

when violence affects a **TENANCY**





This booklet has been produced by Tenants Advice Service (Inc.) WA with funding from the Law Society of WA Public Purposes Trust.

© Copyright Tenants Advice Service (Inc.) WA 2002

This booklet may be reproduced and distributed to tenants provided the source is acknowledged and the information is distributed free of charge. Permission must be obtained from Tenants Advice Service to reproduce this booklet or parts of this booklet for any other purpose.

Disclaimer: While making every attempt to present general legal information accurately in this publication, Tenants Advice Service (Inc.) WA disclaims liability for any loss or damage arising from its use. This publication should not be relied upon as a substitute for legal or other professional advice.

Tenants Advice Service Inc. (TAS) is a community legal service funded to assist tenants.



This booklet is also available on the web at www.taswa.org

Illustrations: Justine Dalziel

Layout Design: Holly Hammond; Nicolette Ward.

Printing: Admiral Print

when violence affects a TENANCY

contents

How could violence affect your tenancy?	4
If you are a victim of violence	5
Getting better security	6
Breaking a tenancy agreement	7
Can I be held responsible for damage to the premises?	8
Can I be evicted if I am in a violent situation?	10
What if the violent person is a co-tenant?	11
Restraining Orders	12
What if the violent person is the owner/agent?	13
What if I am a Homeswest tenant?	14
Improving security for Homeswest tenants	15
Priority transfer for Homeswest tenants	16
Appealing a Homeswest decision	17
Where can I get help?	18

How could violence affect your tenancy?

This booklet is for tenants who are the victims of violence. In this booklet, the word "violence" may refer to a number of different behaviours, such as:

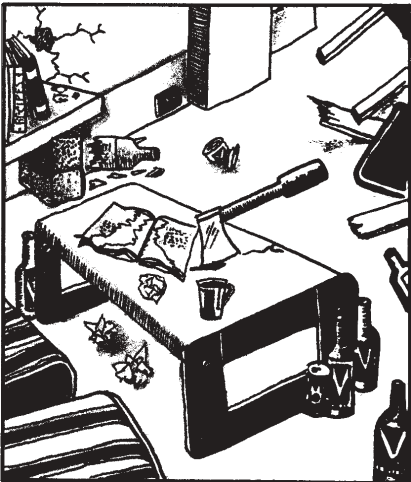
- *Threats* (e.g. "I'm coming back to get you")
- *Intimidation* (e.g. "If you don't do this I'll make you sorry")
- *Harassment* (e.g. constant phone calls)
- *Physical violence* (e.g. causing damage to the premises or injury to another person).

If you are the victim of violence, please see the list at the end of this booklet for people who may be able to help you.

If you are a victim of violence

If you are a victim of violence, you may:

- Want extra security (for example, better locks or security screens);
- Want the person causing the violence to leave if they are living with you;
- Need to break your tenancy agreement, so you can move to a safe place;
- Be held responsible for damage to premises (for example, fist holes in doors); or
- Be evicted if the violence results in a breach of your tenancy agreement.



How can I stay in the tenancy and get better security?

Section 45 of the *Residential Tenancies Act* (1987) says that the owner has to provide locks and other devices to make the place "reasonably" secure. These can include security screens on windows, deadlocks on doors and key locks on windows.

If you think the security on your place is not "reasonable" you can ask the owner/agent to install better security.



How can I break my tenancy agreement?

Your tenancy agreement can only be broken if the owner/agent agrees. They do not have to let you go because they are not at fault. However, most owners/agents are reasonable, understanding people, and arrangements can usually be made.

The best outcome for you is if they will agree to let you get out of the tenancy straight away without having to keep paying rent. This means that you won't get charged anything more because you are leaving early. If you can get the owner/agent to agree to this, you should get it confirmed in writing.

The most common arrangement is where the owner/agent agrees to let you go, but you have to pay any costs caused by your leaving early. For example, paying for advertising and rent until new tenants are found.

Whatever arrangements you make, always confirm them in writing.



Can I be held responsible for damage to the premises?

There are two sections in the *Residential Tenancies Act* which talk about the tenant being responsible for damage.

Section 38(1)(c) says you are not allowed to cause damage, or let anyone else cause damage; either on purpose or by not taking care.

Section 50 says if somebody is visiting your place with your permission, you are responsible for their actions.

If you are being charged for damage caused by a violent person, the owner/agent has to show that you let the person be there. You may have to prove you didn't let them on the property, but this can be difficult, especially when there are no other witnesses.

It can be a problem if you have let the violent person in, even if you didn't think they might get violent. This may be a reasonable explanation if it's the first time, but if it has happened before and you still let them in again, you are more likely to be held responsible for any damage they cause.

If you have called the police, there will be a record of your complaint. If they come out to your place, you should ask the officers for their names and they should give you a slip of paper with the "offence report number" on it.

Ring the police if you haven't got an offence report number. It may prove that at the time of the damage, the person was not welcome to be there. It may also prove that the damage is a crime and that the violent person is responsible.

Section 38(1)(b) says you have to tell the owner within three days if there has been any damage at the place.

If you haven't told the owner/agent about the damage, you may be held responsible to pay for it. Make sure you let them know what is happening. It's a good idea to confirm in writing in case you need proof later.



Can I be evicted if I am in a violent situation?

Understandably, some owners/agents get worried if the tenant is a victim of violence. They may be worried about the risk of damage, or they may be under pressure from neighbours.

Damage to the premises may be considered a breach of the tenancy agreement, and therefore grounds (reasons) for the owner/agent to terminate the tenancy agreement. Again, the owner/agent will have to prove that you are responsible for the damage (see page 8).

Section 39(b) says you are not allowed to cause or permit a nuisance. It can be upsetting for people living near violent incidents. Some people can be understanding and helpful, but others cannot understand and just want it to stop. They may give evidence against you.

If you receive any notice from the owner/agent it is important that you respond in writing and keep a copy of both. If you are on a periodic tenancy and you receive a Form 1C Notice of Termination, **it does NOT mean you have to be out on the day it says.** It means if you are not out by then, the owner/agent can apply to the Court for a hearing. **You do NOT have to move out before the Court hearing.** At the hearing, you will have a chance to explain your side of the story and eviction may not be justified. Contact Tenants Advice Service (Inc.) for more information on this.

What if the violent person is a co-tenant?

If you have a joint tenancy, everyone whose name is on the tenancy agreement has to agree before any changes to arrangements can be made. This can make things very difficult if the violent person is refusing to leave; or if you want to leave and you are not sure what the other person wants to do. If you are in this situation, you should let the owner/agent know what's going on.

It is possible, under section 73 of the *Residential Tenancies Act*, for the owner/agent to apply to terminate the agreement on the grounds that a tenant has or is likely to cause damage to the premises, or injury to a person. You may be able to negotiate with the owner/agent to get them to make an urgent application under this section, with an agreement to re-let the place to you under a new tenancy agreement without the violent person. If you can work this out, make sure it is confirmed in writing.

If you are the victim of violence you should seriously consider seeking a Restraining Order. This is a Court Order that says the violent person is not allowed near you. If the violent person breaks this condition of the Restraining Order, they could get arrested which may result in a fine or imprisonment.

You can apply for a Restraining Order to keep the violent person away from your place.

Restraining Orders

There are two types of Restraining Orders in WA:

- **Misconduct Restraining Orders (MRO)** are to stop intimidation, threats and abuse, stalking type behaviours such as nuisance or abusive telephone calls, damage to property; and
- **Violence Restraining Orders (VRO)** are to stop actual physical violence or the threat of it. This order can include the protection of children.

Applications for either of these orders can be made by yourself or the police. In some urgent circumstances the police can get a **VRO** quickly over the phone for you. You can make your application at the Court of Petty Sessions during normal office hours. At the initial hearing, the Court can make a temporary order and the violent person has 21 days to object. If they object there will be a hearing for both sides to tell their story. It is up to the police to serve the orders.

There is no fee for a VRO. There is a \$57.50 fee for a MRO but it may be waived if you can show you can't afford it. There is no fee for a MRO if you have a pensioner's concession (Health Care Card).

MRO's stay in force for one year; or whatever time is specified. VRO's stay in force for two years; or whatever time is specified. Telephone orders last for 72 hours; or the time stated in the order.

What if the violent person is the owner/agent?

If an owner/agent is violent towards you, you should tell the police. Also, they are in breach of section 44 of the *Residential Tenancies Act* (which gives you the right to peace, comfort and quiet enjoyment of the premises) and possibly section 46 (which talks about when an owner/agent can come to the premises).

You can serve a **Notice of Breach of Agreement** on the owner. This can be in the form of a letter setting out what they have done wrong and what you want done about it. Or you can serve a **formal breach notice on a Form 20A** (available from the Department of Consumer and Employment Protection or Tenants Advice Service Inc. - see contact details at the back of this booklet).

If the owner/agent won't stop their behaviour, you have two choices:

1. You can apply to the court for a VRO or MRO to stop the violent person continuing their behaviour.
2. You can apply to the court, asking for your tenancy to be terminated on the grounds of breach by the owner (section 75) and for the owner to pay all your relocation costs (section 15).

What if I am a Homeswest tenant?

Homeswest has a special "Domestic Violence" policy. It sets out the sort of help Homeswest can give and in what circumstances. You should ask Homeswest for a copy of this policy.

Homeswest is the same as any other owner/agent for everything set out above. Except that Homeswest tenants are usually periodic tenants. That is, there is no end date to the tenancy agreement. This means you can get out of your agreement by just giving three weeks notice in writing. In serious circumstances, Homeswest will not even require this.

You should ring your accommodation manager to discuss the situation, then send a letter to confirm the discussion.

If you are a Homeswest tenant, you have two extra options:

- Apply for improved security, or
- Apply for a priority transfer.

Improving security for Homeswest tenants

Homeswest has the same obligations as any other owner to make sure your place is “reasonably” secure. Many of the older Homeswest places do not have reasonable security. Contact Tenants Advice Service (Inc.) for more information on this.

In addition, Homeswest policy provides that security screens can be installed if necessary. You will need to prove to Homeswest that they are necessary. It is best to put your request in writing, setting out the reasons why you need security screens. If you just ask over the phone or counter, there may be no record of your request. If Homeswest says no, you can “appeal” the decision (see page 17).



Priority Transfer

In order to convince Homeswest that you should be transferred you will need to tell them all about what has been happening to you. All Homeswest officers who make decisions involving violence, should have had special training to identify the issues.

You will need to have some evidence to support your story. For example:

- A support letter from a counsellor, a refuge coordinator/manager, or social worker;
- A support letter from your doctor;
- Proof of complaints to the police;
- A restraining order.

If Homeswest won't agree to a transfer, you can "appeal" the decision (see page 17). If Homeswest does approve a priority transfer, they say it will happen within a reasonable time. If you feel the time taken is unreasonable, you should contact your local Homeswest Customer Service Manager.

You may want to leave your place and stay with friends or family until Homeswest finds you another place. You will have to keep paying your Homeswest rent while you wait for a transfer, unless they say it's alright to stop paying rent. If they agree to this, it is very important that you get it in writing first.

If you have to move to a refuge, you can apply for your Homeswest rent payments to be suspended while you are there.

Appealing a Homeswest decision

If Homeswest makes a decision you aren't happy with, you can appeal.

If Homeswest says:

- you can't have a transfer; or
 - you can't have security screens; or
 - you are being held responsible for damage; or
 - you are accused of causing a "nuisance";
- you can appeal.

This means you have the chance to try to convince Homeswest that they are wrong. You will need to make an application for appeal. Homeswest has a form you can fill out, but you should also write a letter explaining your circumstances, and attach any other support letters you have.

Homeswest will set a hearing date when you can come along and talk to the appeal committee which will decide your case. This committee has a Homeswest officer and an independent community worker. Victims of violence can ask for their appeal to be heard by persons of the same gender. The hearing is actually an informal talk around the table.

You should get some advice before you lodge an appeal. Your story may not be enough on its own. You have to show how your case fits in with Homeswest's policy. See the list at the end of this booklet for referral to people who can help you with appeals.

Where can I get help?

Restraining Orders

Legal Aid Commission – 1800 809 616

Victim Support Service – 1800 818 988

Court of Petty Sessions - 9425 2266

Police

Police DV Resource and Referral Centre – 9226 2370

Police (24 Hours) - 9222 1111

Nearest Police Station – 131 444

Police Family and Domestic Violence Unit – 9356 0555

Police Child Abuse Unit – 9492 5444

District Domestic Violence Liaison Offices:

Joondalup - 9400 0915

Mirrabeeka - 9345 9121

Perth - 9226 2370

Midland - 9250 0322

Fremantle - 9336 9919

Cannington - 9399 0273

Refuge Accommodation

Women's Refuge Group - 9420 7264

Aboriginal Women's Refuge ('Anawim') 9328 7562

ACRAH Men's Refuge – 9272 1333

Salvo Care Line – 9227 8655

Crisis Help

Crisis Care – 9223 1111 – 1800 199 008

Family Help Line – 9223 1100 – 1800 643 000

Men's DV Help Line – 9223 1199 – 1800 000 599

DV Children's Counselling Service - 9328 1888

Kid's Help Line – 1800 551 80

Gay and Lesbian Counselling Service - 9420 7201

Translating and Interpreting Service – 13 14 50

Assistance

Domestic Violence Resource and Referral Centre
(Perth district) - 9226 2373
Domestic Violence Advocacy and Referral Service -
(Joondalup district) - 9300 1022
Multicultural Women's Advocacy Service -
9328 1200
Domestic and Family Violence Outreach -
9227 8122 (Women's Health Care House)
9472 9470 ('Nardine')
9398 5080 ('Starick House')
9300 1022 ('Patricia Giles Centre')
9193 6146 ('Marnja Jarndu' - BROOME)
9842 1574 (ALBANY)
9791 2884 (BUNBURY)

Ishar Multicultural Women's Health - 9345 5335

Women's Health Works - 9345 5335

Derbarl Yerrigan Health Service -

9421 3888 (Perth)

9452 5333 (Maddington)

9344 0444 (Mirrabooka)

Sexual Assault Resource Centre – 9340 1828/20

Child Sexual Abuse (Princess Margaret Hospital) –
9340 8222

Family Court Counselling Service – 9224 8248 –
1800 199 228

Legal Services

Domestic Violence Legal Aid Unit – 9261 6254;
9261 6320

Legal Aid Information Service – 1300 650 579;
TTY: 1800 241 216

Aboriginal Legal Service – 9265 6666;
1800 019 900

Welfare Rights and Advocacy Services –
9328 1751

Youth Legal Service – 9202 1688; 1800 199 006

Women's Law Centre-

9221 5122; TTY - 9221 5410; 1800 625 122



TENANTS ADVICE SERVICE (Inc.) WA

Telephone Advice Line

Metro Line: (08) 9221 0088

Country Line: 1800 621 888

webpage: www.taswa.org

Tenancy Advice Local Service Units

BUNBURY: Tenant Advocate (South West)

Phone: (08) 9791 1877 Freecall: 1800 222 213

EAST VIC. PARK: Sussex Street Community Law Service

Phone: (08) 9470 2676

FREMANTLE: Community Legal and Advocacy Centre

Phone: (08) 9432 9790

GERALDTON: Geraldton Resource Centre

Phone: (08) 9964 3533 TTY: (08) 9964 5822

GOSNELLS: Gosnells Community Legal Centre

Phone: (08) 9398 1455; (08) 9398 1466

KALGOORLIE: Goldfields Community Legal Centre

Phone: (08) 9021 1888

KUNUNURRA: Kimberley Community Legal Services

Phone: (08) 9169 3100

MIDLAND: Midland Information, Debt and Legal Advice Service

(MIDLAS) - Phone: (08) 9250 2123

MIRRABOOKA: Northern Suburbs Community Legal Centre

Phone: (08) 9440 1663 TTY: (08) 9440 1680

ROCKINGHAM: Southern Communities Advocacy Legal

Education Services Inc. (SCALES) - Phone: (08) 9528 6077

ROEBOURNE: Pilbara Community Legal Service

Phone: (08) 9182 1169

SOUTH HEDLAND: Pilbara Community Legal Service

Phone: (08) 9140 1613

Department of Consumer and Employment Protection

Freecall: 1300 30 40 54 TTY: 9282 0800