

# Entry and Privacy

As a tenant you have rights and responsibilities under the *Residential Tenancies Act 1987* (the Act). This fact sheet incorporates the changes affected by the *Residential Tenancies Legislation Amendment (Family Violence) Bill 2018* from 15 April 2019.

## QUIET ENJOYMENT

As a tenant you have a right to quiet enjoyment and reasonable peace, comfort and privacy of the property. The lessor or anyone acting on their instructions (e.g. a tradesperson or a property manager), are not permitted to enter the property unless you have been given correct notice beforehand.

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

## WHEN CAN THE LESSOR ENTER THE PROPERTY?

The lessor may enter the property in the following circumstances:

Purpose	When can they enter premises?
In an emergency	At any time
Conducting routine inspections (or for any other purpose)	At a reasonable time, after giving at least 7 and not more than 14 days' written notice
Collecting rent	At any reasonable time (if agreed it is to be collected at premises)
Lessor suspects that you have abandoned premises	24 hours after giving the correct written notice
Necessary maintenance and repairs	72 hours after giving written notice
Show prospective tenants	Only in the last 21 days of the agreement. At a reasonable time, on a reasonable number of occasions after giving you reasonable written notice
Show prospective buyers	At a reasonable time, on a reasonable number of occasions after giving you reasonable written notice
To inspect the premises and assess any damage after receiving notice under the family violence provision	After giving at least 3 days and not more than 7 days after a tenant issues a notice to terminate their interest. If the lessor inspects at this point, this can count as the PCR.

To inspect the premises and assess damages where there is an application to Court to take a tenant off the lease, after committing family violence	After giving at least 3 days and not more than 10 days before the hearing for an application to terminate a tenant's interest
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*The new family violence provisions came in to effect in April 2019. If your tenancy is affected by family violence see our Family Violence fact sheets for more information.*

A lessor may also enter if you agree at or immediately before the time of entry.

The written notice must state the day of the entry and whether the entry will be before or after 12pm.

The lessor must make reasonable attempts to negotiate a day and time for entry that does not unduly inconvenience you.

## HOW OFTEN CAN THE LESSOR CONDUCT ROUTINE INSPECTIONS?

A lessor may only conduct four routine inspections in any 12 month period.

This may include what some property managers call “re-inspection”. Usually when a property manager wants to “re-inspect” a premises when they believe you have breached the agreement. It is not clear whether the “re-inspection” would be included as one of the four routine inspections allowed. There is no explicit right for them to do so under the *Residential Tenancies Act 1987*(WA).

You **may** consent to a re-inspection to maintain a good working relationship with the lessor or agent. However, this would then be an entry by consent rather than one of the ‘routine inspections’ under the act and would not count towards the four inspections allowed per year. The legal basis is addressed in further detail in the Residential Tenancy Law and Practice Manual for WA online if you wish to find out more<sup>1</sup>. You may wish to seek advice if this issue arises.

## WHAT IS A “REASONABLE TIME”?

Reasonable time means:

- between 8.00am and 6.00pm on a weekday
- between 9.00am and 5.00pm on a Saturday
- any other time agreed between you and the lessor.

## WHAT IS REASONABLE NOTICE?

The *Residential Tenancies Act 1987* states what notice period is required for inspections, maintenance or if the lessor suspects you have abandoned the premises.

The Acts does not define “reasonable notice” or “reasonable number of occasions” for showing prospective tenants and buyers through the property. If the lessor wishes to take prospective buyers through the property frequently you may be able to negotiate a reduction of rent to compensate you for the inconvenience.

## YOU HAVE A RIGHT TO BE PRESENT WHEN THE LESSOR ENTERS THE PROPERTY

You have the right to be present when the lessor/third party enters the property but there is no rule stating that you **must** be present. If you have been given the correct notice and you have failed to negotiate an alternative time, the lessor can use their spare key to enter the property.

<sup>1</sup> Residential Tenancy Law and Practice Western Australia, published on Austlii.

If you cannot be present at the time stated on the notice, and you cannot negotiate an alternative time you can ask a friend or a relative to be there instead.

## WHAT IF YOUR BELONGINGS ARE DAMAGED BY THE LESSOR ENTERING THE PROPERTY?

You must be compensated by the lessor if they or any other person accompanying them causes damage to your belongings on the property.

## YOU DO NOT HAVE TO PAY FOR INSPECTIONS

Lessors cannot ask tenants to pay additional money other than rent and security bond. The lessor cannot pass on any administration, re-inspection fees or other charges to the tenant.

The lessor can request compensation if the tenant has breached the agreement and they can show they suffered additional costs as a result of the breach.

For example, a tenant may be charged a portion of the final inspection fee in a break lease situation as the lessor has had to pay the additional costs due to the tenant breaking the contract. A lessor cannot ordinarily charge a final inspection fee as it is a term of the tenancy agreement that the lessor is to carry out an inspection and property condition report at the end of the tenancy.

## INTERFERENCE WITH YOUR PRIVACY

Examples of this include:

- the lessor coming to the property for no reason and without notice
- a tradesperson coming to do non-urgent repairs without proper notice
- prospective buyers being shown the property without notice or written consent from the lessor.

## WHAT CAN YOU DO IF THE LESSOR INTERFERES WITH YOUR PRIVACY?

If the lessor enters the property without giving the required notice, or enters so often that your quiet enjoyment of the property is being affected, there are a number of options available to you:

1. Write to the lessor and inform them that your privacy is being violated and request that in the future the correct notice is given. If your complaint is about a real estate agent, tell your landlord about the agent's behaviour.
2. If the property is managed by an agent, you may request a meeting with the Principal of the real estate agency and discuss the problem with him/her.  
Be clear about how much notice you require before each entry taking into consideration what notice you are entitled to under the *Residential Tenancies Act 1987*.
3. Apply to the Magistrates Court for orders:
  - a. To stop the lessor entering the property.
  - b. To specify or limit the days and times on which, and purposes for which, the lessor or other authorised person can enter.
  - c. To end your tenancy (must be a serious breach).
  - d. For compensation for loss of or damage to your goods.
4. Report trespass to the police.
5. Make a complaint to the Department of Commerce about the lessor or property manager's behaviour.
6. If you find that you are not getting anywhere with your negotiations then contact your local tenant advocate for assistance.

**NOTE: if you choose to end the tenancy early because the lessor has entered the property unannounced and you have not followed the above steps, you could be liable for break lease fees.**

## USE OF PHOTOGRAPHS IN A RESIDENTIAL TENANCY

It is common practice for Real Estate Agents to take photos of a rental property. The two primary reasons for use of photos are:

### 1. **Photographic evidence to show the lessor the condition of the property**

Photographic evidence may form part of the Property Condition Report and can be used to monitor the property standards. Photos taken during a routine property inspection may also be used for issuing a Breach Notice.

### 2. **For advertising the property to prospective buyers**

When and in what circumstances photographs may be taken may be covered in the tenancy agreement.

Most Real Estate Agents are covered by the Privacy Act 1988, and have to comply with the Australian Privacy Principles when handling images which contain personal information. There is nothing expressly prohibiting them from taking photos under the *Residential Tenancies Act 1987 (WA)*. If there is clause in your agreement allowing the lessor to take photos or videos it is likely that the lessor has a very strong argument and it is unlikely that the taking of photographs or videos would be a breach of the tenant's right to reasonable peace, comfort or privacy.

You could try to argue that the lessor's obligation to enter the premises in a 'reasonable manner' extends to only taking photographs as are reasonable to show elements of damage to the premises<sup>2</sup>.

If you have an issue with your lessor taking photos in your premises, you may wish to negotiate the nature and extent of the photographs taken e.g. not to include any identifying items.

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<sup>2</sup> s 46(7) of the *Residential Tenancies Act 1987 (WA)*

## 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](http://www.tenancywa.org.au)

Department of Mines, Industry Regulation and Safety 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>Regional Alliance West (formerly GRC) (Mid-West/Gascoyne)</b> <a href="https://raw.org.au/">https://raw.org.au/</a>
<b>Northern Suburbs CLC (Northern Suburbs)</b> <a href="http://www.nslc.org.au">www.nslc.org.au</a> Mirrabooka – 9440 1663 Joondalup - 9301 4413	Geraldton – 9938 0600 Carnarvon – 9941 1062
<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>Goldfields CLC (Goldfields)</b> 9021 1888 <a href="http://www.gclc.com.au">www.gclc.com.au</a>
<b>Sussex Street CLS (South Central Suburbs)</b> 6253 9500 <a href="http://www.sscls.asn.au">www.sscls.asn.au</a>	<b>Kimberley CLS (Kimberley)</b> 9169 3100
<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>Peel CLS (Peel)</b> 9581 4511 <a href="http://www.peelcls.com.au">www.peelcls.com.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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