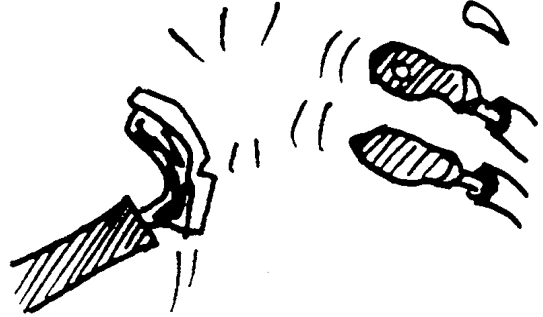


4.07 Evictions

What is an eviction?

An eviction is where the owner legally recovers the rented premises from the tenant. The owner must get an order from the court to end the agreement and to take back possession of the premises. **The owner is never allowed to evict you without an order from the court** (*Residential Tenancies Act 1987* (WA), section 80).



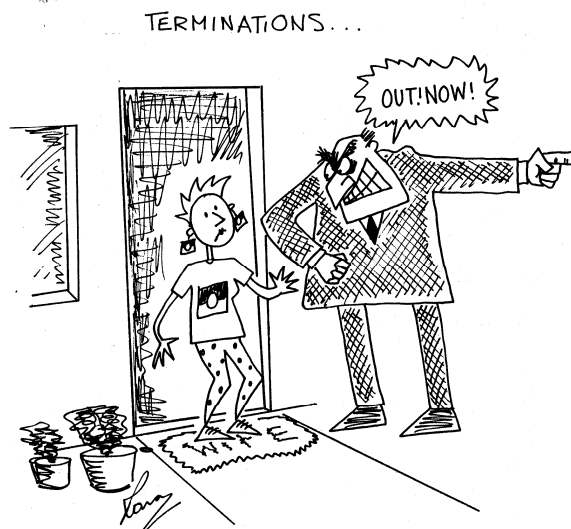
What is an illegal eviction?

Forcing you out of the rented premises without a court order is illegal. It is a serious breach of the *Residential Tenancies Act 1987* (WA) to illegally evict a tenant. The owner, or any other person, who forces you out of the premises without a court order may be liable for a penalty (\$4000 (s.80)).

**It is illegal for any owner to evict a tenant without a court order -
Penalty \$4000.**

Is the Notice of Termination an Eviction Order?

NO. A Notice of Termination is one of the first steps an owner/agent can take if they want to end the tenancy. The Notice of Termination does not end the tenancy. **The owner/agent must apply to court for an eviction order if the tenant doesn't move out after being given a Notice of Termination.**



When can an eviction happen?

The *Residential Tenancies Act 1987* (WA) requires the owner/agent to follow certain steps before the court can give them an eviction order. This often involves giving the tenant a Notice of Termination and **always** involves applying to court for an order for termination and possession (eviction order).

The owner/agent can apply to the court for an order for termination and possession if:

- **You fail to move out after the owner/agent gives you a Notice of Termination.**

If this happens, the owner/agent must apply to court **within 30 days** of the date you were told to move out on the termination notice. If they don't apply within this time the owner/agent must start their action to terminate your tenancy again (give you a breach notice and/or another termination notice).

- **You don't move out at the end of your fixed term tenancy.**

The owner/agent must apply to court **within 30 days** of the fixed term tenancy ending. If the owner/agent doesn't apply within this time, you may argue you have a continuing tenancy being a periodic tenancy and that the owner/agent must follow other steps in the *Residential Tenancies Act 1987* (WA) before they can end your tenancy.

- **You have (or are likely to) intentionally or recklessly caused or allowed serious damage to the rented premises or injury to the owner, agent, neighbours and/or their guests.**

Where the court gives the owner an order under this section, the order for possession takes effect immediately (s 73).

- **The owner would suffer undue hardship** if s/he were required to terminate the tenancy under any other section of the *Residential Tenancies Act 1987* (WA).

If the court gives the owner an order to end the tenancy, the court can decide when the tenancy is to end and may order compensation to the tenant for any loss caused by the tenancy being ended (s 74 (2)(b)).

If the court gives the owner an order to end the tenancy, you can ask the court to consider your 'hardship' and to suspend the order for up to 30 days (s71 & s72).

How will I know if the Owner has applied to court?

The court should send you a copy of the application (Form 12) that the owner/agent has filed. This application will give you details of the owner's application and the time, date and place of the hearing. The notice can either be sent to your last known address or place of employment; given to you or to the person who normally pays the rent; or given to a person who seems to be living at the rented premises and who seems to be over the age of 16 (s 85).

Should I go to court?

YES! It is important for you to go to court and explain why you shouldn't be evicted. The court won't know if giving the eviction order is unfair if you don't go to the hearing and explain why. See chapters [6.02 Preparing for Court](#) and [6.03 Going to Court](#) for more information.

Parkalina was a very well informed pig...



What if the owner is trying to evict me in retaliation?

You can tell the court that the owner/agent should not be given an order to evict you if you believe the owner/agent is trying to evict you out of revenge (retaliation) for action/s you have taken to secure or enforce your rights as a tenant. This might be because you complained to a public authority or asked the owner/agent to carry out their responsibilities (such as to do repairs).

You will need to show the court what steps you took to secure or enforce your rights. The court will then require the owner/agent to show that their action to evict you is not motivated by retaliation (s. 71(3)(b) & (4)). The court may refuse to give the owner/agent an eviction order unless the owner/agent proves they were not wholly or partially motivated to end your tenancy because you enforced your rights.

What if the owner is trying to evict me for a minor breach, or a breach I have remedied (fixed)?

You should explain to the court why you think the breach is minor and why it does not justify your tenancy being ended. The court can consider all the circumstances of your case in deciding whether the breach is serious enough to justify your tenancy being ended (s.71 (3)(b).).

You should show the court proof that you have fixed the breach that the owner/agent has applied to court about. Be aware the court can take into account any previous breaches of your agreement when considering whether to give the owner an eviction order (s.15 (4)). See also chapter [3.08 When the Tenant is in Breach of the Agreement](#).

What happens if the court gives the owner an eviction order?

If the court gives the owner an eviction order and you don't move out by the date on the order, you can be physically removed. The owner will need a Property Seizure and Delivery Order for a Bailiff (court official) to remove you from the premises. The owner can claim the cost of this order from you. The order will be dated one day after the court order and is effective for twelve months (*Civil Judgments Enforcement Act 2005* (WA)).

What if I wasn't in court when the order was made?

You can apply for the eviction order to be "varied" or "set aside" if you were not in court when a decision was made (s17(1)). You will need to fill out a **Form 16: Application to Vary or Set Aside Order** (see sample form at the end of this info sheet). The cost for lodging this application is \$26.70 (as at January 2008). Upon lodgement you will be given a new Hearing date.

The *Form 16* application must be lodged within 14 days of the order having been made (s.17(2)). However, if you have good reasons for not being able to lodge it within 14 days, the court may be able to give you an extension of time (s. 20(f)).

If the order was for termination of your agreement, you will need to act quickly before the owner gets a *Property Seizure and Delivery Order* and you should seek advice about applying for a "suspension" of that Order. If the owner already has a *Property Seizure and Delivery Order*, and the Bailiff enforces it you will have to leave the premises and the Application to Vary or Set Aside Order may not be successful. (see chapter 1.12 Community Contacts).

At the hearing to vary or set aside the order, you will have to have a valid reason as to why you were unable to attend the first hearing. You will also need to convince the court that there are good reasons why your case should be reheard. This means, you will need to show the court that you have a good defence to the owners application to eviction (eg: that your rent was paid up to date). If you are successful, some courts will set aside the order or make a date to come back for the application to be heard. Others will immediately hear the case, so you will need to be well prepared (see chapter 6.02 Preparing for Court).

Can I be evicted if I am a Department of Housing (DH) tenant?

DH can evict tenants and, like any other owner, must follow the *Residential Tenancies Act 1987* (WA). **DH can never evict you without a court order.**

If DH is trying to evict you, try negotiating with them directly. Make sure to ask DH for information on how you can have the decision to evict you reviewed or appealed. Also get help from your local community agency if DH is trying to evict you. See chapter 1.12 Community Contacts for a list of advocates and community workers that may be able to assist you with tenancy matters.

DH have their own policies which may give public housing tenants additional options to avoid being evicted. DH policies can be obtained from their website (www.housing.wa.gov.au - click on Rental Housing, then Housing Policies).

Contact Tenants Advice Service for more information.

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

- 1.12 Community Contacts
- 3.08 When the Tenant is in Breach of the Agreement.
- 6.02 Preparing for Court
- 6.03 Going to Court

SAMPLE FORM ATTACHED –

- ***Form 16: Application to Vary or Set Aside Order***

MAGISTRATES COURT: REGISTRY PH: FAX:	RESIDENTIAL TENANCIES ACT 1987 (WA) Section 17 APPLICATION TO VARY OR SET ASIDE ORDER FORM 16	Case number: Date lodged:
Method of service:		
APPLICANT(S) Tick [✓] a box <input type="checkbox"/> Owner <input type="checkbox"/> Tenant	Name: Address: _____ Postcode: _____	
RESPONDENT(S) Tick [✓] a box <input type="checkbox"/> Owner <input type="checkbox"/> Tenant	Name: Address: _____ Postcode: _____	
On the _____ day of _____ 20_____ an order was made by the Court in my absence.		
I hereby make application to have that order set aside/varied for the following reasons <i>(give details)</i> : <div style="border: 1px solid black; height: 80px; width: 100%;"></div>		
Signature of applicant		Date
Take notice that this application has been set down for hearing in the Magistrates Court at: _____ on _____ day, the _____ day of _____ 20 _____ at _____ am/pm.		
Registrar		Date
Court Seal		
To the owner <i>(name and address)</i>		
To the tenant <i>(name and address)</i>		

SAMPLE