

3.05 Maintenance and Repairs

Who is responsible for maintenance and repairs?

Both the owner and the tenant have certain responsibilities.

The owner

Under the *Residential Tenancies Act (1987) WA (s.42)*, the owner must:

- provide the property in a reasonable state of cleanliness;
- provide and maintain the property in a reasonable state of repair, consistent with the age, character and life expectancy of the property; and
- comply with all building, health and safety regulations that relate to the property.

The owner's responsibilities outlined above extend to the chattels provided with the property, for example whitegoods and furniture.

However, under s. 82 of the *Residential Tenancies Act*, the owner/agent can 'contract out' of some of their above responsibilities. 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*.

For example, the owner/agent may 'contract out' of their responsibility to carry out maintenance and repairs by stating in the Tenancy Agreement:

- that the tenant must maintain the property; or
- that the tenant accepts the tenancy in an 'as is' condition.

Be wary about signing a tenancy agreement which makes you responsible for maintenance and repairs, as this can be very expensive.

The tenant

Under the *Residential Tenancies Act*, you must:

- keep the premises in a reasonable state of cleanliness (s.38(1)(a));
- notify the owner/ agent of any property damage within three days of it occurring (s.38 (1)(b)); and
- not cause or permit damage to the property, intentionally or by being negligent (s.38 (1)(c)).

The owner/agent may serve a Notice of Breach of Agreement if you don't keep the premises reasonably clean, or if you cause or allow any damage, intentionally or by being negligent. You must repair this type of damage at your own expense, or repay the owner for the cost of repairs. It is important to be aware that you may be held responsible for damage caused by any person on the premises with your consent (s.50). See chapter 3.08 When the Tenant is in Breach of the Agreement for more information.

Do not withhold rent payments in an attempt to force the owner to carry out repairs or maintenance.

This will result in you breaching the agreement.

What can I do if the owner doesn't fulfil their responsibilities?

There are a number of options for action you can take if the owner does not maintain or repair the property to a satisfactory standard:

- You can discuss the problem with the owner/agent and ask them to fix it. Make sure you confirm what has been agreed in writing.
- You can write to the owner/agent with a specific request, stating clearly what you want repaired or replaced, and by when. It is also a good idea to say in your letter how the problem is affecting you. See the sample letter at the end of this section for an example and chapter [3.13 Writing a Letter to the Owner/Agent](#) for more information.
- You may also serve a Notice of Breach of Agreement (see below and chapter [3.09 When the Owner is in Breach of the Agreement](#)).
- You can apply to the Magistrates Court and ask them to order the owner to carry out repairs (s.15) and/or for the agreement to be terminated due to a breach by the owner (see chapter [4.04 Ending a Tenancy when the Owner Breaches the Agreement](#)).
- You can claim compensation if you suffer a loss due to the owner's failure to do maintenance and repairs (see further section in this chapter).
- You can seek a reduction in rent (see chapter [3.01 Rent, Rent Increases and Rent Reductions](#)).

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.

How do I serve a Notice of Breach of Agreement?

The first step is to request, preferably in writing, that the owner carry out the work. Clearly state what needs to be done and state reasonable times for a repair person to do the work. Ask the owner/agent

to contact you as soon as possible to arrange the repairs. If you rent through a real estate agent send the letter to the owner care of the agent in the post or via email. See chapter [3.13 Writing a Letter to the Owner/Agent](#) for more information.

You can also send the letter with a [Notice of Breach of Agreement](#) (Form 20A), available from the State Law Publisher (Ph: **9426 0000**) or the Department of Commerce website: www.commerce.wa.gov.au. A sample Form 20A is available to view on the TAS website: www.taswa.org.

Always keep a copy of any letter or breach notice.

What happens if the owner ignores my request for repairs?

If the owner ignores your letter or [Notice of Breach of Agreement](#), you can have URGENT repairs carried out by a licensed repair person and claim the reasonable costs back from the owner as long as the tenancy agreement does not say:

- you must have the owners consent to get repairs done;
- that the tenant will not be compensated for work done; or
- that sections 42 and/or 43 of the *Residential Tenancies Act* are excluded from the agreement.

Read the tenancy agreement thoroughly and carefully before arranging for anyone to do work on the property. A 'contracting out' clause may read something like "the tenant is not authorised to undertake or authorise any repairs without the prior written consent of the owner or the owner's agent".

All REIWA tenancy agreements contain a clause that states you shall not undertake or authorise any repairs without prior written consent of the owner/agent.

How do I claim compensation?

If your tenancy agreement does not say you must have the owner's consent before you can authorise urgent repairs, or otherwise exclude s.43 from the agreement, then you may get a tradesperson to do the work and claim the reasonable costs back (compensation) from the owner.

You can claim compensation (s.43 and s.15) if you can show that:

- you, or someone living in the premises, or a guest, did not cause the damage;
- the damage or necessary repair was likely to cause injury to a person or property or undue inconvenience to you;
- you made a reasonable attempt to inform the owner about the damage;
- you made a reasonable attempt to inform the owner that you intended organising the repairs, incurring costs yourself;
- the repairs were carried out by a licensed tradesperson; and

- you gave the owner a report by the tradesperson detailing the apparent cause of the damage (disrepair).

See chapter [3.12 Compensation for Loss Incurred Due to a Breach by the Owner](#) for more information.

Getting a Court Order to have repairs done

If the owner refuses to compensate you for the costs of urgent repairs, you can apply to the Magistrates Court for reimbursement. See chapter [6.02 Seeking a Performance Order from the Magistrates Court](#) for more information.

If you are not able to get the repairs done and claim compensation from the owner, you can ask the Court to allow you to pay your rent to the Court until the repairs are done. This may motivate the owner to carry out the repairs quickly in order to recover the rent. If the court allows this, the owner will have to provide evidence that repairs have been done, or that they have reimbursed the tenant for repairs, before they can collect the rent money.

If the breach (failure to do repairs) is serious and you would like to move out, you can apply to the court for the agreement to be terminated due to the owner's breach (s.75). See chapters [4.04 Ending a Tenancy when the Owner Breaches the Agreement](#), [6.03 Preparing for Court](#) and [6.04 Going to Court](#) for further information.

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

- [3.01 Rent, Rent Increases and Rent Reductions](#)
- [3.08 When the Tenant is in Breach of the Agreement](#)
- [3.09 When the Owner is in Breach of the Agreement](#)
- [3.12 Compensation for Loss Incurred due to a Breach by the Owner](#)
- [3.13 Writing a Letter to the Owner/Agent](#)
- [4.04 Ending a 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](#)

DISCLAIMER: This is a sample letter only. You should write your own letter telling your story in your own words. (See [3.13 Writing a Letter to the Owner/Agent](#) for information on writing your own letter).

SAMPLE LETTER

Mr P Owner
c/o Wright Real Estate
15 Hill Street
West Coast

1 February 2010

Dear Mr Owner

Re: Repairs to Hot Water System

I write further to our telephone conversations about problems with the gas hot water system. I confirm that I first informed you two weeks ago that the pilot light keeps blowing out leaving us with no hot water.

This problem is urgent and causing us a great deal of inconvenience. We have tried relighting it as you suggested but this hasn't worked.

The problem is also leading to increased expenses. I have to heat water on the gas stove for the children's bath. I am worried that my next gas bill will be much higher than usual.

I am also very concerned about possible health risks. My baby has a skin condition and I have been advised that I should wash his nappies in hot water. However, it has been very hard to do so because of the problems with the hot water system.

I believe you are in breach of section 42 of the Residential Tenancies Act. I request that you send a qualified person to repair the hot water system within 3 days. Please be advised that if the problem is not fixed within that time I intend to apply to the Court for a performance order under section 15 of the Act.

I look forward to your prompt response.

Yours faithfully

Mrs J Tenant
136 Resident Street
Newtown WA 6666