

## 3.03 Privacy and Quiet Enjoyment

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Tenants have a right to quiet enjoyment and reasonable peace, comfort and privacy of the property (*Residential Tenancies Act* WA (1987), section 44). The owner cannot write anything into the tenancy agreement to change or remove this right.

This means that the tenant is entitled to enjoy the premises without undue interference by the owner. Unannounced visits by an owner/agent or anyone acting on their instructions, (like a tradesperson) are not permitted unless you receive a reasonable amount of notice beforehand. Some interruptions to your reasonable privacy may be able to be stopped by applying to the Magistrates Court for an order restricting the owner's right of entry (see section in this chapter on "What can I do if owner/agent interferes with my privacy"?).

### Owner's right of entry

Under Section 46 of the *Residential Tenancies Act*, the owner/agent has the right to enter the property after giving notice to the tenant stating why and when they intend to enter the property. The owner/agent is entitled to enter the premises for bona fide (genuine) reasons, taking into consideration the tenant's right to reasonable privacy and quiet enjoyment. The owner/agent may only enter the premises without advance notice in cases of emergency (s.46(1)(a)) or if the tenant agrees (consents) at the time of or immediately prior to them entering (s.46(1)(h)). The tenant does not have to give their consent if the owner/agent arrives unannounced and wants to enter. Likewise if the owner/agent phones the tenant immediately before turning up, the tenant is still not obliged to agree to this visit. The owner/agent is allowed to hold a key to the premises.

Advance notice of an intended visit or inspection is usually given to the tenant in written form, either as a letter or a [Form 19: Notice of Intended Inspection](#). This form is available to download from the TAS website ([www.taswa.org](http://www.taswa.org)).

It is not appropriate for a written message to be placed on your doorstep as this has meant that the owner/agent has already entered the premises (which includes front and back yards). Advance notice does not always have to be in writing and can be given verbally to the tenant in some cases.

### How much notice does the agent/owner have to give?

The *Residential Tenancies Act* (s.82) provides scope for the owner to "contract out" of the provisions relating to their right of entry in terms of how much notice they are required to give to the tenant (s.46). Check the tenancy agreement to make sure the owner has not contracted out of this section. See chapter [2.08 The Tenancy Agreement](#) for more information.

Otherwise, if the owner/agent has not contracted out of Section 46, the owner/agent must observe the tenant's right to reasonable peace, comfort and privacy in their use of the premises. The owner may only enter the premises in any case of emergency, if the tenant allows them to, or they satisfy one of the following requirements (s. 46):

1. **For the purpose of inspecting the premises or any other purpose:** at least 7 days written notice should be given. This notice should be in writing and specify the date and time at which the inspection will be done. The inspection should be done at a reasonable hour.

2. **To carry out or inspect NECESSARY repairs or maintenance:** at least 72 hours notice should be given. The owner/agent or tradesperson may only enter at a reasonable hour. This does not include general renovations; only necessary repairs or maintenance.
3. **To show prospective tenants through:** in the last 21 days of your tenancy providing they come at a reasonable hour, after having given you reasonable notice and only a reasonable number of times.
4. **To show prospective purchasers through:** providing they come at a reasonable hour, after having given you reasonable notice and only a reasonable number of times. A phone call from the owner/agent telling the tenant they are on their way may or may not be considered 'reasonable' notice, depending on the agreement the tenant may have about this with the owner.
5. **To collect rent:** where rent is paid at least on a weekly basis IF you and the owner/agent have agreed rent will be collected at the premises, providing they come at a reasonable hour.
6. **To inspect the property while collecting rent:** BUT not more than once every 4 weeks.

**The owner/agent must give the tenant notice BEFORE they enter the property.**

### **Coming at a reasonable time**

The owner/agent does not require your consent to enter the property if they have given you the correct notice. However, they do have to arrange to come at a reasonable hour. If you have been given written notice check the notice to see if the time is specified and if it is reasonable.

### **What is "reasonable notice"?**

The Residential Tenancies Act does not provide a definition of "reasonable". As it is a general term it is open to interpretation and negotiation. This means the tenant can specify what they consider to be reasonable given their circumstances and day to day commitments, especially if the owner is intending to enter the property repeatedly to bring in prospective tenants or purchasers.

If there is a problem with the owner/agent not respecting the tenant's right to quiet enjoyment; TAS suggests that the tenant write to the owner/agent outlining what hours are convenient and on which days, along with any times which are always out of the question, and any other special needs they may have. Send a copy of the letter to the owner, and if relevant the selling or re-letting agent, and always keep a copy of any letter you write for your own records. For further information, see chapter [3.13 Writing a Letter to the Owner/Agent](#).

**Let the owner/agent know in writing how much notice you consider to be reasonable.**

### **Do I have to be there for the owner/agent's visits?**

NO! There is no requirement that the tenant must be present when an inspection is carried out. However, the owner cannot stop you from being present; you cannot be required to leave the premises during any inspection or "home open", although you may agree to do so. If you cannot be present at the

time arranged for the owner/agent to enter the property then you might like to get a friend or relative to be there instead.

### **Do I have to pay for inspections?**

NO. Section 27 of the *Residential Tenancies Act* prohibits any charges other than rent, bond and an option fee. However, sometimes agents/owners will try to charge a tenant for a “re-inspection” or “final inspection” fee. This is most commonly done when the tenant has breached the tenancy or has terminated the tenancy earlier than expected (usually under a fixed term agreement).

As a general rule, there is no legal basis for the charging of such fees. However, if the agent/owner can show that they have incurred additional expenses or costs as a direct result of you breaching the tenancy agreement, then they may be entitled to claim such costs back from you. For example, the owner/agent may try to charge a re-inspection fee because they had to come and inspect to make sure you had fixed up whatever the alleged breach was. On the other hand, being charged a final inspection fee has no legal basis as an inspection is normally carried out at the end of a tenancy anyway.

If you are being charged a re-inspection fee, you should seek advice on your individual situation (see chapter [1.12 Community Contacts](#)). For example, you may be able to dispute the charge if you do not agree that you were in breach in the first place, or that the breach was minor and did not justify the agent coming back to re-inspect. If you feel a re-inspection charge is unfair you should write to the owner/agent and explain why and ask them to reconsider the charge. See chapter [3.13 Writing a Letter to the Owner/Agent](#).

### **When the rented premises are "For Sale" through multi-listing**

Sometimes when a property is on the market to be sold it will be "multi-listed". This means any estate agent can show prospective buyers through the house. Any agent who wants to show people through the house must give you reasonable notice of the inspection. They are not permitted to leave a key anywhere on the premises so that any agent can enter at any time. All agents must give you notice every time they want to come through the house. Even if the property is in the hands of only one agent, the tenant must receive notice of every intended inspection by a prospective buyer. The owner/agent cannot make the tenant leave the premises during a "home open" or any other inspection but they are allowed to enter the property without the tenant being there if the correct notice of entry has been given to the tenant.

**The tenant does not have to leave the premises during a ‘home open’ or any other inspection.**

#### **OWNER OR AGENT?**

**It is important to know that whilst you may be dealing directly with the real estate agent about your tenancy, it is the owner who takes on all the landlord responsibilities under the *Residential Tenancies Act (1987)*. If the agent or owner does something wrong and you have to fill out a breach notice or go to court, it is the owner you will list on the forms and notices.**

## Changing the locks

Changing the locks may seem like a tempting solution to the problem of inspections without any or unreasonable notice. However, section 45 of the *Residential Tenancies Act* only allows for a party to change the locks if they have the consent of the other party. An owner/agent may also be able to change the locks if they have authorisation in the form of a Property (Seizure and Delivery) Order from the Magistrates Court. (Also see chapter [3.04 Locks and Security](#)).

If a tenant is unlawfully locked out this should be reported immediately to the Department of Commerce (Ph: **1300 30 40 54**) who have the power to prosecute for breaches of the *Residential Tenancies Act*. They may also be able to intervene to stop the owner/agent from locking you out.

If the owner/agent has changed the locks during the term of the tenancy agreement without the tenant's consent, or without an Order from the Magistrates Court, the tenant is still entitled to possession of the property. The tenant is within their rights to re-enter the property and/or get a locksmith to cut a key to the lock.

Anyone who unlawfully changes the locks without the other person's consent may be fined up to \$4000. The cost of the re-entering may be claimed back under section 15 of the *Residential Tenancies Act*, which provides for the tenant to claim for any loss (other than personal injury) or expense incurred due to a breach of the Act by the owner. See chapter [3.12 Compensation for Loss Incurred Due To A Breach By The Owner](#) for more information.

**Neither the tenant nor the owner/agent may change the locks without the other's consent or an order from the Magistrates Court.**

## What can I do if the owner/agent interferes with my privacy?

If the owner/agent enters the property without giving the required notice, OR enters so often that the tenant's quiet enjoyment of the premises is being affected, there are a number of options:

1. You may inform the owner/agent that you regard your privacy as having been violated and request the owner/agent to behave more appropriately in future by giving the notice required under Section 46 of the *Residential Tenancies Act*. You can advise that a Performance Order may be sought from the Magistrates Court if the owner/agent does not observe your right to quiet enjoyment. Make this request in writing and keep a copy for your records. See chapter [3.13 Writing a Letter to the Owner/Agent](#) for more information.
2. If the property is managed by an agent, you may request a meeting with the Principal of the real estate agency and discuss the problem with her/him. Be clear about how much notice you require before each entry, what notice you are entitled to under the *Residential Tenancies Act*, and what times you consider reasonable. If you come to some agreement, write down what you agree to and both sign it.
3. The option of serving written notices as outlined above will provide you with evidence that the owner/agent has been notified that you consider they have interfered with your privacy. You do not have to take these steps, you can apply straight to Court if you choose to, although the Court should

generally be an avenue of last resort. For more information in applying and appearing in Court see chapters [6.03 Preparing for Court](#) and [6.04 Going to Court](#).

4. You may serve a [Notice of Breach of Agreement by Owner \(Form 20A\)](#) on the owner/agent. This is a formal notice which notifies the owner/agent that they have breached the terms of the tenancy agreement or the *Residential Tenancies Act* and that they must remedy the breach as soon as possible within 14 days. Keep a copy of this notice for yourself as you will require it for evidence. The notice may be a letter or a standard form available from the State Law Publisher (Ph: **9426 0000**), Department of Commerce website ([www.commerce.wa.gov.au](http://www.commerce.wa.gov.au)) and some newsagencies.

On the breach notice you should state that the owner has breached the owner's right of entry requirements under the *Residential Tenancies Act* (Section 46) or your quiet enjoyment (Section 44) and give details of the breach. This step is optional, and you do not have to do this before taking the Court action referred to below. See chapter [3.09 When the Owner is in Breach of the Agreement](#) for more information.

5. You can also apply for a Performance Order from the Magistrates Court nearest the premises you are renting, requiring the owner/agent to perform in accordance with the *Residential Tenancies Act*. See chapter [6.02 Seeking a Performance Order from the Magistrates Court](#) for more information.
6. You may also apply to the Magistrates Court to have the fixed term tenancy agreement terminated on the grounds that the owner has breached the agreement (s. 75). You must be able to convince the Magistrate hearing the case that the breach of the agreement is serious enough to warrant terminating the contract. See chapter [4.04 Ending the Tenancy When the Owner Breaches the Agreement](#) for more information.
7. See also the chapter on Rent – 3.1 Rent, Rent Increases and Rent Reductions for information on the possibility of a rent reduction.

## What about noisy neighbours?

Tenants sometimes call TAS' advice line when they're having a problem with a neighbour. TAS can only offer advice and information when the owner/agent can somehow be held responsible under the *Residential Tenancies Act*.

For example, the owner can be held accountable if you and your neighbour share the same owner. In this situation, the owner must take all reasonable steps to make sure that their other tenants do not interfere with your peace, comfort or privacy. This is useful for tenants in duplexes, flats and Department of Housing accommodation where there is the same owner for a number of properties. If the owner does not take all reasonable steps to perform this obligation, you can apply for a performance order through the Magistrates Court to terminate the agreement. See chapter [6.02 Seeking a Performance Order from the Magistrates Court](#) for more information.

Neighbourhood disputes about nuisance, noise and/or animals are generally matters for the police or your Local Council. But before going to these authorities, make sure to try to resolve the issue by talking to your neighbour or by seeking the help of an independent mediator.

**If possible, try to approach the neighbours first to sort out any noise or nuisance problems.**

## **What is noise?**

Noise is a subjective term – what one person thinks is noise, another may consider music! Basically, noise is any unwanted sound. Keep in mind that in medium to high density housing some noise disturbance from other residents is normal, especially where a common wall is shared between residents. If the neighbours are making too much noise, they may be in breach of noise pollution regulations, for example, if they use power tools at night or early in the morning. Contact the Environmental Health Officer at your Local Council to check what noise restrictions apply in your area.

Local Government Authorities can also do noise readings. If the noise level is over the limit and interferes with another person, the Council can take action. This applies to both residential and commercial noise, for example, loud music or televisions, machinery, air conditioners, pool pumps, construction noise, regular loud parties. There are also strict rules that apply to the licences of nightclubs and hotels about the amount of noise that can be made in residential areas.

## **What about noisy dogs?**

According to the *Dog Act* (1976), you are responsible for ensuring that your dog is not a “public nuisance” by excessive barking. There are fines for allowing your dog to create a public nuisance. Contact your Local Council’s Environmental Health Officer for more information.

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

- [1.12 Community Contacts](#)
- [2.08 The Tenancy Agreement](#)
- [3.01 Rent, Rent Increases and Rent Reductions](#)
- [3.04 Locks and Security](#)
- [3.08 When the Tenant is in Breach of the Agreement](#)
- [3.09 When the Owner is in Breach of the Agreement](#)
- [3.10 Requesting that the Owner Remedy a Breach of Agreement](#)
- [3.12 Compensation for Loss Incurred due to a Breach by the Owner](#)
- [3.13 Writing a Letter to the Owner/Agent](#)
- [4.02 Ending a Fixed Term Tenancy](#)
- [4.04 Ending the Tenancy When the Owner Breaches the Agreement](#)
- [6.02 Seeking a Performance Order from the Magistrates Court](#)
- [6.03 Preparing for Court](#)
- [6.04 Going to Court](#)