

Fact Sheet 6:

Rent

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

Rent in advance

Under the Act a lessor cannot charge you more than two weeks rent in advance. You may decide to pay your rent monthly for example but it cannot be an enforceable term of the agreement and you can go back to paying fortnightly if you wish to do so.

How often can my rent be increased?

Periodic tenancy: If you are in a periodic tenancy, the lessor cannot increase the rent more than once every six months and the lessor must give you at least 60 days' notice of the proposed increase. The notice must be in writing and it must be made using a Form 10.

Fixed term tenancy: If you are in a fixed-term tenancy, the rent cannot be increased during the fixed term unless the rent increase, or the method of calculating the rent increase, is set out in the tenancy agreement.

The rent cannot be increased more than once every six months and the lessor must give you at least 60 days' notice. The notice must be made in writing and it must be made using a Form 10.

If your fixed term tenancy is for longer than 12 months, your agreement may have an additional term relating to subsequent increases. It is important to check your agreement for such clauses.

If your fixed term tenancy is coming to an end and you want to enter into new agreement for the same property, the lessor does not have to give you 60 days notice but the rent cannot increase for the first 30 days of the new agreement.

What if you are not given the correct notice?

If the lessor does not give the correct notice for a rent increase, the rent must stay the same. You can refuse to pay the rent increase until the correct notice is given. You can also refuse to pay the increase if the notice is not made using the Form 10 and/or it does not include the required information.

The 60 day notice period begins after you receive the correct notice.

How much can my rent be increased by?

For the lessor to be able to increase the rent during the term of a fixed term tenancy, the agreement must set out the amount of increase (e.g. \$20 per week) or the method of calculating the amount of the increase (e.g. increase by CPI or a percentage amount).

There are limited circumstances in which you may be able to argue that the rent is excessive. These include where there has been a significant reduction in the facilities in the property after you entered into the lease or where rent has been increased in order to make you end the tenancy.

Rent receipts

The lessor must give you a receipt within three days of receiving a rent payment unless the rent is paid into an authorized bank or credit union account nominated by the lessor.

The rent receipt must show:

- The fact that the payment was for rent;
- The date the rent was received;
- The name of the person paying the rent;
- The amount paid;
- The rental period covered by the payment;
- The address of the rented property.

Rent arrears

If you are in rent arrears (behind in rent) the lessor can take immediate legal action to terminate your tenancy.

To avoid legal action it is important that you contact the lessor to explain your financial situation and what arrangements you will make to pay the arrears. Get the agreement in writing if the lessor agrees to you repaying the arrears by a certain date or by installment.

The lessor has two options available against a tenant in rent arrears.

Option 1: The lessor may follow this process if they want to end your tenancy, as well as get you to pay monies owing. The Option 1 process is:

- You fall into rent arrears.
- The lessor may give you a written breach notice immediately. The breach notice may be a letter

or a Form 21 'Breach Notice for Non-Payment of Rent' and must give you up to 14 days to pay the rent owing.

- If you pay the rent owing, the lessor cannot take further action.
- If you do not pay the rent within 14 days of receiving a letter or Form 21, the lessor may give you a Form 1A: Notice of Termination for Non Payment of Rent. You will then have seven days to vacate the property.
- 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. The lessor must apply to court within 30 days of the date that the Form 1A states you must vacate the property.

Option 2: the lessor will want you to pay the rent owing but may not necessarily want to end your tenancy. The Option 2 process is:

- You fall into rent arrears.
- The lessor may give you a Form 1B: Notice of Termination for Non Payment of Rent immediately your rent is in arrears.
- If you pay the rent owing within seven days of the notice, the lessor cannot apply to the court.
- If you do not pay the rent owing within seven days of the notice, the lessor may apply to court for an order for the rent owing to be paid.
- The lessor may also apply to court for an order to terminate your tenancy and get back possession of the premises.
- The court date to hear the lessor's application cannot be earlier than 21 days from when you were given the Form 1B.
- The lessor must stop the court action if you pay the lessor the rent owing and the cost of the court application anytime up to one day before the court hearing.

What should I do if I get a notice about rent arrears from the lessor?

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 the notice is a breach notice for the non-payment of rent, this indicates the lessor is following Option 1 and will probably give you a Form 1A Notice of Termination if the rent is not paid.

If the notice is a Form 1B Notice of Termination this means the lessor is following Option 2. For this Option, make sure you pay any monies owing or sort the problem out in time to stop the lessor from taking further action.

- Check that the calculations are correct. Mistakes in rent calculation do happen. Compare your rent records/receipts to the lessor's calculations. Ask the lessor to give you a copy of the rent schedule/calendar showing how you are in arrears.
- Let the lessor know straight away if you think you are not in arrears.
- 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.
- 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 can't, see if the lessor is willing to give you extra time to pay the rent owing. Get any agreement confirmed in writing.

It is important that you **always** pay your rent, even if you are in a 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.

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.gosnells.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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