

3.2 Rent Arrears

Under the *Residential Tenancies Act (1987)*, if you are in rent arrears (behind in rent) the owner/agent can take legal action immediately.

To avoid legal action it is important that you contact the owner/agent to explain your financial situation and what arrangements you will make to pay the arrears. Get the agreement in writing if the owner/agent agrees to you repaying the arrears by a certain date or by instalment.

The owner may take legal action immediately you are behind in the rent (rent arrears).

Two alternative actions

There are two alternative actions the owner/agent may take against a tenant in rent arrears – see the sections on **Option 1** and **Option 2** below.

The owner/agent may follow the **Option 1** process if they want to end your tenancy, as well as get you to pay monies owing. For **Option 2**, the owner/agent will want you to pay the monies owing but may not necessarily want to end your tenancy.

Samples of forms have been attached to the end of this chapter.

Option 1

WARNING: If you do not pay the rent owing in the breach notice period of the Option 1 process, the owner/agent may take steps to evict you. (See the Option 1 flow chart on the next page).

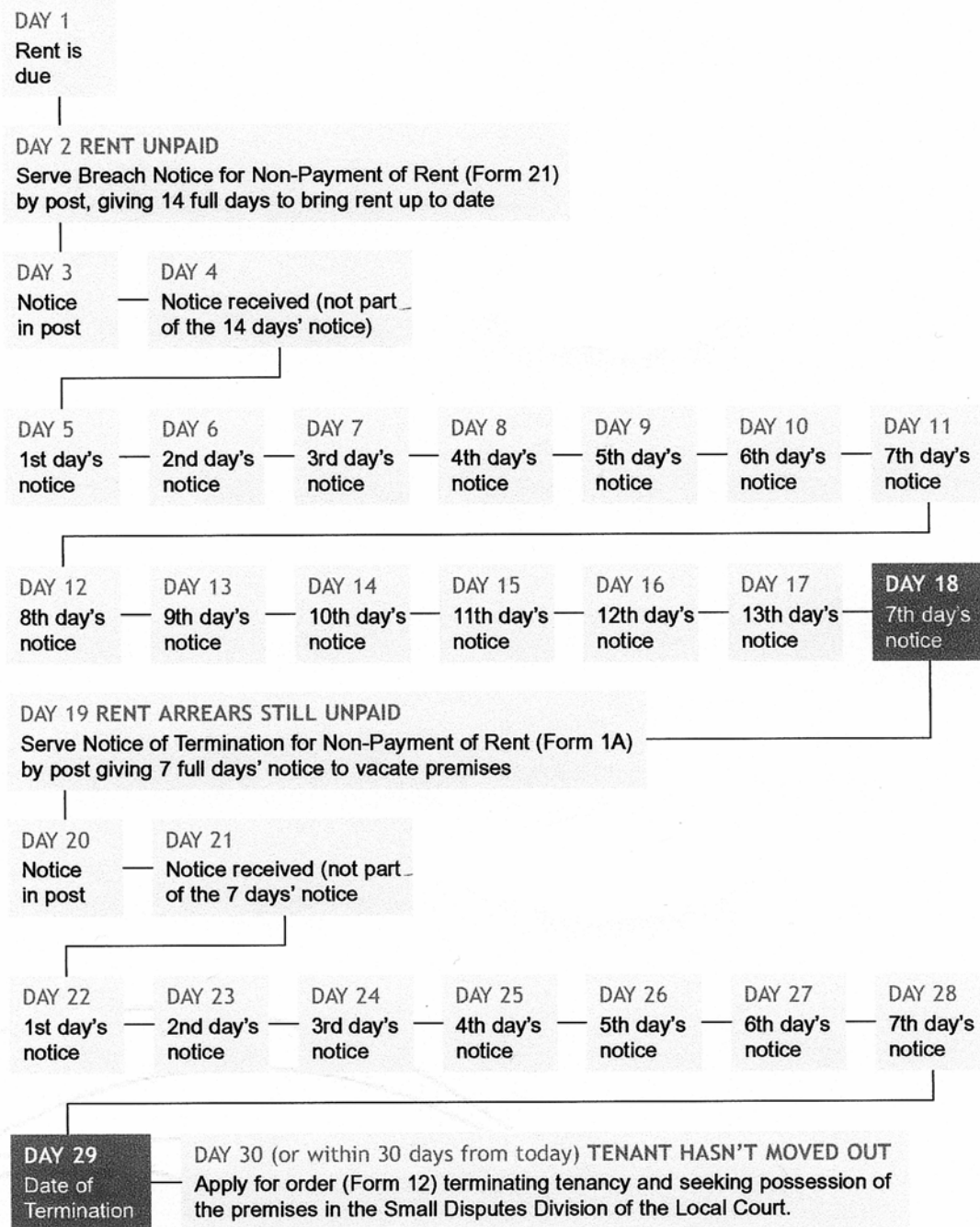
The Option 1 process is:

- You fall into rent arrears.
- The owner/agent may give you a written breach notice **immediately** your rent is in arrears. The breach notice may be a letter or a **Form 21: Breach Notice for Non-Payment of Rent**.
- **You must be given not less than 14 days to pay the rent owing.**
- If you pay the rent owing, the owner/agent can not take further action.
- Under section 62(4) of the Residential Tenancies Act, the owner/agent may give you a **Form 1A: Notice of Termination for Non Payment of Rent** if you do not pay the rent owing.
- Even if you pay the rent owing after you have been given the **Form 1A**, the owner/agent may still apply to court to evict you. Under the Residential Tenancies Act (section 71), the owner must apply to court within 30 days of the expiry of the **Form 1A**. See chapter [4.7 Evictions](#) for more information.

The Option 1 (Alternative One) process is shown in the flow chart below:

Alternative One

Service of Notice of Termination for Failure to Pay Rent



Note: Days 3, 4, 20 and 21 are eliminated if the notice is served personally on tenants or occupants.

Acknowledgment: The Department of Consumer and Employment Protection is acknowledged for providing permission to Tenants Advice Service to reproduce its flow charts as shown in this information sheet.

Option 2

Under Option 2, the owner/agent **must** stop their court action if you pay the rent owing to the owner/agent any time up to one day before a court hearing date (s.62(5)(a)). You will also need to pay the court application fee if the owner has made an application to court (s.62(5)(b)). See the Option 2 flowchart on the next page.

The Option 2 process is:

- You fall into rent arrears.
- The owner/agent may give you a **Form 1B: Notice of Termination for Non Payment of Rent** immediately your rent is in arrears.
- The owner can not apply to the court if you pay the rent owing within the **seven days of the notice**.
- If you do not pay the rent owing, the owner/agent may apply to court for an order for the rent owing to be paid.
- The owner may also apply to court for an order to terminate your tenancy and get back possession of the premises. (See chapter 4.7 Evictions for more information).
- The court hearing to hear the owner/agent's application can not be earlier than 21 days from when you were given the **Form 1B**.
- The owner/agent's court application cannot be continued if you pay the owner/agent the rent owing and the cost of the court application up to one day before the court hearing.

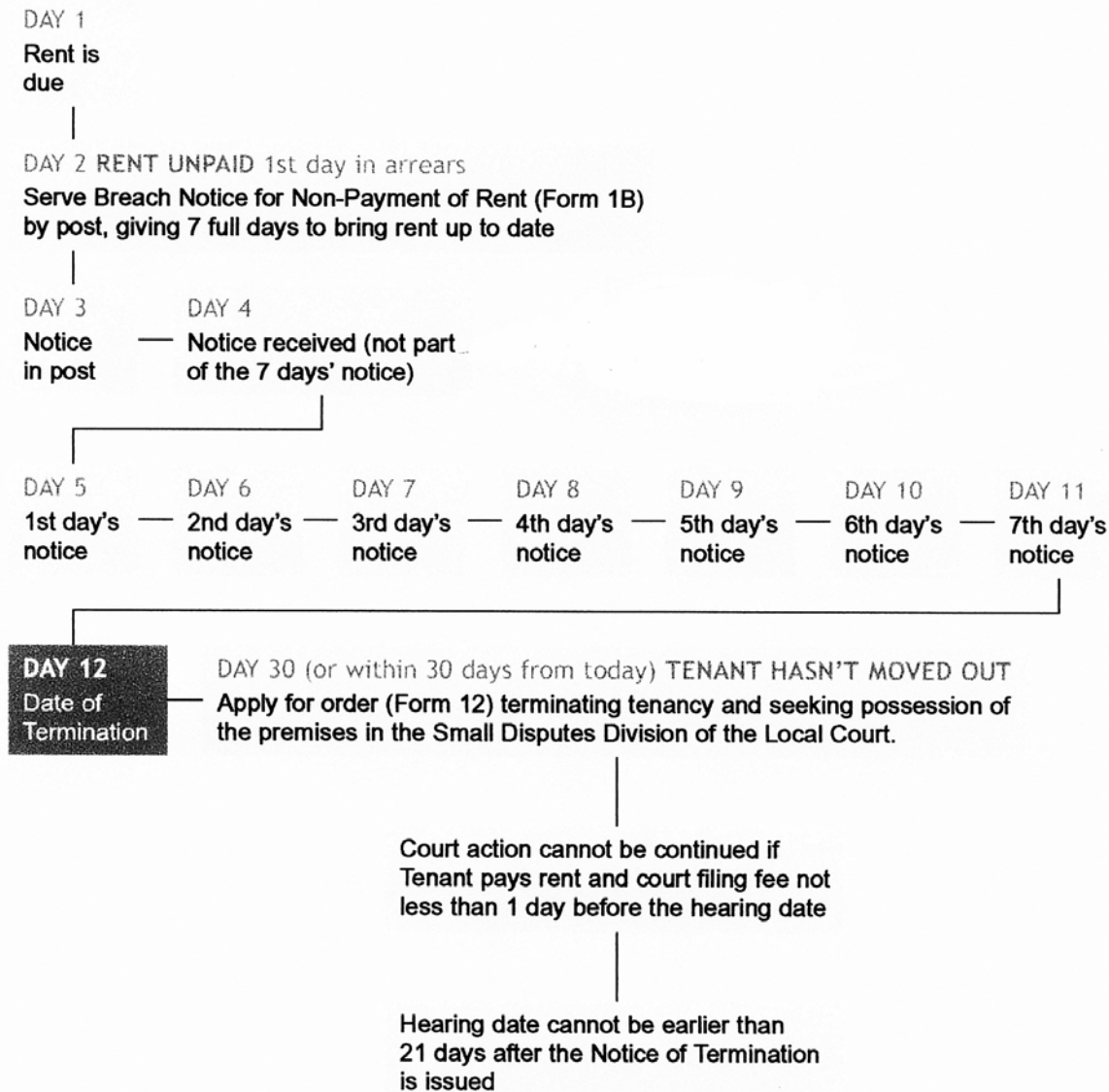
The court can not give the owner/agent an order to evict you if you pay the rent owing (and owner/agent's court application cost) to the owner/agent up to one day before the court hearing.



The Option 2 process is shown in a flow chart below.

Alternative Two

Service of Notice of Termination for Failure to Pay Rent



Note: Days 3, 4 are eliminated if the notice is served personally on tenants or occupants.

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Serving Notices

There are a few things the owner/agent must consider when serving a notice for rent arrears (**Form 1A** or **1B**).

- 1) The owner/agent may choose to arrange for the notice to be hand delivered to the tenant. The notice cannot be left in the tenant's letterbox nor can it be hand delivered to a person who 'appears' to be a minor (that is, 16 years of age or under).
- 2) The owner/agent may choose to mail the notice. The time taken to deliver the notice by the standard postal system needs to be taken into consideration before the notice can take effect. The owner/agent needs to allow at least 2 days (if in Perth), or 3 days (in the country). Certified mail is not acceptable.
- 3) The notice period should not include the day on which the notice is served (the day the tenant receives the notice) or the last day of the notice period.

What should I do if I get a notice about rent arrears from the owner/agent?

- **Check the notice to see which Option the owner/agent is following and how long you have to respond before further action can be taken.** If the notice is a breach notice for the non-payment of rent, this indicates the owner/agent is following Option 1 and will probably give you a **Form 1A Notice of Termination** if the rent is not paid.

If the notice is a **Form 1B Notice of Termination** this means the owner/agent is following Option 2. For this Option, make sure you pay any monies owing or sort the problem out in time to stop the owner/ agent from taking further action.

- **Check that the owner/agent's calculations are correct.** Mistakes in rent calculation do happen. It is important to check that the arrears the owner/agent calculates are correct. Compare your rent records to the owner/agent's calculations. Check your rent receipts. Ask the owner to provide you with a copy of the rent schedule/calendar showing how you are in arrears.
- **Let the owner know straight away if you think you are not in arrears.** If you think the owner/agent's calculations are wrong, write a letter and explain why. See Chapter [3.13 Writing a Letter to the Owner/Agent](#) for more information. Include a copy of your rent receipts and/or documents that support your calculations. Always keep your original rent receipts.

- **If you are in rent arrears - try and come to an arrangement with the owner/agent.**
Explain to the owner/agent why you are in arrears and when you will be able to pay the rent owing. If you can, pay the rent arrears **before** the owner/agent takes further action. If you can't, see if the owner/agent is willing to give you extra time to pay the rent owing. Get any agreement confirmed in writing.
- **Seek financial assistance - a financial counsellor may be able to help.**
See chapter [1.5 Financial Assistance for Tenants](#) for more information.

Do I have to go to court if I pay the rent owing and the owner's court fee (Option 2)?

Under Option 2, if the owner has applied to court and you have paid the rent and court application fee at least one day before the court hearing, the owner/agent should contact the court to withdraw the application before the court hearing.

You can check with the court to see if the owner/agent has withdrawn the application. If the application has not been withdrawn, you can ask the court to have it withdrawn because you have paid the rent.

However, if the application has not been withdrawn by the owner/agent or you are not able to have it withdrawn, it is important that you go to court on the date of the hearing.

It is important that you go to court (unless the court hearing has been cancelled) to prove you have paid the monies owing so that no further action is taken.

Will the court automatically grant the owner/agent an eviction order if I haven't paid the rent owing (Options 1 and 2)?

The court may give the owner/agent an Order for Termination (eviction order) if satisfied that:

- 1) The **Form 1A** or **Form 1B Notice of Termination for Non Payment of Rent** was given to the tenant, and that it complied with and was given in accordance with the *Residential Tenancies Act* (s 71 (2)(a)).
- 2) The owner/agent has proved that you are in rent arrears, that you didn't pay within the time allowed and that the rent arrears breach is serious enough to justify termination of the tenancy (s 71 (2)(b)).

This means the owner/agent must give the correct rent arrears notices (*Form 1A* or *Form 1B*) and have followed the right process.

You can ask the court to consider the circumstances that you believe don't justify the tenancy being ended. For example, that you have been living in the premises for a long time and have always paid rent on time before, or that you fell into arrears because you lost your employment.

However, it is not clear which circumstances the court will take into account or on what basis they will consider the termination of the tenancy agreement is not justified. See chapter [6.3 Going to Court](#) for more information.

The court is likely to give the owner/agent the order if you do not attend the court hearing to present your side of the story.

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

- [1.5 Financial Assistance for Tenants](#)
- [3.13 Writing a Letter to the Owner/Agent](#)
- [4.7 Evictions](#)
- [6.3 Going to Court](#)

SAMPLE FORMS ATTACHED TO THE END OF THIS CHAPTER:

- **Form 21: Breach Notice for Non-Payment of Rent**
- **Form 1A: Notice of Termination for Non-Payment of Rent**
- **Form 1B: Notice of Termination for Non-Payment of Rent**

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RESIDENTIAL TENANCIES ACT 1987

Section 62(4)(a)

SAMPLE

BREACH NOTICE FOR NON-PAYMENT OF RENT

TO:

(Name of tenant(s))

.....

(Address of rented premises)

I hereby give you NOTICE that:

- 1. You currently owe \$..... in rent arrears and are in breach of your residential tenancy agreement; and
2. I require you to pay this outstanding rent without delay.

DATE: SIGNED:

(Owner/agent)

ADDRESS:

..... POSTCODE:

IMPORTANT INFORMATION FOR TENANTS

- Do not ignore this notice. If you do not pay the outstanding rent within 14 days the owner can give you a NOTICE OF TERMINATION requiring you to vacate the premises.
If you believe that your rent has been paid up to date you should show to the owner or the owner's agent your rent receipts or proof of payment and your calculations showing you are not in arrears.
You should contact the owner or the owner's agent immediately to try and resolve this matter.
You should seek advice immediately if you do not understand this notice or if you require further information.

TIS (TRANSLATING AND INTERPRETING SERVICE) TELEPHONE 13 1450 AND ASK TO SPEAK TO THE DEPARTMENT OF CONSUMER AND EMPLOYMENT PROTECTION 1300 304 054

FORM 1A
RESIDENTIAL TENANCIES ACT 1987
Section 61(a)

SAMPLE

NOTICE OF TERMINATION FOR NON-PAYMENT OF RENT

(NOTE: This form is **ONLY** to be used if not less than 14 days' notice of breach of the agreement to pay rent has been given.)

TO:

(Name of tenant(s))

I hereby give you notice of termination of your residential tenancy agreement and require you to deliver up vacant possession of the premises at—

.....

(Address of rented premises)

.....

(Date on which vacant possession of the premises is to be given)

This notice of NOT LESS THAN 7 DAYS is given to you on the ground that you have breached the agreement to pay rent and the rent or any part of the rent due remains unpaid.
(See section 62 of the Residential Tenancies Act 1987.)

Notice of the breach was given to you on

DATE: SIGNED:

(Owner/agent)

ADDRESS:

..... POSTCODE:

IMPORTANT INFORMATION FOR TENANTS

- The owner is seeking to terminate your residential tenancy agreement and requires you to vacate the premises on the date specified in this notice.
- This notice has no effect unless you were given a notice specifying the breach of the agreement and requiring payment of the rent not less than 14 days before you were given this notice.
- If you do not vacate the premises, the owner may apply to court for an order terminating your residential tenancy agreement and requiring you to vacate the premises.
- If you pay the rent due under the agreement after receiving this notice, the payment will not prevent the owner applying in court for an order terminating your residential tenancy agreement and requiring you to vacate the premises.
- You should contact the owner or the owner's agent immediately to try and resolve this matter.
- You should seek advice immediately if you do not understand this notice or if you require further information.

TIS (TRANSLATING AND INTERPRETING SERVICE) TELEPHONE 13 1450 AND ASK TO SPEAK TO THE DEPARTMENT OF CONSUMER AND EMPLOYMENT PROTECTION 1300 304 054

SAMPLE

NOTICE OF TERMINATION FOR NON-PAYMENT OF RENT

(NOTE: This form is ONLY to be used if notice of breach of the agreement to pay rent has NOT been given.)

TO:

(Name of tenant(s))

I hereby give you notice of termination of your residential tenancy agreement and require you to deliver up vacant possession of the premises at—

.....

(Address of rented premises)

.....

(Date on which vacant possession of the premises is to be given)

This notice of NOT LESS THAN 7 DAYS is given to you on the ground that you have breached the agreement to pay rent and the rent or any part of the rent due remains unpaid.
(See section 62 of the Residential Tenancies Act 1987.)

DATE: SIGNED:

(Owner/agent)

ADDRESS:

..... POSTCODE:

IMPORTANT INFORMATION FOR TENANTS

- The owner is seeking to terminate your residential tenancy agreement and requires you to vacate the premises on the date specified in this notice.
- If you pay the rent due under the residential tenancy agreement in full before the date specified in this notice, you do not need to vacate the premises and no further action will be taken.
- If you do not pay the rent due under the agreement in full and do not vacate the premises, the owner may apply to court for an order terminating your residential tenancy agreement and requiring you to vacate the premises.
- The owner cannot continue an application for a court order if you pay to the owner the rent due under the residential tenancy agreement together with the court application fee in full not less than one day before the court hearing.
- You should contact the owner or the owner's agent immediately to try and resolve this matter.
- You should seek advice immediately if you do not understand this notice or if you require further information.

TIS (TRANSLATING AND INTERPRETING SERVICE) TELEPHONE 13 1450 AND ASK TO SPEAK TO THE DEPARTMENT OF CONSUMER AND EMPLOYMENT PROTECTION 1300 304 054