

Natural disasters (WA) – renting issues

If you are a residential or commercial tenant or a lessor in Western Australia whose property has been damaged by natural disasters such as bushfires or severe storm related floods, this infosheet may answer some of your queries.

It does not replace legal advice. It is important to get legal advice about your individual situation. Do this as soon as possible as limitation dates may apply which could affect your options.

My house or unit has been damaged (or destroyed) and is no longer okay to live in. What can I do?

If your home has been destroyed or damaged as a result of a natural disaster, 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.

There are several ways of ending either type of tenancy. Not all are considered here.

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 tenancy agreement. How you do this depends on what sort of tenancy agreement you have – a periodic tenancy or a fixed term tenancy.

Ways you can end a tenancy include:

- If the property is destroyed or made uninhabitable, by giving the lessor not less

than two days' notice in writing stating the reason for ending the tenancy. Get legal advice if this applies to you.

- If it is a periodic tenancy, at any time, for no reason by giving the lessor not less than 21 days' notice in writing.
- If it is a fixed term tenancy, at any time if you and the lessor agree. The agreement must be in writing. Get legal advice in this situation.

For more information about the details needed in giving notice when ending a tenancy agreement, read the Circle Green Community Legal fact sheet on its website at: <https://circlegreen.org.au/> under the heading *Tenancy*.

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

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

If you own the house and it is now destroyed or 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 to carry out necessary repairs, but you must let the tenant know (if they still live there) at least 72 hours in advance, except in the case of emergency.

If you cannot reach an agreement with the tenant, you can end a periodic or fixed term agreement by giving the tenant an official notice of termination of the agreement. You must give the tenant no less than seven days' notice before the termination day. If the tenant 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 help to resolve a dispute?

When a dispute arises between lessors and tenants it is always preferable if the parties can negotiate a settlement themselves without going to court.

Circle Green Community Legal (for residential tenants but not lessors) or the Department of Energy, Mines, Industry Regulation and Safety – Consumer Protection may be able to help.

What happens with the bond?

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

The bond should have originally been lodged by the lessor with the Department of Mines, Industry Regulation and Safety - Consumer Protection's Bond Administrator.

If the tenant and lessor agree, 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 lessor do not agree to the amount of bond each should receive, 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 about repairs?

If you are renting, you need to contact your lessor (or their property manager) immediately to talk about whether the repair needed to fix the damage is 'urgent'. Urgent repairs fall into two types: repairs for the supply or restoration of an essential service, or other urgent repairs. Essential services include repairs to: a gas leak, the supply of hot water, sewerage leaks or dangerous electrical faults. Other urgent repairs are those where if the repair is not done it might cause damage to the property, injure you or cause undue hardship or inconvenience to you.

If you cannot contact the lessor (or their property manager) within 24 hours for an essential repair and 48 hours for another urgent repair (or if contacted, the lessor fails to make sure the repairs will be carried out as soon as practicable), then you are able to arrange for the repairs to the minimum extent necessary and pay for the repairs yourself.

These repairs must be done by a suitably qualified repairer for you to be successful in claiming the cost back from the lessor. The lessor must reimburse you as soon as practicable for any reasonable expenses.

If the damage repairs are not urgent, you should try to make an agreement with the lessor to have the repairs completed in a reasonable time. You should get any agreement in writing. If you are unable to reach agreement on this, you can apply to the Magistrate's Court of Western Australia for orders specifying any repairs required. However, you should not pay less rent or withhold rent without an order or agreement.

What can I do about paying less rent while the house is damaged?

If part of the premises is destroyed or rendered uninhabitable, then the rent automatically reduces accordingly in proportion to the amount of damage.

You should try to seek agreement with your lessor about the reduced rent. If you cannot reach agreement, you should pay the reduced rent you think is reasonable. If the lessor disagrees, the lessor can make an application to court for an order for you to pay more rent and make up the shortfall. If you pay an unreasonably low amount of rent, the lessor could get a court order to terminate the tenancy.

Alternatively, if there has been a significant reduction in the chattels and/or facilities at the property, then you can apply to the Magistrates Court for a rent reduction.

What if a commercial property has been damaged?

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

Whether the lessor or the tenant is responsible for cleaning up fire damaged or flooded premises or paying for the clean-up will depend on the tenancy agreement's terms, the type of premises and how they are insured.

What if I cannot reach an agreement with the lessor?

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 on all aspects of commercial and retail tenancy rental agreement negotiations and operations.

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

Who is responsible for insurance?

This is a complex area of the law. Tenants and lessors should get legal advice about their specific rental agreement's terms and obligations.

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

Depending on the tenancy agreement, 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 lessor for any losses caused by a bushfire or flood.

Is any financial help available from the government?

In cases of natural disaster government help may be available. Information can be found on:

- Services Australia (Cth) website for those directly affected by natural disasters: <https://www.servicesaustralia.gov.au/natural-disaster>.
- The Department of Fire and Emergency Services' website under [Recovery](#). If you need help in deciding if you qualify for any help email: drfawa@dfes.wa.gov.au or phone the numbers provided on the website.
- See also the Legal Aid WA Infosheet: *Natural disasters (WA) – debt issues* which is available from the Legal Aid WA website or any office.

Where can I get more information?

- Residential tenants living in WA can contact Circle Green Community Legal on (08) 6148 3636. Check its website for details of

temporary hotlines for natural disaster advice for tenants. You can also access fact sheets on common tenancy issues on its website at: <https://circlegreen.org.au> under the heading *Tenancy*.

- Go to the Department of Energy, Mines, Industry Regulation and Safety – Consumer Protection website at: <http://www.commerce.wa.gov.au/consumer-protection> or call the Contact Centre 1300 304 054 or email: consumer@dmirs.wa.gov.au for advice on policy and content aspects of retail/commercial shop tenancy laws.
- Visit the Magistrates Court WA website at: https://www.magistratescourt.wa.gov.au/_ap/ps/DocList/doclist.aspx or a registry office for

the forms needed for tenancy related court applications.

- For commercial tenancy matters contact the [Small Business Development Corporation](#) Business Advisory Service on 133 140 or the office on (08) 6552 3300 weekdays from 8.30am to 4.30pm (WST). It has a free dispute resolution service for small business owners (faced with business-to-business or business-to-government disputes).
- Contact the [State Administrative Tribunal](#) on (08) 9219 3111 or 1300 306 017 (cost of a local call) for information on the mediation service it provides for disputes about retail and commercial shop rental agreement matters.

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