



ILLEGAL USE OF PREMISES POLICY

WHAT HAS CHANGED?

The Department of Housing (the Department) has revised its policy and processes in response to the illegal use of public housing rental accommodation (the premises). The Illegal Use of Premises policy more clearly defines the circumstances under which the Department will seek the termination of the Tenancy Agreement where the premises have been used for an illegal purpose.

If the premises are a necessary component of criminal activity, it will be considered that the tenant has used, caused or permitted the premises to be used, for an illegal purpose.

The Department will take immediate action where there is sufficient evidence that the premises has been used for an illegal purpose. In most circumstances legal action will commence where a tenant or any other person, given express or implied permission to be on the premises by the tenant, has been convicted of an offence that warrants the termination of the tenancy agreement.

In some circumstances legal action will commence prior to a conviction. For example, the Department will seek the immediate termination of the Tenancy Agreement in response to illegal activities occurring at the premises where the safety or security of people or property is placed at immediate risk. The presence of a clandestine drug laboratory at the premises would warrant this response.

The Department will take action in line with the policy in all instances. Discretion cannot be applied by the Department's regional staff.

WHY HAS IT CHANGED?

The *Residential Tenancies Act 1987* was amended in May 2012 with the inclusion of section 75A (1) which states:

“A competent court may, upon application by the lessor under a social housing tenancy agreement, terminate the agreement if it is satisfied that the tenant has used the social housing premises, or caused or permitted the social housing premises to be used, for an illegal purpose and that the behaviour justified terminating the agreement.”

The inclusion of section 75A required the Department to revise its policy and processes to define the circumstances under which an application for the termination of a Tenancy Agreement will be considered.

WHAT ACTIVITIES ARE CONSIDERED TO BE AN ILLEGAL USE OF THE PREMISES?

Examples of activities considered to be an illegal use of the premises include:

- The presence of a clandestine drug laboratory
- Arson
- Illegal storage of firearms, ammunition or explosives

More detail about Illegal Use of Premises is available in the Rental Policy manual on our website

www.housing.wa.gov.au

Call 1800 093 325 for details of your nearest Department of Housing office

- Unlawful sale, supply, cultivation, manufacture, use or possession of a prohibited drug or plant
- Storage of stolen property and/or receiving, handling or processing money or goods taken or obtained illegally
- Operating or permitting the premises to be used for the operation of a business for the purpose of prostitution

WHAT DOES THIS MEAN FOR TENANTS?

If a Department of Housing tenant is found to have used or permitted the premises to be used for an illegal purpose, the Department may commence legal proceedings which may result in the termination of the Tenancy Agreement and eviction from the property.

In some instances, tenants may receive a written warning if it is determined that the activity did not pose a risk to the safety or security of the community or was not sufficiently serious to warrant the termination of the Tenancy Agreement. Termination of the Tenancy Agreement will be considered if there is a recurrence.

HOW DO I REPORT SUSPECTED ILLEGAL ACTIVITY OCCURRING AT A PUBLIC HOUSING PREMISES?

You should report suspected illegal activity to the Western Australia Police. Once you have reported the matter to the police, you should contact the Department with your concerns. The case will be referred to an officer who will commence an inquiry into the matter. The Department can liaise with the police through existing information sharing protocols to determine whether there is sufficient evidence for the Department to take action under the *Residential Tenancies Act 1987*.

The Department's inquiry will gather evidence from a number of sources including the police, the courts, other members of the public, and, at the appropriate time, the tenant. Provided you have given us your name and contact details, you will be kept informed of the progress of the inquiry.

The Department is not responsible for investigating, charging or prosecuting people for alleged illegal activities or crimes. The Department will take action under the *Residential Tenancies Act 1987* where there is sufficient evidence that the premises have been used for an illegal purpose and termination of the Tenancy Agreement is warranted. The Magistrates Court of Western Australia will decide the matter.

Before making a decision about whether to apply to the Magistrates Court for the termination of the Tenancy Agreement, the Department will provide the tenant with an opportunity to discuss the evidence. If the Department decides to seek the termination of the Tenancy Agreement, the tenant will have an opportunity to attend the court hearing to provide testimony. The court will decide the matter ensuring natural justice has been applied.