

1.07 Penalties for Breaching the Residential Tenancies Act

Tenants, agents and property owners who breach the Residential Tenancies Act (1987) may be prosecuted and fined.

Under section 8 (1)(d) of the Residential Tenancies Act, the Department of Commerce (DoC) has the power to investigate:

- An offence committed under the Act, and/or
- The infringement of a party's rights arising out of a residential tenancy agreement. This can include the investigation of a person who was a prospective or former party to a residential tenancies agreement.

The Commissioner for Fair Trading is the only person who may prosecute a party for an offence committed under the Residential Tenancies Act (s.9).

How can I complain about a breach of the Residential Tenancies Act?

If you wish to make a formal complaint you can complete a residential tenancy complaint form or write a letter. Complaint forms are available from the Department of Commerce (website: www.commerce.wa.gov.au; phone: 1300 30 40 64) or Tenants Advice Service.

Send your complaint form to:

The Consumer Protection Division, Department of Commerce
Locked Bag 14, Cloisters Square
PERTH WA 6850
Australia

Your complaint should clearly detail the breach (dates, people, places), and ask the Commissioner to investigate the matter and, if appropriate, prosecute the offending party. The complaint must be made within three months of the termination of the tenancy agreement (s.9(3)(b)) to enable the Commissioner to take action on the complaint.

The Commissioner may negotiate or otherwise seek to resolve a problem rather than prosecute. If you believe the owner/agent should be prosecuted and charged the relevant penalties, you will need to state why (s.8(1)(d)).

What can a tenant be penalised for?

Below is a list of tenant breaches of the Residential Tenancies Act and penalties they may attract:

Failing to pay rent with the intention that it be recovered from the security bond -(s.52).	\$1000
Giving the owner a false name or place of occupation (s.53(1)), or not notifying the owner that their place of occupation has changed within 14 days of the change - (s.53(2)).	\$1000
Not leaving a forwarding address when vacating the property - (s.53(3)).	\$1000

What can an owner be penalised for?

Below is a list of owner/agent breaches of the Act and penalties they may attract:

Requiring or receiving money from a tenant or prospective tenant for entering into, renewing, extending or continuing a tenancy agreement (s.27(1)). NOTE: A tenant can be asked to pay an option fee or any money as authorised by the Act (s.27(2)).	\$1000
Asking a tenant to pay more than a fortnights rent before or during the first two weeks of a tenancy agreement, or requesting another rent payment before the first payment has expired (s.28 (1) and (2)).	\$1000
Asking for more than one security bond (s.29(1)), or requesting more than four weeks rent as a bond (unless allowed under s29(2)).	\$1000
Not providing a receipt for security bond monies received, or not depositing the bond into an account as required under Schedule 1 of the Act (s.29(4)).	\$4000
Demanding or receiving any rent that is beyond an amount set by a Court Order (s.32(7)).	\$1000
Not giving a receipt within three days of receiving the rent (except where the rent is paid into a bank, building society or similar body (s33(2)), or if the receipt does not show all the required details (s.33(1)).	\$1000
Falsely stating the grounds for termination when the owner has in fact entered into a contract for sale of the premises (s.63(3)).	\$2000
Refusing a tenant on the grounds that a child will be living on the premises (s.56(1)) or instructing any person, or stating their intention in an advertisement, not to accept a tenant should a child be living with them (s.56(2)). NOTE: This penalty does not apply if the premises are the principal residence of the owner, or if the owner or agent lives in adjoining premises (s56(3)).	\$1000
Not providing the tenant with a copy of the written tenancy agreement document at the time it is signed by the tenant and ensuring that a fully executed copy of the document is delivered to the tenant within 21 days or as soon as reasonably possible (s.54(1)).	\$1000
Where the tenant is required to be told of the owner's name and address, not notifying the tenant of any change in name or address within 14 days - (s.51(4)).	\$1000
Failing to notify the tenant of their full name and address (the address can be care of a real estate agent (s.51(1)); or the name and address of any other person that has superior title on the property; or if the owner is a body corporate, the body corporate's name and address, at the time of entering into the agreement (s.51(1)).	\$1000
Altering, removing or adding any lock by the agent of the owner without the consent of the tenant in the absence of a reasonable excuse (s45(2) and (3)).	\$4000 plus any civil liability
Requiring a post-dated cheque for payment of rent - (s.35).	\$1000
Not keeping records showing the rent received from the property (s.34(1)), or knowingly making a false entry in the records showing the rent received (s.34(2)).	\$1000

Entering premises for the purpose of recovering possession of the property without a Court Order whilst the tenant is still in possession of the property (legally or otherwise (s.80). <u>NOTE:</u> A Termination Notice is not a Court Order.	\$4000
Entering into an agreement or arrangement that is inconsistent with a provision of the Act or with intent to directly or indirectly defeat, evade or prevent the operation of the Act (s.82(2)).	\$2000

What can both owners and tenants be penalised for?

Below is a list of breaches of the Act that could apply to owner/agents and tenants, and the penalties they may attract:

Ignoring a Court Order (s.16(1)) or failing to appear in court after being summonsed or not producing summonsed documents (s.19(2)) without reasonable excuse.	\$2000
Demanding or receiving money or a reward for representing or helping someone in legal proceedings (except in certain circumstances) (s.22(5)).	\$1000
Altering, removing or adding any lock without the prior consent of the other party in the absence of a reasonable excuse (s.45(2)).	\$4000 plus any civil liability