

2.08 The Tenancy Agreement

What is a Tenancy Agreement?

A Tenancy Agreement is sometimes known as a lease. It sets out the conditions of your tenancy including things like:

- How long can you stay - for a fixed or unlimited time?
- How much rent do you have to pay and how often?
- Who pays the water costs? Are they shared?
- How many people may live in the premises?

The Tenancy Agreement is a legal contract between you and the owner. It allows you to live in rental housing in exchange for “valuable consideration”. This usually means money or the tenant’s labour. Some examples of tenancy agreements are available to download from the TAS website (www.taswa.org). Be aware that other tenancy agreements may differ from these.

The Tenancy Agreement must not include any conditions that break the law as set out in the *Residential Tenancies Act WA* (1987). However, not all agreements are covered by the Act. Check with TAS or the Department of Commerce (Ph: **1300 304 054**) if you are not sure, especially if you live with the owner or in a shared tenancy. Also see chapters [1.09 Boarders and Lodgers](#) and [1.10 Shared Tenancies](#).

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Are there different types of Tenancy Agreements?

YES. A Tenancy Agreement can be a:

- **written** contract;
- **spoken** (verbal) contract, or
- a combination of both.

It may be for a fixed or an open amount of time:

- A “**periodic tenancy agreement**” is for an indefinite amount of time. There is no definite end date.
- A “**fixed term tenancy agreement**” is for a definite amount of time. A fixed term tenancy has a start and end (expiry) date.

The Tenancy Agreement is a legally binding contract. There can be serious consequences if either party breaks or breaches the agreement. It is important that you understand and agree with the conditions and obligations that are in the Tenancy Agreement. It is best to avoid verbal or partially verbal agreements because they are difficult to prove. Sometimes only the basic conditions of the Tenancy Agreement are written, with other conditions being added verbally. Make sure that any verbal conditions or ‘promises’ are included in your written agreement. For example, any repairs or maintenance the owner/agent has agreed to.

Be wary if the owner/agent won't write verbal conditions or 'promises' into the agreement, as this may be an indication that they will probably not carry it out when the need arises. If you live in a flat or unit, your Tenancy Agreement may state you will agree to comply with strata company or body corporate rules. If this is the case, you should ask for a copy of the rules so you know what you are agreeing to.

Make sure you know and understand the conditions of the Tenancy Agreement before you sign it (or agree).

Will the agreement include how much and when rent is paid?

YES. Your rental commitments will be agreed as part of the Tenancy Agreement. Whether the tenancy is a fixed term or periodic agreement, the rent may be paid weekly, fortnightly, monthly or at any other interval decided on by the owner and yourself. For further information, see chapter [3.01 Rent, Rent Increases, and Rent Reductions](#).

Do I have to be over 18 to sign a Tenancy Agreement?

Generally you must be over 18 to enter into a contract. However contract law does allow minors to enter into tenancy agreements for necessities. Housing may fall under this category if you demonstrate that you cannot access other accommodation (for example, you are homeless or must leave home due to domestic violence, etc). Housing is recognised as being a human right and a necessity of life and, it could be argued, cannot be withheld from someone just because of their age. This is recognised in the *Equal Opportunity Act (WA)* which states that access to accommodation cannot be restricted on the grounds of age (see chapter [1.08 Discrimination](#) for more information). If you are having problems with someone who says you are too young to sign a contract, contact TAS.

NOTE: Some accommodation programs will have set age limits. To apply for Department of Housing (DH) accommodation you must be at least 17, however applicants between the ages of 16-18 may be housed at the discretion of the DH depending on the applicant's needs and circumstances. Many supported accommodation programs accommodate 15-25 year olds.

What does the agreement say?

The agreement sets out the terms of the tenancy. These are known as conditions and will guide what happens if either party breaks one of the conditions. It is important to be aware and understand all the tenancy conditions before you sign. Take the agreement home and read it carefully, get a friend to read and "witness" (sign) it.

How does the Residential Tenancies Act WA (1987) relate to my agreement?

The Residential Tenancies Act sets out the rights and responsibilities of the owner and tenant and how Tenancy Agreements may be ended. These rules are not always written into your agreement but they will automatically apply to your tenancy. For further information, see chapter [1.03 The Residential Tenancies Act](#). Certain parts of the Act **can** be changed in your agreement. To be legally binding, these changes must be written in the agreement, not just agreed to verbally. See the section below on "contracting out".

What conditions should be included?

When you read the Tenancy Agreement ask the following questions to make sure you understand and agree to the conditions:

- Is the tenancy for a fixed term or periodic?
- If it is a fixed term tenancy, when does the tenancy start and finish, and can I stay on after the expiry date?
- How much rent do I pay?
- How often is the rent due (weekly, fortnightly or monthly)?
- How can I pay the rent (by cash, cheque or any other method)?
- Do I pay the rent to the owner, agent or the owner's bank account? (Also see chapter [3.01 Rent, Rent Increases, and Rent Reductions](#)).
- Who pays the water costs? How will I be charged for water usage? (Also see [2.05 Water Charges](#)).
- Can I rent rooms out to other people? (Also see chapter [1.10 Shared Tenancies](#)).
- Is the house likely to be offered for sale during the tenancy?
- Do I have to get the carpets or curtains professionally cleaned when I move out? (This might depend on whether they were cleaned before you moved in).
- Is the property to be rented 'as is'? Does the owner or the tenant have to maintain or do repairs to the property? (Also see chapter [3.05 Maintenance and Repairs](#)).
- What happens if the owner wants to enter the property regularly for any reason? (Also see chapter [3.03 Privacy and Quiet Enjoyment](#)).
- Am I allowed to have pets? (Also see chapter [2.09 The Security Bond](#)).

What is the 'contracting out' clause?

The term "contracting out" refers to clauses that can be included in your written Tenancy Agreement that change your tenancy rights as set out in the *Residential Tenancies Act*. A contracting out clause may say "Sections 42 and 43 do not apply to this contract" or "Sections 40 and 45 may have been modified, excluded or restricted", or be specific as to what is excluded such as "The tenant is responsible for all maintenance on the property" (which excludes s.42).

The wording of a "contracting out" clause can allow the owner to modify or exclude sections of the Act without you knowing what the sections refer to or how it will affect your tenancy rights. Do not agree to a clause if you do not understand the sections that are being contracted out and the implications this has on your rights. As at 2006, the Real Estate Institute of WA's (REIWA) *Standard Residential Property Lease* takes away some rights, as provided by the Act, such as your right to do urgent repairs and claim the cost back from the owner (s.43).

If your Tenancy Agreement contains a contracting out clause, make sure you understand how it affects your rights.

The *Residential Tenancies Act* sets out which sections **can** be altered in a written Tenancy Agreement (see s.82). These include:

- Tenant's responsibility for cleanliness and damage (s.38).
- Tenant's conduct on the premises (s.39).

- The tenant to have vacant possession of the rented property on the day the tenant is to move in (s.40).
- The owner/agent cannot rent out the property if they know there are legal barriers to the tenant's occupation of the property (s.41).
- Owner's responsibility for providing the property in a clean condition and the owner's responsibility for maintaining and carrying out repairs on the property (s.42).
- Compensation where a tenant sees to URGENT repairs (s.43).
- The owner's responsibility to provide and maintain locks. The inability of the owner or the tenant to remove or change the locks without the other party's permission (s.45).
- Owner's right of entry (s.46).
- Right of tenant to affix and remove fixtures (s.47).
- Right of tenant to assign or sub-let (s.49).
- Vicarious responsibility of tenant for breach by other person lawfully on premises (s.50).
- Cost of written agreement to be borne by owner (s.55).
- Cost of council rates, land taxes, and/or water rates (s.48).
- Discrimination against tenants with children (s.56). **See note.

No other sections of the Residential Tenancies Act can be contracted out. For example, under no circumstances can the owner/agent take away your right to be served the correct notices before they evict you.

***NOTE on discrimination against tenants with children:*

Section 56 of the *Residential Tenancies Act* makes it unlawful for an owner/agent to refuse accommodation because of your intention to have a child/children live with you at the rental premises, unless the rental premises are the owner's principal place of residence, or the owner/agent lives in the adjoining premises (next door). Even though it is lawful for the owner/agent to contract out of this section and to, in effect, discriminate against tenants with children, you can still choose to lodge a complaint with the Department of Commerce (DoC) about the unfair practice of this section of the *Residential Tenancies Act* and how it has affected your access to accommodation. You can get free advice about this matter from DoC's advice line for consumers, Ph: **1300 304 054**.

Should I Get a Copy of My Agreement?

The owner must give you a copy of your agreement at the time you sign it (s. 54 (1)(a); penalty \$1000) and a booklet which sets out your rights and responsibilities (s.88(2)(c) and Regulation 14, clause 2). You should also get a fully executed copy of your Tenancy Agreement within 21 days, or as soon as practical, after it is signed (s.54(1)(b); penalty \$1000).

The owner named in a tenancy agreement must provide their full name and address to the tenant at the time of entering into the tenancy agreement. If the property is being managed by a Real Estate Agency, it is sufficient for the owner to notify the tenant of the address of that Agency.

If the property is owned by a body corporate, the full name and business address of the secretary of the body corporate must be provided. If the owner/agent changes address, they must provide the tenant with the new address in writing within 14 days. Likewise if a new owner/agent is appointed as a result of the property being sold or taken over (see chapter 4.08 A 'Superior Title' Claim: Takeover of the Property).

You must be given a copy of your Tenancy Agreement by the owner/agent.

List of Tenants' Rights Manual chapters referred to in this info sheet:

- [1.03 The Residential Tenancies Act](#)
- [1.08 Discrimination](#)
- [1.09 Boarders and Lodgers](#)
- [1.10 Shared Tenancies](#)
- [2.05 Water Charges](#)
- [2.09 The Security Bond](#)
- [3.01 Rent, Rent Increases and Rent Reductions](#)
- [3.03 Privacy and Quiet Enjoyment](#)
- [3.05 Maintenance and Repairs](#)
- [4.08 A 'Superior Title' Claim: Takeover of the Property](#)