

Maintenance and Repairs

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 maintenance and repairs 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.

Both you and the lessor have certain responsibilities for maintaining the property under the Act.

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

BEFORE YOU MOVE IN

The lessor is required to provide the property to you in a reasonable state of cleanliness and repair, taking into consideration the age and character of the property.

Check that the property is clean before you move in and complete the property condition report. If it is not satisfactory – contact the lessor as soon as possible to discuss. Ensure you get any agreement for repairs or cleaning in writing.

LESSOR'S RESPONSIBILITIES

The lessor must:

- provide you vacant possession of the property in a reasonable state of cleanliness and a reasonable state of repair
- maintain the property in a reasonable state of repair
- comply with all building, health and safety laws
- conduct any repairs in a timely manner when repairs are needed.

The lessor is also responsible for the repair of fixtures (e.g. lights, fitted carpet, swimming pool) and chattels (e.g. white goods and furniture) provided with the property.

The lessor is not required to repair any fixture or chattel that s/he said was not working before the agreement began, or anything that you could not reasonably have expected to be working when the agreement began.

NOTE: From 1 July 2013, the lessor cannot “contract out” of any of the responsibilities listed above. This means they cannot put in any special conditions that contradict or restrict their responsibilities.

TENANT'S RESPONSIBILITIES

It is your responsibility as a tenant to:

- keep the property in a reasonable state of cleanliness
- advise the lessor as soon as it is practicable if any damage occurs
- not intentionally or negligently (accidentally) cause or permit damage to the property

WHAT IS FAIR WEAR AND TEAR?

You are not responsible for fair wear and tear to the property. Fair wear and tear is a general term for deterioration that occurs through ordinary use such as the curtains fading from the sun or the carpet being worn where there is “high traffic” such as a hallway.

Intentional damage (on purpose) or damage caused by negligence (accidental) is not fair wear and tear. Not all accidental damage is negligent, you can seek advice about the law of negligence.

WHAT IF YOU HAVE CAUSED THE DAMAGE?

If repairs are needed because you or someone that you invited to your home caused damage, you will have to pay for the repairs. You must inform the lessor of the damage, and negotiate with the lessor about the repairs. You should not undertake your own repairs without the lessor’s consent. If you undertake your own repairs you will be liable for further damage from poor or faulty repairs. The lessor may want you to arrange for the repairs, or may prefer to arrange their own repairs, at your cost. The lessor may also choose to claim under their insurance, in which case the insurance company is likely to pursue you for the whole cost of repairs.

The lessor has a duty to minimise their loss, so the repairs should be done at a reasonable price.

GETTING REPAIRS DONE

The first step to getting repairs or maintenance done is to make sure that your lessor knows about the issue. It is your responsibility to notify them as soon as there is a need for repair/maintenance.

Process for getting maintenance/repairs done:

1. Discuss the problem with your lessor and ask them to fix it. Confirm this is in writing.
2. Write to the lessor with the request, stating clearly what you want repaired or replaced, and by when. It also a good idea to include in your letter how the problem is affecting you.
3. If no response is received or no action is taken you can issue the lessor with a [Form 23 – Notice to Lessor of Breach of Agreement](#). On the form, clearly outline what the required maintenance and repairs are and give a time frame of when you want them fixed.
4. If you have done all of the above and the problem has not been fixed – you can apply to the Magistrate’s Court for a performance order to carry out the maintenance or repairs. This application is made on a [Form 12 – Application for Court Order](#) from the Magistrates Court of WA website.
5. If the lessor fails to conduct the work in a timely manner, you can seek a rent reduction for loss of use of the premises or part of the premises (see more information about this below).

NOTE: Do not withhold rent in an attempt to force the lessor to carry out repairs or maintenance, as this will result in you breaching the agreement. Ending the agreement early because the lessor hasn’t fixed the problem may see you paying break lease fees.

URGENT REPAIRS

In WA, urgent repairs are broken down into two categories:

1. Essential services
 - Electricity
 - Gas
 - A functioning fridge (if provided with the property)
 - Sewerage, septic tank or other waste management
 - Water, including the supply of hot water (burst or broken hot water service)

2. Other urgent repairs

These are repairs that are not an essential service but are necessary to avoid:

- exposing the property to damage,
- exposing a person to the risk of injury, or
- causing undue hardship or inconvenience to you.

If your repairs are **URGENT** contact the lessor as soon as possible. If it is after hours and the property is managed by a real estate agent, contact the after-hours number they have provided.

You can organise urgent repairs without the lessor's permission if:

- within 24 hours of the need for repair of an essential service, or 48 hours of the need for any other urgent repair, you cannot contact the lessor, or
- within the same time periods, you have told the lessor of the need for the repair, and the lessor has failed to have the repairs carried out as soon as reasonably possible.

You cannot go ahead and have repairs done without the owner's permission if repairs are only needed because of your breach of the agreement (for example, you negligently or wilfully caused the damage, or it was caused by using the property for an illegal purpose).

If you arrange for any urgent repairs to be carried out, the lessor must reimburse you for any reasonable costs. The repairs must be made to the minimum extent necessary and be done by a qualified tradesperson.

RENT REDUCTION

If a lessor fails to carry out any necessary maintenance and repairs after a reasonable period of time, you can request a rent reduction.

You and the lessor should negotiate an amount you both feel is reasonable in the circumstances.

You can apply to Court for a rent reduction, but you should seek advice first as you will need to have evidence of a range of factors the Court will consider.

See our "rent increases" fact sheet for more information on the process to apply to reduce your rent.

APPLYING TO COURT

You may need to apply to the Magistrate's Court if:

- The lessor has failed to arrange the repairs (after you have given them written notice of any necessary repairs and/or issued them with a Form 23); or
- The lessor will not reimburse you for any urgent repairs you arranged.

You will need to complete a [Form 12 – Application for Court Order](#) which can be found on the Magistrates Court of WA website.

RELEVANT FORMS

[Form 23 – Notice to Lessor of Breach of Agreement](#)

[Form 12 – Court Application Form](#)

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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