. The Department's view of how sections 70A and 76C will apply is outlined below.

How sections 70A and 76C will apply

New section 70A of the RT Act provides that in order for a tenancy to end on the expiry day of a fixed-term agreement, either the tenant or the lessor must provide to the other a notice of termination of the agreement (notice) not less than 30 days before the day on which possession is to be delivered to the lessor. This applies to fixed-term tenancy agreements in place prior to the new provisions commencing, as well as those entered into after the new provisions take effect.

If the expiry date is to be the date that possession of the premises is given back to the lessor, then notice must be given at least 30 days prior to the expiry date of the agreement (example A below). However it is not always possible or desirable for a decision to be made this far in advance. Section 70A allows for the required notice to be given at any time up to, and including, the expiry date of the agreement. In this circumstance, the agreement continues on the same terms and conditions for the term of the notice period (example B, page 2).

Example A:

For a fixed-term tenancy that commenced 15 October 2012 and due to expire 15 October 2013 as set down in the agreement, notice should be given on 14 September 2013 (at the latest) in order for the possession date of 15 October 2013 to remain the same.

...continued on page 2



continued from page one

Example B:

For a fixed-term tenancy that commenced 7 August 2012 and due to expire 7 August 2013 as set down in the agreement, if the lessor gives the tenant a 30-day notice on 2 August 2013 (ie five days before the expiry date set down in the agreement) the new possession day by which the tenant must vacate becomes 2 September 2013.

Calculating the correct notice period and possession date

The day the notice is given, and the possession day are not included within the 30-days' count. Additionally, if you issue the notice by mail, under the RT Act the notice takes effect from the time the letter would have been delivered by ordinary post, so you may need to 'count-back' another day or two. Once the 30-day notice has been given, the tenancy does not continue as a periodic agreement if the tenant does not move out by the possession day (unless, of course, there is an agreement made by both parties that the tenancy should continue in this manner).

No other notice is required to be given if the tenant does not move out of the premises by possession day, however, the lessor may apply to the Magistrates Court seeking an order that terminates the agreement and grants possession of the property to the lessor.

Section 76C – Fixed term tenancies continuing as periodic tenancies

If, neither party has given notice to the other prior to, or on the expiry date, as required by section 70A, in accordance with the proposed new section 76C, the tenancy will continue as a periodic tenancy after the expiry date. This is consistent with current provisions of the RT Act under sections 60(2) and 60(3).

If the lessor subsequently wished to end the tenancy, a notice in accordance with section 64 of the RT Act is required to be given (that is, a 60-day notice to end the periodic agreement without grounds) (example C, page three).

Similarly, should the tenant wish to end the periodic tenancy, they will be required to give not less than 21-days notice as required by section 68.

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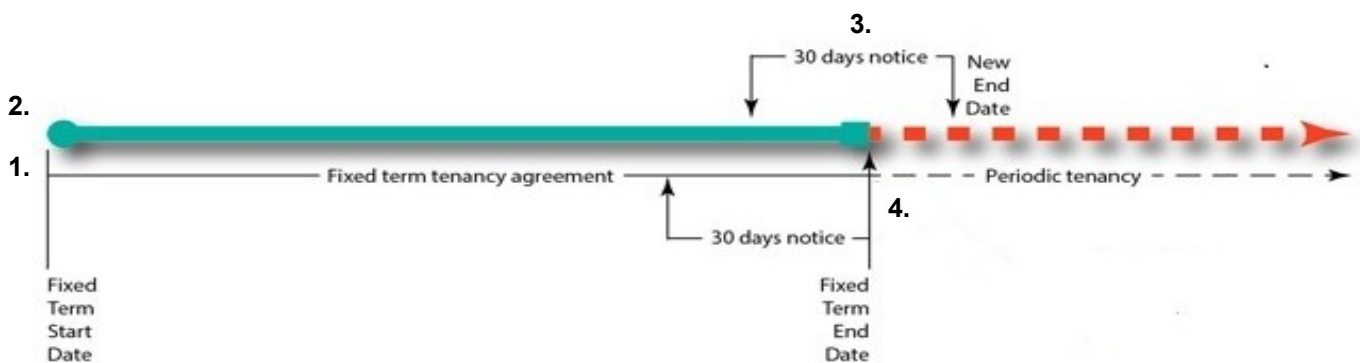


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Example C:

For a fixed-term tenancy that commenced 7 August 2012 and due to expire on 7 August 2013 as set down in the agreement, if the lessor decides on 8 August 2013 that they wish to terminate the tenancy agreement, the tenancy has rolled over and become a periodic tenancy agreement. This means that a notice of not less than 60 days must be given to the tenant. If a 60-day notice is deemed to be served to the tenant on 8 August 2013, the earliest the tenancy can be terminated is 8 October 2013.

The diagram below forms part of the mandatory CPD training on changes to the RT Act and associated Regulations for property managers and licensed agents. It provides a useful pictorial representation of how sections 70A and 76C are applied.



A pictorial representation of how sections 70A and 76C are applied.

1. Example A: notice deemed to be given 30 days before possession date
2. Example B: notice given, but not deemed to be at least 30 days before possession date.
3. If you give notice some days after the 30-day notice date (but before the end of the tenancy), those days are added to the fixed term to give a new end date.
4. Example C: the fixed term tenancy converts to a periodic tenancy if neither party gives notice before the lease end date.

You should check the Commerce website (www.commerce.wa.gov.au/tenancy) regularly for more information on when the new laws will commence and other changes to the RT Act that may affect you. Updated forms and notices will soon be available on the Department's website and will be free for you to download and use.

For further information on your obligations under the RT Act, visit the Commerce website (www.commerce.wa.gov.au/tenancy) or telephone 1300 30 40 54.