

## 3.09 When the Owner is in Breach of the Agreement

Often the owner's obligations (and the tenant's rights) are not written or mentioned when a tenancy agreement is entered into. Therefore many tenants do not know what the owner's obligations are. The legal obligations of both owners and tenants are contained in the Residential Tenancies Act (1987) WA. They can also be found in the information booklet which owners are required to give to tenants at the commencement of the tenancy (Residential Tenancies Regulations 1989, regulation 14 and schedule 2).

### **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*. 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.**

All tenancy agreements, whether written or verbal, must adhere to the Residential Tenancies Act. This means that the tenant and the owner/agent have certain legal rights and obligations. See chapter [1.03 The Residential Tenancies Act](#) for more information. Special conditions may also be agreed between tenants and owner/agents. In some circumstances the owner can avoid his/her obligations by writing into your tenancy agreement that they have modified, excluded or restricted a provision of the Residential Tenancies Act. This is referred to as a "contracting out" clause. Not all sections of the Residential Tenancies Act can be "contracted out". See chapter [2.08 The Tenancy Agreement](#) for more information on contracting out.

**Always check the written tenancy agreement in case the owner has varied or 'contracted out' of the provisions of The Residential Tenancies Act.**

### **When is an owner/agent in breach of the agreement?**

If the owner/agent does something they are not supposed to do, or does not do something that the tenancy agreement or the Residential Tenancies Act says they should do, they are in breach of the agreement. Some examples of owner/agent breaches are:

- Entering the premises whenever they like, without prior notice to tenant (see chapter [3.03 Privacy and Quiet Enjoyment](#));
- Changing the locks without telling the tenant or not providing the premises with reasonable security (see chapter [3.04 Locks and Security](#));
- Not fixing a damaged ceiling, leaking roof/taps/water pipes, a broken stove/water heater, or damage caused by a contractor (see chapter [3.05 Maintenance and Repairs](#));
- Not giving the correct notice for rent increases (see chapter [3.01 Rent, Rent Increases and Rent Reductions](#)); and
- Not providing the tenant with a copy of the written tenancy agreement (see chapter [2.08 The Tenancy Agreement](#)) or bond lodgement form (see chapter [2.09 The Security Bond](#)).

**Do not stop paying rent in an effort to motivate the owner to fix a problem. By not paying rent, you are breaching the agreement.**

## **What should I do when the owner is in breach of the agreement?**

There are a number of options to try in order to get the owner to act in the way the law or the agreement says they should, including:

- Making a written request (also see chapter [3.13 Writing a Letter to the Owner/Agent](#));
- Sending a [Form 20A: Notice of Breach of Agreement \(by Owner\)](#) to the owner. A sample Form 20A is available to view on the TAS website: [www.taswa.org](http://www.taswa.org) and can be downloaded from the Department of Commerce website: [www.commerce.wa.gov.au](http://www.commerce.wa.gov.au) .(Also see chapter 3.10 Requesting that the Owner Remedy a Breach of Agreement);
- Getting a work order served on the owner/agent by Synergy or the Local Council (also see chapter [3.05 Maintenance and Repairs](#));
- Paying for repairs yourself and claiming the cost back from the owner (s.43 Residential Tenancies Act). NOTE: the tenancy agreement may not allow you to do this, ALWAYS check the agreement first (also see chapter [3.05 Maintenance and Repairs](#)) ; and
- Applying for a Performance Order from the Magistrates Court in order to get repairs and/or maintenance done (also see chapter [6.02 Seeking a Performance Order from the Magistrates Court](#)).

## **Can I terminate my tenancy agreement because of an owner/agent's breach?**

The tenancy agreement is not automatically terminated when a term or condition of the agreement is broken. Both parties are still bound by the agreement and you must continue to pay rent and meet all your obligations until the agreement is terminated. You should not withhold rent in an effort to motivate the owner to fix a problem as this is a breach of the agreement by the tenant. A tenant may apply to the Magistrates Court to terminate a tenancy agreement because of the owner's breach. However the court must be satisfied that the breach justifies termination (ie. is serious enough) for it to make an order for termination. See chapter [4.04 Ending the Tenancy when the Owner Breaches the Agreement](#) for more information.

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

- [1.03 The Residential Tenancies Act](#)
- [2.08 The Tenancy Agreement](#)
- [2.09 The Security Bond](#)
- [3.01 Rent, Rent Increases and Rent Reductions](#)
- [3.03 Privacy and Quiet Enjoyment](#)
- [3.04 Locks and Security](#)
- [3.05 Maintenance and Repairs](#)
- [3.10 Requesting that the Owner Remedy a Breach of Agreement](#)
- [3.13 Writing a Letter to the Owner/Agent](#)
- [4.04 Ending the Tenancy when the Owner Breaches the Agreement](#)
- [4.07 Evictions](#)
- [6.02 Seeking a Performance Order from the Magistrates Court](#)