



new **act** *new* **facts**



REIWA Property Management Network

New Act New Facts

The **Residential Tenancies Act** is long and certainly complex.

You can't know it all off the top of your head, but now you don't need to!

The REIWA Property Managers' Network Committee has produced this handy summary, with the **quick facts** you need to know.

So, when the office is busy, the phones are ringing and other staff are tied up with clients, this simple and easy-to-read document is probably all you need to answer your tenancy questions.

Start here with **New Act New Facts** to address common questions and frequently raised issues about leasing residential property.

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Abandonment of Premises

RTA Sections 77 and 76A

REIWA forms: 329 - Notice to Tenant of Abandonment of Premises

331 - Notice of Termination to Tenant if Premises Abandoned

- Where there are reasonable grounds to suspect that the premises have been abandoned e.g. excess mail in the mail box or lack of movement at the premises, then the property manager may serve notice upon the tenant (form 329).
- The tenant then has 24 hours from the time that the notice was given to inform the lessor/property manager that the premises have not been abandoned.
- If there is no response from the tenant then the property manager may enter the premises for the purpose of securing the premises and inspecting.
- Also if there is no response from the tenant then a termination notice (form 331) can be served.
- The tenant then has 7 days, from having been given the notice, to dispute the termination through the process described in RTA section 76B.
- If there is no response from the tenant within the 7 days then the premises are deemed to be abandoned, the lease terminated, and the lessor can take possession of the premises.
- The lessor is able to claim any costs that have been incurred as a result of the tenants abandonment e.g. loss of rent and cleaning.



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Abandoned Documents

RTA section 80A

- A lessor/property manager must take reasonable care of a tenant's documents left on the premises for 60 days following the termination of a tenancy agreement.
- Documents include an official document, a photograph, correspondence, and any document that it would be reasonable to expect that a person would want to keep.
- A lessor/property manager must take reasonable steps to notify the tenant that the documents have been collect and where they can be collected.
- Prior to collection of the documents the tenant is required to pay for the reasonable costs incurred by the property manager.
- The documents can be destroyed after 60 days.

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Break Lease

Periodic Tenancy

- The tenant has the right to terminate the tenancy through serving a 21 day written notice on the Lessor/ Lessor's agent;
- The tenant's notice does not have to be on a prescribed form but it must:
 1. Be in writing
 2. Be signed by the tenant and identify the premises
 3. Specify the day on which the tenant will deliver up possession of the property.
(Realform form no. 321 has been drafted to this purpose)
- If the tenant wants to terminate prior to expiry of the required 21 days notice then refer to information under "fixed term tenancy" below.

Fixed Term Tenancy

- The tenant does not have the right to terminate the lease prior to the agreed expiry date;
- The tenant has the right to request an early termination and the Lessor has the right to decline the request;
- Inform the Lessor as soon as the tenant has advised of their intention to terminate their lease prior to the end of the fixed term period;
- If the lessor and the tenant agree to an early termination without any further liability to the tenant then **REIWA Form 353 "Agreement to Terminate Residential Tenancy Agreement"** can be used;
- If the Lessor does not consent and the tenant leaves the premises, then the tenant will continue to be liable to the lease obligations until a new tenancy commences. If the tenant does not agree to pay those obligations that arise under the tenancy agreement, then the lessor will seek damages through the Magistrates Court;
- Suggest that the tenant complete a "Request for Consent **to Termination By Tenant During a Fixed Term Agreement**" (Realform form no. 123) and return without delay so the Lessor can consider the request.
- NOTE: This form is not an agreement, rather a request for consent to the early termination of the lease. This form will often be requested by the Magistrate if there is a dispute.

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- If the tenant vacates the premises and returns the keys, the Lessor must make a decision as to whether to take possession of the premises. The Lessor could take possession for the purposes of conducting maintenance e.g. painting. In such circumstances, a magistrate may deem that the tenant's lease obligations and the Lessor's ability to claim damages came to an end at the re-possession date.
- The Lessor can advertise for a new tenant at market rent and the new tenant enters a new lease, not an extension of the old tenant's lease.

General Comments

- Commence advertising for new tenants (on the instructions of the Lessor/tenant) as soon as possible.
- If there is a break lease, the Lessor has the right to claim damages from the tenant for the Lessors losses that the Lessor will incur as a direct result of the early termination. The general concept is that the Lessor should be no worse off as a result of the break lease;
- There is no requirement to advertise the premises for the same rent the vacating tenant is currently paying. However, it is important to remember the rent cannot be increased during the first six months of the new tenancy agreement.
- There is also the scenario where market rent is now less than the rent currently paid by the defaulting tenant. The Lessor would therefore have a loss of rent claim against the tenant. The loss would be equivalent to the difference between the previous and new rent multiplied by the number of weeks remaining on the tenancy agreement.
- The lessor cannot let his losses unnecessarily run on in the anticipation that the tenant will pay. If, for example, the lessor did not within reasonable time seek a new tenant, but claims rent from the tenant, then the tenant could claim that the lessor has not made a reasonable attempt to restrict his losses.
- In reference to the software system that your company operates, because the tenant is required to pay rent until the premises are re-let, **DO NOT** enter a vacate date into the Tenant details on your Trust Account system. This should not be done until the **new** tenancy has commenced.



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Death of a Tenant

The RTA treats the death of a sole tenant differently to the death of one tenant in a multiple person tenancy

The effect of the death of the only Tenant on a Residential Tenancy

- Section 60(i) of the RTA provides that a tenancy agreement shall terminate upon the death of every tenant on the tenancy agreement.
- There will not be any rent payment from the deceased person's estate from the date of the tenant's death.
- It is reasonable to expect that the lessor will want all of the deceased person's possessions out of the premises as soon as possible so that an alternative tenant can be located.
- The property manager should deal with the deceased person's legal personal representative (the Executor named in the Will or the Administrator if there is no Will). Normally an agreement will be reached for the removal of the personal property in the premises.
- Under section 59C of the RTA a person who is not a tenant but who resides at the premises may apply to the magistrates court to be recognised as a tenant. Therefore a partner of the deceased tenant(s)) would have the right to apply to the court seeking such an order. It would be assumed that the court could reinstate the lease that has terminated.
- It would be assumed that a person would only apply to a court if a lessor refused to enter into a lease

What happens to the Security Bond?

- Section 5 of Schedule 1 to the RTA allows an executor or an administrator to sign for a tenant.

What if there is no Probate?

- Probate is the step of obtaining probate or letters of administration from the Supreme Court. It gives confidence to anyone dealing with the Executor or Administrator named in a grant of probate that they are the legal person authorised to deal with the affairs of the deceased tenant.

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- Some Executors and Administrators of deceased tenants may not obtain probate or letters of administration because the value of the estate does not warrant it.
- Technically, the public trustee is the body that all property vests in prior to the grant of probate or letters of administration being obtained.
- Many banks will deal with the next of kin of the deceased without a grant of probate or letters of administration if the estate is small and the parties receiving the funds give an indemnity to the bank. A Lessor of a property could do the same provided the amount of money involved was not large.
- In relation to the bond if probate is not obtained, it would be necessary to apply to a magistrate to have the bond dealt with through the required process.

General matters

- Probate is not able to be obtained until 14 days after a persons' death.
- From a practical point of view, probate cannot be obtained until the death certificate has issued.
- Lessors and agents are not entitled to a copy of the death certificate but can request it.
- Lessors and agents should request a copy of the probate or letters of administration in order that they can know who they can confidentially deal with in relation to the tenancy matter.
- It may take months for the grant of probate or letters of administration to be issued by the Supreme Court.

Death of One of 2 or More Tenants

- Section 59B of the RTA provides that if there are two or more tenants and one of the tenants die, then upon their death that person's interest in the tenancy ends i.e. the person is no longer a tenant.
- The Act provides that the death of one tenant does not affect the tenancy agreement between the lessor and the remaining tenants.
- This provision overlooks the scenario that the remaining tenants may not want to continue with the tenancy because they may not be able to afford the rent e.g the rent may have been divided equally amongst three tenants but now it is only divided between two tenants.
- If the remaining tenants wanted to terminate, then the lessor would either agree to terminate the tenancy at no cost or treat it as a break lease.



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Death of a Lessor

- A valid management authority, under common law, does not come to an end upon the death of the Lessor.
- Upon the death of a Lessor, agents should always take steps to enter into a new written authority pursuant to the requirements of Section 60 of the REBA Act with the estate's legal representative.
- Until the grant of probate or letters of administration have been issued to the legal personal representative, no money should be disbursed to the Lessor's account.



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Drugs in a Rental Property

It is a term of the RTA that the tenant is not to cause, use, or permit the premises to be used for any illegal purpose.

It is important that the lessor is not seen to be condoning any illegal conduct on the premises by the tenant

If you believe there is a clandestine laboratory or any other illegal activities on the premises that you manage, then leave the premises immediately and call 131 444. Request police attendance and report to the police what you know.

Indicators of clandestine drug laboratories:

- Strong unpleasant or chemical odours
- Many empty containers of over-the-counter cold or allergy medicines
- Chemistry/laboratory equipment
- Plastic bottles or glass jars
- The presence of obvious evidence
- Unusually sophisticated weight scales
- Large amounts of chemical containers, drain cleaner and acid
- Excessive gas cylinders

Indicators of cannabis growing laboratories:

- Electrical wiring that has been tampered with
- Powerful lights on at irregular hours
- Windows blacked out
- A sudden jump in electricity bills
- High humidity in the premises
- Excessive ducting and exhaust fans
- Additional deadlock or key locks on internal doors that you are unable to access
- Excessive water consumption

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General Indicators:

- Expensive vehicles
- Unusual fortification of a unit
- The presence of weapons
- Heavy traffic
- Unusual exchanges of money and valuable items
- Activity at irregular hours
- An applicant's willingness to pay the rent with cash months in advance
- High end electrical items, eg expensive TV's etc

Prevention measures:

- Use only photo identification of potential applicants
- Ensure identification has not been altered or is fake
- Watch for telephone accounts in different names
- Check for water, gas and electricity accounts in different names
- Require more than one type of identification for joint applications
- Check the current address of a prospective tenant
- Check the rental history of a prospective tenant
- Obtain any mobile phone numbers of prospective tenants
- Obtain all car registrations, makes and models including visitors when doing inspections

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Ending a Management

- When a fixed term authority is close to expiry the owner or the agent merely has to inform the other party that the authority will not be extend.
- When a fixed term authority to manage has expired and it is just drifting on, it may be ended by either the Lessor or the agent by giving 28 days written notice to the other party. (Refer – REIWA Exclusive Management Authority for Residential Premises form 310)
- If the management is to be assigned to another agent it is important that the tenant is informed of this in writing, preferably by the existing Lessor/agent.
- The existing Lessor should notify the current agent that they have appointed a new agency to act as Managing Agent and the date that their authority will commence.
- Where a property is being sold the existing Lessor has an obligation under the Joint Form of General Conditions (refer to Section 6.9) to ensure that the new Lessor is provided with information about the tenancy. The existing Lessor may request the agency to provide that information that includes
 - *Current (original) Lease Agreement*
 - *Current tenants' original Tenancy Application form.*
 - *Property Condition Report along with any photos.*
 - *Tenant contact details*
 - *Rent statement for the period of settlement*
 - *Any outstanding tenant invoices (i.e. water consumption)*
 - *Any relevant tenant history.*
 - *All keys to the property.*
 - *Completed and signed Notice of Variation of the Security Bond.*
- The existing agent does not have to provide any file notes that the agent has prepared in the course of their management.
- Copies of all documents should be kept on file for future reference.
- If the management authority is not renewed the above listed items should be provided to the Lessor or to the Lessor's new agent at the request of the Lessor.



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Inflatable Pools

- In Western Australia, the requirements for swimming pool safety barriers are regulated through the Building Regulations 1989.
- There is no distinction between pools, inflatable pools, portable spas etc. If the depth of water is more than 300mm then it is deemed to be a pool and a safety barrier must be in place. The lessor should contact the local government authority for fencing requirements.
- Portable spas which have lockable covers are still required to have a barrier in place.
- The Additional term 2.26 that REIWA has drafted for Part C of the Residential Tenancy Agreement requires a tenant to have the Lessor's written permission to install a swimming pool or spa. If tenant seeks permission to have inflatable pool and there is no fencing then permission should not be given.
- If an inflatable pool is evidenced at routine inspections with no fence and no lessor permission then a breach notice should be issued. A letter should also be sent to the tenant advising that this is unsafe, does not meet legal requirements and must be removed.
- Pool fencing should be checked by the local government authority every four years. Lessors should maintain safety barriers adequately all of the time.
- If a temporary pool collapses and causes water damage to the property then under the additional terms that REIWA has drafted for Part C the tenant accepts responsibility for any damage caused.



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Insects and Rodents

- Generally the Lessor/strata company will be responsible for plagues of pests that are moving through an area;
- Generally the tenant will be responsible for pests associated with their conduct at the premises e.g. if the tenant keeps a pet/birds that attract rodents then the tenant would be responsible for the control of rodents (refer to 2.13 & 2.14 of the Additional terms drafted by REIWA in Part C of the Residential Tenancy Agreement).
- If a swarm of bees set up 'home' at the premises, then the removal is considered a Lessor expense.
- Upon being advised of pests, the property manager should immediately notify the Lessor or the strata manager.
- A pest infestation in a strata complex that cannot be isolated to an individual unit should be referred to the strata manager for action.



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Inspections

Pursuant to section 46 of the RTA, the lessor has the right to enter the premises during the term of the lease.

Routine Inspections

Refer to sections 24 to 31 of Part B of the Residential Tenancy Agreement

REIWA form 333 "Notice of Intention to Enter Premises"

- Notice of a routine Inspection is to be by written notice and to be not less than seven days and not more than 14 days before the date of the intended inspection. The notice period must take into account the time taken to deliver the notice (three days for snail mail).
- The lessor, during a tenancy, is entitled to up to four routine inspections in any 12 month period.
- Prior to sending a notice of routine inspection section 46(4) of the RTA provides that the lessor must make a reasonable attempt to negotiate a day and time for that entry that does not unduly inconvenience the tenant. The interpretation that has to be made is what does "reasonable" mean and what does "unduly" mean? The Act certainly does not provide any definitions.
- The notice sent to the tenant must specify whether the inspection is to be before or after 12 noon. Inspections can be between the hours of 8:00am & 6:00pm Monday to Friday (inclusive) and between 9:00am & 5:00pm on Saturday.
- While the tenant has the right to be present at an inspection, if the tenant is not present at the specified time the Lessor/property manager may enter the premises.
- If property managers are denied entry, they should not enter the property and the matter should be referred to the licensee. A notice of breach should be issued to the tenant.



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Property Condition Report

Refer to RTA section 27C

- The RTA requires that a tenant be provided with two copies of a property condition report (PCR) within seven days of the tenant entering into occupation of the premises.
- Section 27C of the RTA makes no reference to the lessor or property manager signing but Form 1 of the Regulations state that the PCR given to the tenant must be signed
- Where the tenant disagrees with any information in the PCR then the report has to be marked by the tenant to reflect the disagreement. The tenant then keeps one copy and returns a copy of the PCR to the property manager.
- The RTA prescribes that the following information must be in PCR:
 1. Clean,
 2. Undamaged
 3. Working
 4. Tenant Agrees
- It would be best practice for the tenant to be informed that failure to return the signed report will result in the original report being used at the end of the tenancy as evidence of the condition of the property at the commencement of the tenancy. This is reflected in the last section of Part A of the Residential Tenancy Agreement.
- There is not any requirement for the lessor and tenant to reach a resolution on any disputed items. In such cases it may be helpful to have photographs that show the status of the disputed item.
- It would be best practice to provide the Lessor with a copy of the fully signed Property Condition Report.

Final (Bond) Inspection

- The RTA requires that as soon as practicable but in any event within 14 days of termination of the termination of the tenancy the lessor must:
 1. Conduct an inspection of the premises,
 2. Prepare another PCR that describes the condition of the premises, and
 3. Provide a copy of the PCR to the tenant.

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- The RTA requires that the tenant be given a reasonable opportunity to attend the inspection.
- The purpose of the final inspection is to ensure that the tenant has returned the property in the same standard and condition as at commencement of tenancy and to determine if the lessor has a claim against the tenant's security bond.
- The lessor can make a claim for malicious, wilful, neglectful or accidental damage by the tenant.
- The lessor cannot claim for "fair wear and tear".



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Lease Renewal

- It is best practice to have a system in place to track the expiry dates of fixed term tenancies. This will allow time to communicate with the lessor and take written instruction from them on whether they wish to offer the tenants another fixed term or a periodic tenancy or if they wish the tenants to vacate the property at the expiry of the fixed term period.
- Best practice would be to contact the lessor not less than eight weeks prior to the lease expiry date.
- Contact with the lessor should always be in writing advising the date the lease is due to expire.
- This would also be an opportunity to discuss the rent for the next lease term or any changes to the terms of the agreement which may be necessary.
- Request the lessor to communicate their instructions in writing by a certain date.
- The lessor should be made aware of the requirements for rent increases at the end of a fixed term tenancy.[See section **Increase in Rent after Renegotiating Lease** Reference section 31B of the RTA]

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Maintenance

Refer Section 42 – Residential Tenancies Act

- *The lessor must deliver up the premises in a reasonable state of cleanliness and a reasonable state of repair having regard to its age and character.*
- *The lessor during the term of the tenancy must maintain the premises in a reasonable state of repair having regard to its age and character.*
- *The lessor must attend to any repairs within a reasonable period after the need for repair arises.*
- *The lessor must comply with all requirements in respect of building, health and safety and any other written law insofar as they apply to the premises.*
- The premises do not include any fixture or chattel disclosed by the lessor as not functioning. The section in Part A titled as "*The residential premises include/exclude*" would be a suitable place in the agreement to describe chattels and fixtures that are not functioning.
- **IMPORTANT – the lessor cannot contract out of this obligation**
- In item 2.20 of the additional terms drafted by REIWA in Part C of the residential tenancy agreement the tenant has agreed to report any damage or repairs, that is not deemed an essential services or an urgent repair within a reasonable period of the damage. Failure to do so could make the tenant liable for the costs associated with not reporting the damage. For example a window may have been broken through no fault of the tenant but the damage was not reported, later in a rain storm water enters through the broken window and damages the carpet. In such instances the Lessor would be liable for the window glass but would be claiming the carpet damage from the tenant. If the damage had been reported the window would have been fixed and the carpet would not have suffered water damage.
- It is good practice to keep a written record of all maintenance or repair requests made by the tenant.
- Unless otherwise agreed, any maintenance requirements must be communicated to the lessor as soon as possible and permission gained from the lessor prior to proceeding with any repairs.
- All contractors engaged to carry out repairs or maintenance to a property should first provide the agent with written proof of their Public Liability and Workers Compensation Insurance cover.
- **GARDENS** – (Unless otherwise agreed) The tenant under section 2.18 of Part C is responsible for maintenance of the lawns, gardens, hedges, shrubs and trees in the same condition as per the Property Condition Report. This includes regular fertilising

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of lawns and gardens and keeping them free of weeds. Also keeping all the grounds (including paved areas) weed and debris free [REIWA 2.24 lease condition and compliance with strata by-laws].

- POOLS & SPAS – (Unless otherwise agreed) The tenant under section 2.19 of Part C tenant is responsible for maintenance of the pool/spa and any equipment and is to keep the water in a properly treated and clean condition. The tenant must not drain the pool without the permission of the Lessor. Lessors should give consideration to contracting a pool maintenance company to check the pool on a periodic basis.
- Any work order sent to a contractor should request the invoice be addressed to the **Lessor** of the property c/- the Agent. Make it clear to the contractor that the agent is merely relaying the Lessors' instructions and is not personally liable.
- Best practise would see a system in place to follow-up all work orders on a minimum weekly basis to ensure works are completed or delays captured and rectified in a timely manner – NOTE: This is a major area for conflict between tenants, Lessors and agents where reported work is not completed or finalised.

Urgent Repairs

Section 43 of the RTA provides the tenant with the right to undertake urgent repairs if the lessor has not taken action within a period of time to effect the repair.

- Urgent repairs have been divided into two parts.
- Firstly repairs that are necessary for the supply or restoration of a service prescribed in the regulations as an essential service. Regulation 12A has prescribed each of the following services as an essential service —
 - (a) electricity;
 - (b) gas;
 - (c) a functioning refrigerator, but only if it is provided with the premises;
 - (d) sewerage, septic tank or other waste water management treatment;
 - (e) water, including the supply of hot water.
- Secondly those repairs that are necessary to avoid —
 - (a) exposing a person to the risk of injury; or
 - (b) exposing the property to damage; or
 - (c) causing the tenant undue hardship or inconvenience.

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- It is a term of every residential tenancy agreement that if a need for urgent repairs arises otherwise than as a result of a breach of the agreement by the tenant —
 - (a) the tenant is to notify the lessor of the need for those repairs as soon as practicable after the need arises; and
 - (b) the lessor is to ensure that the repairs are carried out by a suitable repairer as soon as practicable after that notification.
- It is a term of every residential tenancy agreement that if, within the prescribed period after the need for the urgent repairs arises, the tenant is unable to contact the lessor or, having notified the lessor of the need for the repair, the lessor fails to ensure that the repairs are carried out by a suitable repairer as soon as practicable after that notification —
 - (a) the tenant may arrange for the repairs to be carried out by a suitable repairer to the minimum extent necessary to effect those repairs; and
 - (b) the lessor must, as soon as practicable after the repairs are carried out, reimburse the tenant for any reasonable expense incurred by the tenant in arranging for those repairs to be carried out and paying for those repairs.
- The prescribed period, in relation to the carrying out of urgent repairs, means —
 - (a) in relation to repairs necessary for the supply or restoration of an essential service — 24 hours; or
 - (b) in relation to any other urgent repairs — 48 hours or any longer period prescribed in the regulations;
- This certainly does not mean that the lessor has to repair the urgent repair in the time period, rather it means the lessor has to take action to have the essential service restored.
- Acceptable action within the 24 hours period would be to:
 - (b) Clarify exactly what has happened
 - (c) gain the tenant's consent that a suitable repairer be able to contact the tenant directly;
 - (d) use reasonable efforts to inform the lessor
 - (e) contact a suitable repairer and instruct them to attend to the repairs.
 - (f) inform the tenant of the steps that has been taken to effect the repairs and be provided with some indication of when the service provider will be attending the premises.
- Some agents have provided tenants with a list of various service providers who can be contacted in an emergency if the agent cannot be contacted.

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Mortgagee Repossession of Rented Properties

- When a lessor fails to pay their mortgage payments the lender being the mortgagee is entitled to take possession of the property. In such a scenario the lessor has no rights over the property.
- The RTA at section 60(e) provides that if a mortgagee takes possession of the property in pursuance of the mortgage then the lease automatically comes to an end.
- Quite often an agent will be unaware that the mortgagee is taking possession of the property until the notice is served on the tenant.
- The mortgagee will often appoint a solicitor to attend to enforce the mortgagee's rights
- The RTA at section 81A provides that the mortgagee will not be able to remove the tenant from the premises until the tenant has been given 30 days notice and that 30 days has expired.
- The tenant is not required to pay any rent or any fee during this 30 day notice period.
- The tenant can quit the premises prior to the expiry of the 30 day period of notice.
- The agent could endeavour to contact the mortgagee or their representative to determine whether the mortgagee will appoint the agent to manage the property and clarification of the Lessor's funds held in trust.
- If the agent is not appointed by the mortgagee to manage the premises, the agent should inform the tenant to liaise with the mortgagee or their representative;
- If the agent is not appointed by the mortgagee to manage the premises, the agent does not have any role to play in the management of the property including collecting rent, issuing notices, and finalising the bond without authority from the mortgagee.
- If the agent is appointed then the agent's fee should not be based upon rent because there will not be any rent during the 30 day notice period.

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Property for Sale

Nothing in the RTA prevents the lessor from selling the property.

There is no provision in the RTA that terminates the lease if the lessor sells the property, rather the lease continues on with the new owner under the same terms and conditions.

- Advise the tenant as soon as you are made aware the lessor has placed their property on the market for sale.
- The tenant can be informed of the selling agent's name and contact details.
- The selling agent should also be provided with the tenant's details (the tenant has agreed to this in the privacy provisions on their lease) including their contact details and particulars of their tenancy as follows:

Full names of all tenants

Tenant contact details

Lease term and expiry date (if fixed term) Rent amount

Date when rent may be reviewed

Furnished/un-furnished

Any special conditions or obligations of the Lessor under the lease agreement e.g. option agreement

- For the purpose of showing prospective buyers through the property the tenant is required to allow the lessor/agent access at any reasonable hour and on a reasonable number of occasions after giving the tenant reasonable notice. The agent is required to make a reasonable endeavour to negotiate a suitable time that does not unduly inconvenience the tenant. Four day's notice would not be unreasonable. [Section 46 (2) (g)] Use REIWA form 333 "Notice of Intended Inspection"
- If the tenant continually refuses entry the Lessor can apply to the magistrates court, after going through the breach process, seeking relief. [Section 15]
- If the tenancy is for a fixed term, the tenancy will continue on after the property is sold. [Section 63 (4)]
- If the tenancy is periodic the lessor/property manager may give 30 clear days written notice of termination of an agreement to the tenant on the ground that the lessor has entered into a contract for sale of the premises to which the agreement relates and under that contract the lessor is required to give vacant possession of the premises

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on or before settlement date. [Section 63 (1)] This notification is generally given only once the offer becomes unconditional but the tenant is entitled to 30 days notice. [use REIWA form 311C]

- When the property is sold the seller must, prior to settlement provide documents and information to the buyer about the tenancy. [Section 6.9(a) of the 2011 Joint Form of General Conditions for the Sale of Land (General Conditions)]
- Where the buyer has bought the premises for investment purposes and the tenancy is continuing then the buyer is entitled to the rent income from & including the earlier of:
 1. The possession date or
 2. Settlement [General Conditions 6.6]



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RCDs

See Electricity Regulations 1947

Obligation

Residential

- From 9th August 2009 two RCDs had to be installed in every residential property before it can be sold or leased.
- From 9th August 2011 two RCDs must be installed in every residential property.

Strata Common Property

- The strata council of owners must ensure that any common property relating to residential premises has at least one residual current device per switchboard, designed to protect all the sub-circuits supplied from that switchboard.

Compliance

There is no requirement to provide proof that two RCDs are fitted to a residence.

- A property manager is not lawfully qualified to categorically confirm compliance of a property.
- A licensed electrical contractor can be engaged to inspect the electrical circuits and provide an Electrical Safety Certificate stating that two RCDs are installed protecting all power and lighting circuits.

Maintenance

- Unlike the smoke alarm regulations there is not any requirement for RCDs to be kept in working order.
- Although RCDs undergo rigorous testing, dust and salt build up may cause damage.
- All RCDs are manufactured with a test button. While the Office of Energy Safety recommends that the test button should be pressed every three months, property managers should encourage the tenant to test the RCD. Testing the RCD essentially turns the power off to that circuit and the property manager may not be aware of the implications to the tenant's electrical equipment if the power is turned off.
- Pushing the test button simulates an earth leakage fault and indicates whether or not the device is operating correctly. Electrical clocks and timing devices may have to be

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reset after the test button has been pushed and the RCD turned back on. Note: Many electrical ovens do not work unless the clock has been set to a time.

- Lessors could engage an annual maintenance program to ensure that RCDs remain in good working order.

Penalties for Non Compliance

EnergySafety can impose fines for non compliance:

\$15,000 for individuals

\$10,000 for corporate

On the spot fines may be issued for common property:

\$4000 for body corporate

\$1000 for individuals



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Rent

- The tenant and the lessor agree to an amount of rent that is described as an amount per week.
- Prior to the end of the first two weeks of the tenancy agreement, the lessor cannot require more than 2 weeks rent.
- After the initial 2 weeks of the tenancy, the lessor cannot require more than two weeks rent in advance.
- The tenant may offer to pay more than two weeks rent in advance but it cannot be a requirement.
- The tenant can change his offer to pay say monthly back to 2 weeks in advance at any time.
- The tenant agrees in section 2.1 of Part C of REIWA's tenancy agreement not to make any deductions from the rent. This means that if for example the lessor owes the tenant money then the tenant could not withhold rent.
- The lessor, similarly cannot deduct amounts from the rent to pay for outstanding amounts owing from the tenant e.g water consumption and then claim that the rent is in arrears.

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Rent Arrears

Rent is in arrears when it is ONE DAY overdue.

Notices can be issued immediately from and including this day.

- Rent to be paid one rental period in advance (Ref: Part A).
- Rent arrears should be checked every day (after all electronic payments have been receipted)
- Advise the Lessor of the arrears and seek the Lessor's instructions.

Forms of notice for rent in arrears must be served on the prescribed form as follows:

- Form 21 – Breach Notice for Non-Payment of Rent

If all the outstanding rent is not paid within 14 days of the notice being served the Lessor can give the tenant Notice of Termination (Form 1A) requiring tenant to vacate in seven clear days.

NOTE: If rent is paid during seven clear days vacate period tenancy can still be terminated.

- **Form 1A – Notice of Termination for Non-Payment of Rent**
Only to be used if Form 21 (Breach Notice for Non-Payment of Rent) has been issued.
- **Form 1B – Notice of Termination for Non Payment of Rent**
(Can only be issued if Form 21 has NOT been issued)

Not less than seven clear days notice on grounds of breach of agreement to pay rent or any part of rent remains unpaid.

IMPORTANT: If rent is paid in full before the termination date specified in the notice the tenant does not need to vacate and no further action will be taken.

Note: Court action cannot be continued if Tenant pays rent AND court filing fee not less than 1 day before the hearing date. Hearing date cannot be earlier than 21 days after the form 1B notice is issued.

Requirements for service of notices - refer to Section 85 of Residential Tenancies Act.

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Rent Increases

Periodic Tenancies

- Rent can be increased six months after the lease commences.
- Rent can be increased every six months.
- There is not any statutory limit to the increase however as a caution property managers should be aware that rent should reflect the market rate.
- The tenant has to be provided with not less than 60 clear days written notice of a rent increase. [use REIWA form 317]
- The notice can be sent prior to the expiration of the six months.
- The notice of rent increase must be in writing [s30 of the RTA] but there is no prescribed form.
- Notices must be served according to s85 of the RTA.
- If the tenant did not want to accept the rent increase then the tenant would serve a
- 21 day termination notice.

Fixed term Tenancies

- The rent can only be increased within the term of a fixed term lease if the written lease agreement provides for a rent increase. Part A and C provide for rent increase.
- If there is such a provision, then the rent can be increased six months after the lease commences.
- The increase in rent provision should state how the rent will be increased:
 - (a) The increase may be to a specified amount e.g. from \$400 per week to \$450 per week and the date to be effective must be specified;
 - (b) The increase may be to a specified formula e.g. in line with CPI for Perth;
 - (c) The increase may be specified as an amount.
- The Department of Commerce has frowned upon market rent reviews with fixed term leases.
- If market rent reviews are adopted then the rent review method will have to include a dispute resolution procedure that would probably involve the lessor having to pay for a valuer to determine the rent.

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- The tenant needs to receive a 60 day notice that the rent will increase. [use REIWA form 317]

Increase in Rent after Renegotiating Lease (Renewal)

Reference section 31B of the RTA

- If a residential tenancy agreement creates a tenancy for a fixed term (the former agreement); and the parties enter into a new residential tenancy agreement in relation to the same premises (the new agreement) that is to commence immediately after the end of the term of the former agreement, whether under the terms of the agreement or under section 76C, then during the first 30 days after the new agreement was entered into, the tenant cannot be required under the new agreement to pay an amount of rent more than the amount payable under the former agreement.
- The term “after the new agreement was entered into” is deemed to mean the date that the new tenancy commences.
- Section 2.3 of Part C of the REIWA Residential Tenancy Agreement is used to address this issue



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Residential Tenancy Agreements

- Unless the Housing Authority is a party to a residential tenancy agreement a written agreement must be in the prescribed format [Regulation 5AB]. The prescribed format is reflected in form 1AAA of Schedule 4 of the Regulations. REIWA's Residential Tenancy Agreement [form 303] has been granted copyright authority to reproduce the form.
- Prescribed means that it has to be used.
- Form 1AAA consists of Part A, B, and C.
- Part C provides the opportunity for the lessor and tenant to agree upon additional terms.
- Those additional terms cannot conflict with Parts A and B, with the RTA, nor with Australian Consumer Law.
- REIWA has drafted additional terms it considers to be acceptable to clarify many issues that can arise in a tenancy.
- Part A provides for the many variables to a tenancy agreement to be agreed upon. This includes identifying the lessor, tenant and property manager, the rent, payment frequency, the number of persons allowed to occupy the premises, pets, term of the tenancy, fixed or periodic tenancy.
- Part B are the standard terms applying to all residential tenancy agreements and are a reflection of the RTA
- Every tenant must also be given a copy of Form 1AC "Information for Tenant"
- **IMPORTANT: Before having the tenant sign the residential tenancy agreement it is important that the tenant reads the document thoroughly.**
- The REIWA Agreement must be signed by all tenants whose name appears on the lease and the signatures must be witnessed by a party independent to the agreement.
- The Agreement can only be signed by a registered Property Manager or Licensee on behalf of the Lessor.
- At the time of signing the Agreement the tenant must also receive:
 1. The Lease and any attached annexures
 2. Information for Tenant (Statement of Rights and Duties)
 3. Relevant By-Laws pertaining to a Strata complex.

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- Best practise would also suggest the Property Condition Report is available at the time of signing the Agreement, but definitely prior to occupying the property.
- Occupation of the property should not be permitted until the Agreement is signed and the bond monies paid – failure to do so could invalidate any insurance on the property and increase the agent's liability to the lessor.



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Security Bonds

Maximum amounts

- Pursuant to s29 of the Act a person shall not —
 - a. require the payment of, or receive, more than one security bond in relation to any residential tenancy agreement; or
 - b. require the payment of, or receive, a security bond of an amount exceeding in the aggregate of —
 - i. 4 weeks' rent under the residential tenancy agreement in relation to which it is required or received; and
 - ii. where the tenant is permitted to keep a pet on the premises and that pet is capable of carrying parasites that can affect humans, the amount of \$260 to meet the cost of any fumigation of the premises that may be required on the termination of the tenancy.
- The Regulations to the Act (Section 11) permit the Lessor to have a security bond in excess of 4 weeks rent if the weekly rent for the premises exceeds \$1200.

Increases to the security bond

- Pursuant to s31 of the Act the security bond cannot be increased unless there is an increase in the rent.
- Unlike a rent increase, the security bond cannot be increased less than 6 months after the day the tenancy commenced or 6 months after the last rent increase.
- If the Regulations are changed to alter the maximum prescribed amounts (such as the circumstance that occurred on 1st June 2011) then the security bond cannot be increased unless the rent has been increased.
- Where the security bond can be increased, the tenant must receive a notice of bond increase. That notice of increase must be:
 - I. In writing
 - II. Not less than 60 days prior to the date of increase, and
 - III. Specify the amount of the increase.
- Security bonds can be received in instalments
- Security bonds must be lodged with the bond administrator within 14 days of receipt.
- The person receiving the bond must give a receipt to the person paying the bond.



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Smoke Alarms

Obligation

All rental properties must have a hard wired smoke alarm fitted to each sleeping zone of the premises.

A battery powered smoke alarm is permitted where there is no ceiling space for the wiring to be fitted.

Maintenance - Lessor Obligation

Under the Building Regulations Amendment Act the lessor is required to maintain smoke alarms to be good working order.

FESA Key Smoke Alarm Maintenance Routines

FESA recommendations:

Regular testing (not less than once per month) to ensure the battery and the alarm sounder are operating. This will also familiarize building occupants with the sound that is emitted when the unit detects smoke. Refer to manufacturer's guide for testing procedure.

Replace batteries annually, where appropriate. Refer to manufacturer's guide for battery type.

Cleaning with a vacuum cleaner (at least once a year) to remove particles that will affect smoke alarm performance.

When maintaining the smoke alarm it is also important to note the following:

- Generally, smoke alarms will sound a regular warning 'beep' if the battery needs replacing. Refer to manufacturer's guide for exact warning details.
- Smoke alarms should never be painted.
- The date the smoke alarm was manufactured will be displayed. Smoke alarms have a maximum service life of ten (10) years and need to be replaced.
- Contact the manufacturer or supplier with any queries regarding your smoke alarm. Smoke alarm maintenance may require the use of a ladder. Please take care.

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A licensed electrical contractor is required to disconnect or install mains powered smoke alarms. All other smoke alarm maintenance does not require a licensed electrical contractor.

Agent Obligation

The agency must determine what role they will play to assist the lessor with the lessor's obligation to maintain smoke alarms.

The lessor and agent should discuss how the lessor will comply with their obligation to maintain smoke alarms.

The agent should keep a file note of the agreement and confirm it in writing. If nothing is agreed, the agent will have the responsibility of ensuring compliance with the law.

Lessor Options

Some of the options available to the lessor are:

1. Lessors engage a qualified tradesperson to undertake maintenance at the lessor's cost.
2. The agent undertakes to engage, on the lessor's behalf, a qualified tradesperson to undertake maintenance.
3. The agent may agree to engage, on the Lessor's behalf at the Lessor's cost, a qualified tradesperson to undertake maintenance on an annual basis but for the agent to test that the battery and the alarm are operating at the periodic inspections.
4. The Lessor may place some responsibility upon the tenant throughout the lease, to test the battery and that the alarm operates, but that will not remove the Lessor's or the agent's potential liability if no testing is done.

Type of Alarm

FESA endorses photoelectric smoke alarms rather than ionisation smoke alarms.

Any property that cannot be fitted with a hard wired smoke alarm will require the long life 10 year non removable battery smoke alarm.

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Tenant Damage

If a tenant has interfered with the smoke alarm then under the lease the tenant is responsible for any damage and the property manager must take prompt action to rectify if smoke alarm is damaged or faulty.

Lessor Refuses to Comply

If an Lessor refuses to make the property compliant for smoke alarms then the property manager should advise the Lessor that this is in breach of the management authority. The Lessor in the manage authority has warranted that the property is compliant. This is a safety issue and agents should give serious consideration to terminating the management agreement if the Lessor refuses to comply. The REBA Code of Conduct requires agents to let all relevant parties know – including the tenant.

Local government authorities can impose fines for non compliance: \$750-\$1000 for an infringement notice and up to a \$5000 fine if prosecuted. Although the action would be against the Lessor, the Lessor may seek to be indemnified by the agent.

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Tenancy Application

- Ensure the applicant is aware that it is a condition of the Application that the applicant has inspected the property and will accept possession of the property in the condition as inspected on the date of inspection.
- Relay to the tenant any special conditions which the lessor wants to include in the tenancy agreement
- Applications should contain details of all people 18 years or older who will be occupants of the property.
- The applicant is required to provide proof of identity as well as Next of Kin and
- Emergency Contact details.
- **Ensure ALL details on the application are completed in full.**
- Make sure the applicant has read the Application form fully and understands the condition including the section related to Privacy.
- There are two ways to process the application- either with an option fee or without an option fee.

Option Fee

- An option provides the successful applicant with the right but not the obligation to enter into a lease with the lessor prior to an agreed time (the option period). The option fee is paid to the lessor for that right.
- If the applicant proceeds to sign the lease and pay the required money (the first two weeks rent and the security bond) then the option has been exercised and the option fee is credited towards the rent and the lease comes into effect. The lease will come into effect without the property manager signing the lease because the lessor has granted the option for the applicant to enter into a lease.
- If the applicant does not proceed to sign the lease and pay the required money by the agreed time then the option fee is retained by the lessor.
- The RTA restricts the option fee to a maximum amount.

Where the weekly rent under the residential tenancy agreement is \$500 or less	\$50
Where the weekly rent under the residential tenancy agreement exceeds \$500	\$100

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Where the residential tenancy agreement is for residential premises south of the 26th parallel of south latitude and the weekly rent is \$1 200 or more	\$1,200
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No Option Fee

- If the application is processed without an option fee, then pursuant to the REIWA standard application the successful applicant is provided with a period of time to sign the lease and pay the required money- rent and security bond. This time period is reflected in section 1 of Part C (REIWA's additional terms). The lease will not come into effect until the property manager signs the lease.

General

- Check all references thoroughly and confirm employment details on the application are correct and current. (If the applicant is self employed, then sight proof of income e.g. bank statement, tax return)

Tenancy Databases

- Check all applicants' names through a Tenancy Database and follow up any information which may be provided on this.
- It is a requirement of s82C of the RTA that if the property manager intends to conduct a database check then the applicant must be informed prior to the check.
- REIWA's application incorporates the required notice [REIWA form 352] to the tenant that the property manager may conduct a check on a tenancy database.
- If the tenancy database provides information about an applicant then pursuant to s82D of the RTA the applicant must be informed through a notice [REIWA form 351].
- Once all reference checks have been received communicate to the lessor all information relevant to the application and act on the lessor's instructions in relation to the application.
- Beware of references giving mobile phone numbers only.
- Once you have received instruction from the lessor that they have approved the application advise the applicant without delay and arrange a time for the tenancy agreement to be signed.

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- If an application has not been approved by the lessor it is important to advise the unsuccessful applicant of this and arrange for their option fee (if applicable) to be refunded to them without delay. (Note: You are not obliged to give the applicant a reason for their application not being successful)
- There is not any requirement to hand back to the applicant their application form.

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Termination of Tenancy (By Lessor)

Refer REIWA Form 311C – NOTICE OF TERMINATION

This form is used for termination of a tenancy for a reason other than for non-payment of rent.

- Form of notice of termination by the Lessor shall:
 1. be in writing and in the prescribed form
 2. be signed by the Lessor or agent
 3. identify the premises (address of property)
 4. specify the date on which the premises is to be vacated
 5. specify the grounds and give particulars of the reason the notice is given.
- The grounds for termination (where it is not a social housing tenancy) can be either:
 - (a) NOT LESS THAN SEVEN CLEAR DAYS NOTICE (not rent) – on the grounds that a notice of Breach of Agreement has been issued not less than 14 days before and the breach has not been remedied (ref section 62 of Residential Tenancies Act).
 - (b) NOT LESS THAN 30 CLEAR DAYS NOTICE – on the grounds that the Lessor has entered into a contract for sale of the property and the buyer requires vacant possession.

[NOTE: This does not apply to a fixed term tenancy. A fixed term tenancy will continue to the end of the term even if the property passes to another Lessor.]

 - (c) NOT LESS THAN 60 DAYS NOTICE – the Lessor is not required to specify a reason or grounds. **[NOTE – this does not apply to a fixed term tenancy]**
 - (d) NOT LESS THAN SEVEN CLEAR DAYS NOTICE (ref section 69 of the RTA) under the following circumstances:
 - I. premises have been destroyed,
 - II. premises are deemed uninhabitable,
 - III. premises no longer lawfully useable as a residence,
 - IV. premises have been appropriated/acquired by an authority by compulsory process.
- If the tenant does not vacate the property after the required date on the Notice of Termination then the lessor may then apply to the court for an order terminating the tenancy and requiring vacant possession.



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Termination of Tenancy

(By Tenant)

REIWA Form 321 – NOTICE OF TERMINATION

This form is used for the termination of a tenancy by a tenant.

- Form of notice of termination by the tenant shall be:
 1. in writing
 2. signed by the tenant
 3. identify the premises (address of property)
 4. specify the date on which the tenant will deliver possession of the premises
- The tenant may give notice of termination of an agreement without specifying any grounds for the notice.
- For a periodic tenancy the period of notice must be not less than 21 days.



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Termination of Tenancy (By Lessor or Tenant)

- Where the premises or part of the premises is destroyed or rendered uninhabitable or the premises ceases to be lawfully useable or are appropriated or acquired by an authority –
 1. In these circumstances a Lessor or tenant may give notice of termination.
 2. The period of notice an LESSOR gives under this section is not less than 7 days.
 3. The period of notice a TENANT gives under this section is not less than 2 days.
 4. Rent should be paid up to the last day of the tenancy.
- **THE ABOVE APPLIES TO EITHER A FIXED TERM OR A PERIODIC TENANCY.**



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Termination of a Fixed Term Tenancy

Section 70A provides for the termination of a fixed term tenancy

- To bring a fixed term tenancy to an end either the landlord or the tenant are required to provide 30 days notice.
- The landlord can provide this notice on REIWA form 311C.
- The tenant can provide this notice on REIWA form 321.
- If no notice is given prior to the expiry date of the fixed term tenancy then the tenancy will continue as a periodic tenancy.
- Section 70A allows for the notice to be given at any time up to, and including, the expiry date of the tenancy agreement. In this circumstance, the fixed term tenancy agreement will continue until the 30 day notice period expires.
- If both the tenant and the landlord provide different notices then the earlier of the two dates will apply.
- If the lessor's period of notice extends beyond the expiry date, then the tenant can deliver up vacant possession at any time between the expiry date and the termination date on the notice. In such a scenario the tenancy is deemed to be at an end.

It would be a possible scenario that the property manager forgot to give notice but the tenant on the final day of the fixed term tenancy provides the required 30 day notice and then delivers up vacant possession the following day. The tenancy would be at an end.