



Schedule 2 Residential Tenancies Act 1987 Information for tenant (A statement of your rights and duties)

1. INFORMATION FOR TENANT

The *Residential Tenancies Act 1987* and the *Residential Tenancies Regulations 1989* deal with residential tenancy agreements. The main provisions of the Act and Regulations relating to owners' and tenants' rights and duties are summarised below. Full details may be seen in the Act and Regulations, copies of which can be purchased from the State Law Publisher (10 William Street, Perth#).

#Address at time of printing.

2. ADVICE, COMPLAINTS AND DISPUTES

Department of Commerce

The Act allows the Commissioner for Consumer Protection to give advice to parties to a residential tenancy agreement, to look into complaints and, wherever possible, help to settle them. The Department of Commerce may be contacted by telephone or by visiting the Department's main office in Perth or in Albany, Broome, Bunbury, Geraldton, Kalgoorlie or Karratha.

The tenant should generally approach the owner or his agent to solve any problem before approaching the Department of Commerce. The Department's role is one of mediation and conciliation, it cannot issue orders or make determinations in respect of disputes.

Hearing of disputes

If a dispute between an owner and a tenant has to be decided by a court it has to be dealt with by a court that has jurisdiction to hear and determine the application. The Magistrates Court has exclusive jurisdiction to hear and determine applications relating to bonds under Schedule 1 clause 8 of the Act and other matters that do not involve a claim over \$10 000. The matters it can hear and determine are minor cases and must be dealt with by the minor case procedure in the Magistrates Court.

If a person is claiming over \$10 000, other than in an application relating to a bond referred to in the previous paragraph, the claim must be brought in a court, such as the Supreme Court, District Court or Magistrates Court, that is competent to hear and determine a claim founded on contract for the amount of the claim. If the claim is dealt with in the Magistrates Court, the parties to the application may consent in writing (which consent is irrevocable) to the proceedings being heard and determined by the minor case procedure.

3. AGREEMENTS THAT BY-PASS THE ACT

The Act permits the owner and the tenant to contract out of some parts of the Act if the tenancy agreement is in writing and signed by the owner and the tenant. *This applies to the clauses and paragraphs below marked with an asterisk.*

In addition a competent court may make an order excluding or varying a provision of the Act.

* Refers to provisions of the Act that may be excluded/varied where the tenancy agreement is in writing and signed by both the owner and the tenant.

Consumer Protection Division

Forrest Centre, 219 St Georges Terrace
Perth, Western Australia 6000 (hours: 8:30am – 5:00pm)
Admin: 9282 0777 **Advice Line: 1300 30 40 54** Facsimile: 9282 0850
Email: consumer@commerce.wa.gov.au
Internet: www.commerce.wa.gov.au

Apart from these cases it is an offence (maximum fine — \$2 000) to make an agreement to prevent the operation of the Act.

4. INFORMATION TO BE GIVEN

THE OWNER OR THE OWNER'S AGENT must give to the tenant —

- a copy of this form or booklet, before or at the time the tenancy agreement is entered into;
- a copy of any written tenancy agreement at the time it is signed by the tenant; and
- a further copy of any written tenancy agreement after it has been signed by both parties normally within 21 days after the date when the agreement is signed and delivered by the tenant.

AN OWNER who is an individual must ensure that the tenant is notified in writing of the full name and address of the owner and of any head lessor.

If the premises are managed by a licensed real estate agent, an owner can notify the tenant of the agent's address instead of the owner's address.

AN OWNER that is a corporation must ensure that the tenant is notified in writing of the name and address of the secretary of the corporation.

If ownership of premises changes during the tenancy, these requirements also apply to a new owner.

A tenant must be notified in writing within 14 days of any change in the details previously notified by the owner.

A TENANT must —

- not give a false name or place of occupation;
- notify the owner of any change of the tenant's place of occupation during the tenancy; and
- give the owner a forwarding address at the end of the tenancy.

5. USE OF PREMISES

THE OWNER must make sure that —

- on the day on which it is agreed that the tenant will move in, the premises are vacant;
- the tenant has quiet enjoyment of the premises which means that the owner must not interfere with the tenant's privacy or use of the premises. This does not apply to situations where the owner is exercising his or her right of entry.

Regional offices:

Goldfields/Esperance: (08) 9026 3250
Great Southern: (08) 9842 8366
Kimberley: (08) 9191 8400
South-West: (08) 9722 2888
North-West: (08) 9185 0900

THE TENANT must not —

- *(a) use the premises or permit them to be used for any illegal purpose; or
- *(b) do anything on the premises or permit someone else entering the premises with the tenant's permission to do anything on them that causes a nuisance, (e.g. a noise that disturbs neighbours).

6. CHILDREN

NO PERSON can —

- (a) refuse a tenancy;
- (b) state an intention to refuse a tenancy; or
- (c) cause or instruct another person to refuse a tenancy,

on the ground that a child will live on the premises. There is an exception where a person's own home is being let or where the owner or the agent of the owner lives in the premises next door.

*7. REPAIR AND CLEANLINESS

THE OWNER —

- (a) must make sure that the premises and chattels are in a reasonably clean condition at the beginning of the tenancy;
- (b) must maintain the premises and chattels in good repair; and
- (c) must comply with any law relating to buildings, health or safety.

THE TENANT —

- (a) must keep the premises and chattels in a reasonably clean condition;
- (b) must take care to avoid damage to the premises and chattels; and
- (c) must give notice to the owner of any damage to the premises or chattels as soon as practicable but at the latest within three (3) days.

In this clause and in clause 8 **chattels** includes furniture, household appliances and other household items provided with the premises for use by the tenant.

*8. URGENT REPAIRS BY TENANT

THE OWNER is required to compensate the tenant for the reasonable cost of urgent repairs to the premises or chattels if —

- (a) there is likely to be injury, property damage or real inconvenience to the tenant if the repairs are not done;
- (b) the tenant did not cause the problem by failing to keep to the agreement;
- (c) the tenant made a reasonable attempt to notify the owner that the tenant would be arranging the repairs; and
- (d) where by law the repairs must be carried out by a licensed tradesman, the work is done by such a person and the tradesman's report as to the cause of the problem is given to the owner.

Examples of urgent repairs are any work necessary to repair —

- (i) a burst water service;
- (ii) a broken hot water service;
- (iii) a sewerage blockage;
- (iv) a broken sewerage fitting;
- (v) a serious roof leak;
- (vi) a gas leak;

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- (vii) an electrical fault likely to cause damage to property or to endanger human life;
- (viii) flooding;
- (ix) a fault in a lift in the rented premises;
- (x) substantial damage caused by flooding, storm or fire;
- (xi) a broken refrigerator or washing machine where these are included in the tenancy.

*9. FIXTURES, RENOVATIONS, ALTERATIONS AND ADDITIONS

THE TENANT —

- (a) may be forbidden by the agreement to renovate or alter the premises or to put in fixtures;
- (b) must obtain the owner's consent if the agreement allows the tenant to do any of those things with consent of the owner.

If paragraph (b) applies —

- (i) the owner must consent unless there is good reason not to do so;
- (ii) the tenant may, at the end of the agreement, remove any fixture unless the removal would cause damage that could not be repaired; and
- (iii) the tenant must repair any damage caused by the removal of a fixture or compensate the owner, whichever the owner chooses.

*10. LOCKS

THE OWNER must provide and maintain locks or otherwise secure the premises and NEITHER THE OWNER NOR THE TENANT may change or install any lock without the consent of the other. The consent must be given at, or immediately before, the time when the work is done.

*11. ENTRY BY OWNER

THE OWNER may only enter the premises —

- (a) with the permission of the tenant given at or immediately before the time of entry; or
- (b) in an emergency; or
- (c) for any purpose, if at least 7 and not more than 14 days' notice is given; or
- (d) to collect rent if the agreement allows for rent to be paid weekly or less frequently and permits collection at the premises; or
- (e) for an inspection at the time of a rent collection referred to in (d) but not more than once every 4 weeks; or
- (f) to carry out or inspect necessary repairs after giving at least 72 hours' notice; or
- (g) after giving reasonable notice, to show the premises to prospective tenants on a reasonable number of occasions during the 21 days before the end of an agreement; or
- (h) after giving reasonable notice, to show the premises to prospective purchasers on a reasonable number of occasions.

Except where (a) or (b) applies the owner must only enter at a reasonable hour.

12. PAYMENTS BY TENANT

A TENANT is not required to make any payment in connection with a residential tenancy except —

- (a) rent;
- (b) a security bond;
- (c) a payment for an option to take a tenancy;
- [(d) *deleted*]
- (e) a payment authorised by the Act or regulations.

*The cost of any written agreement must be paid by the owner.

A tenancy agreement cannot contain provision for a penalty or damages or extra payments if the tenant fails to keep to the agreement. If an agreement allows a reduced rent so long as the tenant keeps to the agreement, the owner cannot charge any higher rent even if the tenant breaks the agreement.

13. PAYMENT OF RENT

NO PERSON may ask for —

- (a) more than 2 weeks' rent to be paid before or during the first 2 weeks of a tenancy agreement;
- (b) any rent to be paid until the period covered by the previous payment is finished; or
- (c) a post-dated cheque or other such instrument in payment of rent.

A PERSON who receives rent must see that a receipt is given within 3 days (not including weekends and holidays) of receiving the payment, which must show —

- (i) the date paid;
- (ii) who paid the rent;
- (iii) the amount paid;
- (iv) the premises for which it is paid; and
- (v) the period covered by the payment.

This does not apply if under the agreement the rent is paid into an account in a bank, building society etc.

If rent is paid to a real estate agent, the agent is required by the *Real Estate and Business Agents Act 1978* to give a receipt immediately, except where payment is received by electronic transfer.

14. RENT INCREASE

THE OWNER may not increase the rent unless —

- (a) 60 days' notice is given; and
- (b) not less than 6 months has passed since the tenancy commenced or since the last increase.

In addition —

- (a) in the case of a tenancy for a fixed period, there can be no increase unless the agreement allows an increase during that period; and
- (b) in the case of any tenancy, rent increases may be excluded or limited by the agreement.

THE TENANT must not fail to pay rent with the intention that the owner will take the rent from the security bond.

EXCESSIVE RENTS are dealt with in the Act but the provision only applies where the tenant is not getting the benefits which the owner agreed to provide or where the owner puts the rent up with the motive of getting rid of the tenant.

15. SECURITY BOND

NO PERSON may demand or accept a security bond which amounts to more than 4 weeks' rent (plus \$260 if the tenant is to keep a cat or a dog on the premises); but there is no limit on the amount of the bond where —

- (a) the premises have been the owner's principal residence for the previous 3 months; or
- (b) the weekly rent exceeds \$1200.

A PERSON who receives a security bond must —

- (a) immediately give a receipt showing —
 - (i) the date paid;
 - (ii) who paid it;
 - (iii) the amount paid; and
 - (iv) the premises for which it is paid;
- (b) pay the security bond within 14 days, or in the case of a real estate agent as soon as practicable after receiving the bond, to either —
 - (i) the Bond Administrator###; or
 - (ii) an authorised financial institution to be held in an account in the names of the owner and the tenant entitled "Tenancy Bond Account" or, if paid by a real estate agent, in an account in the name of the agent entitled "Tenancy Bond Trust Account"; and
- (c) within 28 days of paying the security bond to the Bond Administrator or an authorised financial institution###, give to the person who paid the bond a copy of the record of payment in the form contained in Schedule 4 to the *Residential Tenancies Regulations 1989* showing —
 - (i) the date on which the amount was paid;
 - (ii) the amount paid; and
 - (iii) in the case of payment to an authorised financial institution, the name of the financial institution and the name and number of the account into which the amount was paid.

Bond money will be held in the name of the owner and the tenant and will only be paid out if the owner and the tenant apply jointly, and failing that, the owner or the tenant must apply to a competent court for an order as to how the money is to be paid out.

INTEREST earned on bond money will be paid into an account called "the Rental Accommodation Fund" and can be used to fund the cost of administering the Act and educating people about the Act and for public housing.

Bond Administrator: address at time of printing: Forrest Centre, 219 St Georges Terrace Perth WA 6000.

Authorised financial institutions are banks, building societies and credit unions.

*16. ASSIGNMENT AND SUBLETTING

- (a) If an agreement allows the tenant to assign the tenant's interest (i.e. pass the tenancy on to someone else) or sublet (i.e. let someone else use the premises) with the consent of the owner, the owner must not refuse to consent without good reason or charge any fee for consenting apart from any reasonable expenses.
- (b) An agreement may allow a tenant to assign or sublet without the owner's consent, OR may completely rule out any assignment or subletting.

If the agreement does not contain one of the provisions mentioned in (b), then the provision mentioned in (a) automatically applies.

* Refers to provisions of the Act that may be excluded/varied where the tenancy agreement is in writing and signed by both the owner and the tenant.

*17. RATES, TAXES AND CHARGES

THE OWNER must pay any rates, taxes and charges for the premises, other than charges for water consumption.

A tenancy agreement may require that the tenant pay in full, or in part, the charges for water consumption.

18. ENDING A TENANCY

Tenancy for fixed period

If the tenancy is for a fixed period it cannot usually be brought to an end by notice before the end of that period. *Only paragraphs (a), (b) and (f) below apply to these tenancies.*

Tenancy not for fixed period

In these cases, either the owner or the tenant may bring the agreement to an end by giving notice in writing under one of the paragraphs below.

Form of notice

Notice given by the owner must be in the form contained in Schedule 4 to the *Residential Tenancies Regulations 1989*. Notice given by a tenant does not need to follow any particular form but must be signed and must identify the premises and show the date on which the tenant will leave.

When tenancy may be ended

Breach of agreement (other than non-payment of rent)

- (a) If a tenant does not keep his or her part of the agreement except for not paying rent, the owner may give a notice (**the first notice**) requiring that the matter be put right.

If the tenant does not put the matter right, then not less than 14 days after the first notice was given the owner may give another notice (**the second notice**) to the tenant ending the tenancy not less than 7 days after the second notice is given.

Breach of agreement (non-payment of rent)

- (b) If a tenant does not pay rent due under the agreement or gives a bad cheque in payment of rent due under the agreement, the owner may either —
- (i) give a notice (**the first notice**) to the tenant requiring payment of the outstanding rent and, if the rent is not paid, give another notice (**the second notice**) to the tenant, not less than 14 days after the first notice was given, ending the tenancy not less than 7 days after the second notice is given; or
 - (ii) on the day after the rent was due or on the dishonouring of the cheque, give notice to the tenant ending the tenancy not less than 7 days after the notice is given.

In the case of (ii) the tenancy does not end if the tenant pays the rent due under the agreement before the day specified in the notice for vacation of the premises. In addition, an application by the owner to a competent court to end the tenancy cannot be continued if the tenant pays the rent due together with the amount of any court application fee at least one day before the scheduled court hearing.

Sale of the rented premises

- (c) Except where paragraph (ca) applies, if an owner sells the premises and has to give vacant possession to the purchaser, the owner may give notice to the tenant ending the tenancy not sooner than 30 days after the notice is given.
- (ca) If the operator of a residential park sells park premises that include a site occupied by a tenant under a site-only

agreement for a periodic tenancy that has continued for 3 months or longer, the park operator may give notice to the tenant ending the tenancy, but must not require the tenant to give vacant possession of the site sooner than 60 days after the notice is given.

Notice without reason, owner

- (d) Except where paragraph (da) applies, an owner may, without giving any reason, give notice to the tenant ending the tenancy not sooner than 60 days after the notice is given.
- (da) Where a tenant occupies a site in a residential park under a site-only agreement for a periodic tenancy that has continued for 3 months or longer, the operator of the residential park may, without giving any reason, give notice to the tenant ending the tenancy, but must not require the tenant to give vacant possession of the site sooner than 120 days after the notice is given.

Notice without reason, tenant

- (e) A tenant may, without giving any reason, give notice to the owner ending the tenancy not sooner than 21 days after the notice is given.

Property uninhabitable

- (f) If the property is wholly or partly destroyed or cannot be lived in or is taken over by any authority by legal process, the tenant may give 2 days' notice, or the owner may give 7 days' notice, ending the tenancy.

Competent court's order

Where an owner ends a tenancy by giving notice, or a fixed term tenancy comes to an end, and the tenant does not leave the premises, the owner may apply to a competent court for an order for possession.

The owner or the tenant may also apply to a competent court to have a tenancy brought to an end under certain circumstances covered by the Act other than those set out above.

The owner is never permitted to force the tenant out of the premises without an order from the court.

Goods left behind

There are detailed provisions in the Act about what is to be done with goods that are left behind by a tenant at the end of a tenancy. Information about those provisions can be obtained by contacting the Department of Commerce. Apart from those provisions the owner cannot seize the tenant's furniture or other goods as compensation for rent owing.

19. GIVING OF NOTICES

A notice under the Act can be given —

- (a) to any person by handing or posting it to the person;
- (b) to a tenant, by giving it to —
 - (i) someone living in the rented premises who appears to be over 16; or
 - (ii) the person who usually pays the rent;
- (c) to the owner, by giving it to —
 - (i) the owner's agent;
 - (ii) someone living with the owner who appears to be over 16; or
 - (iii) the person who usually receives the rent.

Where there are 2 or more owners or tenants notice need only be given to one of them.####

Section 85 of the Act provides further information on the procedures for giving notices.

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* Refers to provisions of the Act that may be excluded/varied where the tenancy agreement is in writing and signed by both the owner and the tenant.