



Government Gazette

OF

WESTERN AUSTRALIA

(Published by Authority at 3.30 pm)

No. 75]

PERTH: WEDNESDAY, 9 AUGUST

[1989

RESIDENTIAL TENANCIES ACT 1987

RESIDENTIAL TENANCIES REGULATIONS 1989

(5) For the purposes of the Act, the exercise of any jurisdiction by the clerk in accordance with the Act shall be deemed to be the exercise of that jurisdiction by a magistrate sitting in the Small Disputes Division.

Review by magistrate of order made by clerk

8. (1) Where the clerk has, under section 12A of the Act, exercised jurisdiction in respect of any matter referred to in regulation 7, a magistrate sitting in the Small Disputes Division may, of his own motion or upon an application made under subregulation (2), review the matter and—

- (a) confirm an order made or step taken by the clerk; or
- (b) cancel an order made or step taken by the clerk and substitute an order or step that the magistrate could have made or taken under the Act if he had been exercising the jurisdiction.

(2) An application for review of a matter may be made by a party to the proceedings within 14 days after the making of the order or the taking of the step by the clerk.

(3) Before a magistrate exercises the power in subregulation (1), the clerk shall—

- (a) give to any applicant under subregulation (2) notice in writing setting out the time and place of the hearing of the review; and
- (b) give to each party who is not an applicant—
 - (i) notice in writing setting out the time and place of the review;
 - (ii) such notice of the review as the Chief Stipendiary Magistrate may direct generally, or as a magistrate may direct in any particular case; and
 - (iii) notice as to the effect of subregulation (4).

(4) On an application being made under subregulation (2), or on the decision by a magistrate to review a matter under subregulation (1), the operation of the order made or other step taken by the clerk is suspended until the review is completed, and then has effect subject to any order made by the magistrate.

Determination of nearest local court

9. For the purposes of section 13 of the Act, the distance of a local court from any premises is the distance by the most direct route using roads open to the public.

Scale of costs for section 24

10. Where a magistrate awards costs under section 24 of the Act he shall do so, so far as the circumstances will allow, on the basis of the scale of costs fixed by determination under section 58W of the *Legal Practitioners Act 1893*.

Amount prescribed for section 29 (2) (a)

11. The amount of \$500 is prescribed for the purposes of section 29 (2) (a) of the Act.

Information prescribed for section 79 (10)

12. The following information is prescribed as that to be provided by an owner who makes an application under section 79 (10) of the Act—

- (a) the name and address of the owner;
- (b) the name of the former tenant;
- (c) for each item sold under section 79 (8) of the Act—
 - (i) a short description of the item;
 - (ii) the amount received for the item; and
 - (iii) the day on which it was sold;
- (d) particulars of the amount claimed by the owner for—
 - (i) the cost of removing, storing and selling the goods; and
 - (ii) money owing by the tenant under the former tenancy agreement.

Letting fees

13. (1) The letting fees set out in Schedule 1 are prescribed for the purposes of section 86 (1) (a) of the Act.

(2) If the tenant has agreed to pay the whole or a part of a letting fee to a real estate agent for services rendered to the owner in connection with a letting, the agent is not entitled to demand or receive from the owner—

- (a) where the whole fee is agreed to be paid by the tenant, any further fee or charge; or
- (b) where part of the fee is agreed to be so paid, any further fee or charge exceeding the balance of the fee so agreed to be paid,

for services rendered in connection with the letting.

Information to be given by owner to tenant

14. (1) The information set out in the form in Schedule 2 is prescribed for the purposes of section 88 (2) (c) of the Act.

(2) An owner commits an offence and is liable to a fine not exceeding \$100 if he enters into a residential tenancy agreement without giving a copy of the form in Schedule 2 to the person who is the tenant under the agreement.

Penalty: \$100.

(3) For the purposes of subregulation (2), the form—

- (a) may be given by an agent of the owner;
- (b) shall be given not later than the time when the residential tenancy agreement is entered into.

(4) The form in Schedule 2 may be printed as a booklet, and references in subregulations (2) and (3) to the form include references to such a booklet.

(5) Subregulation (2) does not apply where a residential tenancy agreement is renewed or extended and there is no change in the parties under the agreement.

WESTERN AUSTRALIA

RESIDENTIAL TENANCIES ACT 1987

RESIDENTIAL TENANCIES REGULATIONS 1989

MADE by the Lieutenant Governor and Administrator in Executive Council under section 88.

Citation

1. These regulations may be cited as the *Residential Tenancies Regulations 1989*.

Commencement

2. These regulations shall come into operation on the day on which the *Residential Tenancies Act 1987* comes into operation.

Exemption for retirement villages

3. (1) Any residential tenancy agreement in respect of premises in a retirement village is a prescribed agreement for the purposes of section 5 (2) (g) of the Act.

~~(2) In subregulation (1) "retirement village" means a group of 4 or more residential premises established or maintained together as premises for occupation exclusively or principally by retired persons.~~

Exemption for certain agreements with squatters

4. (1) A residential tenancy agreement to which this regulation applies is a prescribed agreement for the purposes of section 5 (2) (g) of the Act.

~~(2) This regulation applies to a residential tenancy agreement between the Shire of Coorow and an occupant of a coastal shack on Reserve No. 22521 in the records of the Department of Land Administration (Victoria Location 11761) being an agreement entered into with the approval of the Minister for Lands under power conferred by Order under section 33 (2) of the *Land Act 1933*.~~

Exemption for certain agreements under the *Land Act 1933*

5. (1) The Governor, the Minister within the meaning of the *Land Act 1933*, or other person acting on behalf of the Crown in exercise of a specified power is prescribed for the purposes of section 5 (2) (f) of the Act.

(2) In subregulation (1) "specified power" means the power to grant or issue a lease or licence under section 32 (1) or (2), 38 (1), 41A (1), 43, 45A (1), 45B (1), 47 (4), 53, 86, 116 or 117, or under Part VI, of the *Land Act 1933*, or under the *War Service Land Settlement Scheme Act 1954*.

(3) A residential tenancy agreement entered into in pursuance of a direction to lease given under section 33 (3) (a) of the *Land Act 1933* is a prescribed agreement for the purposes of section 5 (2) (g) of the Act.

Amount prescribed for section 12 (7)

6. The amount of \$6 000 is prescribed for the purposes of section 12 (7) of the Act.

Matters in which clerk may act

7. (1) The following matters, and the powers referred to in subregulation (2), are prescribed for the purposes of section 12A of the Act—

- (a) the termination of an agreement under section 73 of the Act;
- (b) the making of a declaration under section 77 of the Act;
- (c) the determination under section 79 (10) of the Act of an amount that represents the balance of the proceeds of sale of goods;
- (d) the making of an order under section 79 (12) of the Act for the payment of an amount out of the Rental Accommodation Fund within the meaning of that section;
- (e) the giving of notice under clause 8 (3) of Schedule 1 of the Act;
- (f) the making of an order for payment under clause 8 (4) of Schedule 1 of the Act;
- (g) if all affected parties consent, the making of any order or the taking of any step that may be made or taken under the Act by a magistrate sitting in the Small Disputes Division;
- (h) the settling, signing and sealing of orders under the Act and copies thereof.

(2) Where the clerk is exercising any jurisdiction referred to in subregulation (1) he may also exercise any incidental power, and is subject to any duty, that a magistrate sitting in the Small Disputes Division could exercise, or is subject to, if he were exercising the jurisdiction.

(3) Notwithstanding subregulation (2) the clerk shall not—

- (a) exercise the power in section 25 of the Act; or
- (b) issue a warrant under section 20 (d) of the Act without the approval in writing of a magistrate.

(4) The clerk may at any time adjourn the hearing or determination of any matter and—

- (a) seek directions or further directions from; or
- (b) refer the matter for hearing or determination by, a magistrate sitting in the Small Disputes Division.

Disposal of unclaimed security bonds

15. (1) This regulation applies where a bond holder has reason to believe that 6 months have elapsed since the termination of a residential tenancy agreement and a security bond held in respect of that agreement—

- (a) has not been paid in accordance with an application under ~~clause (1) (a) or 7 (1) (a)~~ of Schedule 1 to the Act, as the case may require; or
- (b) has not been the subject of an application under clause 8 of that Schedule.

(2) Where this regulation applies, the bond holder shall give notice in writing to the owner and the tenant in whose names the security bond is held—

- (a) informing them that the bond holder has reason to believe that 6 months have elapsed since the termination of the residential tenancy agreement and that the security bond has not been dealt with in accordance with the Act;
- (b) inviting them to apply under the Act for disposal of the security bond; and
- (c) notifying them that if the security bond is still in the hands of the bond holder after 60 days from the date of the notice the amount will be paid to the Unclaimed Security Bond Account.

(3) If after 60 days from the date of a notice under subregulation (2) the security bond is still in the hands of the bond holder, the bond holder shall pay the amount to the Unclaimed Security Bond Account.

(4) A security bond that remains in the Unclaimed Security Bond Account at the expiration of 6 years from the day on which it is paid into that account shall be paid into the Consolidated Revenue Fund.

(5) Clauses 5 (1), (2) and (3) and 8 of Schedule 1 to the Act apply to a security bond while it is in the Unclaimed Security Bond Account.

(6) For the purposes of this regulation, the chief executive officer of the Crown Law Department shall establish in the Residential Accommodation Fund referred to in clause 3 of Schedule 1 to the Act an account called the Unclaimed Security Bond Account.

(7) In this regulation—

“bond holder” means the bond administrator or an authorized financial institution as defined in Schedule 1 of the Act;

“security bond” includes part of a security bond;

“Unclaimed Security Bond Account” means the account established under subregulation (6).

Prescribed financial institution

~~16. (1) Credit unions are prescribed to be authorized financial institutions for the purposes of the definition of that term in clause 1 of Schedule 1 to the Act.~~

~~(2) In subregulation (1) “credit union” means a credit union or a foreign credit union registered under the Credit Unions Act 1979.~~

Fees prescribed

17. The fees set out in the third column of Schedule 3 are payable to the clerk for the matters set out in the second column of that Schedule.

Forms prescribed

18. (1) A form referred to in the second column of the table at the foot of this regulation is prescribed for the purposes of the provision of the Act specified opposite thereto in the first column of the table.

(2) The forms so prescribed are set out in Schedule 4.

Provision of Act	TABLE	Description of Form
S. 61 (a)		Form 1— Notice by owner of termination of agreement
S. 79 (3) (a)		Form 2— Notice to former tenant as to disposal of goods
S. 79 (3) (b)		Form 3— Notice as to disposal of goods
Schedule 1, clause 5 (1) (a) } Schedule 1, clause 7 (1) (a) }		Form 4— Joint application for disposal of security bond
Schedule 1, clause 8 (3) and (4)		Form 5— Notice of intention to dispute application for disposal of security bond.

Matters prescribed for clauses 6 (b) and (c) of Schedule 1 to the Act

19. (1) The interest rate of 6 per cent is prescribed for the purposes of clause 6 (b) of Schedule 1 to the Act.

(2) For the purposes of clause 6 (c) of Schedule 1 to the Act—

- (a) the last days of the months of January, April, July and October are prescribed as the times for payment of interest to the Rental Accommodation Fund; and
- (b) the day on which a security bond or part of a security bond is paid to the owner or the tenant, and until such payment the last days of the months of April and October are prescribed as the times for payment of excess interest to the tenant.

SCHEDULE 1

[reg. 13]

LETTING FEES**1. Tenancy for a fixed term**

- (a) For a term of not more than 1 year, the maximum fee is 8.5 per cent of the gross rent for the term.
- (b) For a term of more than 1 year but not more than 3 years, the maximum fee is 8.5 per cent of the average annual gross rent for the term.
- (c) For a term of more than 3 years the maximum fee is—
 - (i) 8.5 per cent of average annual gross rent for the first 3 years; and
 - (ii) 1 per cent of average annual gross rent for each year or part thereof in excess of 3 years.

2. Tenancy for indefinite term

The maximum fee is a sum equal to 1¹/₂ times the rent for one week.

3. Tenancy for a fixed term or an indefinite term of a building of more than one storey where the whole building is let under one agreement

The maximum fee is a sum equal to the total rent for one week of all of the residential premises in the building.

SCHEDULE 2

[reg. 14]

RESIDENTIAL TENANCIES ACT 1987
INFORMATION FOR TENANT

1. 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 ~~WA Government Book Shop~~ †

2. ADVICE, COMPLAINTS AND DISPUTES

Ministry of ~~Consumer Affairs~~

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

The tenant should generally approach the owner or his agent to solve any problem before approaching the Ministry of ~~Consumer Affairs~~.

Small Disputes Division of a Local Court

If a dispute between an owner and a tenant has to be decided by a court it must be referred to the Small Disputes Division of a Local Court nearest to the rented premises. There are Local Courts in most major centres throughout the State.

However, if a person is claiming more than \$6 000 the claim must be brought in ~~an ordinary court~~, unless all parties agree to it being dealt with by the Small Disputes Division.

†Address at time of printing: Alexander Library Building, Perth Cultural Centre.

3. AGREEMENTS THAT BY-PASS THE ACT

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

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

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

Information to be Given

- ~~4. THE OWNER OR AN AGENT must give to the tenant—~~
- ~~(a) a copy of this form or booklet, not later than the time when the tenancy agreement is entered into;~~
 - ~~(b) a copy of any written tenancy agreement at the time it is signed by the tenant;~~
 - ~~(c) a copy of any written tenancy agreement 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 see that the tenant is notified in writing of the full name and address of the owner, any head lessor, and of the owner's licensed real estate agent (if any).

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

These requirements also apply to a new owner, on a change of ownership.

Any change in the details notified must also be notified in writing within 14 days.

A TENANT must—

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

5. USE OF PREMISES

THE OWNER must make sure that—

- ~~*(a) on the day on which it is agreed that the tenant will move in, the premises are vacant;~~
- ~~(b) the tenant has quiet enjoyment of the premises, e.g. except when exercising a right of entry, the owner must not interfere with the tenant's privacy or use of the premises.~~

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 ~~not break~~ 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.

8. URGENT REPAIRS BY TENANT

~~THE TENANT may recover the cost of urgent repairs to the premises or chattels from the owner 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 ~~not keeping~~ to the agreement;
- (c) 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 ~~on 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 fittings;
- (v) a serious roof leak;
- (vi) a gas leak;
- (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) ~~if any damage is caused by the removal, the tenant must repair it 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;

11

- (c) a payment for an option to take a tenancy;
- (d) a real estate agent's letting fee not exceeding one week's rent; or
- (e) a payment authorized 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.

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 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 ~~covered~~ 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 \$50¹⁰⁰ 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 \$500.

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;

~~and~~

~~(b) pay the security bond within 14 days, or 28 days in the case of a real estate agent to either—~~

- ~~(i) an authorized financial institution i.e. a bank, building society or credit union; or~~
- ~~(ii) the Bond Administrator's office² or the office of any Local Court.~~

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 magistrate for an order as to how the money is to be paid out.

~~INTEREST will not be paid on bond money held by the Bond Administrator. Bond money held by financial institutions will earn interest at the rate of at least 6 per cent. This will be paid to the W.A. Government towards the cost of administration of the Act and public housing. Any interest paid above 6 per cent will go to the tenant.~~

*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.

~~*17. RATES AND TAXES~~

~~THE OWNER must pay any rates and taxes for the premises.~~

²Address at time of printing: May Holman Centre, 32 St. George's Terrace, Perth.

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

- ~~(a) If a tenant does not keep his part of the agreement except for not paying the rent—
the owner may give a notice requiring that the matter be put right; not less than 14 days after that notice is given, if the tenant has not put the matter right, the owner may give another notice to the tenant ending the tenancy not sooner than 7 days after the notice is given.~~
- ~~(b) If rent that is due is not paid for 7 days or more or if a bad cheque is given for rent due, a notice may be given to the tenant ending the tenancy not sooner than 7 days after the notice is given.~~
- ~~(c) 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.~~
- ~~(d) 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.~~
- ~~(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.~~
- ~~(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.~~

Magistrate'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 magistrate sitting in the Small Disputes Division of a Local Court for an order for possession.

The owner or the tenant may also apply to a magistrate 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.⁴ 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.

SCHEDULE 3

[reg.17]

	\$
1. (a) Filing of an application under the Act by—	
(i) a financially disadvantaged person.....	19.50
(ii) any other person.....	26.50
(b) In sub-item (a) (i) "financially disadvantaged person" means—	
(i) a person who produces, or in respect of whom there is produced, to the clerk evidence to the satisfaction of the clerk showing that the person holds a Health Care Card, a Health Benefit Card, or a Pensioner Health Benefit Card issued by the Department of Social Security or the Department of Veteran's Affairs of the Government of the Commonwealth; or	
(ii) a person who satisfies the clerk that he is, by reason of his financial circumstances, unable to pay the prescribed fee.	
2. Filing under clause 8 (3) of Schedule 1 to the Act of a notice of intention to dispute.....	18.00
3. Filing of an application for review under regulation 8 (2).....	18.00
4. Search of an application—	
(a) by a reporting service approved by the Attorney General....	00.60
(b) by any other person.....	04.00
5. Photocopy of any document—	
(a) not exceeding 4 pages.....	03.00
(b) 5 pages or more.....	00.70
6. Certification that document is a true copy, for each document....	per page 03.00.

15

SCHEDULE 4

[reg.18]

FORM-1

RESIDENTIAL TENANCIES ACT 1987

Section 61 (a)

NOTICE BY OWNER OF TERMINATION OF AGREEMENT

TO
(Name of tenant(s))

I hereby give you notice of termination of your tenancy agreement and require you to deliver up vacant possession of the premises at—

.....
.....
(address of premises)

on.....
(date on which possession of the premises is to be given)

ONLY ONE OF
GROUNDS A, B,
C, OR D IS TO
BE SPECIFIED
—DELETE THE
OTHER THREE

A. This notice, which is not less than 7 days, is given on the ground (see section 62 of the Act) that you have breached a term of the agreement and the breach has not been remedied.

Particulars of the breach are—

.....
.....
.....

B. This notice, which is not less than 30 days, is given on the ground (see section 63 of the Act) that the owner has entered into a contract for sale of the premises and under the contract he is required to give vacant possession. The contract is dated and is made between the owner and

.....
.....
(name of purchaser)

C. This notice, which is not less than 60 days, is given in exercise of the owner's right (see section 64 of the Act) to give notice without specifying any ground for doing so.

~~D. This notice, which is not less than 7 days, is given on the ground (see section 69 of the Act) that the premises, or part of the premises—~~

*delete as appropriate

- ~~*have been destroyed~~
- ~~*have been rendered uninhabitable~~
- ~~*have ceased to be lawfully usable as a residence~~
- ~~*have been appropriated or acquired by an authority by compulsory process.~~

This ground is believed by the owner to apply because

.....

(set out the reason for owner's belief)

.....

.....

 Date..... Signed.....
 (owner/agent)
 Address.....

NOTES: See over for relevant provisions of the *Residential Tenancies Act 1987*.
 See section 8.5 of the Act for the manner in which the notice may be served on the tenant.

FORM 1—REVERSE

Notice of termination by owner upon ground of breach of term of agreement

62. (1) An owner may give notice of termination of an agreement to the tenant upon the ground that the tenant has breached a term of the agreement and the breach has not been remedied.

(2) Where an owner gives notice of termination under this section, the period of notice shall not be less than 7 days.

(3) Where notice of termination is given under this section upon the ground of a breach of the agreement other than the agreement to pay rent, the notice is ineffectual unless a notice specifying the breach and requiring that it be remedied is given to the tenant not less than 14 days before the notice of termination is given.

(4) Where notice of termination is given under this section upon the ground of a breach of the agreement to pay rent—

- (a) the notice is ineffectual unless—
 - (i) notice of the breach is given to the tenant not less than 7 days before the notice of termination is given; and
 - (ii) the rent or any part of the rent remained unpaid in breach of the agreement for not less than 7 days before the notice of breach was given; and
- (b) the notice is not rendered ineffectual by failure by the owner to make a prior formal demand for payment of the rent.

17

(5) Notwithstanding subsection (4) (a) (ii) where a tenant has tendered payment by cheque of rent due under an agreement and the cheque is not paid on presentation, the owner may immediately give notice of breach of the agreement.

(6) Where notice of termination is given under this section in respect of an agreement that creates a tenancy for a fixed term, the notice is not ineffectual by reason of the fact that the day specified as the day on which the tenant is to deliver up possession of the premises is earlier than the last day of that term.

(7) Failure by a tenant under an agreement that creates a tenancy for a fixed term to deliver up vacant possession of the premises at the expiration of the term does not constitute a breach of the agreement.

Notice of termination by owner who has entered into contract of sale

63. (1) An owner may give notice of termination of an agreement to the tenant on the ground that he has entered into a contract for sale of the premises to which the agreement relates and under that contract he is required to give vacant possession of the premises.

(2) Where an owner gives notice of termination under subsection (1) the period of notice shall be not less than 30 days.

(3) An owner or agent of an owner shall not give notice of termination under this section that falsely states the ground of the notice.

Penalty: \$1 000.

(4) This section does not apply to an agreement that creates a tenancy for a fixed term during the currency of that term.

Notice of termination by owner without any ground

64. (1) An owner may give notice of termination of an agreement to the tenant without specifying any ground for the notice.

(2) Where an owner gives notice of termination under this section, the period of notice must be not less than 60 days.

(3) This section does not apply in relation to an agreement that creates a tenancy for a fixed term during the currency of that term.

Notice of termination by owner or tenant where agreement frustrated

69. (1) Where, otherwise than as a result of a breach of an agreement, the premises, or a part of the premises, the subject of that agreement are destroyed or rendered uninhabitable or cease to be lawfully usable as a residence or are appropriated or acquired by any authority by compulsory process—

(a) the rent shall abate accordingly; and

(b) the owner or tenant may give notice of termination of the agreement to the other upon that ground.

(2) Where an owner gives notice of termination under this section, the period of notice shall be not less than 7 days.

(3) Where a tenant gives notice of termination under this section, the period of notice shall be not less than 2 days.

(4) Where notice of termination is given under this section in respect of an agreement that creates a tenancy for a fixed term, the notice is not ineffectual by reason of the fact that the day specified as the day on which the tenant is to, or will, deliver up possession of the premises is earlier than the last day of that term.

FORM 2
RESIDENTIAL TENANCIES ACT 1987

Section 79 (3) (a)

NOTICE TO FORMER TENANT AS TO DISPOSAL OF GOODS

TO
(name of former tenant)

of
(forwarding address of former tenant)

1. The residential tenancy agreement in respect of the premises at.....
.....
between you as tenant and me as owner was terminated on.....
(insert date)

2. The following goods were left on the premises—
.....
(specify goods*)
.....
which I put into storage under section 79 (2) of the Act on.....
(insert date)

3. Under section 79 (7) of the Act, a person who has a lawful right to the goods may reclaim them upon paying to me the reasonable costs incurred for removal and storage.

4. If the goods have not been reclaimed within 60 days after the date shown in paragraph 2 above—
(a) I am required by the Act to have them sold by public auction; and
(b) I am entitled, subject to approval of a magistrate, to receive from the proceeds of sale my costs and any amount owing to me under the terminated agreement and to pay the balance into a Local Court.

.....
(date) (signature of owner)
.....
(name of owner)
.....
(address of owner)
.....

*NOTE: Under section 79 (1) of the Act, an owner need not store, but may remove and destroy—
(a) perishable foodstuffs; and
(b) goods whose value is less than the estimated cost of removal, storage and sale.

19

FORM 3

RESIDENTIAL TENANCIES ACT 1987

Section 79 (3) (b)

NOTICE AS TO DISPOSAL OF GOODS

- 1. A residential tenancy agreement in respect of the premises at.....

 between
 as owner of the premises and.....
 as tenant was terminated on.....

- 2. The following goods were left on the premises—

 which have been put into storage under section 79 (2) of the Act on.....

- 3. Under section 79 (7) of the Act, a person who has a lawful right to the goods may reclaim them upon paying to the owner of the premises the reasonable costs incurred for removal and storage.

- 4. If the goods have not been reclaimed within 60 days after the date shown in paragraph 2 above the owner of the premises—
 - (a) is required by the Act to have them sold by public auction; and
 - (b) is entitled, subject to approval of a magistrate, to receive from the proceeds of sale his costs and any amount owing to him under the terminated agreement, and to pay the balance into a Local Court.

.....
 (date) (signature of owner)

 (name of owner)

 (address of owner)



20

FORM 4

RESIDENTIAL TENANCIES ACT 1987

Schedule 1, clauses 5 (1) (a) and 7 (1) (a)

JOINT APPLICATION FOR DISPOSAL OF SECURITY BOND

Reference

1. Any alteration on this form must be verified by a full signature of each party.
2. Cheques will be drawn payable to the parties in accordance with this application unless signed authorities are attached authorizing payment to be made otherwise.
3. This form must be fully completed before lodgement.

A. Full name and new postal address of tenant to whom refund should be paid (if applicable). Surname Other names Business Phone No. Private Phone No. Postcode
B. Full name and address of owner to whom refund should be paid (if applicable). Surname Other names Business Phone No. Private Phone No. Postcode
C. Address of rented premises. Postcode
D. The date on which the tenancy agreement ended:	X /19
E. Application for refund of security bond money	PLEASE PAY TENANT \$ PLEASE PAY OWNER \$ Total

N.B. DO NOT SIGN THIS FORM UNTIL THE TENANCY HAS ENDED

Signature of tenant (as on lodgement form)	Date
Signature of owner (as on lodgement form)	Date

OFFICE USE ONLY

Examined	Checked	Cheque No.	Amount
----------	---------	------------	--------

21

FORM 5

RESIDENTIAL TENANCIES ACT 1987

Schedule 1, clause 8 (3) and (4)

Plaint No. RT...../.....

IN THE LOCAL COURT
OF WESTERN AUSTRALIA
SMALL DISPUTES DIVISION
HELD AT

NOTICE OF INTENTION TO DISPUTE APPLICATION
FOR DISPOSAL OF SECURITY BOND

BETWEEN: APPLICANT
*Delete (Applicant's full name) *owner/tenant
one

and

..... RESPONDENT
(Full name of other party) *owner/tenant

TAKE NOTICE that I intend to dispute this application. My reasons for this are

.....
.....
.....

My address for service is—.....

.....

Date

Signature of RESPONDENT

COURT USE ONLY

LODGED FEE REC

By Command of the Lieutenant-Governor
and Administrator,

Clerk of the Council.

