



Government of **Western Australia**
Department of **Commerce**

Information booklet park living

Important

Before signing a tenancy agreement, park operators must give a copy of this booklet to prospective tenants or face a fine of up to \$5,000.

This is an important document that should be kept for future reference.



A guide to the laws regulating long-term living in park homes,
lifestyle villages and caravan parks in Western Australia

The Consumer Protection Division of the Department of Commerce provides the following services:

- free general (not legal) advice is given to all parties in a long-stay tenancy agreement;
- a free management service is provided for security bonds, located at our head office;
- complaints are conciliated, and, wherever possible, settled; and
- prosecution of breaches of consumer law are undertaken.

When conciliating complaints and the parties are unable to reach a satisfactory outcome, it may be necessary for the matter to be settled by the State Administrative Tribunal. Consumer Protection does not have the power to make orders or determinations, such as making a tenant or a park operator do something – only the Tribunal can do that.

This booklet can be obtained from the Consumer Protection Advice Line 1300 30 40 54 (for the cost of a local call state wide) or can be downloaded from our website: www.commerce.wa.gov.au

The information provided in this publication explains and simplifies the law and should not be taken as a statement of law, for which you should refer to the *Residential Parks (Long-stay Tenants) Act 2006* (the Parks Act) and the Residential Parks (Long-stay Tenants) Regulations 2007 (the Regulations). Authorised versions of the Parks Act and Regulations are available from the State Law Publisher, who are located at 10 William Street, Perth, telephone (08) 9321 7688. You can also visit the State Law Publisher,s website www.slp.wa.gov.au

Disclaimer:

The Department of Commerce has produced this guide as a summary of many of the rights and responsibilities of park operators and tenants under the *Residential Parks (Long-stay Tenants) Act 2006*. It should not be used as a substitute for the Act or professional legal advice.

Government of Western Australia 2009

This publication is free. The Department of Commerce has no objection to photocopying parts or all of the text.

This publication is available on request in alternative formats to assist people with special needs.

| | |
|---|----|
| Introduction | 2 |
| Is this booklet for you? | 2 |
| Thinking about park living | 4 |
| Proposed agreement | 4 |
| Information booklet | 6 |
| Information sheet | 6 |
| Park rules | 7 |
| Condition report | 8 |
| Important questions for tenants | 9 |
| Starting a tenancy | 13 |
| Keeping the paperwork | 13 |
| Start up fees | 13 |
| Other up front fees | 14 |
| Cooling off period | 14 |
| Living in a park | 15 |
| Change of details | 15 |
| Rent | 15 |
| Rent increases | 15 |
| Cleanliness, maintenance and damage | 16 |
| Alterations and additions to park home or site | 17 |
| Changes to park rules | 18 |
| Respecting the privacy and comfort of others | 18 |
| Park operators right of entry | 18 |
| Sub-letting | 19 |
| When things go wrong: disputes and resolution | 20 |
| Dispute resolution bodies | 20 |
| Types of disputes | 22 |
| Ending a tenancy | 25 |
| The tenant wants to end a tenancy | 25 |
| Compensation of a park operator | 30 |
| The park operator wants to end a tenancy | 30 |
| Evictions | 31 |
| Compensation of a tenant | 32 |
| Glossary | 33 |
| Appendix A | 34 |
| Appendix B | 35 |
| Useful contacts | 36 |

Introduction

In Western Australia, a residential park (a park) is a caravan park that provides land (called 'sites') upon which relocatable homes, such as caravans or park homes can be placed.

'Mixed' parks provide a combination of long-stay and tourist accommodation. Tenants, who are not occupying the park for holiday purposes, should be situated on 'long-stay' (as opposed to 'short-stay') sites. Long-stay sites can be occupied for more than **three months**. Tenants of mixed parks should be aware that they may be sharing facilities such as recreational and toilet facilities, with holidaymakers.

Other parks may contain long-stay sites only. These parks may be called 'lifestyle villages' because they are marketed to people who have a particular interest or quality in common. However, lifestyle villages can also be retirement villages and these may be regulated by the *Retirement Villages Act 1992*. If the lifestyle village is a retirement village for the purposes of the *Retirement Villages Act 1992*, it is not covered by the residential park laws.

Before entering a park, prospective tenants should be aware that it is a unique lifestyle. Parks provide a place for a number of people to live reasonably close together, which can provide people with a feeling of safety and a sense of belonging to a community. However, people may find that living close to others may sometimes create disharmony and can require a fair amount of compromise and good communication.

This booklet summarises many of the rights and responsibilities of park operators and tenants, as outlined in the following renting laws:

- *Residential Parks (Long-stay Tenants) Act 2006* (the Parks Act)
- Residential Parks (Long-stay Tenants) Regulations 2007 (the Regulations)

The Parks Act applies to people on a private or government owned park who:

- are renting both a home, such as a caravan or park home, and a site on a park for three months or more;
- are renting a site on a park as the caravan or park home is owned, purchased on-site or brought onto the site by the tenant for three months or more;
- had entered into a periodic tenancy agreement before 3 August 2007;
- had a written, fixed term agreement that has expired or was extended on or after 3 August 2007; and
- had entered into an oral tenancy agreement before 3 August 2007.

The law does not apply to people who:

- are on holiday for any length of time;
- are employees of the park staying on the premises during the term of employment;
- are in retirement villages (who are covered by the *Retirement Villages Act 1992*); or
- have written, fixed term tenancy agreements, which have been entered into before 3 August 2007 until expiry.

If you are still unsure whether the law applies to you, contact the Consumer Protection Advice Line on 1300 30 40 54 (for the cost of a local call state wide).

Thinking about park living?

As park living involves renting, it is important that tenants are clear about the conditions of the tenancy.

When considering whether to live in a particular park, it is a good idea for tenants to familiarise themselves with the provisions of the Parks Act and Regulations.

The provisions of the Parks Act and Regulations reflect a broad recognition that park operators may not have had a lot of experience in producing agreements, particularly agreements that comply with the Act. To address this issue, the Parks Act and Regulations provide for standard information to be included in all tenancy agreements.

Such standards form the basis of all tenancy agreements between the park operator and the tenant. Outside of the provisions of the Parks Act, the tenant and the park operator are free to negotiate other terms of the agreement, as long as such terms are not inconsistent with the core provisions of the Act.

The Parks Act and Regulations also contain provisions that recognise that prospective tenants may not be familiar with the operation of the residential park tenancy market. For example, tenants may have owned a house on a suburban block for most of their lives and may be unfamiliar with the requirements of renting, particularly in a communal living situation.

In addition, the agreement and the laws are written in a legalistic style, which people outside of the legal profession may find difficult to read, understand and interpret.

To address these issues, the Parks Act provides that certain information must be provided to prospective tenants:

Information for tenants

Under the Parks Act, the following five disclosure documents must be given to a tenant **before signing** an agreement. These are discussed in the following pages.

1. **Proposed agreement**
2. **Information booklet**
3. **Information sheet**
4. **Park rules**
5. **Condition report**

BE AWARE: Under section 11(1) of the Parks Act it is an offence if the park operator does not provide the information required to be given to tenants before an agreement is made (maximum penalty: \$5,000).

Proposed agreement

The agreement is a legally binding contract that is usually made between a tenant and a park operator. Understanding the rules from the start helps to avoid disputes later.

The Regulations provide for standard information to be included in all agreements.

If a tenant has been residing on a park for **three months** and has a periodic non-complying agreement, a park operator must take appropriate steps to attempt to make an agreement that complies with the Parks Act. If such an agreement is not made within **five months** after the tenant has commenced residing on the park, either party could apply to the State Administrative Tribunal (Tribunal) for a determination.

For information about the Tribunal, refer to the section of this booklet titled *When things go wrong: disputes and resolution*.

Standard information (contained in the Regulations) is required to be included in every agreement, but many of the terms are negotiable. You should note that there are two types of agreements:

1. On-site home agreement

This agreement outlines the tenancy arrangements when a tenant rents both a relocatable home and a site.

2. Site-only agreement

This agreement outlines the tenancy arrangements when a tenant rents a site only.

Negotiable terms – duration of tenancy

For each of the agreements outlined above, the parties must decide whether or not the agreement will be for a fixed period. It should be noted that a park operator must renew his/her operating licence under the *Caravan Parks and Camping Grounds Act 1995* every year. However, despite this renewal requirement, park operators may negotiate an agreement with a prospective tenant that is greater than one year.

The duration of the agreement is a significant term, which should be considered and agreed between the parties and is considered in more detail in the next section.

A fixed term agreement

A fixed term agreement specifies a period of time that a tenant rents the premises, for example, one year, 10 years or 50 years. It is harder for either party to end a fixed agreement, which provides both parties with some degree of certainty about the length of time of the tenancy.

See the section *Ending a tenancy* for more information.

A periodic agreement

A periodic agreement does not specify the period of time that a tenant rents the premises. Either party can give relatively short notice (compared to a fixed term agreement) to end the tenancy, which provides both parties with more flexibility.

See the section *Ending a tenancy* in this booklet for more information about minimum notice periods.

Thinking about park living?

Other negotiable terms

Matters other than the duration of the agreement that may be negotiated are:

- the amount of the rent (see the section *Living in a park* for more information);
- the amount of other allowable fees and charges;
- the number of people residing in the rented premises;
- the types of fixtures and facilities that may be used;
- under what circumstance (if any) the tenant is to be transferred to another site or home during the tenancy; and
- whether the tenant can sell their home on the park (see the section *Ending a tenancy* for more information).

If there is a term that a tenant would like to change in the fixed or periodic agreement, it is important to seek advice about whether the term is negotiable and discuss the options with the park operator. An example of a term that cannot be negotiated and is required by law is that a tenant must be given a copy of the signed agreement.

Copies of standard agreements can be downloaded from the Consumer Protection website www.commerce.wa.gov.au or call 1300 30 40 54 to obtain a free copy of each agreement.

Information booklet

This information booklet is designed to be a general reference for tenants and park operators about the laws for park tenancies. The booklet is also a guide for tenants about the information he/she should gather to make an informed decision about whether to rent in a park.

It may be useful for tenants to read this booklet before reading the other information required to be given to tenants. The booklet may assist tenants to understand the agreement and the Parks Act, but should not be used as a substitute for reading these legal documents.

Further copies of this booklet can be downloaded from the Consumer Protection website www.commerce.wa.gov.au or call 1300 30 40 54 to obtain a free copy.

Information sheet

The information sheet is designed to provide specific information about a particular park that a tenant may be thinking about entering. Where possible, the information sheet will be in a question and answer format and summarises information contained in the agreement.

It may be useful for tenants to read the information sheet after reading this booklet to help assess whether a particular park meets their needs. The information sheet may assist tenants to understand the agreement but should not be used as a substitute.

The information sheet should contain information about:

- whether pets are allowed in a park;
- the circumstances when visitor fees are charged;
- the types of utilities available in the park; and
- the membership and functions of a Park Liaison Committee.

BE AWARE: Under Regulation 9 of the Regulations, it is an offence if an information sheet is provided which the park operator knows, or ought to know, is false or misleading (maximum penalty: \$5,000).

Standard information sheets can be downloaded from the Consumer Protection website www.commerce.wa.gov.au or call 1300 30 40 54.

Park rules

Park rules are rules of conduct that are specific to individual parks. The park rules form part of the agreement however, the agreement provides for the changing of these rules over time. The agreement also requires that these rules must be followed. The Regulations set out the types of park rules that must be made about the site, park or shared premises. Such rules include permitted noise, parking, use of shared premises, storage, office hours, children on the park, and safety and health issues.

BE AWARE: It is an offence if a park operator does not make park rules in relation to the matters outlined in Regulation 20 (maximum penalty: \$5,000).

A copy of the park rules must be provided with the proposed agreement. The park rules should be read and understood before a tenant signs an agreement.

Thinking about park living?

Condition report

A condition report records the condition of the home or site at the start and end of a tenancy.

There are two types of condition reports:

- a report in relation to an on-site home agreement – to assess the condition of the rented site and relocatable home; or
- a report in relation to a site-only agreement – to assess the condition of the rented site.

The park operator must complete a condition report and give **two copies** to the tenant before the agreement is signed. Before signing an agreement, a prospective tenant should consider the condition report provided by the park operator. It is recommended that a tenant consider any items that have been assessed in the condition report as needing attention, whether the park operator has undertaken to remedy these matters, and the timeframe for attending to these matters.

Any items that a park operator has not indicated will be fixed or attended to may be a source of negotiation between the park operator and the tenant. Any agreement reached between the park operator and the tenant should be recorded on the condition report or the agreement and signed by both parties.

Within **seven days** of signing an agreement, the tenant must then fill out one of the copies of the report.

As soon as possible after the tenancy ends, the park operator and the tenant should each fill out a condition report and give a copy to the other party.

The parties may commit an offence if the procedure to make a condition report at the start and end of a tenancy is not followed.

A blank draft condition report can be downloaded from the Consumer Protection website www.commerce.wa.gov.au or call 1300 30 40 54 to obtain a free copy.

Other information

Tenants should also be aware that a park operator is subject to a yearly licence renewal under the *Caravan Parks and Camping Grounds Act 1995*. Section 13(2) of the *Caravan Parks and Camping Grounds Act 1995* requires that the park operator display in a prominent place, such as a noticeboard:

- the licence for the park and any special conditions of the licence;
- a plan of the park;
- a copy of the park rules; and
- the name, address and phone number of an emergency contact.

Important questions for tenants

Before signing an agreement, it is a good idea for prospective tenants to prepare a list of questions about park living that is important to them.

This information booklet, along with the information sheet for the particular park, may provide answers to your questions in reasonably simple language. However, to determine specific answers that are relevant to your circumstances, you will need to read:

- the Parks Act and Regulations; and
- the proposed agreement, including the park rules.

If you are unsure or need to clarify information in the agreement speak to the park operator, Consumer Protection, a lawyer and/or an independent trusted advisor. It is important that you obtain the answers to any questions you may have **before signing an agreement**.

Below you will find a number of tables with useful questions, and references to information that could assist you to decide whether a particular park is right for you.

Is park living right for me?

| Questions to consider | Parks Act and Regulations | Section of this booklet | Agreement | Other |
|--|--|-------------------------|---------------------|--|
| <ul style="list-style-type: none"> • Are there any tourist sites on the park? If so, where are these sites located in relation to the site I am thinking about renting? (Note: this may affect the noise and ambience of the park) | N/A | N/A | N/A | 1. Visit the park 2. The <i>Caravan Parks & Camping Grounds Act & Regulations</i> |
| <ul style="list-style-type: none"> • Can I make improvements to the exterior of my park home or caravan while occupying a site in a park? | Section 32 & Schedule 1, Clause 14 Parks Act | <i>Living in a park</i> | Check the agreement | Discuss with the park operator before signing the agreement |
| <ul style="list-style-type: none"> • I want to go on holiday – can I get someone to rent the site and/or the home while I am away? | Section 32 & Schedule 1, Clause 16 Parks Act | <i>Living in a park</i> | Check the agreement | 1. Discuss with the park operator before signing the agreement 2. Information sheet |

N/A: Not directly applicable

continued on page 10

Thinking about park living?

Is park living right for me? continued

| Questions to consider | Parks laws | Section of this booklet | Agreement | Other |
|--|--|--|---------------------|--|
| <ul style="list-style-type: none"> What are the park rules? How does management enforce these rules? What is the process to change park rules? | Regulations 20, 21 | <i>Thinking about park living and Living in a park</i> | Check the agreement | <ol style="list-style-type: none"> 1. Visit the park 2. Read the <i>Caravan Parks & Camping Grounds Act & Regulations</i> 3. Check the park rules (provided with the agreement) |
| <ul style="list-style-type: none"> Can I have a say in the running of the park? | Part 4, Division 2 | <i>When things go wrong: disputes & resolution</i> | Check the agreement | <ol style="list-style-type: none"> 1. Visit the park 2. Read the Information sheet |
| <ul style="list-style-type: none"> What should I do if I have left goods on a park relating to a previous tenancy? | Part 3 Division 6 & Part 5 Division 4 Parks Act | <i>Ending a tenancy</i> | N/A | Contact the park operator from the previous tenancy |
| <ul style="list-style-type: none"> Under what circumstances can the park operator enter rented premises? Can the park operator enter my home if I own it and just rent the site? Can I refuse the park operator entry and under what circumstances? | Section 32 & Schedule 1, Clause 13 Parks Act | <i>Living in a park</i> | Check the agreement | Discuss with the park operator before signing the agreement |
| <ul style="list-style-type: none"> Can I be asked to leave the park and under what circumstances? What should I do if I want to leave the park? When am I entitled to compensation? | Parts 3, 5 Parks Act | <i>Ending a tenancy</i> | Check the agreement | Discuss with the park operator before signing the agreement |

N/A: Not directly applicable

Is park living right for me?

| Questions to consider | Parks laws | Section of this booklet | Agreement | Other |
|--|---|--|---------------------|--|
| <ul style="list-style-type: none"> • What can I do if I have a dispute while on the park? • What should I do if the park operator keeps disturbing me? • What should I do if a tenant(s) living nearby is/are too noisy? • What should I do if a tenant(s) living nearby threaten(s) my safety? • What should I do if tenants are not observing park rules? | Section 32 & Schedule 1, Clauses 10, 11, 17 Parks Act | <i>When things go wrong: disputes & resolution</i> | Check the agreement | <ol style="list-style-type: none"> 1. Visit the park 2. Is there a park liaison committee? |

What are the terms of the contract being offered to me?

| Questions to consider | Parks laws | Section of this booklet | Agreement | Other |
|---|---|-----------------------------------|---------------------|---|
| <ul style="list-style-type: none"> • Are there any terms that you would like to change in the agreement? • Are these terms negotiable? | Particularly sections 9, 30, 32 Parks Act | <i>Thinking about park living</i> | Check the agreement | <ol style="list-style-type: none"> 1. Discuss with the park operator before signing the agreement 2. Read the condition report 3. Read the Information sheet |
| <ul style="list-style-type: none"> • Is the duration of the tenancy specified in the agreement? • Are you happy with the period of time that you can rent the premises? | N/A | <i>Thinking about park living</i> | Check the agreement | Get some independent advice, if necessary |
| <ul style="list-style-type: none"> • What happens if I change my mind once I sign a tenancy agreement? | Sections 18, 44 Parks Act | <i>Starting a tenancy</i> | Check the agreement | Discuss with the park operator before signing the agreement |

N/A: Not directly applicable

continued on page 12

Thinking about park living?

What are the terms of the contract being offered to me? continued

| Questions to consider | Parks laws | Section of this booklet | Agreement | Other |
|---|--|--|-------------------------|--|
| <ul style="list-style-type: none"> • What are the up-front and ongoing charges for a park tenancy? • How much is the rent and how frequently must the rent be paid? • What is a security bond and can I be asked to pay a security bond if I own my home? • What utilities are available and how are these charged? • Is there a charge for visitors and how is this fee calculated? | <p>Sections 11, 12 Parks Act</p> <p>Part 2, Division 2 & Schedule 1, Clauses 3, 4, 18 Parks Act</p> <p>Regulations 10, 11 & Schedule 8 Regulations</p> | <i>Starting a tenancy, Living in a park</i> | Check the agreement | <ol style="list-style-type: none"> 1. Discuss with the park operator before signing the agreement 2. Read the information sheet |
| <ul style="list-style-type: none"> • What shared premises are available on the park? • How would I access these shared premises? | Section 32 & Schedule 1, Clauses 11 - 14 Parks Act | <i>Thinking about park living</i> | Check the agreement | <ol style="list-style-type: none"> 1. Visit the park 2. Discuss with the park operator before signing the agreement 3. Read the information sheet |
| <ul style="list-style-type: none"> • What can I do if I think the rent is excessive? | Sections 42, 63, 74 Parks Act | <i>When things go wrong: disputes & resolution</i> | Not directly applicable | <ol style="list-style-type: none"> 1. Check the rent & facilities of comparable parks |
| <ul style="list-style-type: none"> • What are my rights if I want to sell my caravan or park home? • Can I sell my own caravan or park home on the park? • What will the park operator charge me to sell my caravan or park home on my behalf? • What will the park operator require before a prospective purchaser is given an agreement to rent the site? | <p>Section 32 Parks Act</p> <p>Part 4 Division 1 & Schedule 1, Clause 16 Parks Act</p> <p>Regulation 11</p> | <i>Ending a tenancy</i> | Check the agreement | <ol style="list-style-type: none"> 1. Discuss with the park operator before signing the agreement 2. Read the information sheet |

Keeping the paperwork

Once the tenant and the park operator have agreed on the terms of the agreement, a tenant must be given a copy of the signed agreement. It is advisable for a tenant to keep the information that was provided before the agreement was signed as well as any receipts for payments made, as outlined below.

Start-up fees

A tenant should only be charged rent and a security bond at the start of a tenancy.

Rent

No more than **two weeks** rent can be charged during or before the first **two** weeks of the tenancy. For more information about rent, see the section *Living in a Park*.

Bond

A security bond is money that the park operator can use for repairs if the tenant damages the rented premises. If there is no valid claim against the security bond, then it must be returned to the tenant at the end of the tenancy. A security bond can be required whether a tenant rents a site only or rents both a site and a caravan or park home.

A park operator can only require one security bond for each agreement and it cannot be more than:

- four weeks rent;
- \$100 as a security for keys, park entry devices etc; and
- \$100 as a pet bond if the tenant is permitted under the agreement to keep a cat or dog (this amount is to go towards fumigation of the premises at the end of the tenancy).

The park operator must give the tenant a receipt for any security bond paid within **three days** of receiving the bond, which states:

- the amount paid;
- the date it was paid;
- the amount of the pet bond if there is one;
- the name of the tenant; and
- details of the premises covered by the bond.

The park operator (or agent) must lodge the security bond with the Bond Administration section of Consumer Protection or pay the money into a tenancy bond account with a financial institution within **14 days** of receiving the payment. If the Bond Administrator holds the bond, the tenant will receive a record of the payment directly from Consumer Protection. If a financial institution holds a tenancy bond account, the park operator should give the tenant a copy of the lodgement form.

BE AWARE: Under section 21 of the Parks Act, it is an offence if the park operator does not lodge the bond with the Bond Administrator or a financial institution within **14 days** of receiving the payment (maximum penalty: \$20,000).

Other up-front fees

Unless otherwise stated in the agreement, a park operator must pay for the preparation of the agreement.

A prospective tenant may be charged a fee for an 'option to enter' into an agreement. This is an amount of money that indicates the genuine intent of a person to enter into an agreement with the park operator. However, the option fee must be refunded or applied towards rent once the tenancy begins.

Property management fees

If the park operator uses a real estate agent to find a tenant and/or manage the tenancy, the real estate agent cannot charge a tenant letting fee.

A real estate agent can only charge a park operator a maximum **two weeks** rent as the management fee.

Cooling-off period – site only

Site-only agreement

The 'cooling-off' period gives a prospective tenant the chance to withdraw from a site-only agreement without giving a reason. However, a tenant cannot change his/her mind once he/she has actually taken up occupancy of the site.

The length of a cooling-off period depends on the situation:

- if a prospective tenant is given the **five** documents outlined in the section *Thinking about park living* before a site-only agreement is signed, the agreement can be cancelled within **five working days** after the date of the agreement; or
- if a prospective tenant is **not** given the **five** disclosure documents, a prospective tenant may cancel a site-only agreement within **10 working days** of finally receiving the information.

On-site home agreement

There is no mandatory cooling-off period for on-site home agreements. A tenant may be required to compensate the park operator for losses incurred if a tenant signs an on-site home agreement and then changes his/her mind.

For more information about notice periods, see the section *Ending a tenancy*.

It is important that park operators and tenants understand their rights and responsibilities during the course of a tenancy to assist in minimising disputes and to contribute to a harmonious park environment.

Change of details

Under section 15 of the Parks Act, a park operator should notify tenants if any details of the park operator (or agent) change during the tenancy.

Under section 16 of the Parks Act, a tenant is responsible for notifying the park operator of any change of employment address during the tenancy.

Rent

Tenants must pay rent and in most cases the rent will be payable in advance. A tenant cannot be charged more than **two weeks** rent before or during the first **two weeks** of the tenancy.

If rent is not paid into a financial institution, the park operator must keep records of rent received and issue a written receipt within **three working days**.

The receipt must specify:

- the date the rent was received;
- amount paid;
- period the rent covers;
- name of long-stay tenant; and
- particulars of the agreed premises.

Rent increases

A park operator should provide written notice of a proposed rent increase and when it will begin.

On-site home agreements - periodic

Unless otherwise provided for in a periodic on-site home agreement:

- the park operator must provide at least **60 days** notice of a rent increase in writing;
- rent cannot increase in the first **six months** of a tenancy (unless a written review date schedule for the variation of rent was given to the prospective tenant); and
- rent cannot increase less than **six months** after the last rent increase.

On-site home agreements - fixed term

Unless a fixed term on-site home agreement contains a rent variation clause, the rent cannot be varied during the course of the fixed term.

Site-only agreements

When renting a site only, the following applies (unless otherwise provided for in the agreement):

- rent reviews must be at least **12 months** apart, except at the start of a tenancy if the tenant was informed of a particular rent review schedule;

Living in a park

- the agreement should detail the process of rent review; and
- the agreement must allow for a reduction in rent if the rent review suggests this.

All agreements

The agreement may require that rent be varied on a 'market rent' basis. In this case, when reviewing the rent, the park operator must consider a report from a licensed land valuer in setting the rent.

Ongoing fees

Other fees that can be charged during the tenancy are:

- visitor (or resident) fees, as set out in the agreement and information sheet;
- payment for utilities, if separately metered;
- services provided to the tenant (as provided for in the agreement); and
- exit fees payable by the tenant who is selling his/her home on-site, where the park operator is not the selling agent, maximum \$200.

A list of permissible fees and charges can be found in Schedule 8 of the Regulations.

Cleanliness, maintenance and damage

Cleanliness

At the start of a tenancy, the park operator must make sure that rented premises are habitable, clean and in good repair, unless otherwise provided for by the agreement.

During a tenancy, a tenant who rents:

- **a site only** is generally responsible for keeping the rented site and the exterior of his/her own caravan or park home in a reasonable state of cleanliness, subject to fair wear and tear; or
- **a site and a relocatable home** is generally responsible for keeping the site and both the exterior and interior of the caravan or park home in a clean and reasonable state, subject to fair wear and tear.

Maintenance

Unless otherwise provided for by the agreement, the park operator is responsible for keeping sites, caravans or park homes (where applicable) and shared premises in a reasonable state of repair. The park operator must also comply with all relevant building, safety and health laws, including the *Caravan Parks and Camping Grounds Act 1995*.

If a tenant rents a site and a relocatable home, the park operator is generally responsible for maintaining the contents provided as part of the tenancy, such as the refrigerator, washing machine and air conditioner.

Urgent repairs

Unless the written agreement states otherwise, a tenant can organise urgent repairs for rented premises if:

- the damage is likely to cause injury, further damage or undue inconvenience;
- the damage was not caused by the tenant; and
- the tenant has made a reasonable attempt to notify the park operator of the problem.

Examples of an urgent repair may be a gas leak, an electrical fault or a broken stove (if part of the agreement).

Before seeking compensation from the park operator, a tenant who is able to arrange urgent repairs should ensure that the costs are reasonable and the work was carried out by a qualified tradesperson. The tradesperson must give the park operator a written report on the apparent cause of the problem.

A tenant who is able to arrange urgent repairs is entitled to compensation even if the problem existed at the time the agreement was made. If the park operator fails to compensate a tenant who undertakes urgent repairs, the tenant can seek an order for compensation from the State Administrative Tribunal.

See the section *When things go wrong: disputes and resolution* for more information about the Tribunal.

Damage

The tenant must report any damage to rented premises or to the exterior of an on-site home to the park operator as soon as possible, but within **three days**.

If a tenant causes damage to rented premises, the park operator can ask the tenant to pay for repairs.

Before signing an agreement, check to see who is responsible for cleanliness, maintenance and repair of rented premises and the exterior of an on-site home – this is negotiable!

Alterations or additions to a park home or site

Unless the agreement states otherwise, a tenant can only make alterations or additions to a site or a rented park home or caravan with the consent of the park operator. This may also include the exterior of the tenant's own dwelling, if a site-only agreement contains such a requirement.

If a tenant is required to obtain the consent of a park operator to make alterations or additions, such as the addition of an annexe, it is unlawful for the park operator to withhold consent unreasonably. If there is a dispute, the State Administrative Tribunal can determine whether the park operator has acted reasonably.

For more information about the Tribunal, refer to the section titled *When things go wrong: disputes and resolution*.

Changes to park rules

For information about park rules, see the section *Thinking about park living*. The Regulations set out how park rules can be changed. Changing park rules could involve varying or removing an existing rule or adding a new rule. The process for changing a park rule is outlined below.

A park operator must give residents at least **30 days** notice of a change to a park rule. However, if the park rule relates to the use of shared premises, the park operator must give residents **seven days** notice. If a tenant is concerned about a park rule, or the operation of a park rule, a tenant is encouraged to discuss the matter with the park operator or through the Park Liaison Committee. If the matter cannot be resolved, an application can be made to the State Administrative Tribunal for a hearing.

For more information about the Tribunal, refer to the section *When things go wrong: disputes and resolution*.

Respecting the privacy and comfort of others

Tenants have the right to use the park and its facilities without being bothered by other tenants. This right is called 'quiet enjoyment'. This means that tenants are not allowed to interrupt the peace, comfort or privacy of other occupants.

Likewise, park operators must not unreasonably restrict or interfere with a resident's peace, comfort, privacy or proper use and enjoyment of the site and park facilities.

Park operator's right of entry

A park operator may enter a site, or a park home or a caravan:

- if the resident agrees; or
- in an emergency.

Unless the agreement provides otherwise, a park operator may enter rented premises:

- to collect rent but no more frequently than on a weekly basis, if it is specified in the agreement;
- to inspect the premises when collecting rent – no more than once every **four weeks**; and
- in compliance with the terms of an order from the Tribunal, where a tenant has abandoned the rented premises.

Unless the agreement provides otherwise, a park operator may also enter rented premises at any reasonable time, and on a reasonable number of occasions:

- to show premises to prospective tenants during the **21 days** before the agreement ends; and
- to show the premises to prospective buyers.

Unless the agreement provides otherwise, the park operator must provide advanced notice to enter rented premises in other circumstances, such as:

- at least **24 hours** written notice to carry out a duty under the Parks Act;
- at least **72 hours** notice to carry out or inspect repairs; and
- written notice of at least **seven days** and no more than **14 days** in advance for the purpose of inspecting the premises for any purpose.

Sub-letting

While renting, a tenant may want to ask other people to stay in the home and share the cost of the tenancy. Alternatively, a tenant may be going on an extended holiday and would like to have someone stay in the home while he/she is away.

In these situations, known as 'sub-letting', the tenant who is named on the agreement with the park operator is known as the 'head tenant' and the other tenants, who are not named on the agreement, are called 'sub-tenants'. In the case where a tenant owns the home and rents only the site, it is the site lease that is being sub-let.

The Parks Act states that the ability of a tenant to sub-let the rented premises is negotiable between the park operator and the tenant before an agreement is signed. The agreement should reflect what has been agreed.

The agreement may:

- allow or disallow sub-letting;
- allow sub-letting but only with the written agreement of the park operator and the consent cannot be unreasonably withheld; or
- be silent about sub-letting, in which case the written approval of the park operator must be sought and cannot be unreasonably withheld.

If considering sub-letting tenants should:

- ensure the agreement allows sub-letting; and
- seek written approval from the park operator if required.

When things go wrong: disputes and resolution

Disputes may arise between tenants and park operators over matters such as park rules, rent, noise and repairs.

Ideally, disputes should be resolved by discussing the issues and trying to come to a resolution that suits both parties.

Dispute resolution bodies

The bodies that may assist in resolving disputes are outlined below.

Park Liaison Committee

A park with **20** or more long-stay sites must have a Park Liaison Committee (PLC), and parks with less long-stay sites may have one if they choose. The purpose of the PLC is to help the park operator maintain and improve the lifestyle of tenants.

NOTE: The PLC is only advisory in nature. The decision-making power of tenants is limited to determining their own representatives on the PLC

The functions of the PLC are to advise and consult with the park operator regarding:

- preparing and amending park rules;
- developing guidelines for the standards of behaviour of park tenants;
- developing policies for the improvement and maintenance of the natural environment and amenities of the park; and
- developing policies for the installation and maintenance of roads, street and other security lighting and fencing within the park.

The PLC may also assist in the resolution of disputes between tenants and disputes between tenants and the park operator. A PLC consists of:

- one or more park tenants, chosen by other park tenants to represent their interests; and
- one or more representatives of the park operator.

In terms of representation on the PLC, there must be more tenant representatives than representatives of the park operator.

To resolve an issue, a tenant may consult with the PLC. If no PLC is in place, the park rules or the agreement may set out an alternative dispute resolution process.

BE AWARE: Under section 59(1) of the Parks Act it is an offence if a park operator does not convene and maintain a Park Liaison Committee if a park has **20** or more long-stay sites (maximum penalty: \$5,000).

It is assumed that a PLC will not be required to be an incorporated association, as it does **not**:

- deal with money, including borrowing money, operating bank accounts and incurring debts;

When things go wrong: disputes and resolution

- enter into contracts; nor
- appoint agents.

If a PLC is considering becoming an incorporated association, it is advisable for the PLC to obtain its own independent legal advice.

Consumer Protection

The Consumer Protection Division of the Department of Commerce provides a general advice service for both park operators and tenants and also provides a conciliation service for tenants. Consumer Protection does not, however, provide legal advice. If a problem arises, the tenant should approach the park operator in the first instance in person or preferably in writing, to resolve the matter.

If the dispute is about a tenancy matter other than the return of bond money, a tenant can approach Consumer Protection to help reach a settlement, and a *Consumer Complaint Form* should be completed.

A tenant can also make complaints to Consumer Protection if he/she has evidence or a reasonable belief that a park operator has committed an offence. Examples of offences are: failing to lodge a security bond or failing to provide the disclosure information outlined in the section of this booklet titled *Thinking about park living*.

Consumer Protection also funds community legal centres to provide education and advice services to tenants, such as the Tenants Advice Service.

State Administrative Tribunal (Tribunal)

If a dispute cannot be resolved, either the tenant or park operator may apply to the Tribunal to decide the case. The Tribunal can resolve disputes involving:

- an agreement or an option to enter an agreement; or
- an agreement authorising an agent to sell a park home or caravan on behalf of a tenant.

The Tribunal, which is similar to a court of law, has the power to make a binding decision in relation to a dispute. For example, the Tribunal can make an order that:

- requires the tenant and/or the park operator comply with a term of the agreement;
- compensation be paid to the tenant or park operator;
- declares a rent increase is excessive;
- ends a tenancy agreement;
- rent be reduced and/or paid to the Tribunal until the park operator stops breaking the agreement;
- a park rule be changed or withdrawn;
- the park operator carry out repairs rented premises; or
- is considered to be appropriate.

When things go wrong: disputes and resolution

Types of disputes

Challenging rent increases

If a tenant believes the rent is too high, the park operator should be approached wherever possible and the matter negotiated. If the park operator is unwilling to negotiate or is unapproachable, a tenant can apply to the Tribunal to have the proposed increase reduced or withdrawn.

Reasons for challenging a rent increase are:

- a significant reduction in the size or quality of the park amenities; or
- the park operator being wholly or partly motivated by a desire for the tenancy to be terminated.

Overdue rent

If a tenant fails to pay rent on time, a park operator may choose to follow one of two alternatives.

Overdue rent - alternative one

If a tenant has a history of late rental payments, a park operator may issue the following notices, outlined below.

The day after the rent is due but was not received; a park operator can issue a *Default Notice for Non-Payment of Rent* to a tenant. This form gives a tenant **14 days** to get up-to-date with the rent.

If some rent remains outstanding **14 days** after the *Default Notice for Non-Payment of Rent* is issued, a park operator can issue a *Termination Notice for Non-Payment of Rent (Default Notice Issued)* to a tenant. This notice ends the agreement and gives a tenant **seven days** to vacate the premises. If a tenant does not vacate the premises on the required date, a park operator may apply to the State Administrative Tribunal for an order to terminate the agreement and for possession of the agreed premises.

NOTE: Once a termination notice is given and a tenant, with a poor history of paying rent on time, gets up to date with the rent, a park operator can still apply to the Tribunal for an order to terminate the agreement and for possession of the agreed premises.

Overdue rent - alternative two

If a park operator wants to obtain outstanding rent as quickly as possible, alternative two may be the most appropriate option, outlined below:

- The day after the rent is due but is not received, a park operator may issue a *Termination Notice for Non-Payment of Rent (No Default Notice Issued)*. This notice gives a tenant **seven days** to vacate the premises.
- If some rent remains outstanding **seven days** after the *Termination Notice for Non-Payment of Rent (No Default Notice Issued)* was issued, a park operator can

When things go wrong: disputes and resolution

apply to the Tribunal for an order to terminate the agreement and for possession of the premises. However, a hearing date cannot be earlier than **28 days** after the *Termination Notice for Non-Payment of Rent (No Default Notice Issued)* was issued.

NOTE: If a tenant pays all outstanding rent, together with the Tribunal's hearing fee, at least **one day** prior to the hearing, the application cannot be continued.

See **Appendix A** and **Appendix B** for flow charts summarising the two alternatives, at the end of this booklet.

Default and termination notices can be downloaded from the Consumer Protection website www.commerce.wa.gov.au or call 1300 30 40 54.

Other breaches by tenant

Other than falling behind with rent, if a tenant does something that is contrary to the agreement for example, damaging the premises or disturbing the neighbours, the park operator could write a letter to the tenant, stating the nature of the problem and requiring that it be fixed within a reasonable time period, for example **14 days**. If the tenant does not fix the problem, a park operator could approach the PLC or alternatively take the matter to the Tribunal.

If the problem is of a serious nature, the park operator should first issue a *Default Notice (Reasons other than Non-Payment of Rent)*, giving the tenant a minimum **14 days** to fix the problem. Once the time period has passed and the problem remains unresolved, the park operator could issue a termination notice *Termination Notice (Reasons other than Non-Payment of Rent)*, giving a tenant a minimum **7 days** to vacate the rented premises.

If a tenant does not vacate the premises on the required date, a park operator may apply to the Tribunal for an order to terminate the agreement and for possession of the agreed premises. For more information about evictions, see the section *Ending a tenancy*.

Default and termination notices can be downloaded from the Consumer Protection website www.commerce.wa.gov.au or call 1300 30 40 54 to obtain free copies.

Dangerous tenants

A tenant should notify the park operator immediately if any tenant/person is:

- causing harm to anyone who is lawfully on the park;
- likely to cause harm to anyone who is lawfully on the park;
- seriously damaging park property; or
- likely to cause serious damage to park property.

A park operator can apply to the Tribunal for an urgent hearing to have the matter resolved.

When things go wrong: disputes and resolution

Park operator breaches agreement

A park operator may do something that is contrary to the agreement, such as:

- disturbing a tenant's quiet enjoyment; or
- unlawfully entering a tenant's rented premises.

Also, a park operator could fail to do something that the agreement requires him/her to do, such as:

- unreasonably withholding consent to make alterations;
- unreasonably withholding consent to sub-let the premises;
- failing to ensure surrounding tenants do not disturb another tenant; or
- failing to compensate the tenant for undertaking urgent repairs if the agreement provides for this.

In the above circumstances, it is a good idea for the tenant to write to the park operator, explaining the problem and request that the park operator fix the problem within a reasonable time period, for example **14 days**. The tenant should keep a copy of any letter sent to the park operator.

If the park operator fails to fix the problem within the time specified in the letter, the tenant could either:

- approach the PLC to have the matter sorted out at park level;
- contact Consumer Protection to have the matter conciliated; or
- apply to the Tribunal for an order requiring the situation to be rectified.

NOTE: A tenant should not hold back rent as a way of making the park operator fix a problem. If rent becomes overdue, the park operator can commence action to terminate the tenancy.

Bond disputes

At the end of a tenancy, if a park operator and a tenant disagree about how the bond should be paid out, either party can apply to the Tribunal for an order.

For more information about security bonds, see the section *Starting a tenancy*.

There are various reasons why a tenancy ends and either the tenant or the park operator could initiate the ending of a tenancy. This section outlines the procedures involved when one party ends a tenancy.

Paying out the bond

Regardless of who ends the tenancy, the security bond will need to be paid out. However the bond holder, either the Bond Administrator or a financial institution, will only disburse the bond if the tenant and the park operator agree on how much each party will receive from the bond.

If there is no dispute over the condition of the property, or the tenant and park operator have agreed how the bond money should be paid out, both the tenant and the park owner must sign a *Joint application for Disposal of Security Bond* form and give it to the bond holder.

The Tribunal can resolve bond disputes.

For more information about the Tribunal and resolving bond disputes, see the section *When things go wrong: disputes and resolution*.

BE AWARE: It is an offence for a tenant to refuse to pay rent on the basis that a park operator will be able to recover it from the security bond (maximum penalty: \$5,000).

The tenant wants to end a tenancy

Tenants must leave a forwarding address and phone number with the park operator when leaving a park. This will make it easier for a park operator to contact the former tenant, particularly with regard to the return of security bond money or the recovery of goods left behind.

The following table outlines the circumstances where a tenant ends a tenancy, the minimum notice period (if lawful) and whether compensation is payable to a park operator.

For more information about the difference between periodic and fixed term agreements, see the section *Thinking about park living*.

Ending a tenancy

| Situation causing tenancy to end | Minimum notice period to park operator to end a tenancy | Compensation payable by tenant to park operator |
|---|---|--|
| <p>The tenant does not specify a reason or wants to sell his/her relocatable home.</p> <p>See below for more information about a tenant selling a home on-site.</p> | <p>Periodic agreement:</p> <ul style="list-style-type: none"> • 21 days notice <p>Fixed term agreement:</p> <ul style="list-style-type: none"> • No minimum notice period – end date stated on the agreement. • It is suggested that about 30 days before the tenancy is due to end, that the tenant and park operator discuss whether the tenancy will continue or end. | <p>Periodic agreement:</p> <p>None</p> <p>Fixed term agreement:</p> <p>None, unless a tenant wants to leave earlier than the fixed term, without the agreement of the park operator.</p> |
| <p>The rented premises cannot be lived in or is taken over by an authority by law.</p> | <p>Periodic or fixed term agreement:</p> <ul style="list-style-type: none"> • 2 days notice | <p>Periodic or fixed term agreement:</p> <p>None, if the situation occurred through no fault of the tenant.</p> |
| <p>The park operator has significantly breached the agreement.</p> | <p>Periodic or fixed term agreement:</p> <ul style="list-style-type: none"> • Write letter, request compliance with agreement and suggest minimum time for complying with agreement eg 14 days. • State Administrative Tribunal order, if fail to comply. | <p>Periodic or fixed term agreement:</p> <p>None, if the situation occurred through no fault of the tenant.</p> |
| <p>The tenancy has been abandoned (see below for more details).</p> | <p>No notice period given.</p> | <p>Periodic or fixed term agreement:</p> <p>Yes</p> |
| <p>The park operator and tenant mutually consent.</p> | <p>Periodic or fixed term agreement:</p> <ul style="list-style-type: none"> • As agreed between the park operator and a tenant. | <p>Periodic or fixed term agreement:</p> <p>Possibly – determined by the parties.</p> |

A termination notice without grounds can be downloaded from the Consumer Protection website www.commerce.wa.gov.au or call 1300 30 40 54 to obtain a free copy.

A tenant wants to sell his/her home

A tenant who decides to sell his/her home on-site (called a 'seller' in this booklet) must first advise the park operator. A 'For Sale' sign may be displayed, but it must comply with any terms of the tenancy agreement or park rules, which reasonably restrict its size or placement. The park operator cannot unreasonably restrict potential buyers from inspecting the park home or caravan.

Selling the home

Under the tenancy agreement, a tenant is not required to nominate the park operator as the selling agent in relation to the sale of the tenant's home. If a tenant chooses to use the park operator or a real estate agent as a selling agent:

- a park operator does not have to be a licensed real estate agent or motor vehicle dealer to sell a relocatable home on the operator's park;
- the park operator/agent and tenant must have a selling agency agreement which details the amount of commission the agent will receive upon sale of the home; and
- no commission is payable if the property is not sold or is sold by means other than the agent's efforts.

Organising the sale

When selling a home on site, there are two transactions that must take place.

- The seller must enter into a selling agreement for the sale of the home with a prospective purchaser.
- The seller must ensure that an agreement is reached between the park operator and the prospective purchaser about renting the site.

NOTE: An agreement may prevent a tenant from selling his/her home on site. Tenants should check the agreement before signing it.

There are a number of ways that a prospective purchaser can obtain an agreement with a park operator to rent a site, some of which are discussed below.

Negotiating a new site-only agreement

When a seller has a buyer for his/her home, the purchaser could negotiate a completely new (site-only) tenancy agreement with the park operator. This is the most preferable situation because the prospective purchaser is given an opportunity to negotiate the terms of the tenancy agreement that satisfy his/her particular circumstances. It also ensures that the prospective purchaser is given all relevant tenancy information required by law.

Assignment of an existing site-only agreement

When a purchaser buys a home on a park, the existing site-only tenancy agreement can be transferred into the purchaser's name and the seller's name is removed from the tenancy agreement. The existing terms of the tenancy agreement with the park operator would apply to the purchaser of the caravan or park home.

NOTE: A site-only agreement may:

- prevent a tenant from assigning his/her site-only agreement; or
- require that a tenant obtain the written permission from the park operator to assign a site-only agreement. The park operator's permission cannot be unreasonably withheld.

Ending a tenancy

Sub-letting the site

A purchaser could buy a park home or caravan from a seller and sub-let the site. When sub-letting the site, the seller (the head tenant), rather than the purchaser (the sub-tenant), is named on the tenancy agreement with the park operator. The difficulty with this arrangement is that the head tenant is still legally liable to the park operator for the site if anything goes wrong, even though the head tenant no longer remains on the park.

NOTE: A site-only agreement may:

- prevent a tenant from sub-letting; or
- require that a tenant obtain the written permission from the park operator to sub-let and the park operator's permission cannot be unreasonably withheld.

Advice to prospective tenants thinking about renting a site only:

Before signing a tenancy agreement, consider whether you may wish to sell your home during the tenancy and if so, whether the tenancy agreement allows the site to be assigned (transferred) or sub-let, as this is negotiable.

If you wish to sell your home on site and the agreement does not allow this, you should try to negotiate this term with the park operator before the tenancy agreement is signed.

Abandoned premises and/or goods

If a tenant abandons the rented premises without notice, the Parks Act states that the agreement has ended and a park operator can take control of the premises and possession of its goods eg furniture, clothing etc.

However, the park operator must make certain that the premises have been truly abandoned or apply to the State Administrative Tribunal for an order declaring the premises abandoned.

Therefore, it is important for tenants to notify the park operator if planning on leaving a park for an extended period of time, such as going to hospital or going on an extended holiday. In these circumstances the tenant must make the appropriate arrangements such as rent payments.

If goods are left behind belonging to the tenant, a park operator can take action under the Parks Act such as storing, selling or disposing of the goods, as outlined below.

Perishable food or low-cost items

The park operator may destroy any perishable food or items where the cost of removal, storage and sale is likely to be more than the cost of the goods. If the goods are of little value, the park operator can apply to Consumer Protection for a certificate allowing them to dispose of the goods.

Other items

The park operator must send the tenant a notice identifying the goods left behind and advertise them in either *The West Australian* or the *Sunday Times* within **seven days**. If a tenant claims the goods, he/she must pay the park operator the reasonable costs of removal and storage.

If the goods are not claimed within **60 days**, the park operator must, as soon as practicable, sell them at public auction. The park operator is entitled to keep from the proceeds the reasonable costs of removing and storing the goods and any outstanding amount relating to the tenancy. Any remaining money is to be paid into the Rental Accommodation Fund and a tenant can apply to the Tribunal to have this remaining money paid out to him/her.

A *Notice to a Former Tenant about Abandoned Goods* can be downloaded from the Consumer Protection website www.commerce.wa.gov.au or call 1300 30 40 54.

Death of a tenant

The Parks Act does not specifically deal with the ending of an agreement upon the death of a tenant. If a tenant passes away and the agreement does not deal with this issue, the tenancy continues and the executor or administrator of the estate becomes responsible for ensuring that the agreement is upheld, including making rent payments until the tenancy is ended.

On-site home agreements

For tenants renting both a site and a home, it is recommended that the executor or administrator of the estate negotiate with the park operator about ending the agreement as soon as possible or otherwise minimising the costs to the estate. If an agreement provides that a tenancy ends upon the death of a resident, the estate would not be responsible for the tenancy beyond that time.

Site-only agreements

For tenants that own a relocatable home and rent a site, the issue is somewhat more complex. There are a number of issues that such tenants should consider before an agreement is signed, some of which are outlined below.

- Do you intend that a friend or relative may inherit the home and take up residence at the park?
- Do you intend that a friend or relative or a surviving tenant may seek to sell the home on-site and that the purchaser takes up residence at the park?
- Do you intend that the home be towed off-site for sale?
- Would a surviving tenant wish to remain on the site?

For more information, see the assignment and sub-letting sections of *Living in a park* and *Ending a tenancy* in this booklet.

The tenant and park operator may negotiate terms of the agreement in relation to the death of a resident, which take into account the unique circumstances of the parties to provide both parties with greater certainty.

In regard to the security bond, where applicable, both the executor and the park operator should fill out, sign and send a bond disposal form to the Bond Administrator or financial institution holding the security bond. A copy of the death certificate must accompany the disposal form for the bond holder to disperse the bond.

Ending a tenancy

Where there is a dispute about either the disposal of the security bond or the authority of the person acting for the deceased estate, such matters can be determined by the Tribunal.

Compensation of a park operator

A park operator may claim compensation for losses incurred over and above the amount of the bond if there has been a breach of the agreement. This includes failing to comply with an order for possession of the premises or losses incurred as a result of the premises being abandoned.

The park operator wants to end a tenancy

The following table outlines the circumstances in which a park operator wants to end a tenancy, the minimum notice period and whether compensation is payable.

| Situation causing tenancy to end | Minimum notice period to tenant to end a tenancy | Compensation payable by park operator to tenant |
|---|--|---|
| The park operator does not specify a reason. | <p>Periodic site-only agreement:</p> <ul style="list-style-type: none"> • 180 days notice <p>Periodic on-site home agreement:</p> <ul style="list-style-type: none"> • 60 days notice <p>Fixed term agreement:</p> <ul style="list-style-type: none"> • No minimum notice period – end date stated on the contract. • It is suggested that about 30 days before the tenancy is due to end, that the tenant and park operator discuss whether the tenancy will continue or end. | <p>Periodic site-only agreement:</p> <p>No</p> <p>Periodic on-site home agreement:</p> <p>No</p> <p>Fixed term agreement:</p> <p>Yes</p> |
| The tenant has not kept up to date with the rent. | <p>Periodic or fixed term agreement:</p> <p>See the section <i>When things Go Wrong: Disputes and Resolution</i></p> | <p>Periodic or fixed term agreement:</p> <p>To be determined by the State Administrative Tribunal.</p> |
| The park operator has sold the park, subject to vacant possession. | <p>Periodic or fixed term site-only agreement:</p> <ul style="list-style-type: none"> • 180 days notice <p>Periodic or fixed term on-site home agreement:</p> <ul style="list-style-type: none"> • 60 days notice | <p>Periodic agreement:</p> <p>No</p> <p>Fixed term agreement:</p> <p>Yes</p> |
| The rented premises is uninhabitable or compulsorily acquired by law. | <p>Periodic or fixed term agreement:</p> <ul style="list-style-type: none"> • 7 days notice | <p>Periodic agreement:</p> <p>No</p> <p>Fixed term agreement:</p> <p>Yes</p> |

| Situation causing tenancy to end | Minimum notice period to tenant to end a tenancy | Compensation payable by park operator to tenant |
|---|---|--|
| The tenant has significantly breached the agreement. | <p>Periodic or fixed term agreement:</p> <ul style="list-style-type: none"> • Default notice minimum 14 days • Termination notice minimum 7 days • Tribunal order if necessary. | <p>Periodic or fixed term agreement:</p> <p>To be determined by the Tribunal if proven.</p> |
| The park operator and tenant mutually consent. | <p>Periodic or fixed term agreement:</p> <p>As agreed between the park operator and a tenant.</p> | <p>Periodic or fixed term agreement:</p> <p>Possibly – determined by the parties.</p> |
| The park operator obtains an order from the Tribunal to terminate agreement on the grounds of hardship. | <p>Periodic or fixed term agreement:</p> <p>As determined by the Tribunal.</p> | <p>Periodic agreement:</p> <p>None unless ordered by the Tribunal.</p> <p>Fixed term agreement:</p> <p>Yes</p> |

Default and termination notices can be downloaded from the Consumer Protection website www.commerce.wa.gov.au or call 1300 30 40 54 to obtain a free copy.

Evictions

A tenant cannot be forced out of rented premises without an order from the State Administrative Tribunal. This applies to all tenants. Any other method of eviction is unlawful under the Parks Act.

If a tenant receives proper notice to end an agreement but refuses to leave, the owner or agent can seek an order from the Tribunal to end the agreement and take possession of the premises. The order can be enforced with a warrant authorising a bailiff to evict a tenant.

If the Tribunal makes an order that a tenant must leave and a tenant believes he/she is likely to suffer hardship as a result, a tenant could ask the Tribunal for an order to be suspended for up to **30 days**.

In all circumstances, a park operator is not permitted to change locks, turn off the electricity, gas or water, or take any other action to force a tenant out of the park, unless authorised by an order of the Tribunal.

If a tenant believes that there has been any such action to force a tenant to give up possession, contact Consumer Protection because such 'unlawful coercion' may be a breach of the *Fair Trading Act 1987* and can attract significant penalties.

Compensation of a tenant

A tenant under a fixed-term agreement is entitled to compensation if the park operator ends the agreement:

- because the park is being sold, subject to vacant possession;
- without giving a reason;
- because the park is uninhabitable or unusable; or
- because the park operator is suffering hardship.

Site-only agreements - fixed term

In considering the amount of compensation payable in relation to a site-only agreement, the Tribunal may have regard to:

- the cost of moving a caravan or park home, including disconnecting utilities and other services;
- the cost of towing or otherwise moving the caravan or park home and possessions to another site or up to 600 km (whichever is the shorter distance);
- the cost of re-sitting the caravan or park home and connecting services; and
- the costs of establishing the new site, including landscaping.

On-site home agreements - fixed term

In considering the amount of compensation payable in relation to an on-site home agreement, the Tribunal may have regard to the cost of towing or otherwise moving the tenant's possessions to another site or up to 600 km (whichever is the shorter distance).

Bond

Money paid by the tenant and held in trust by an independent third party as security against damage.

Condition report

A report that outlines the contents and records the opinion of the condition of rented property.

Fixed term on-site home agreement

A long-stay tenancy agreement, usually between a park operator and a tenant, that allows a tenant to rent a site and a relocatable home on a park for residential purposes for a set period of time.

Fixed term site-only agreement

A long-stay tenancy agreement, usually between a park operator and a tenant, that allows a tenant to rent a site on a park for residential purposes for a set period of time.

Long-stay agreement

An agreement for three months or longer, usually between a park operator and a tenant, that allows a tenant to rent premises on a park that is subject to the provisions of the *Residential Parks (Long-stay Tenants) Act 2006*.

Park Liaison Committee (PLC)

A committee of residents and management that aims to maintain and improve the lifestyle and wellbeing of park tenants.

Park operator

A person who oversees the running of the park.

Periodic on-site home agreement

A long-stay tenancy agreement, usually between a park operator and a tenant, that allows a tenant to rent a site and a relocatable home on a park for residential purposes for an unspecified period of time.

Periodic long-stay tenancy agreement

A long-stay tenancy agreement, usually between a park operator and a tenant, that allows a tenant to rent a site on a park for residential purposes for an unspecified period of time.

Rent

The money the tenant pays for the right to live in the premises.

Sub-let

A rental long-stay tenancy agreement where the tenant rents out all or a part of the premises to another person.

Tenant

A person who rents a long-stay site or a relocatable home and a long-stay site.

Termination of tenancy

The ending of a tenancy.

Flow chart 1

Overdue rent - Alternative one

DAY 1 Rent is due



DAY 2 RENT UNPAID

Serve *Default Notice for Non-Payment of Rent* by post, giving 14 full days to bring rent up to date



DAY 3

Notice in post

DAY 4

Notice received (not part of the 14 day's notice)



DAY 5
1st day's notice

DAY 6
2nd day's notice

DAY 7
3rd day's notice

DAY 8
4th day's notice

DAY 9
5th day's notice

DAY 10
6th day's notice

DAY 11
7th day's notice



DAY 12
8th day's notice

DAY 13
9th day's notice

DAY 14
10th day's notice

DAY 15
11th day's notice

DAY 16
12th day's notice

DAY 17
13th day's notice

DAY 18
14th day's notice



DAY 19 RENT ARREARS STILL UNPAID

Serve *Notice of Termination for Non-Payment of Rent (Default Notice Issued)* by post giving minimum 7 full day's notice to vacate premises



DAY 20
Notice in post

DAY 21
Notice received (not part of the 7 day's notice)



DAY 22
1st day's notice

DAY 23
2nd day's notice

DAY 24
3rd day's notice

DAY 25
4th day's notice

DAY 26
5th day's notice

DAY 27
6th day's notice

DAY 28
7th day's notice

DAY 29

Date of termination

DAY 30 TENANT HASN'T MOVED OUT

Apply within 30 days for an order from the State Administrative Tribunal terminating tenancy and seeking possession

Note: Days 3,4,20 and 21 are eliminated if the notice is served personally on tenants or occupants.

Flow chart 2

Overdue rent - Alternative two

DAY 1 Rent is due



DAY 2 RENT UNPAID

1st day in arrears

Serve *Notice of Termination for Non-Payment of Rent (No Default Notice Issued)* by post, giving 7 days to bring rent up to date



DAY 3

Notice
in post



DAY 4

Notice received (not part
of the 7 day's notice)



DAY 5

1st day's
notice

DAY 6

2nd day's
notice

DAY 7

3rd day's
notice

DAY 8

4th day's
notice

DAY 9

5th day's
notice

DAY 10

6th day's
notice

DAY 11

7th day's
notice



DAY 12

Date of termination



DAY 13 TENANT HASN'T MOVED OUT

Apply within 30 days for an order from the State Administrative Tribunal terminating tenancy and seeking possession



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 day the *Notice of Termination for Non-Payment of Rent (No Default Notice Issued)* was given to the tenant.

Note: Days 3 and 4 are eliminated if the notice is served personally on tenants or occupants.

Useful contacts

Department of Commerce Building and Tenancy Industries Branch

Contact details are on the back cover.

Australian Property Institute (API) 9474 2784

The API is an association that represents the interests of property professionals including land valuers.

Caravan Industry Association WA 9240 8208 www.caravanwa.com.au

The Caravan Industry Association WA represents caravan parks, dedicated residential lifestyle villages, caravan dealers and manufacturers, and service providers.

Citizens Advice Bureau 9221 5711

The Citizens Advice Bureau is a not-for-profit information and referral agency.

Department of Local Government and Regional Development 9217 1500 or country callers 1800 620 511

The Department of Local Government administers the *Caravan Parks and Camping Grounds Act 1995*.

Legal Aid 1300 65 05 79

(Perth, Fremantle, Midland, Albany, Geraldton, Broome, Bunbury, South Hedland, Kalgoorlie and Cocos/Christmas Island)

Legal Aid is an independent statutory body, funded by the State and Commonwealth governments, to provide information, advice and other legal help. The type and amount of help available depends on a client's finances, the legal problem and Legal Aid's resources.

Park Home Owners Association (PHOA) www.parkhomeowners.com.au

PHOA is an incorporated body that represents the interests of permanent residents of caravan parks and lifestyle villages in WA.

State Administrative Tribunal 9219 3111 or toll free 1300 306 017

The State Administrative Tribunal is similar to a court of law and deals with a broad range of administrative, commercial and personal matters.

State Law Publisher 9321 7688 www.slp.wa.gov.au

Copies of the Act and Regulations are available from the State Law Publisher, the official publisher of Western Australian legislation and statutory information.

Tenants Advice Service (TAS) 9221 0088

TAS is a community legal centre funded to provide quality advice and information to residential tenants (both public and private) and community workers in WA.

Translating and Interpreting Service (TIS) 13 14 50

TIS National can provide telephone and onsite interpreters for non-English speakers.

Department of Commerce

Consumer Protection Division

219 St Georges Terrace, Perth, Western Australia 6000

Advice Line: 1300 30 40 54

Admin: 9282 0777

Facsimile: 9282 0850

Email: consumer@commerce.wa.gov.au

National Relay Service: 13 36 77

www.commerce.wa.gov.au

Regional offices

Goldfields/Esperance

Viskovich House 377 Hannan St, Kalgoorlie

PO Box 10154, Kalgoorlie WA 6433

Telephone: (08) 9026 3250

Great Southern

Unit 2/129 Aberdeen St, Albany

PO Box 832, Albany WA 6330

Telephone: (08) 9842 8366

Kimberley

Shop 24 Kununurra Shopping Centre 64

Konkerberry Dve, Kununurra

PO Box 1104, Kununurra WA 6743

Telephone: (08) 9169 2811

North-West

Unit 9 Karratha Shopping Centre Sharpe Ave,
Karratha

PO Box 5, Karratha WA 6714

Telephone: (08) 9185 0900

Mid-West

Shop 3 Post Office Plaza 50-52 Durlacher St,
Geraldton

PO Box 1447, Geraldton WA 6531

Telephone: (08) 9964 5644

South-West

8th Floor 61 Victoria St, Bunbury

PO Box 1747, Bunbury WA 6231

Telephone: (08) 9722 2888