



# LEGAL AID

WESTERN AUSTRALIA

## WA floods – renting

**This fact sheet is for residential and commercial tenants and owners whose property has been damaged by severe storm related floods. It will explain your legal rights and options and at the end has the contact details of organisations that may be able to help you.**

### **My house or unit has been damaged or destroyed by floods and is no longer okay to live in. What can I do?**

Your options are different depending on whether you have a periodic tenancy (for an unlimited time, with no fixed end date) or a fixed term tenancy (for a definite period of time, with a start and end date) agreement.

#### **What if I rent a house and want to leave because of the damage?**

If you are the tenant (you are renting) and the house is unfit to live in, you do not have to keep living there. You will need to end the lease. How you do this depends on what sort of lease you have - a periodic tenancy or a fixed term tenancy. A periodic tenancy is an agreement that runs for an indefinite length - there is no set finishing date. A fixed term tenancy is an agreement for a fixed term.

There are several ways of ending a periodic tenancy. Not all are considered here. You can end a periodic tenancy:

- If the property is destroyed or made uninhabitable by giving the owner/agent 2 days notice in writing stating the reason for ending the tenancy. Get legal advice if this applies to you.
- At any time, for no reason by giving the owner/agent not less than 21 days notice in writing.
- At any time if you and owner agree. The agreement must be in writing.

There are several ways a fixed term tenancy can be ended. Not all are covered here. You can end a fixed term tenancy **before** the expiry date when:

- The property is destroyed or rendered uninhabitable. You can end the tenancy by giving the owner/agent 2 days notice in writing, stating the reason for termination. Get legal advice if this applies to you.

- You and the owner/agent agree. The agreement must be in writing. Get legal advice in this situation.

If there is a dispute you may need some evidence of the unfit condition of the house, eg photos.

For more information about the details needed in giving notice when ending a lease, read the **Tenants Advice Service** fact sheets on its website at <http://www.taswa.org> and in particular the information about ending a tenancy when the agreement becomes frustrated.

### **What if I rent a house and want to pay less rent because the house is damaged?**

If you want to stay and the house is completely or partly unfit to live in because of the floods or storms/cyclones, you can try to negotiate reduced rent with the owner or agent. You need to pay the rent while you negotiate.

If you can't reach an agreement you can apply to the Magistrates Court for a reduction in rent on the basis there has been a significant reduction in the chattels and/or facilities at the property since you entered into the lease. A court order only applies from the date you made the application to the court, not from the time the problem started.

### **What if I own a rental property and want the tenant to leave?**

If you own the house and it is now unfit for the tenant to live in, you cannot make a tenant move out immediately so try to work out an agreement with them.

You do not have to help the tenant find another place to live in but your help in doing so at this time would be appreciated. You are also allowed to inspect an unfit property but you must let the tenant know in advance that you are doing this (if they still live there).

If you cannot reach an agreement with the tenant you can end the lease by giving the tenant an official notice of termination of agreement. You must give the tenant no less than 7 days notice. If the tenant still does not vacate the premises on or before the date specified, you will have to obtain an eviction order from the **Magistrate's Court of Western Australia**. You must never seek to forcibly evict a tenant or lock them out of the premises.

### **Can I get any help to resolve a dispute?**

When a dispute arises between owners and tenants it is always preferable if the parties can negotiate a settlement themselves without resorting to court action. The **Tenants Advice Service** or the **WA Department of Commerce - Consumer Protection division** may be able to help.

### **What happens with the bond?**

Tenants should generally be able to get their bond back if the lease has been terminated.

The bond should have originally been lodged by the owner with the State Government bond administrator at the Department of Commerce – or if the owner is a licensed real estate agent, in a Tenancy Bond Trust Account.

If the tenant and owner agree then they complete a joint application for disposal of bond money, specifying the amount of the bond to be returned to each.

If the tenant and owner do not agree to the amount of bond each should receive then either can apply to the Magistrate's Court of Western Australia for an order specifying how much bond money should be paid to each party.

### **My rental property has been damaged but is still okay for me to live in.**

#### **What can I do?**

If you are renting, you need to contact your owner or agent immediately to talk about whether the repair needed to fix the damage is 'urgent'. Urgent repairs include things such as a gas leak, serious flood damage. If you cannot get hold of the owner urgently then you are also able to arrange and pay for urgent repairs yourself and claim the cost back from the owner at a later time. These repairs must be done by a licensed repairer, where that is required by law, for you to be successful in claiming the cost back from the owner.

If the damage is not urgent, you should try to make an agreement with the owner to have the repairs completed in a reasonable time. It may be that you can agree to a rent reduction during any period when the repairs remain undone. If you are unable to reach agreement on these matters you can apply to the Magistrate's Court of Western Australia for orders specifying any repairs required, and rent reduction. However you should not reduce or withhold rent without an order or agreement.

### **What if a commercial property has been damaged?**

Owners and tenants should always check their lease to see if it specifically states what happens when part of the property is damaged. If the owner does not repair the property within a reasonable time, the tenant may be able to end the lease. If the owner thinks that the repairs are impractical, they may be able to end the lease.

Whether the owner or the tenant is responsible for cleaning up flooded premises or paying for the clean up will depend on the lease's terms, the type of premises and how they are insured.

### **What if I cannot reach an agreement with the owner or real estate agent?**

The law is complex in this area. Get legal advice about your specific circumstances.

The **Small Business Development Corporation** may be able to help as it provides specialist small business guidance, awareness and education service on all aspects of commercial and retail tenancy lease negotiations and operations.

The **State Administrative Tribunal** provides a mediation service and determines disputes in relation to retail and commercial shop lease matters.

### **Who is responsible for insurance?**

Generally owners will choose to maintain insurance on a residential property and tenants will insure their own contents.

Depending on the lease, the tenant may be required to insure a commercial rental property. If the tenant was supposed to do this but did not – or did not have enough insurance - the tenant may have to pay the owner for any losses caused by a flood.

This is a complex area of the law. Tenants and owners should get legal advice about their specific lease terms and obligations.

## **Is any financial help available from the government?**

Australian and/or State Government assistance may be available if the impact of the severe storms/floods meets the criteria to be declared an “eligible natural disaster” for the purposes of Natural Disaster Relief and Recovery Arrangements (NDRRA). For more information on this see **Information sheet 84 Floods – debt issues** which is available from any Legal Aid WA office.

## **Where can I get help?**

- For residential tenancy matters (tenants only) contact the **Tenants Advice Service** on **(08) 9221 0088** (8.30am – 4.30pm weekdays ) or **1800 621 888** (country freecall 1.00pm – 3.30pm weekdays)
- Go to the **Department of Commerce - Consumer Protection division** website at:  
[http://www.commerce.wa.gov.au/ConsumerProtection/Content/Business/Commercial\\_tenancy/index.htm](http://www.commerce.wa.gov.au/ConsumerProtection/Content/Business/Commercial_tenancy/index.htm) or contact them on **1300 30 40 54** for advice on policy and content aspects of retail/commercial shop tenancy laws
- Go to the **Magistrates Court WA** website at:  
[http://www.magistratescourt.wa.gov.au/R/residential\\_tenancy\\_ame](http://www.magistratescourt.wa.gov.au/R/residential_tenancy_ame)



[ned regulations 2005 forms.aspx?uid=1471-5224-2977-6780](#) or a registry for the forms needed for the disposal of bond money and other tenancy related applications such as eviction

- For commercial tenancy matters contact the **Small Business Development Corporation** on **(08) 9220 0222**
- Contact the **State Administrative Tribunal** on **(08) 9219 3111** for information on the mediation service it provides for disputes in relation to retail and commercial shop lease matters



## Legal Aid Offices

**TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)**

**Translating and Interpreting Service 131 450**  
**National Relay Service (for hearing and speech impaired) 133 677**

[www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)

### **Perth Office**

55 St Georges Terrace, Perth, WA 6000  
1300 650 579  
(08) 9261 6222

### **Fremantle Regional Office**

Shop 7, Queensgate Arcade, William Street, Fremantle, WA 6160  
(08) 9336 9100

### **Midland Regional Office**

Landgate Building, 1 Midland Square  
Cnr The Avenue and Old Great Northern Highway  
Midland, WA 6056  
(08) 9274 3327

### **Southwest Regional Office**

Koombana Court, 141 Victoria Street, Bunbury, WA 6230  
(08) 9721 2277

### **Great Southern Regional Office**

Unit 3, 43-47 Duke Street, Albany, WA 6330  
(08) 9892 9700

### **Goldfields Regional Office**

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430  
(08) 9025 1300

### **Midwest & Gascoyne Regional Office**

Unit 7, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530  
(08) 9921 0200

### **Pilbara Regional Office**

28 Throssell Road, South Hedland, WA 6722  
(08) 9172 3733

### **West Kimberley Regional Office**

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725  
(08) 9195 5888

### **East Kimberley Regional Office**

98 Konkerberry Drive, Kununurra, WA 6743  
(08) 9166 5800

### **Christmas/Cocos Islands Office**

Administration Building Gaze Road,  
Christmas Island, Indian Ocean, WA 6798  
(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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