

In the Residential Tenancies Act the landlord is referred to as the lessor. The real estate agent is a representative of the lessor.

Family Violence

Fact Sheet 2: My co-tenant has issued a Family Violence Termination Notice, what are my rights?

This fact sheet is for tenants who have received a Family Violence Termination Notice from their landlord, as one of the tenants is terminating their interest in the tenancy under new family violence provisions.

This fact sheet is intended for co-tenants who have not been accused of family violence. There is a separate fact sheet “I’ve been accused of family violence, what does this mean for my tenancy?” focused on these issues.

You can also read more about the new family violence provisions in our Fact Sheet “There are options when domestic violence affects a tenancy” which is intended for victims of family violence who need to make changes in their tenancy.

This fact sheet is written for a co-tenant where you and the person who has issued the Family Violence Termination Notice are both named on the lease, (possibly with other co-tenants too). If you are a sub-tenant (leasing from the head tenant and not named on the main lease) or you are a boarder (e.g. just renting a room short term with meals included) or you don’t know which category you are, it’s best to seek advice as this fact sheet won’t apply to you. There are contact details for tenant advocates at the end of this fact sheet for you to seek advice.

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My co-tenant has left and the landlord has given me a copy of the Family Violence Termination Notice

There are new domestic violence provisions in the *Residential Tenancies Act* that enable a victim of family violence to terminate (end) their interest in the tenancy, by issuing a termination notice with a supporting document to verify the circumstances of family violence. When the landlord receives this notice, the landlord has 7 days to give this notice to all other tenants at the home. You will only get the termination notice, not any supporting documentation.

The effect of the Family Violence Termination Notice is to end that tenant's interest in the tenancy, on the termination date written on the notice (at least 7 days from when it was issued to the landlord). Their interest in the tenancy ends when they leave in accordance with the notice.

So, when the leaving tenant's interest terminates, the tenancy continues on the same terms with the remaining co-tenants. This means that you and any other co-tenants are liable for the whole of the rent from that point.

When you get the notice, **you then have 7 days to decide what you want to do**. You have two options – you can stay and continue the tenancy, or you can choose to end your interest in the tenancy too.

If you choose to go, then you can end your interest in the tenancy by giving at least 21 days' notice to the lessor.

This needs to be in writing, identify the premises and state the date when you will leave, and be signed by you. You can use the Form 22 Notice of termination from tenant to lessor here: <https://www.commerce.wa.gov.au/publications/notice-termination-tenant-lessor-form-22>. This form is an optional form, it makes life easier as it includes all of the required information.

Your interest in the tenancy ends when two things have happened: you reach the termination date, and you have moved out.

If you end your interest in the tenancy by giving at least 21 days' notice after your co-tenant has issued a Family Violence Termination Notice, then there is **no break lease or early termination compensation** due to the landlord. You will be liable for:

- your share of any rent arrears, and
- rent during your 21 day notice period, and
- your share of any damage costs,

You can make your individual decision about whether to stay or go, and any other co-tenants are free to make a different decision. If another co-tenant stays, the lease will continue in their name on the same terms, but you are not liable for anything more after the date your interest is terminated.

If you choose to stay and continue the tenancy:

You and any other remaining co-tenants will be responsible for the full rent. You can either take over the rent payment yourself, or you could try to find a new housemate. If you look for a new housemate, you may need the lessor's consent to either sublet, or add the new housemate as a co-tenant on your lease. Check your lease to see what it says, as usually there is a clause about whether you can sublet. You can see more about all of these options in the Sharing the Rent fact sheet.

You may need to top up the bond.

There is a new process for a partial bond disposal when a tenant leaves using the Family Violence Termination Notice. The starting point is an assumption that each co-tenant is entitled to equal share of the bond, but you can propose that you're entitled to more or less of it. If the leaving tenant's share of the bond is returned (either by consent or by Court orders) then the lessor will probably want you to top

up the bond to the full amount. If the leaving tenant does get their share of the bond returned, then it's important that their name is taken off the listing with the Bond Administrator, otherwise it will be difficult to get your bond back at the end of your lease as you'll need their signature too if their name is still on the bond.

If everyone (the leaving tenant, you and other co-tenants, and the lessor) agrees how much bond the leaving tenant should get, then the process to follow is this:

1. Everyone completes the "Joint Application for Bond Disposal" to agree to the partial disclosure of the bond to the leaving tenant.
2. Then complete the "Bond Variation" form to take off the leaving tenant's name. If you already know the details of any other tenants to add, you can add their names and the top up amount now on the variation form, if you can top it up now.
3. If you are topping up the bond later, and/or adding another tenant later, then you can use a second "Bond Variation" form to add the top up money and the new name(s).

If you can't all agree on how much bond the leaving tenant should get, then it'll need to go to Court. The leaving tenant can apply to Court for an order to get their share of the bond back. The Court will send you the Court paperwork for this process and you can have your say in this process. This can lead to orders to determine the liabilities in the tenancy – where the Court can make orders about which party is responsible for rent arrears or the cost of damages. The Court will look at new family violence factors when making these orders, and you may want to seek advice.

The lessor (or real estate agent) can inspect the house in the 7 days after the leaving tenant sends the Family Violence Termination Notice, and the lessor will need to give you three days' notice of this inspection. This is so that the lessor has evidence about the condition of the property when the other tenant's interest is ending.

You get to make the decision to stay even if the lessor doesn't like it. The lessor doesn't have any option to end the whole tenancy under the family violence provisions. The lessor has their standard options to end a tenancy:

- End a periodic tenancy with 60 days' notice without giving a reason;
- End a fixed term tenancy at the end date by giving 30 days' notice (without having to give a reason);
- End a tenancy because you have breached the tenancy agreement and the breach justifies termination;

If you receive a termination notice from the lessor, you can see more about your rights in the Eviction fact sheet, or seek advice about your situation.

What if there are rent arrears and damage in the house?

The family violence provisions in the *Residential Tenancies Act* create a new power for the Court to make a determination of the rights and liabilities under the residential tenancy agreement. So if any tenant has terminated their interest in the tenancy using the family violence provisions, then any tenant or the lessor can apply to Court for a determination of the liabilities or for a compensation order.

The Court will consider the following factors when dealing with these applications:

- a) that family violence is a fundamental violation of human rights and is unacceptable in any form;
- b) the need to prevent further victimisation of a person who has experienced family violence through the unjust application of the principle of joint and several liability or the principle of vicarious liability;
- c) the need to maximise the safety of persons who have experienced family violence by reducing any financial burden arising from the family violence;
- d) the need to prevent, or reduce to the greatest extent possible, the consequences of family violence;
- e) the need to protect the wellbeing of children by preventing them from being subjected or exposed to family violence; and
- f) the need to encourage perpetrators of family violence to accept responsibility for their behaviour and the effect it has on others.

If you have not been accused of family violence, then you can expect that the Court will hold you responsible for your share of rent arrears and responsible for damage that you caused in the house, or a share of damage in the house while you were a tenant. If you are not accused of family violence, then it's unlikely that you will be ordered to pay for more than your share of liability. A tenant who has committed family violence is likely to be ordered to pay for the costs of the family violence. You can seek advice, the contact details for tenant advocacy services are at the end of this fact sheet. There are a lot of different scenarios which can be too complex for this fact sheet.

You can apply for these orders at Court if you want the liabilities sorted out, or if another person applies to Court you will be sent the paperwork and you will have a chance to have your say. The Court can proceed in your absence, so if you don't go to the Court date orders the Court may make orders based on the information they have available. See the Going to Court fact sheets for more information about what to expect and how to prepare for Court.

The Court can make these orders about who is liable for costs after a Family Violence Termination Notice is issued, or when the Court hears an application to take someone off the lease if they have committed family violence.

What if you don't believe there was family violence?

Under the new family violence provisions in the *Residential Tenancies Act* a tenant can issue a Family Violence Termination Notice with a supporting document to verify the family violence.

The lessor has a right to apply to Court to review the validity of the notice. This review is strictly about the validity of the notice, and not a consideration of the details of the family violence.

A co-tenant does not have a right of review. Family violence can be complex, occur in private, and even if you live with someone, you may not know if they are being subjected to family violence. Under the law, the details of the family violence are not relevant to you, as a co-tenant your rights remain the same, you can choose to remain in the tenancy or give notice and leave the tenancy.

An application to take someone off the lease for committing family violence?

The Court has the power to make an order to take someone off a residential tenancy agreement if they have committed family violence.

A tenant who has been subjected to family violence can apply, or the person who has committed family violence can apply to be taken off the lease.

If you are a co-tenant in this situation, then the Court will send you the paperwork and you will have a chance to be heard, and the Court is required to consider the impact on you. The Court will consider all of these factors:

- The best interests of any children living at your home (this is the primary consideration for the Court).
- Your best interests (including your ability to meet social housing eligibility criteria without the other tenant).
- The impact on the lessor or other co-tenants.
- The impact on pets.
- The fact that people who commit family violence might seek to misuse the protections offered in these new laws, and the need to prevent that from happening.

Seek advice if you are in this situation where you shared a tenancy with a victim and perpetrator of family violence, as there are many different scenarios we can't cover in detail in this fact sheet.

Under the law, the details of the family violence are not relevant to you, as a co-tenant your rights remain the same, you can choose to remain in the tenancy or give notice and leave the tenancy.

FURTHER HELP – TENANTS’ ADVICE AND ADVOCACY

Tenancy WA provides free, state wide telephone advice services and referrals.

Metro: (08) 9221 0088 • Country: 1800 621 888 (free call) • www.tenancywa.org.au

Department of Mines, Industry Regulation and Safety 1300 304 054

METROPOLITAN COMMUNITY LEGAL CENTRES	REGIONAL COMMUNITY LEGAL CENTRES
<p>Fremantle CLC (Western Suburbs) 9432 9790 www.fremantle.wa.gov.au</p> <p>Gosnells CLC (South Eastern Suburbs) 9398 1455 www.gosclc.com.au</p> <p>MIDLAS (Eastern Suburbs) 9250 2123 www.midlas.org.au</p> <p>Northern Suburbs CLC (Northern Suburbs) www.nslc.org.au Mirrabooka – 9440 1663 Joondalup - 9301 4413</p> <p>SCALES (South Western Suburbs) 9550 0400 www.law.murdoch.edu.au/scales</p> <p>Sussex Street CLS (South Central Suburbs) 6253 9500 www.sscls.asn.au</p> <p>Welfare Rights & Advocacy Service (North Central Suburbs) 9328 1751 www.wraswa.org.au</p>	<p>Albany CLC (Great Southern) 9842 8566 www.albanyclc.com.au</p> <p>AccordWest (South West) 9729 9000 www.accordwest.com.au</p> <p>Regional Alliance West (formerly GRC) (Mid-West/Gascoyne) https://raw.org.au/ Geraldton – 9938 0600 Carnarvon – 9941 1062</p> <p>Goldfields CLC (Goldfields) 9021 1888 www.gclc.com.au</p> <p>Kimberley CLS (Kimberley) 9169 3100</p> <p>Peel CLS (Peel) 9581 4511 www.peelcls.com.au</p> <p>Pilbara CLC (Pilbara) Karratha - 9185 5899 Newman - 9175 0148 Roebourne - 9182 1169 South Hedland - 9140 1613 www.pcls.net.au</p> <p>Wheatbelt CLC (Wheatbelt) 9622 5200 www.wheatbeltclc.com.au</p>

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