

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 3: I’ve been accused of family violence, what are my rights and responsibilities in my tenancy?

There are new family violence provisions in the *Residential Tenancies Act* which take effect on 15 April 2019.

These provide a range of new rights and powers:

- 1) A victim of family violence can terminate (end) their interest in a tenancy by giving a Family Violence Termination Notice, with a supporting document to verify the family violence. This ends their interest with at least 7 days’ notice, with no break lease compensation.
- 2) The Court can make an order taking someone off a residential tenancy agreement if they have committed family violence. A victim of family violence can apply for this, or you can apply for this if you are a respondent to a family violence order or you admit that you have committed family violence.
- 3) The Court can make orders about who is liable for rent arrears, damage at the tenancy and other costs.
- 4) Victims of family violence have the right to change the locks and will have rights to increase security on the home.

This fact sheets provides information about general rights and responsibilities. If you need advice about your specific situation, there are contact details for tenant advocates and other family law services at the back of this fact sheet.

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WHAT IS FAMILY VIOLENCE?

Family violence is given a broad definition, from the *Restraining Orders Act*, and includes violence or a threat of violence to a family member, and includes other behaviour that coerces or controls or causes fear for a family member. A family relationship includes married and de facto couples, children, and other relatives, and also includes broader family groups recognised in your culture.

The *Restraining Orders Act* states that all of the follow may be family violence:

- (a) an assault against the family member;
- (b) a sexual assault or other sexually abusive behaviour against the family member;
- (c) stalking or cyber-stalking the family member;
- (d) repeated derogatory remarks against the family member;
- (e) damaging or destroying property of the family member;
- (f) causing death or injury to an animal that is the property of the family member;
- (g) unreasonably denying the family member the financial autonomy that the member would otherwise have had;
- (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the member, at a time when the member is entirely or predominantly dependent on the person for financial support;
- (i) preventing the family member from making or keeping connections with the member's family, friends or culture;
- (j) kidnapping, or depriving the liberty of, the family member, or any other person with whom the member has a family relationship;
- (k) distributing or publishing, or threatening to distribute or publish, intimate personal images of the family member;
- (l) causing any family member who is a child to be exposed to behaviour referred to in this section.

WHAT CAN HAPPEN IF WE WERE CO-TENANTS, AND NOW I'M ACCUSED OF FAMILY VIOLENCE?

Someone who has been subjected to family violence can issue a family violence termination notice and terminate their interest in a tenancy with at least 7 days notice.

If you are a co-tenant, then you have the choice to either stay in the tenancy or to leave as well, even if it is a fixed term tenancy.

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 details to make it valid.

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:

- rent arrears, and
- damage costs,
- the rent during your 21 day notice period,

but you will **not be liable for break lease compensation**.

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 they 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 new 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 your tenancy 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 to them, or paid to the lessor (either by consent or by Court orders) then the lessor will probably want you to top up the remaining 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 at 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 notice of the Court application and you can have your say in this process. This can lead to orders determining 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 tenant who is leaving 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 YOU DENY 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 to review the Family Violence Termination Notice, even if you are the person accused of family violence.

If the Court is considering an application to take your name off the lease, and there is a family violence order in place (a restraining order or family court injunction) then the Court will not hear evidence about whether there was or wasn't family violence, they will accept the decision of the Court in the restraining order application (including for an interim order).

If there is no family violence order in place, then before making an order to take your name off the lease, the Court will need to be satisfied that you committed family violence (including threats) during the tenancy. You will have an opportunity to be heard, and contest the evidence.

I'VE LEFT THE HOUSE BUT MY NAME IS STILL ON THE LEASE, WHAT HAPPENS NOW?

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

Either the tenant who has been subjected to family violence can apply to Court to have your name removed, **or** you can apply to be taken off the lease.

This is a two-step process. First the Court will consider whether there has been family violence. If there is a family violence order in place (a family violence restraining order or a family court injunction) the Court will accept that as evidence of family violence. If there is not a family violence order, then the Court will hear evidence to decide if family violence has occurred.

Then, the Court will consider these factors to decide whether the person who has committed family violence should be taken off the lease:

- The best interests of any children living at your home (this is the primary consideration for the Court).
- The best interests of the protected tenant (including the ability to meet social housing eligibility criteria).
- 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.

This means if the victim of family violence with a restraining order applies to take your name off the lease, it is quite likely that the order will be made. If the Court orders the termination of your interest in the tenancy the Court will give you a termination date when your interest ends, between 7 and 30 days from the orders.

If you apply to take your name off the lease, then the Court is only likely to make the order if this is in the best interest of any children and the victim of family violence. The Court may find that it is best for you to remain on the tenancy agreement and remain liable for the rent, if this is necessary for the victim and children to afford to remain in the tenancy. You may be more likely to be successful in getting your name off the tenancy if you can show that you have made arrangements to pay child support, maintenance or a family law property settlement.

Applying to have a tenant who committed family violence taken off the lease is a civil process, which changes the contractual agreement between the co-tenants and your lessor. It is not a criminal law process or a family law process. The order is not an “ousting order”, it is not enforced by the police like a restraining order. The legal effect of an order taking a tenant who committed family violence off the lease is that you no longer have any rights or responsibilities as a tenant at the house. If you go to the house uninvited, you could be reported to the police for trespass, or if there is a restraining order, for breach of VRO.

HOW TO APPLY TO BE TAKEN OFF THE LEASE?

You can apply to Court on a Form 12 application. The Court will send the paperwork to the lessor, and all co-tenants. You need to list all of these people as respondents on the application.

You can apply to take yourself off the lease if there is a family violence order against you, or you admit that you have committed family violence during the term of the tenancy.

When the Court consider the application to take your name off the lease, the Court must also consider making orders to determine the rights and liabilities under the tenancy agreement, and consider compensation orders. This is covered in the next section.

WHAT IF THERE ARE RENT ARREARS AND DAMAGE IN THE HOUSE OR OTHER COSTS?

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 can apply to Court for a determination of the liabilities or for a compensation order. The lessor can apply to Court for their claims, and the family violence factors will be considered if any of the tenants responds with an application to determine the liabilities.

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;
- f) the need to encourage perpetrators of family violence to accept responsibility for their behaviour and the effect it has on others.

The Court could make the following sorts of orders:

- That rent arrears or damage arising from family violence should be paid by the tenant who committed family violence.
- That a proportion of the rent arrears should be paid by the tenant who committed family violence.
- That the cost of changing the locks or increasing security is paid by the tenant who committed family violence.
- Other orders determining liabilities and rights or providing compensation relating to the termination – these are new provisions and it will take some time for the Courts to consider the implementation.

These new powers override the provisions of your lease that says you and your co-tenants are jointly or jointly and severally liable. The Court can now make orders saying who is individually liable for what costs.

WHAT ABOUT GOING TO COURT?

You can see more details in our 4 fact sheets about Going to Court for a rental dispute, available at www.tenancywa.org.au/fact-sheets

The Court sends notice of Court applications in residential tenancy matters (unlike other litigation where the parties serve one another). If the Court cannot send the notice to you as they don't have a current address for you, the Court will put the notice of Court hearing on this website. If you have left your tenancy, it is worth checking this website to see if you have a Court matter listed.

<https://ecourts.justice.wa.gov.au/eCourtsPortal/ResidentialTenancy>

The first Court date will be a pre-trial conference, where the Registrar will see if the parties can reach an agreement, and make orders by consent. This will be a good opportunity to settle the matter. The Court has the power to proceed in the absence of a party, so if you don't attend the Court date, the Court can still go ahead and make orders based on the information that it has available (as long as the Court records show that everyone was notified of the Court date). If you don't go to Court when you have made an application, it might get dismissed. Seek advice if you are unhappy about orders made in your absence as you may have options to set aside the decision or apply again.

WHERE CAN I GET HELP?

Tenancy Advice

Tenancy WA – You can book an appointment online on our website or call our advice line on 9221 0088 or country freecall 1800 621 888.

Or find your local tenant advocate here: <http://www.tenancywa.org.au/find-a-tenant-advocate>

Tenancy WA and Tenant Advocates will assist all tenants, both victims and people who have committed family violence. If one party has sought advice from a Centre, that Centre can refer the other party to another service for advice.

Other legal issues connected with family violence

Family violence can result in lots of legal issues. You may want advice about restraining orders, family law for children's arrangements and for property settlement, advice about child support, advice about criminal law and possibly advice about child protection law too.

Legal Aid, Community Legal Centres and the Aboriginal Legal Service can assist with advice on these issues, or you can speak to a private lawyer. The contact details for your local community legal centre are below. Some Centres have special programs to advise people who are respondents to restraining order applications.

If you are at risk of homelessness

Entrypoint - <http://www.entrypointperth.com.au/> - referral service for people at risk of homelessness. Phone (08) 6496 0001 or 1800 124 684. Crisis Care - Telephone (08) 9223 1111 or 1800 199 008 (country free call). This service is run by the Department for Communities, Child Protection. This is a 24 hours service 7 days a week.

Family violence support lines for men

Men's domestic violence helpline WA call: 9223 1199 or 1800 000 599

Men's line Australia <https://mensline.org.au/changingforgood/resource/find-a-mens-behaviour-change-program/>

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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