



S75A and Disruptive Behaviour Management Unit (DBMU) Fact Sheet

The Department of Housing's Disruptive Behaviour Management Policy

In May 2011 the Western Australian Government's Disruptive Behaviour Management Strategy came into effect. Its stated purpose was to address public concerns about disruptive behaviour by tenants in public housing.

How Does It Work?

Under this strategy, the Department of Housing (DOH) can take action for repeated instances of disruption or 'anti-social' behaviour, including initiating termination proceedings against tenants who disregard intervention efforts and formal warnings (strikes).

Legal action to terminate a tenancy will usually commence if a prescribed number of warnings (known as strikes) are issued within a twelve (12) month period.

A strike is a notice issued to a tenant found to have caused or permitted a nuisance or to have interfered with the reasonable peace, comfort and quiet enjoyment of neighbours.

(Strikes lapse after twelve (12) months).

The number of strikes to be issued before the Department takes action to evict a tenant will depend on the severity of the incident. The Disruptive Behaviour Management Policy which guides the Department can be found on page 79 of the Department of Housing's rental policy manual which is at:

http://www.dhw.wa.gov.au/HousingDocuments/Rental_Policy_Manual.pdf

Categories of Disruptive Behaviour

Under the policy there are three categories of disruptive behavior.

1. Dangerous Behaviour

Defined as dangerous activities that pose a demonstrable risk to the safety or security of residents or property; or have resulted in injury to a person in the immediate vicinity with subsequent Police charges or conviction.

Examples:

- Physical assaults or violence to people other than household member or visitors.
- Aggravated threats of violence such as threats with a weapon.

- Extensive and deliberate serious damage to property.

Response: Immediate termination proceedings will be commenced.

2. Serious Disruptive Behaviour

Defined as activities that intentionally or recklessly cause serious disturbance to persons in the immediate vicinity, or which could reasonably be expected to cause concern for the safety or security of a person or their property.

Examples:

- Threats to the health and safety of other people.
- Abusive language based on race, gender, sexual orientation and other forms of harassment.
- Fights between householders or visitors to the property.
- Vandalism to property in the immediate area, such as graffiti.

Response: A first and final strike will be issued following one substantiated incident. A subsequent incident of similar severity within twelve (12) months will result in termination proceedings.

3. Disruptive Behaviour

Defined as behaviour that causes a nuisance or unreasonably interferes with the peace, privacy or comfort, of persons in the immediate vicinity.

Examples:

- Night time parties that create loud and excessive noise.
- Family arguments that disturb neighbours.
- Excessive noise from TVs, stereos, vehicles etc.
- Unwarranted entry into neighbouring properties.
- Disputes with other tenants over communal parking bays or laundry areas.
- Unreasonable disturbances from children.

Response: A strike will be issued for each substantiated incident of disruptive behaviour. Termination proceedings will commence if three strikes are issued within a twelve (12) month period.

Investigation of complaints

Complaints are investigated by case managers from the DOH Disruptive Behaviour Management Unit. The decision to issue a strike is made at a case management conference which usually involves several officers.

Tenants who have allegedly caused disruption are invited to a 'natural justice' interview prior to the issuing of a strike where they can refute the allegations or plead mitigating circumstances. For example:

- A tenant is issued a strike for shouting, swearing and fighting at the property. The tenant attends the natural justice interview and provides a letter showing that at the time of the alleged

incident she was attending a medical appointment and therefore could not have caused or allowed the behaviour.

- A tenant is issued a strike for loud and abusive language and fighting requiring police attendance. The tenant attends the 'natural justice' interview and produces a Violence Restraining Order (VRO) against her ex-partner and a police incident report number. It turns out that the tenant called the police after asking her ex-partner to leave the property.

If you receive any strike or a notice of a hearing for termination, contact your local tenant advocate for advice immediately.

The Department of Housing say that action will be taken only where the Department is satisfied that an incident occurred which caused a nuisance to a person in the immediate vicinity, interfered with their comfort or privacy or posed a safety risk, and that the legal tenant caused or permitted the incident.

It is important to note that most regional offices will take the action set out in the policy in all instances. In exceptional circumstances the Executive Director Client Services may approve alternative action.

The Department of Housing's ILLEGAL USE OF PREMISES POLICY may also be used where the Department believes the property is being used for illegal purposes, for example, the manufacture or sale of drugs. In such instances the Department of Housing will immediately apply to court to seek immediate termination of the tenancy agreement.

Depending on whether the criminal matter has been heard by the Court it may be possible to obtain an adjournment pending the outcome of criminal proceedings.

S75A Residential Tenancies Act 1987

The Disruptive Behaviour Management Policy is complemented by an amendment to the Residential Tenancies Act 1987 (the Act) which is the legislation dealing with the rights and responsibilities of tenants and lessors in Western Australia.

S75A came into effect on 14 December 2014. It only applies to public housing tenancies and tenants.

A link to s75A can be found at:

http://www.austlii.edu.au/au/legis/wa/consol_act/rta1987207/s75a.html

Once a public housing tenant has been issued with the required number of strikes for alleged disruptive behaviour the Department of Housing will usually apply to the local Magistrates Court under s75A to terminate the tenancy. The Department is required to prove the incidents occurred and they will have to bring witnesses to court.

If you receive notice of a Court hearing contact your local tenant advocate as soon as possible.

If contacted before the hearing a tenant advocate may be able to obtain an adjournment and an outline of the case against the tenant (disclosure orders) in order to assess whether they can defend the matter at trial.

It is very important if you are being taken to Court under s75A that you try and ensure no further complaints against your tenancy are made. There can be a delay between when the Department starts termination proceedings and when the matter finally goes to trial. The Magistrate will often take into account whether there has been any further 'disruptive' behaviour during this period. A Magistrate may decide not to evict you if the behaviour complained about has not occurred recently.

Magistrates also consider whether the behaviour, even if proven, justifies termination and will take into account mitigating factors such as untreated mental illness now being treated or women experiencing domestic violence who have now obtained a VRO to stop the violent person coming to the house.

Even if a Magistrate decides to end the tenancy they may suspend the operation of the order for a period of time – this means they could say that the Department has to wait 30 days or 60 days before making the tenant move out. In cases where the behaviour is extremely disruptive and ongoing a Magistrate could end the tenancy immediately although it would probably take a few days before the bailiffs could repossess the property.

Other sections of the Act the Department of Housing may use to end tenancies for alleged disruptive behaviour or illegal activity

Although s75A and the Disruptive Behaviour Management policy were introduced to deal with alleged instances of disruptive behaviour by public housing tenants the Department of Housing may in some instances rely on other sections of the Act to seek termination of tenancies namely s64 and s73.

S64 allows a landlord to terminate a periodic tenancy by giving the tenant at least 60 days' notice in the prescribed form (Form 1C). The landlord does not have to give a reason why they want the tenant to move out. If the tenant does not vacate on the day written in the notice the landlord can then apply to Court for termination.

The Department of Housing says that it will only terminate under s64 of the Act for disruptive behaviour where witnesses are unable to attend court or claim to have been intimidated. The Department also states that the issuing of these notices is not taken lightly and only after approval by the Director General.

In exceptional circumstances a tenant advocate may be able to persuade the Department not to evict someone using this provision.

S70A allows a landlord to terminate a fixed term tenancy by giving a notice of termination 30 days prior to the end of the fixed term lease.

If the tenant has a fixed term lease with the Department of Housing and the Department considers there has been disruptive behavior the lease will usually not be renewed. The Department will issue a letter at least 30 days before the end of the lease advising the tenant that they are not renewing the lease and that the tenant is required to move out. If the tenant does not move out the Department will initiate termination proceedings.

If you receive a s64 notice of termination contact your local tenant advocate as soon as possible.

The Department of Housing may also apply to Court under s73 to terminate a tenancy where serious damage to property or injury to persons has occurred or is likely to occur. A link to s73 can be found at:

http://www.austlii.edu.au/au/legis/wa/consol_act/rta1987207/s73.html

If the Court is satisfied that the tenant allowed or permitted serious damage to the property or injury to a person or is likely to cause or permit serious damage or injury it will terminate the tenancy at once.

If you receive notice of a Court hearing brought under s73 contact your local tenant advocate as soon as possible.

What happens after a tenancy is ended?

If the Court terminates a tenancy it also orders a date that the tenant has to give back vacant possession (in other words move out). If the tenant does not move out on this date the Department of Housing will get bailiffs to go to the property, remove the tenant and change the locks.

The Bailiff usually gives the tenant 24-48 hours' notice that this is going to happen. Once this process starts the bailiff will only stop if the Department tells them to.

If the bailiff has to remove the tenant and change the locks because the tenant has not moved out and returned the keys on or before the date of vacant possession the Department will charge the tenant the cost of doing this. This charge will be added to a tenant's vacated liability and can amount to several hundred dollars.

For information about how to challenge Court orders made under s75A in a tenants absence refer to the fact sheet appealing Court orders and applying for the suspension of orders.

Please note: This information contains general information only and is accurate at July 2015. It does not constitute legal advice.