

Fact Sheet 5:

Maintenance, repairs and rent reduction

As a tenant you have rights under the *Residential Tenancies Act 1987* (the Act). This fact sheet explains the law in Western Australia about maintenance, repairs, rent reduction and incorporates the changes made to the Act, which came into effect on 1 July 2013.

Who is responsible for maintenance and repairs?

Both you and the lessor have certain responsibilities.

The lessor: can be a private landlord, property manager, Department of Housing or other Community Housing provider.

Under the prescribed residential tenancy agreement the lessor must:

- Provide the property in a reasonable state of cleanliness and repair; and
- Maintain and repair the premises in a timely manner; and
- Comply with all building, health and safety laws.

The lessor's responsibilities outlined above extend to the fixtures and chattels provided on the property. An example of a fixture is a light, the carpet and swimming pools. An example of a chattel is a fridge, washing machine, hot water system and air conditioners. From 1 July 2013 the lessor/lessor cannot 'contract out' of any of the responsibilities listed above.

The tenant (you): Under the standard tenancy agreement you must:

- Keep the property in a reasonable state of cleanliness; and
- Advise the lessor as soon as practicable if any damage occurs; and
- Not intentionally or negligently cause or permit damage to the property.

You are not responsible for 'fair wear and tear' to the property.

What is fair wear and tear?

Fair wear and tear is a general term for anything that occurs through ordinary use. For example, carpet can become worn in frequently used areas; varnish wears off stair railings; net curtain naturally deteriorates in the sun and so on. Intentional damage (on purpose) or damage caused by negligence (not taking enough care) is not fair wear and tear.

What can I do if the lessor doesn't maintain the property?

There are a number of options you can take if the lessor does not maintain or repair the property to a satisfactory standard:

- You can discuss the problem with the lessor and ask them to fix it. Make sure you confirm what has been agreed in writing.
- You can write to the lessor with a specific request, stating clearly what you want repaired or replaced, and by when. It is also a good idea to say in your letter how the problem is affecting you.
- You may also serve a Notice of Breach of Agreement on the lessor (Form 23).
- If you have informed the lessor by letter or Form 23 and the problem has not been fixed, you can apply to the Magistrates Court and ask them to order that they carry out the repairs.
- You can claim compensation if you suffer a financial loss due to the lessor's failure to do maintenance and repairs.
- You can seek a reduction in rent.
- **Do not** withhold rent payments in an attempt to force the lessor to carry out repairs or maintenance. This will result in you breaching the agreement.

It is important to know that even while you may be dealing directly with the real estate agent about your tenancy, it is the lessor who takes on all the responsibilities under the *Residential Tenancies Act 1987*. If the lessor does something wrong and you have to fill out a Notice of Breach of Agreement (Form 23) or go to court, it is the lessor you name on the forms and notices.

How do I serve a Notice of Breach of Agreement?

A Notice of Breach of Agreement can be a formal Form 23 which can be downloaded from the Department of Commerce's website, or a letter written by you the tenant. The Form 23 and the letter require a clear statement on what the maintenance needs are.

In the Form 23 or letter ask the lessor to contact you as soon as possible to arrange for someone to come out and either inspect or repair the problems raised in your Form 23 or letter.

What if my repairs are urgent?

If your repairs are URGENT you should contact the lessor as soon as possible. If, within 24 hours (for restoration of essential services) or 48 hours (for other urgent repairs), you are unable to contact the lessor or the lessor fail to arrange the repairs, then you can arrange for the repairs to be made.

Repairs by you must be made to the minimum extent necessary by a qualified repair. The lessor must reimburse you for any reasonable costs.

Essential services include: gas leaks, dangerous electrical faults, broken hot water system, burst water service, sewerage leaks and function refrigerator (if supplied with the property).

Other urgent repairs: those that are not an essential service, but might cause damage to the property, injure a person or cause undue hardship or inconvenience to you.

How do I claim compensation?

If the lessor refuses to reimburse you for urgent repairs, the Magistrates Court may, at the time it makes an order for reimbursement of a tenant, also order the lessor to pay a tenant compensation bond to the Bond Administrator to cover future tenant compensation orders.

You can then apply to the court to have all or part of the tenant compensation bond paid to you using an Application for disposal of tenant compensation bond to tenant (Form 15). Further information is available from Magistrates Court website www.magistratescourt.wa.gov.au

How do I claim a rent reduction?

It may be possible for you to claim a rent reduction if there has been a significant reduction in the chattels provided with the property for example, furniture or white goods or in the facilities provided (for example, the toilet can't be used) since you entered into the tenancy, as long as there has been no fault on your part causing the damage or breach. Follow the same process as seeking compensation by writing a letter or application to court.

If you have any questions about the topics discussed in this fact sheet please contact your local tenancy advocate or the Department of Commerce on 1300 30 40 54 or go to www.commerce.wa.gov.au

METROPOLITAN: Fremantle Community Legal Centre (Fremantle) (08) 9432 9790 www.fremantle.wa.gov.au | Gosnells Community Legal Centre (Gosnells) (08) 9398 1455 www.gosclc.com.au | MIDLAS (Midland) (08) 9250 2123 www.midlas.org.au | Northern Suburbs Community Legal Centre Inc. Mirrabooka: (08) 9440 1663 Joondalup: (08) 9301 4413 www.nsclegal.org.au | SCALES, Rockingham: (08) 9550 0400 www.law.murdoch.edu.au/scales | Sussex Street Community Law Service Inc. (Victoria Park) (08) 6253 9500 www.sscls.asn.au | Welfare Rights & Advocacy Service (Perth) (08) 9328 1751 www.wraswa.org.au **REGIONAL:** Albany Community Legal Centre Inc. Albany: (08) 9842 8566, Free call: 1800 606 060 www.albanyclc.com.au | Agencies for South West Accommodation (ASWA), Bunbury: 08 9791 1877 www.glcl.com.au | Geraldton Resource Centre, Geraldton 08 9938 0600 www.grc.asn.au | Goldfields Community Legal Centre, Kalgoorlie: (08) 9021 1888 www.glcl.com.au | Kimberley Community Legal Services, Kununurra: (08) 919 3100 Free Call: 1800 686 020 | Peel Community Legal Service Inc. (Mandurah) (08) 9140 1613 www.peelclc.com.au | Pilbara Community Legal Service Karratha: 08 9185 5899 Newman: 08 9177 8708 Roeburne: 08 9182 1169 South Hedland: (08) 9140 1613 | Wheatbelt Community Legal Centre Inc. (Northam) (08) 9622 5200 www.wheatbeltclc.com.au | State wide legal telephone advice line Metro: (08) 9221 0088 Regional: 1800 621 888

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