

## 7.01 Residential Parks (Long-stay Tenants) Act

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The *Residential Parks (Long-stay Tenants) Act 2006* (WA) ("*Residential Parks Act*") is legislation that sets out the rights and responsibilities of those that live in caravan parks in Western Australia as their long term residence. The Act commenced on 3 August 2007. The *Residential Parks (Long-stay Tenants) Regulations 1989* (WA) set out rules relating to the Act. There are very significant differences between the *Residential Parks Act* and the *Residential Tenancies Act 1987* (WA) ("*Residential Tenancies Act*"), so it is important to be aware of the *Residential Parks Act* and how it will affect your tenancy.

### Who is not covered under the Residential Parks Act?

Not all people living in caravan parks are covered under the *Residential Parks Act* (sections 5, 6 & 8). The *Residential Parks Act* does not apply to:

- Holiday makers;
- Employees of the caravan park living on site;
- Retirement villages;
- Strata titled caravan parks; or
- Those who have a fixed term agreement in writing that commenced before 3 August 2007.

### What kind of agreement do I have?

It is important to know whether you have:

- A 'site-only' agreement where you have your own relocatable home and rent the site; or
- An 'on-site' agreement where you rent the site and the relocatable home.

In addition to these two types of agreements, your agreement will also be a 'fixed term' or 'periodic' agreement. For further information regarding these types of agreement, see chapter [2.08 The Tenancy Agreement](#).

### Am I covered under the Residential Parks Act?

You are covered under the *Residential Parks Act* if you have:

- A periodic agreement (on-site or site-only) for 3 months or more; or
- A fixed term agreement (on-site or site-only) that is entered into, renewed or extended after 3 August 2007.

If you are in a fixed term tenancy agreement that was entered into before 3 August 2007 and is in writing then the *Residential Tenancies Act* will apply to your tenancy agreement until it is terminated or replaced.

The *Residential Parks Act* will apply in the following scenarios only to the extent it can be applied:

- A written fixed term agreement that was made before 3 August 2007 and is extended on or after 3 August 2007; or
- An oral fixed term agreement made before 3 August 2007.

Under the *Residential Parks Act*, regardless of whether you are on a fixed or periodic agreement, your agreement **must** be in writing (*Residential Parks Act*, s 10).

If the park operator will not give you a written agreement, you may apply to the State Administrative Tribunal ('SAT') to either terminate the agreement or to determine the terms of the agreement (*Residential Parks Act*, s 7). For more information on applying to the SAT see chapter [7.02 The State Administrative Tribunal](#).

## Cooling off period

If you enter into a site-only agreement there is a cooling off period during which you can cancel (rescind) the agreement (*Residential Parks Act*, s 18). You must rescind the agreement within 5 working days after the date of agreement.

However, if the park operator does not give you the required documents (see the section 'What should I receive when I enter into an agreement?') before you enter into the tenancy agreement, you may rescind the agreement within 10 working days after the park operator gives you the required documents.

**If you take possession of the premises the cooling off period does not apply.**

## Ingoing costs

When applying for a tenancy you may be charged an option fee. If your application is successful and you enter a tenancy agreement the option fee must either be refunded or applied towards the rent.

At the beginning of your tenancy you may only be charged:

- Rent to a maximum of 2 weeks in advance (*Residential Parks Act*, s 25);
- A security bond (maximum amount equivalent to 4 weeks rent) (*Residential Parks Act*, s 21);
- A pet bond (usually \$100 maximum);
- Bond for keys or remote control entry devices (usually \$100 maximum); and
- A letting fee equivalent to a maximum of two weeks rent (*Residential Parks Act*, s 13).

If the long-stay tenant pays an option fee when applying for a long-stay agreement and the application is successful, that option fee must be refunded or applied towards the rent in advance (*Residential Parks Act*, s 12).

## What should I receive when I enter into an agreement?

There are several documents that you must receive before entering into a tenancy agreement (*Residential Parks Act*, s11) being:

- a copy of the proposed tenancy agreement including an explanation of how and when the rent may be changed;
- a copy of a Department of Commerce information booklet;
- a written schedule of fees and charges;
- a property condition report;
- a copy of the park rules;
- written information on membership and functions of the park liaison committee (if applicable);

- a written copy of any restrictions on the ability to sell or assign the tenant's relocatable home; and
- a written copy of any restrictions on assigning the tenant's rights.

### Rent increases for on-site agreements

If you have an on-site agreement and the park operator wants to increase the rent they must give you notice in accordance with the *Residential Parks Act* which states (s30 (2) (a), (b) & (c)):

- the park operator must give you written notice;
- giving at least 60 days notice of the increase, and
- the increase cannot take effect earlier than 6 months since the beginning of the tenancy or the last increase .

If your on-site agreement is for a fixed term, there must be a clause in your agreement allowing for an increase of rent during the fixed term (*Residential Parks Act*, s 30 (2) (d)).

The park operator may increase the rent before the first 6 months of your tenancy has elapsed but only if they have given you a schedule outlining the dates of the rent review prior to the tenancy agreement being entered into (*Residential Parks Act*, s 30 (3) (a) & (b)).

The time frames for rent increases described above do **not** apply if your agreement expressly excludes or limits the provisions of the *Residential Parks Act* (*Residential Parks Act*, s 30 (5)). Therefore, it is important to check your tenancy agreement to see when the rent may be varied.

### Rent increases for site-only agreements

If you have a site-only agreement, the rent can only be reviewed under terms which are specified in your agreement. In your agreement, it is unlawful for the rent to be reviewed in periods less than 12 months apart (*Residential Parks Act*, Schedule 1, clause 4).

The rent can only be reviewed on a **single basis**. That means that the rent can only be calculated in one way – such as a rent review in line with Consumer Price Index (CPI) for example. The agreement may have a different basis per review – such as the first rent review being CPI, the second rent review a year later being an increase of \$10 per week. However, there cannot be more than one basis per review.

If the way your rent is calculated leads to a decrease in rent (eg. if the CPI decreases for the year) it is unlawful if the park operator keeps your rent the same or increases your rent.

Often, certain parks may have a set schedule by which the rent is reviewed. This may mean that your rent will be reviewed not long after you move into your park home. If you are given a notice of the set schedule of rent reviews prior to you accepting your tenancy, **it is lawful** for the park operator to increase the rent in accordance with that schedule even if it has not been 12 months since you entered into the agreement.

### Rent increases for on-site and site-only agreements

If the tenancy agreement provides for a review of rent based on market rent, the park operator must have regard to a report obtained by a licensed land valuer (*Residential Parks Act*, s 31).

Tenants may apply to the SAT for an order to reduce the amount of rent payable if there has been:

- a significant reduction in the size or quality of the premises;
- a significant reduction in the number or quality of the chattels provided (such as furniture or whitegoods); or
- a significant reduction in the facilities provided (such as electricity connection or common bathroom facilities).

The SAT may have regard to factors such as rent paid for similar premises in a similar area, the park operator's expenses or the cost of the services provided by the park operator.

The SAT has the power to reduce the rent if it believes that the rent has been increased in an attempt to get the tenants to move out.

### **Park liaison committee**

If the park you are living in has 20 or more long-stay sites, the park operator must set up and maintain a park liaison committee (*Residential Parks Act*, s 59). This committee must consist of:

- at least one of the park's long-stay tenants chosen by the other tenants of the park; and
- at least one representative of the park operator.

There must be more long-stay tenant members on the committee than members who represent of the park operator.

The park liaison committee has numerous functions, including working with the park operator on park rules and developing guidelines and policies of the park. The committee also needs to assist the park operator to ensure that the park rules are observed and disputes within the park are resolved.

### **Tenants' obligations**

If you have an on-site agreement you must keep the site and the relocatable home (both inside and out) in a reasonable state of cleanliness. If you have a site-only agreement you must keep the site and the outside of your relocatable home in a reasonable state of cleanliness.

If you have given the park operator details of your place of occupation and those details change, you must inform the park operator within 14 days (*Residential Parks Act*, s 16). When you vacate the premises you must give the park operator details of your next residential or postal address (*Residential Parks Act*, s 16).

If the premises (or an on-site home) is damaged you must notify the park operator as soon as possible, but within 3 days.

You must not cause or allow a nuisance anywhere in the park (*Residential Parks Act*, Schedule 1, clause 10).

### **Park operators' obligations**

When you enter a tenancy agreement the park operator must give you written notice of their name and address (and the details of any one who has superior title) and the terms of the park's operating licence (*Residential Parks Act*, s15).

The park operator must give you written receipts for rent unless you pay into an account of a financial institution (such as a bank account). The receipt must specify (*Residential Parks Act*, s 26):

- The date rent was received;
- The amount paid;
- The period which the rent relates to;
- Your name; and
- Particulars of the premises.

The park operator must (*Residential Parks Act*, Schedule 1, clause 7):

- Provide the premises and shared park areas (such as the common laundry) in a reasonable state of cleanliness;
- Maintain the shared park areas in a reasonable state of cleanliness;
- Provide and maintain the premises and the shared park areas in a reasonable state of repair; and
- Comply with health and safety laws.

## **Locks and security**

If you lease an on-site home, locks and other devices must be provided and maintained by the park operator to ensure the home is reasonably secure (*Residential Parks Act*, Schedule 1, clause 12).

For any tenancy agreement, you or the park operator need consent from the other to change or remove any locks to the premises (*Residential Parks Act*, Schedule 1, clause 12). You will also need the park operators consent to change or remove locks to shared park areas. If the park operator changes or removes locks to shared park areas you must be notified beforehand and given a way to access those areas.

## **Urgent repairs**

Where an urgent repair is required (for example to repair a gas leak or broken hot water system) and you spend money to fix it, the park operator must reimburse you for the expense (*Residential Parks Act*, Schedule 1, clause 8). In order to get a reimbursement:

- The issue must be likely to cause injury or to unduly inconvenience you;
- The issue must not have been caused by a breach by you;
- You need to make a reasonable attempt to notify the park operator of the issue and your intention to pay for repairs;
- If the repair is required to be completed by someone who holds a licence then the repairer must hold that licence; and
- The repairer must write a report stating how the issue was caused and you must give the report to the park operator.

## **Quiet Enjoyment and the park operator's right of entry**

You have the right to quiet enjoyment of your premises (*Residential Parks Act*, Schedule 1, clause 11). The park operator must not cause or allow any interference with your reasonable peace, comfort or privacy in your use of the premises and your reasonable use of shared park areas. The park operator must also take reasonable steps to enforce this obligation on other park tenants.

The park operator may enter your premises with your consent or if there is an emergency (*Residential Parks Act*, Schedule 1, clause 13). In any other case the park operator must give you notice before they enter your premises:

- To inspect or complete maintenance or repair work to the site, written notice of at least 24 hours is required;
- For inspections, a written notice which states a day and a reasonable time must be given 7 to 14 days before the inspection;
- Collecting rent can be done at any reasonable time but no more than once each week;
- To inspect or carry out repairs or maintenance to your premises at a reasonable time, at least 72 hours notice is required;
- Showing prospective tenants the premises may be done at a reasonable time and on a reasonable number of occasions in the 21 days before the tenancy agreement ends. Reasonable notice is required; and
- Showing prospective purchasers the premises may be done at a reasonable time and on a reasonable number of occasions after you have been given reasonable notice.

## Termination

There are different ways that tenancy agreements can be terminated under the *Residential Parks Act* (s 33):

- The SAT may terminate the agreement;
- A person or company may claim superior title over the property (see chapter [4.08 A "Superior Title" Claim: Takeover of the Property](#));
- The mortgagee of the premises (eg. a bank) takes possession of the premises under the mortgage;
- The tenant abandoned the premises;
- There is a written agreement between the parties to end the agreement; or
- By merger.

## Form of Notice of Termination

The notice of termination must be in writing, signed by the party giving notice, and identify the premises that are rented (*Residential Parks Act*, s 38).

## Termination due to rent arrears

Termination due to rent arrears may be done in one of two ways.

1. If a default notice is given it must give you at least 14 days to pay the rent owing. If you do not pay the rent within that 14 days, the park operator then has 7 days (after the 14 day period given in the default notice) in which they can issue a notice of termination.

After the notice of termination expires the park operator has 30 days to make an application to the SAT for a termination and eviction order. The order can be given even if you pay the rent owed (*Residential Parks Act*, s 39 (4)).

2. If you receive a notice of termination first you must be given at least 7 days to pay the rent owed.

If the park operator then applies to the SAT for a termination order and you pay the rent owing plus the filing fee more than 24 hours prior to the hearing date, the park operator must withdraw the application (Residential Parks Act, s 39 (5)).

### **Termination by the park operator for breaches other than rent arrears**

If you breach your agreement, the park operator may give you a default notice (*Residential Tenancies Act*, s 40). This default notice needs to:

- describe the breach;
- state the day it occurred;
- specify a day by which the breach is to be fixed (which must be at least 14 days); and
- state that the park operator is entitled to terminate the agreement if the breach is not rectified in that time frame.

The default notice must be in writing and signed by the park operator and identify the premises.

If the breach is not fixed the park owner may issue a notice of termination. This notice of termination must state the grounds for the termination and specify the day that the tenant is to move from the premises (at least 7 days from the notice being given to the tenant). If the tenant does not move by that date, the park operator must apply to the SAT for an order terminating the tenancy. A tenant cannot be forced to move without this order (*Residential Parks Act*, section 54).

### **Termination by the park operator without grounds**

If you have a 'periodic' agreement the park operator can terminate your tenancy without giving a reason. This is known as a termination without grounds (*Residential Parks Act*, s 42). A fixed term agreement cannot be terminated without grounds before the end of the fixed term.

The park operator will need to give you a notice of termination. If you have an on-site agreement the notice of termination must give at least **60 days** for you to move from the property. If you have a site-only agreement, the notice must give at least **180 days** for you to move from the property.

### **Termination by tenant without grounds**

If you have a periodic agreement you can terminate your tenancy without giving a reason. You must give a notice of termination which gives at least 21 days before you give the vacant property back to the park operator. If you have a fixed term agreement you can only give the park operator this notice of termination if you want to give the vacant property back to the park operator on or after the date your fixed term agreement ends. (*Residential Parks Act*, s 44).

### **Termination if vacant possession is required for the sale of the park**

If the park operator sells the park and it is a term of the sale that the new owners require vacant possession, then the park operator may terminate your agreement. If you have an on-site agreement the notice of termination must give at least **60 days** for you to move from the property. If you have a site-only agreement, the notice must give at least **180 days** for you to move from the property.

### **Termination by Frustration**

Situations where the premises becomes uninhabitable and unusable (other than due to a breach of the agreement), or where the park is compulsorily acquired by an authority are called 'frustration'. Either the park operator or a tenant can give a notice of termination to end the agreement (*Residential Parks Act*, s 45).

If the park operator gives a notice of termination due to frustration they must give at least 7 days for you to move from the property. If you give the notice of termination you must give at least 2 days notice before you move from the property.

### **Termination due to hardship of the park operator**

If the park operator is experiencing hardship they may apply to the SAT to have your tenancy terminated.

The SAT may terminate your tenancy agreement if it is satisfied the park operator will suffer undue hardship if required to terminate the agreement by another way provided in the *Residential Parks Act* (section 73).

### **Compensation when a tenancy agreement is terminated**

If you have a fixed term tenancy agreement you may be entitled to compensation if your tenancy is terminated:

- without grounds;
- because the park operator has sold the park; due to frustration; or
- due to hardship of the park operator.

The compensation payable can be an amount that you and the park owner agree to. If an agreement can not be reached then an application can be made to the SAT for a decision on the amount of compensation owed. (*Residential Parks Act*, s 46).

### **Can I sell my park home?**

You are entitled to sell your relocatable home on site **unless** your lease agreement prohibits it (*Residential Parks Act*, s 55). However, you have an obligation to inform the park operator that you are selling your home and to inform the park operator if you are going to assign your lease to the purchaser.

The park operator cannot unreasonably restrict potential buyers from inspecting the premises.

The park operator may act as an agent for the tenant in selling the property and charge a commission if there is a written agreement to do so (*Residential Parks Act*, s 57). The amount of commission (or a method to calculate the commission) must be written into this agreement for the park operator to act as an agent. Commission cannot be charged if the relocatable home is sold by means other than the agency agreement or if the relocatable home does not sell.

### **Contracting Out**

Any agreement or provision of an agreement that tries to exclude or change the effect of the *Residential Parks Act* is unlawful and will not be valid **unless** the *Residential Parks Act* allows for that section to be excluded or changed (s 9).

If a particular section can be excluded or changed, the change or exclusion needs to be stated in the written tenancy agreement and signed by the tenant and the park operator.

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

- [2.08 The Tenancy Agreement](#)
- [4.08 A "Superior Title" Claim: Takeover of the Property](#)
- [7.02 The State Administrative Tribunal](#)