

## 2.09 The Security Bond

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### What is the security bond for?

The owner/agent is allowed to ask you to pay bond money as security for the property. This is to cover any costs which you may be liable for at the end of the tenancy such as property damage or rent arrears.

### How much can I be asked to pay?

The owner/agent can not ask for more than the equivalent of four weeks rent as bond (*Residential Tenancies Act WA (1987), s.29*), unless:

- The rent is more than \$1200 per week; or
- The owner has lived in the premises as their main place of residence for at least three months immediately prior to you moving in.

If the exception applies, the owner/agent can ask for any amount as bond. Try and negotiate if you think the bond is too high.

The owner/agent can face a penalty of \$1000 if an unlawful amount of bond is charged.

Bond assistance, paid by the Department of Housing (DH), is available to low income earners who need help to pay a bond on a private rental property. Contact your nearest DH office to see if you are eligible. Also see chapter [1.06 Financial Assistance for Tenants](#) for more information.

### Do DH tenants have to pay bond?

All DH tenants must pay a bond when they enter into a DH tenancy agreement, equal to 4 weeks market rent. You can arrange to pay the bond to DH by paying a minimum of \$60 at the start of the tenancy and then in affordable instalments of at least \$5 per week. DH does not have to lodge the bond in accordance with the *Residential Tenancies Act*. For more information, see chapter [1.04 Department of Housing Tenants](#).

### Can I be asked to pay extra money if I have pets?

If you are allowed to keep a cat or dog, an extra \$260 (in total, not per pet) can be charged as 'pet bond'. This is to meet the cost of any fumigation of the property that may be required at the end of the tenancy. The money should be returned to the tenant at the end of the tenancy, less ONLY the expense of fumigation. If no fumigation is needed, the pet bond should be returned in full to the tenant.

### Where does the money go?

The bond money is held during the tenancy in an account with either an authorised financial institution (either in a trust account or individual account), or with the Bond Administrator. The bond lodgement provisions are intended to make sure the money is secure until both parties agree on how it should be disbursed at the end of the tenancy. The three options are detailed below.

**The bond money must be held in an approved account during the tenancy.**

1. Real Estate agents (not owners) are allowed to put all collected bond monies into one account, in the name of the agent, held with an authorised financial institution (rather than separate account held jointly with each tenant). This account is called a “Tenancy Bond Trust Account”.
2. Owners (not real estate agents) can pay the bond into an authorised financial institution to be held in an individual account in the names of the owner and the tenant titled “Tenancy Bond Account”.
3. Real estate agents and owners can also lodge your bond with the Bond Administrator (managed by the Department of Commerce) in an individual tenancy bond account showing your name and the name/s of the owner.

A real estate agent who receives a bond must pay it to a bond holder as soon as possible. An owner who receives a bond must pay it within 14 days of receiving the bond. It is an offence to fail to take this action.

## **How do I know where my money has gone?**

When you give your bond to an owner/agent:

- The owner/agent must immediately give you a receipt showing the name of the person who paid it, the amount, date and the address of the rental property.
- You should be asked to sign a Combined Form 1 and 8 (Lodgment of Bond Security Money) which states where the bond will be lodged. The owner/agent also needs to sign this Form. If the bond is paid to a financial institution, they may have their own version of this Form.
- The owner/agent must keep a record of the bond payment, which includes the date, amount, name and number of the account into which the bond was paid, and must give you a copy of this record (usually a copy of the Combined Form, or similar version used by a financial institution) within 28 days of the bond being lodged. If your bond is paid to the Bond Administrator, the Department of Commerce will send you a record of the payment within 28 days of the payment.

A sample of the Combined Form 1 and 8 can be viewed on the TAS website – [www.taswa.org](http://www.taswa.org).

If you are in a shared tenancy situation, make sure that everyone contributing to the bond has their name on the Lodgement form so as to protect their stake in the bond.

## **What happens if there is a change to one of the parties named in the bond account?**

The details of the joint bond account (including the signatures) will need to be updated if the parties to the tenancy agreement change during the tenancy.

Details will change if:

- the property is sold and there is a different owner;
- one or more of the tenants in a shared tenancy decides to move out; or
- the owner decides to employ a different managing agent.

If the Bond Administrator holds the bond, a Form 9 Notice of Variation of Security Bond must be filled out, listing whatever changes have taken place, signed by the new owner/agent/tenant, and given to the bond holder. If a financial institution holds the bond, they may have their own version of this Form.

A sample of the Form 9 can be viewed on the TAS website – [www.taswa.org](http://www.taswa.org).

If a tenant or owner has changed without informing the bond holder (usually by lodging a Form 9) and is no longer available to sign a disposal form at the end of the tenancy, then the bond holder will not be able to release the bond. In these circumstances you will have to go to the Magistrates' Court and ask the Court to make an order for the bond to be released.

Where joint tenants are named on the tenancy agreement and one or more decide to leave or is replaced (with the consent of the owner/agent) by new joint tenants, all parties can decide to change the tenancy agreement and have the bond paid out, then replaced by a new bond. Alternatively Form 9 can be used to notify the bondholder of the change of tenants, so that at the end of the tenancy the bond can be paid out to the current tenants. The incoming tenant can pay the departing tenant their share of the bond.

### **Can the bond be increased?**

Under the *Residential Tenancies Act*, the bond may be increased 12 months after the start of the tenancy or 12 months after the last bond increase. But only if the rent has been increased in accordance with the *Residential Tenancies Act* during the tenancy AND as long as the bond is not more than four weeks rent, plus a pet bond if applicable (s. 31 (1) and (2)).

The owner/agent must give you at least **60 days notice** in writing, of any increase (s.31 (1) (a)); unless you are a DH tenant. See chapters [1.04 Department of Housing Tenants](#) and [3.01 Rent, Rent Increases and Rent Reductions](#) for more information.

### **What if the owner/agent breaches the bond requirements?**

The owner/agent is committing an offence if they:

- Charge too much bond (\$1000 penalty, s.29 (1));
- Do not issue a receipt for the bond (\$4000 penalty, s.29 (4));
- Do not lodge the bond correctly (\$4000 penalty, s.29 (4)); or
- Do not give you a copy of the record of bond payment (\$4000 penalty, s.29 (1)).

If the owner/agent does not comply with their obligations, you can tell them in writing that they have breached the *Residential Tenancies Act*, and ask them to remedy (fix) the breach and comply with the Act in future. Refer to chapters [3.10 Requesting that the Owner Remedy a Breach of Agreement](#) and [3.13 Writing a Letter to the Owner/Agent](#) for further information about your options.

The Commissioner for Fair Trading has the power to prosecute a person for breaching the *Residential Tenancies Act*. You can lodge a formal complaint by writing to the Commissioner and asking that the situation be investigated and that the Commissioner consider taking action against the owner/agent. Contact the Department of Commerce (Ph: **1300 304 054**).

If your bond hasn't been lodged correctly and the owner/agent won't give your money back at the end of the tenancy, you should apply to the court. Tell the court about the bond not being lodged correctly. Many courts have decided that illegally held bond money can't be kept by the owner. This is because the owner can't be allowed to benefit from an illegal act. See chapters [5.01 Getting the Bond Money Back](#), [5.03 Applying to the Magistrates Court for a Bond Disposal Order](#), [6.03 Preparing for Court](#) and [6.04 Going to Court](#), for more information.

## **Should I be paid the interest earned on my bond money?**

Under the *Residential Tenancies Act*, there is no interest payable on money lodged with the Bond Administrator.

If the money is held by a financial institution, the financial institution is required to pay interest at a rate set by the *Residential Tenancies Regulations 1989*. The tenant may be paid interest if the financial institution pays interest at a level above that set by Regulation. Financial institutions do not usually pay interest above the level set by Regulation.

## **What happens to the interest earned on my bond money?**

The interest earned on bond monies is paid into a special fund managed by the state government called the Rental Accommodation Account. The monies in this account can be used to pay the cost of the Court, Bond Administrator and the Department of Commerce in carrying out their functions under the *Residential Tenancies Act*, to community agencies for tenant advice and education purposes (such as Tenants Advice Service), and if there is a surplus, for the purpose of public housing.

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

- [1.04 Department of Housing Tenants](#)
- [1.06 Financial Assistance for Tenants](#)
- [3.01 Rent, Rent Increases and Rent Reductions](#)
- [3.10 Requesting that the Owner Remedy a Breach of the Agreement](#)
- [3.13 Writing a Letter to the Owner/Agent](#)
- [5.01 Getting the Bond Money Back](#)
- [5.03 Applying to the Magistrates Court for a Bond Disposal Order](#)
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- [6.04 Going to Court](#)