

# Natural disasters (WA) – renting issues



**This fact sheet is for residential and commercial tenants and lessors in Western Australia whose property has been damaged by natural disasters or catastrophes such as bushfires or severe storm related floods. It explains some of your legal rights and options. At the end it has the contact details of organisations that may be able to help you.**

**This information sheet cannot replace legal advice. Getting legal advice about your individual situation is important.**

## **My house or unit has been damaged (or destroyed) and is no longer okay to live in. What can I do?**

If your home has been destroyed or damaged as a result of a natural disaster your options are different depending on whether you have a periodic tenancy (for an unlimited time, with no fixed end date) or a fixed term tenancy (for a definite period of time, with a start and end date) agreement.

There are several ways of ending either type of tenancy. Not all are considered here.

## *What if I rent a house and want to leave because of the damage?*

If you are the tenant (you are renting) and the house is unfit to live in, you do not have to keep living there. You will need to end the tenancy agreement. How you do this depends on what sort of tenancy agreement you have – a periodic tenancy or a fixed term tenancy.

Ways you can end a tenancy include:

- If the property is destroyed or made uninhabitable by giving the lessor not less than two days' notice in writing stating the reason for ending the tenancy. Get legal advice if this applies to you.
- If it is a periodic tenancy, at any time, for no reason by giving the lessor not less than 21 days' notice in writing.

- If it is a fixed term tenancy, at any time if you and the lessor agree. The agreement must be in writing. Get legal advice in this situation.

If there is a dispute you may need some evidence of the unfit condition of the house, for example, photos.

For more information about the details needed in giving notice when ending a tenancy agreement, read the **Tenancy WA** fact sheet on its website at: <http://www.tenancywa.org.au/publications/>.

## *What if I own a rental property and want the tenant to leave?*

If you own the house and it is now destroyed or unfit for the tenant to live in, you cannot make a tenant move out immediately so try to work out an agreement with them.

You do not have to help the tenant find another place to live in but your help in doing so at this time would be appreciated. You are also allowed to inspect an unfit property to carry out necessary repairs but you must let the tenant know (if they still live there) at least 72 hours in advance, except in the case of emergency, that you are doing this.

In this situation, if you cannot reach an agreement with the tenant you can end a periodic or fixed term agreement by giving the tenant an official notice of termination of the agreement. You must give the tenant no less than seven days' notice before the termination day. If the tenant still does not vacate the premises on or before the date specified, you will have to obtain an eviction order from the Magistrate's Court of Western Australia.

You must never seek to forcibly evict a tenant or lock them out of the premises.

### *Can I get any help to resolve a dispute?*

When a dispute arises between lessors and tenants it is always preferable if the parties can negotiate a settlement themselves without resorting to court action. **Tenancy WA** (for residential tenants not lessors) or the **WA Department of Commerce – Consumer Protection** may be able to help.

### *What happens with the bond?*

Tenants should generally be able to get their bond back if the tenancy agreement has been terminated.

The bond should have originally been lodged by the lessor with the Department of Commerce's Bond Administrator.

If the tenant and lessor agree then they complete a joint application for disposal of bond money, specifying the amount of the bond to be returned to each.

If the tenant and lessor do not agree to the amount of bond each should receive then either can apply to the Magistrate's Court of Western Australia for an order specifying how much bond money should be paid to each party.

### **My rental property has been damaged but is still OK for me to live in. What can I do about repairs?**

If you are renting, you need to contact your lessor (or their property manager) immediately to talk about whether the repair needed to fix the damage is "urgent". Urgent repairs fall into two types: repairs for the supply or restoration of an essential service and other urgent repairs. Essential services include repairs to: a gas leak, the supply of hot water, sewerage leaks or dangerous electrical faults. Other urgent repairs are those where if the repair is not done it might cause damage to the property, injure you or cause undue hardship or inconvenience to you.

If you cannot contact the lessor (or their property manager) within 24 hours for an essential repair

and 48 hours for another urgent repair, (or if contacted, the lessor fails to make sure the repairs will be carried out as soon as practicable), then you are able to arrange for the repairs to the minimum extent necessary and pay for the repairs yourself. These repairs must be done by a suitably qualified repairer for you to be successful in claiming the cost back from the lessor. The lessor must reimburse you as soon as practicable for any reasonable expenses.

If the damage repairs are not urgent, you should try to make an agreement with the lessor to have the repairs completed in a reasonable time. If you are unable to reach agreement on this you can apply to the Magistrate's Court of Western Australia for orders specifying any repairs required. However you should not pay less rent or withhold rent without an order or agreement.

### *What can I do about paying less rent while the house is damaged?*

If you want to stay and the house is partly unfit to live in because of damage from the natural disaster, you can try to negotiate reduced rent with the lessor. You need to pay the rent while you negotiate. It may be that you can reach agreement on a rent reduction during any period when repairs remain to be done.

If you can't reach an agreement you can apply to the Magistrates Court for a reduction in rent on the basis there has been a significant reduction in the chattels and/or facilities at the property since you entered into the tenancy agreement. A court order only applies from the date you made the application to the court, not from the time the problem started.

### **What if a commercial property has been damaged?**

Lessors and tenants should always check their tenancy agreement to see if it specifically states what happens when part of the property is damaged. If the lessor does not repair the property within a reasonable time, the tenant may be able to end the tenancy agreement. If the lessor thinks that the repairs are impractical, they may be able to end the tenancy agreement.

Whether the lessor or the tenant is responsible for cleaning up fire damaged or flooded premises or paying for the clean-up will depend on the tenancy agreement's terms, the type of premises and how they are insured.

### *What if I cannot reach an agreement with the lessor?*

The law is complex in this area. Get legal advice about your specific circumstances.

The [Small Business Development Corporation](#) may be able to help as it provides specialist small business guidance, awareness and education service on all aspects of commercial and retail tenancy rental agreement negotiations and operations.

The [State Administrative Tribunal](#) provides a mediation service and determines disputes in relation to retail and commercial shop rental agreement matters.

### *Who is responsible for insurance?*

This is a complex area of the law. Tenants and lessors should get legal advice about their specific rental agreement terms and obligations.

Generally lessors will choose to maintain insurance on a residential property and tenants will insure their own contents.

Depending on the tenancy agreement, the tenant may be required to insure a commercial rental property. If the tenant was supposed to do this but did not – or did not have enough insurance – the tenant may have to pay the lessor for any losses caused by a bushfire or flood.

### **Is any financial help available from the government?**

In cases of natural disaster assistance may be available. Information on government assistance can be found on:

- The Department of Premier and Cabinet website [Western Australia Natural Disaster Relief and Recovery Arrangements \(WANDRRA\)](#) on who can receive assistance and if eligible, what assistance is available. If

you need help in deciding if you qualify for any assistance you can contact the administrators on **(08) 6552 5088** or **(08) 6552 6250**, or by email to [wandrra@dpc.wa.gov.au](mailto:wandrra@dpc.wa.gov.au), or

- the **Australian Government Disaster Assist** website at <http://www.disasterassist.gov.au/Pages/default.aspx> or by calling the **Australian Government Disaster Recovery Assistance Hotline** on **180 2266**.

See also the **Information sheet: Natural disasters (WA) – debt issues** which is available from any Legal Aid WA office.

### **Where can I get more information?**

- Residential tenants living in WA can contact the [Tenancy WA Telephone Advice Line](#) on **(08) 9221 0088** (for metropolitan callers) or **1800 621 888** for country callers. This service operates between 9.00am – 4.00pm (WST) Monday to Friday (except public holidays). The phone lines are often busy in the mornings so it is recommended by Tenancy WA that you call in the afternoon if you are finding it difficult to get through. You can also access other information including facts sheets on various topics its website.
- Go to the **Department of Commerce – Consumer Protection division** website at: <http://www.commerce.wa.gov.au/consumer-protection> or call **1300 30 40 54** for advice on policy and content aspects of retail/commercial shop tenancy laws. The Department's free app [iRentWA](#) also has information for residential tenants on rights and responsibilities. It can be downloaded at the Apple Store or Google Play.
- Visit the **Magistrates Court WA** website at: <http://www.magistratescourt.wa.gov.au/R/residential-tenancy-amended-regulations-2005-forms.aspx?uid=1471-5224-2977-6780> or a registry office for the forms needed for tenancy related applications.
- For commercial tenancy matters contact the [Small Business Development Corporation](#) on **13 12 49** weekdays from 8.30am to 5.00pm (WST).
- Contact the [State Administrative Tribunal](#) on **(08) 9219 3111** for information on the mediation service it provides for disputes in relation to retail and commercial shop rental agreement matters.

## Legal Aid WA Offices

**TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)**  
InfoLine open Monday to Friday 8.30 am to 4.30 pm  
(Australian Western Standard Time) except public holidays

**Translating and Interpreting Service 131 450**  
**National Relay Service (for hearing and speech impaired) 133 677**

[www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)

### **Perth Office**

32 St Georges Terrace, Perth, WA 6000  
1300 650 579  
(08) 9261 6222

### **Southwest Regional Office**

7<sup>th</sup> Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230  
(08) 9721 2277

### **Great Southern Regional Office**

Unit 3, 43-47 Duke Street, Albany, WA 6330  
(08) 9892 9700

### **Goldfields Regional Office**

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430  
(08) 9025 1300

### **Midwest & Gascoyne Regional Office**

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530  
(08) 9921 0200

### **Pilbara Regional Office**

28 Throssell Road, South Hedland, WA 6722  
(08) 9172 3733

### **West Kimberley Regional Office**

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725  
(08) 9195 5888

### **East Kimberley Regional Office**

98 Konkerberry Drive, Kununurra, WA 6743  
(08) 9166 5800

### **Indian Ocean Office**

Administration Building, 20 Jalan Pantai  
Christmas Island, Indian Ocean, WA 6798  
(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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