

3.07 Vermin and Pest Control

What are vermin/pests?

Vermin and pests include rats, mice, cockroaches, fleas, termites, wasps and white ants.

When is the tenant responsible for pest control?

The tenant is generally responsible for the eradication of vermin if the infestation occurs after the tenant has moved in and if the infestation can be shown to be caused by the tenant's activities or lack of cleanliness. Section 38 of The Residential Tenancies Act (1987) WA deals with the tenant's responsibility for cleanliness and damage. If you have been living in the property for several months and an infestation of cockroaches occurs, it is generally the tenant who must pay for the fumigation (unless you organise alternative arrangements with the owner).

The tenant may not be held responsible for vermin eradication when you can show that the owner is in breach of the tenancy agreement (for example, by not offering the property in a clean and safe condition) and that this breach has caused the infestation. Alternatively, if you can show that the infestation was caused by – for example - a next door neighbour keeping uncovered rubbish in the backyard, then you may refer the matter to the Local Council for action.

The issue of who is responsible for pest control can sometimes be a grey area. Contact TAS to discuss who may be responsible for the eradication of pests from the property. NOTE: Some tenancy agreements include a clause that vermin and pests are the tenant's responsibility. You should try to negotiate with the owner/agent about this clause before signing the agreement.

When is the owner responsible for pest control?

As part of their responsibility for cleanliness and repairs (s.42), the owner of the rented property is responsible for pest control (including fumigation) when the pests are evident at the beginning of the tenancy. For tenants this means that it is very important when they first see a property to look for signs of pests such as droppings in cupboards and on floors. It is also advisable to check if the previous tenants owned cats or dogs since fleas may be breeding and not appear for a couple of months.

Negotiate with the owner for the property to be fumigated before or within the first weeks of your tenancy if you see evidence of vermin. Have this written into your tenancy agreement under the special conditions section of the agreement. If the owner fails to carry out the agreement to fumigate, you may argue that they are in breach of the agreement and ask them to remedy the breach. For more information see chapters [3.09 When the Owner is in Breach of the Agreement](#) and [3.10 Requesting that the Owner Remedy a Breach of Agreement](#).

What should I do if I discover vermin after I have moved in?

If you do not discover the vermin until you move in, then contact the owner/agent immediately by phone. It is also a good idea to notify the owner/agent in writing and attach a copy of the letter to your Property Condition Report. Request that the owner/agent take steps to eradicate the pests immediately, including fumigation if necessary. The sooner you contact the owner/agent with the problem, the less chance they have to claim that the infestation is a result of your tenancy. Also see chapter 3.13 Writing a Letter to the Owner/Agent.

What if the owner/agent refuses to fumigate?

You may take steps for the owner/agent to get rid of the vermin if they are present from the start of your tenancy and the owner refuses to have the property fumigated. These include:

- You may serve the owner/agent with a Form 20A: Notice of Breach of Agreement (by owner) on the basis that they are in breach of s.42 of the Residential Tenancies Act (to provide the property in a reasonable state of cleanliness) and/or in breach of the special condition of the tenancy agreement (if it is written in the agreement that the owner agrees to have the property fumigated). A sample Form 20A is available to view on the TAS website: www.taswa.org, and can be downloaded from the Department of Commerce website: www.commerce.wa.gov.au. For more information see chapters 3.09 When the Owner is in Breach of the Agreement and 3.10 Requesting that the Owner Remedy a Breach of Agreement.
- You may serve the owner/agent with a Form 20A: Notice of Breach of Agreement on the basis that they are in breach of s.40 of the Residential Tenancies Act in that they have not provided vacant possession of the property. Although this sounds like a highly creative argument, such a position has on occasion been successful in the Magistrates Court.
- Alternatively, you may contact the Environmental Health Officer in your Local Council. Environmental Health Officers have the statutory authority to place work orders on both tenants and owners. In order for the work order to be placed on the owner/agent, you must be able to show them that the infestation was already there when you moved into the property. In determining if the tenant is responsible for the infestation, the Environmental Health Officer may take into account the length of time the tenant has been in the property and if the tenant reported the infestation to the owner/agent early in the tenancy.

Applying for a Court Order

If the owner does not comply with the breach notice or the Council Officer does not help solve the problem, you may apply to the Magistrates Court for a Performance Order in relation to getting rid of the vermin. See Chapter 6.02 Seeking a Performance Order from the Magistrates Court for more information.

Non-toxic pest control methods

If fumigation is necessary, you may prefer the owner use non-toxic pest control methods. This may be more expensive and the owner may be unwilling to bear this additional expense. You may like to consider offering to pay the difference in fumigation if you wish to use a non-toxic fumigation method. For more information on safe pesticide use, contact your Local Council. Some Local Councils may also provide free bait for rats or other such measures to assist in the eradication of vermin.

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

- 3.9 When the Owner is in Breach of the Agreement
- 3.10 Requesting that the Owner Remedy a Breach of Agreement
- 3.13 Writing a Letter to the Owner/Agent
- 6.2 Seeking a Performance Order from the Magistrates Court