

# Evictions & Illegal Lockout

As a tenant you have rights and responsibilities under the *Residential Tenancies Act 1987* (the Act). This fact sheet explains the law in Western Australia about evictions and illegal lockout and incorporates the changes made to the Act, which came into effect on 1 July 2013. Please note that while changes were made to the Act effective 1 July 2013, some of the old laws may still apply to you. If, for example, you entered into a lease prior to 1 July 2013, the old laws may still be valid. Accordingly we strongly encourage you to get appropriate legal/tenancy advice from your local tenancy service concerning the application of the new laws.

In the Residential Tenancies Act the landlord is referred to as the lessor.

## EVICTON WITHOUT A COURT ORDER PROHIBITED

It is illegal for your lessor to evict you without a court order.

The lessor cannot legally lock you out or personally carry out an eviction; only the sheriff (or someone acting for the sheriff, usually a bailiff) can evict you and only when they are acting in accordance with a court order.<sup>1</sup>

## WHAT COURT ORDERS DOES THE LESSOR NEED TO EVICT YOU?

The lessor will first need a court order terminating the tenancy, and an order for possession of the premises.

The court will give you written notice of the time and place of the hearing of any application by the lessor for orders terminating your tenancy and for possession.

If you don't go to the hearing, the Court can proceed in your absence and will likely terminate your tenancy. If you miss your hearing date, and want to appeal the decision you should seek urgent advice.

If the Court grants the application, you can ask the Court to postpone any eviction for up to 30 days on the grounds of hardship. However, your hardship must be greater than any hardship caused to the lessor.

**NOTE: if you do not go to the hearing, it is most likely that the possession order will be granted.**

The order for possession of the premises will set a date which you must move out by. If you do not move out by that date, then the lessor must obtain one more order before you can be evicted, known as a Property (Seizure and Delivery) Order ("PSDO").

## PROPERTY (SEIZURE AND DELIVERY) ORDER

This is an order pursuant to sections 95 and 96 of the Civil Judgments Enforcement Act (2004) WA. It is valid for 12 months and authorises the sheriff to enter the property and evict anyone unlawfully on the premises. The sheriff may use any force and assistance as is reasonably necessary to do so. Bailiffs usually carry out these orders for the sheriff.

<sup>1</sup> Recovery of possession of premises without a court order is prohibited under s.80 of the Act, and punishable by a fine of up to \$20,000.

If your landlord is granted a possession order, you can contact the bailiff to find out if a PSDO has been issued, and, if it has, when they plan to carry out the eviction. Usually the bailiff will come to the property one or more days before the eviction to tell you when they intend to enforce the PSDO.<sup>2</sup>

If you are likely to be evicted, it is a good idea to make arrangements so you will have somewhere to stay, especially if you may be evicted on the same day or at short notice. If you have nowhere to go, you should contact [Entrypoint Perth](#) on 6496 0001 for crisis accommodation services.

If you are evicted in accordance with a PSDO, you will also usually be liable for the costs of carrying out the order.

## HEARINGS MADE IN YOUR ABSENCE

If you find out that a possession order has been granted but you didn't go to the hearing, you can apply to the Court to suspend the enforcement of the judgment, and to set aside the possession Order. You need to lodge the suspension and set aside applications as soon as possible and at least within 14 days after the Order is made<sup>3</sup>. You need to do this before the bailiff evicts you, as once you have been legally evicted the Court has no power to allow you back into a property.

Contact your local Tenant Advocate or Tenancy WA on 9221 0088 for more information. You should contact the lessor and bailiff and ask them to hold off on the eviction until your set aside application is heard in Court.

At the review hearing you will need to show the Court that you had a good reason for not going to the original hearing and that your case has some merit. If the Court accepts your explanation, they will set aside their earlier decision and allow the matter to be reheard.

## ILLEGAL LOCKOUT

It is illegal for a lessor to attempt to physically evict you or change the locks. **Only the sheriff (or a bailiff) can carry out an eviction, and only with a valid court order.**

If the lessor threatens to illegally evict you, or shows up at the property and attempts to evict you, you should call the Police or the Department of Commerce on 1300 30 40 54 immediately.

If you have been illegally evicted, and want to make a court application you can seek urgent advice from a tenant advocate. You may be able to seek orders for you to stay at the property, to get your belongings, or for compensation.

You can lodge a complaint with the Department of Commerce. There are penalties for individuals and companies that are convicted of carrying out an illegal eviction.

You can also seek compensation for any inconvenience, costs, loss or damage to your goods caused by the lessor's illegal actions.

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<sup>2</sup> If no one is home they will usually leave a card.

<sup>3</sup> The court has the power to extend this period under s.20(f) of the Act, but it may be difficult to persuade it to do so, in most circumstances. Wherever possible, you should make this application **as soon as possible**.

## FURTHER HELP – TENANTS’ ADVICE AND ADVOCACY

Tenancy WA provides state wide telephone advice services and referrals.

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

Department of Commerce 1300 304 054

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

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