

Rent Arrears

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 rent arrears 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.

If you are in rent arrears (behind in rent) the lessor can take immediate legal action to terminate your tenancy. To avoid termination it is important that you contact the lessor to explain your financial situation and what arrangements you will make to pay the arrears. If the lessor does agree to you repaying the arrears by a certain date or by instalments, get the agreement in writing.

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

NOTE: Only a bailiff can carry out an eviction, and only after the lessor has obtained a court order from the Magistrates Court.

The lessor has two options available against a tenant in rent arrears. Both options require the lessor to use prescribed (must be used) forms.

OPTION ONE – USING FORM 1A

1. You fall into rent arrears.
2. The lessor issues you with a written breach notice. The breach notice can be a letter or a Form 21- [Breach Notice for Non-Payment of Rent](#) and must give you 14 days to pay the rent owing.
3. If you pay the rent owing within the 14 days, the lessor cannot not take any further action.
4. If you do not pay the rent within 14 days, the lessor can issue you a Form 1A - [Notice of Termination for Non Payment of Rent](#). You will then have seven days to vacate the property.
5. Even if you pay the rent owing after you have been given the Form 1A, the lessor may still apply to court to evict you.
6. If you do not vacate the property within 7 days, the lessor can apply to court for termination of the tenancy. The lessor must apply to court within 30 days of the date that the Form 1A states you must vacate the property.

OPTION TWO – USING FORM 1B

1. You fall into rent arrears.
2. The lessor issues you with a Form 1B- [Notice of Termination for Non Payment of Rent](#). The lessor does not need to give you a breach notice before issuing this form.
3. If you pay the rent owing within seven days of the notice, the lessor cannot take any further action.
4. If you do not pay the rent owing within seven days of the notice, the lessor may apply to court for a termination order and an order for the rent arrears to be paid.
5. The court date must be at least 21 days from when you were given the Form 1B.
6. You have until the day before the court hearing to pay the full arrears and the cost of the court application to the lessor.
7. If you make the payments, the lessor cannot continue with the application.

NOTE: Even if you have received a notice of termination, you do not need to leave the property on the date the form states. The lessor still needs to make an application to court to seek termination.

WHAT TO DO IF YOU GET A NOTICE ABOUT RENT ARREARS FROM THE LESSOR

- Check that the notice given is a prescribed form as discussed in the options above. If the lessor has not followed the correct procedure you do not have to move out.
- Check the notice to see **which option** the lessor is following and how long you have to respond before further action can be taken.
 - If it is a Form 21 Breach notice, the lessor is following Option 1 and will probably give you a Form 1A Notice of Termination if the rent is not paid within 14 days.
 - If the notice is a Form 1B Notice of Termination this means the lessor is following Option 2.
- Check that the calculations are correct. Ask the lessor for the rental ledger and compare your rent records to the lessor's.
- Let the lessor know straight away if you think you are not in arrears.
- Make sure you pay any monies owing or negotiate an agreement with the lessor to stop the lessor from taking further action. Get this agreement in writing.
- If you think the lessor's calculations are wrong, write a letter and explain why. Include a copy of your rent receipts and/or documents that support your calculations. Always keep your original rent receipts, and keep a copy of your letter or email.
- If you are in rent arrears, try and come to an arrangement with the lessor. Explain to the lessor why you are in arrears and when you will be able to pay the rent owing.
- If you can, pay the rent arrears before the lessor takes further action. If you are unable to pay the rent, see if the lessor is willing to give you extra time to pay the rent owing or agree to a payment plan. Get any agreement confirmed in writing.

FINANCIAL COUNSELLORS

If you are having trouble paying your rent, there are a number of agencies that can assist with financial counselling and support. You may also be able to receive emergency relief. Contact your local council or tenant advocate for more information.

To find your local financial counsellor call the Financial Counsellors Association on 1800 007 007.

It is important that you **always pay your rent**, even if you are in dispute about an issue to do with your agreement. If your dispute is resolved in your favour and you are out of pocket you will be entitled to be reimbursed any excess rent that you paid.

RELEVANT FORMS

[Form 1A Notice of Termination for Non-Payment of Rent](#)

[Form 1B Notice of Termination for Non-Payment of Rent](#)

[Form 21 Breach Notice for Non-Payment of Rent](#)

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

Department of Commerce 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) 9440 1663 www.nsclc.org.au</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) 9938 0600 www.raw.org.au</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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