



Independent Living Units  
Seniors Accommodation

# Housing Management Manual

September 2020

## Table of Contents

<b>1.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
1.1	DEFINITIONS / EXPLANATIONS: .....	1
1.2	PURPOSE, SCOPE AND USE OF MANUAL .....	1
1.3	MAINTENANCE OF THE MANUAL .....	1
1.4	PROVIDING THE MANUAL TO THIRD PARTIES .....	2
1.5	STRATEGIC COMMUNITY PLAN.....	2
<b>2.</b>	<b>ALLOCATION OF HOUSING.....</b>	<b>3</b>
2.1	HOUSING ALLOCATION GUIDELINES .....	3
2.1.1	<i>Housing Eligibility Criteria and Allocation Guidelines – 4 Units Johnston Street Wickepin .....</i>	<i>3</i>
2.1.2	<i>Housing Eligibility Criteria and Allocation Guidelines – Wogolin Road Units .....</i>	<i>4</i>
2.1.3	<i>“Need Based” Criteria.....</i>	<i>4</i>
2.1.4	<i>Proof of Identity.....</i>	<i>5</i>
2.2	APPLICATION FOR TENANCY .....	5
2.2.1	<i>Application for Rental Housing Form.....</i>	<i>5</i>
2.2.2	<i>Records Management .....</i>	<i>5</i>
2.2.3	<i>Consent Authority.....</i>	<i>5</i>
2.2.4	<i>Acknowledgement Letter .....</i>	<i>5</i>
2.2.5	<i>Appeal against Refusal of Application for Tenancy.....</i>	<i>6</i>
2.3	MANAGING THE WAITING LISTS.....	6
2.3.1	<i>Waiting Lists.....</i>	<i>6</i>
2.3.2	<i>Conditions of Removal from the Waiting List.....</i>	<i>6</i>
2.3.3	<i>Reinstating a Person Removed from the Waiting List .....</i>	<i>6</i>
2.3.4	<i>Appeal against the Removal from Waiting List.....</i>	<i>6</i>
2.4	HOUSING ALLOCATION PROCESS .....	7
2.4.1	<i>Housing Allocation Decision .....</i>	<i>7</i>
2.4.2	<i>Housing Allocation Report (MP4) .....</i>	<i>7</i>
2.5	CONFLICT OF INTEREST .....	7
2.6	OFFER OF HOUSING NOTIFICATION.....	7
2.7	GROUND FOR REFUSAL .....	7
2.7.1	<i>Acceptance/Refusal of Offer.....</i>	<i>8</i>
2.7.2	<i>Documents and Information the Organisation Must Give to the Tenant (MP5) .....</i>	<i>8</i>
2.8	MONITORING ALLOCATIONS.....	8
2.9	FEEDBACK.....	9
<b>3.</b>	<b>ESTABLISHING AND MAINTAINING TENANCIES .....</b>	<b>10</b>
3.1	RIGHTS AND RESPONSIBILITIES .....	10
3.1.1	<i>Tenant Rights and Responsibilities.....</i>	<i>10</i>
3.1.2	<i>The Organisation’s Rights &amp; Responsibilities .....</i>	<i>11</i>
3.2	RESIDENTIAL TENANCY AGREEMENTS.....	11
3.3	THE PROPERTY CONDITION REPORT .....	12
3.4	SECURITY BOND.....	12
3.4.1	<i>Alterations and Additions to the Form .....</i>	<i>12</i>
3.5	VACANT POSSESSION .....	13
3.6	PRIVACY AND QUIET ENJOYMENT .....	13
3.7	PERIODIC INSPECTIONS - (MP8) .....	13
3.8	ABSENCES FROM PROPERTY.....	13
3.8.1	<i>Temporary Absences .....</i>	<i>13</i>
3.8.2	<i>Order that Premises are Abandoned .....</i>	<i>14</i>
3.8.3	<i>Special Absences.....</i>	<i>14</i>
3.9	CHANGING NEEDS OF TENANTS.....	14
3.9.1	<i>Home Modifications .....</i>	<i>14</i>
3.9.2	<i>Transfers.....</i>	<i>14</i>
3.9.3	<i>Mutual Exchange.....</i>	<i>14</i>
3.9.4	<i>Utilisation of Housing Stock.....</i>	<i>15</i>

3.9.5	Notices - (MP9).....	15
<b>4.</b>	<b>RENT SETTING, COLLECTION AND ARREARS.....</b>	<b>15</b>
4.1	RENT SETTING (AGREED RENT).....	15
4.2	RENTAL PAYMENTS - (MP10).....	15
4.2.1	Commencement Date for First Rental Payment.....	15
4.2.2	Rent Payment System.....	16
4.2.3	Proof of Rental Payment.....	16
4.2.4	Proper Records of Rent to be Kept.....	16
4.2.5	Failure to Pay Rent with Intention to be recovered from Security Bond.....	16
4.3	RENT REVIEWS - (MP11).....	16
4.4	INCREASES IN SECURITY BOND.....	16
4.5	RENT ARREARS.....	16
4.5.1	Identifying Rent Arrears.....	17
4.5.2	How Residential Tenancies are Terminated - (MP12).....	17
4.6	TENANT LIABILITY FOR REPAIRS.....	17
4.6.1	Occupied Tenant Liability.....	17
4.6.2	Vacated Tenant Liability.....	18
4.7	CHARGING TENANT LIABILITY.....	18
4.7.1	Fair Wear and Tear.....	19
4.7.2	Appeal Rights.....	19
4.7.3	Disputes between the Organisation and Tenants Concerning Tenant Liability Charges.....	19
4.8	DEBT RECOVERY.....	19
4.8.1	Debts Relating to Current Tenancy.....	20
4.8.2	Vacated Debt.....	20
4.8.3	Joint Liability of Tenants.....	20
4.8.4	Debt Subject to Dispute.....	20
4.8.5	Referral to Commercial Debt Collection Agency.....	20
<b>5.</b>	<b>PROPERTY OUTGOINGS.....</b>	<b>21</b>
5.1	THE SHIRE'S RESPONSIBILITY.....	21
5.2	THE TENANT'S RESPONSIBILITY.....	21
5.3	INSURANCE.....	21
5.3.1	Tenant Insurance.....	22
5.4	CONDITION OF THE PROPERTY.....	22
5.4.1	Refurbishments, Renovations and Home Improvements.....	22
<b>6.</b>	<b>REPAIRS AND MAINTENANCE.....</b>	<b>23</b>
6.1	REPAIRS AND MAINTENANCE (GENERAL).....	23
6.2	RESPONSIVE REPAIRS AND MAINTENANCE PROCEDURE.....	23
6.3	CONTRACTS FOR REPAIRS AND MAINTENANCE.....	23
6.3.1	Preferred Contractors.....	24
6.4	CODE OF CONDUCT - (MP14).....	24
6.4.1	Property Visit.....	24
6.4.2	Right of Entry.....	25
6.4.3	Urgent/emergency maintenance (after Shire hours).....	25
6.4.4	Contractor's Performance.....	25
6.5	PERFORMANCE TARGETS.....	25
<b>7.</b>	<b>TENANCIES.....</b>	<b>26</b>
7.1	TENANCIES (GENERAL).....	26
7.1.1	Visitors.....	26
7.1.2	Supporting Tenancies.....	26
7.2	TENANT DAMAGE.....	26
7.3	TERMINATION BY TENANT.....	26
7.4	TERMINATION BY MUTUAL AGREEMENT.....	26
7.5	TERMINATION BY FRUSTRATION OF AGREEMENT.....	27
7.6	ABANDONED PREMISES AND/OR GOODS.....	27
7.6.1	Abandoned Goods (as a guide).....	28

7.7	PROPERTY INSPECTION AT TERMINATION OF TENANCY.....	28
7.8	ACCOUNT FINALISATION .....	29
7.9	SECURITY BOND DISPOSAL .....	29
7.9.1	<i>Signatories Change</i> .....	29
7.9.2	<i>In the Case of a Dispute</i> .....	29
7.10	EXIT TENANT INTERVIEW .....	30
7.11	TRANSFER OF A TENANCY TO AN ELIGIBLE TENANT.....	30
<b>8.</b>	<b>ILU MANAGEMENT SYSTEMS.....</b>	<b>31</b>
8.1	SYSTEM DESCRIPTION .....	31
8.1.1	<i>Tenant Files</i> .....	31
<b>9.</b>	<b>PRIVACY AND CONFIDENTIALITY .....</b>	<b>32</b>
9.1	PRIVACY PROTECTION .....	32
9.1.1	<i>Principle of ‘need to know’ and ‘informed consent’</i> .....	32
9.1.2	<i>Privacy for Interviews</i> .....	32
9.1.3	<i>Protecting Confidential Information Internally</i> .....	32
9.1.4	<i>Situations where ‘Informed Consent’ is Not Possible</i> .....	32
9.1.5	<i>File Management</i> .....	33
9.1.6	<i>Records Management</i> .....	33
9.1.7	<i>An Organisational Culture of Privacy Protection</i> .....	33
9.1.8	<i>Confidentiality Guidelines</i> .....	33
<b>10.</b>	<b>COMPLAINTS MECHANISM .....</b>	<b>34</b>
10.1	COMPLAINTS MANAGEMENT.....	34
10.2	PROCEDURES TO SUPPORT GOOD PRACTICE .....	34
10.3	TAKING A COMPLAINT - (MP13) .....	34
10.4	COMPLAINTS MANAGEMENT PROCEDURES .....	34
10.4.1	<i>Assistance to Complainants</i> .....	34
10.4.2	<i>Investigating Complaints</i> .....	35
10.4.3	<i>Remedies</i> .....	35
10.4.4	<i>Response</i> .....	35
10.4.5	<i>Serious Complaints</i> .....	35
10.4.6	<i>External Reviews</i> .....	36
10.5	MONITORING AND REPORTING ON COMPLAINTS .....	36
<b>11.</b>	<b>APPEALS PROCESS .....</b>	<b>36</b>
11.1	APPEALS.....	36
11.2	WHAT DECISIONS CAN BE APPEALED? .....	36
11.3	HOW TO APPEAL.....	37
11.4	APPEAL PROCEDURES.....	37
11.4.1	<i>Natural Justice (Procedural Fairness)</i> .....	37
11.4.2	<i>Appeal Notice</i> .....	37
11.4.3	<i>Acknowledgement of Appeal Notice</i> .....	38
11.4.4	<i>Notice of Appeal Hearing/Ineligible Appeal</i> .....	38
11.4.5	<i>Appellant’s Right to Attend Hearing</i> .....	38
11.4.6	<i>Examination of Appeal Documents</i> .....	38
11.4.8	<i>Appeal Hearing</i> .....	38
11.4.9	<i>Result of Appeal</i> .....	39
11.5	MONITORING AND REPORTING ON APPEALS.....	39
<b>12.</b>	<b>SETTLING DISPUTES IN COURT (WHERE THE RTA APPLIES) - (MP15) .....</b>	<b>40</b>
12.1	HEARINGS.....	40
12.1.1	<i>Where to Apply for a Hearing</i> .....	40
12.1.2	<i>Disputes which End Up in Court</i> .....	40
12.1.3	<i>Attending Court</i> .....	40
12.1.4	<i>How the Case is Heard</i> .....	41
12.1.5	<i>The Decision</i> .....	41
12.1.6	<i>If a Court Order to Pay is Ignored</i> .....	41

*Where 'MP...' is referred to throughout this document, a Management Practice applies (see ILU Management Practices document for further information)*

## **1. INTRODUCTION**

All matters not addressed in this document will be addressed by the Lifestyle Retirement Committee or Council, as they arise.

### **1.1 Definitions / Explanations:**

#### **ILU**

Independent Living Units Seniors Accommodation, owned and managed by the Shire of Wickepin

#### **Management**

Shire of Wickepin

#### **Organisation**

Shire of Wickepin

#### **Preferred Contractors**

Contractors who have provided details of their insurance, trade qualifications and licences (where applicable), have signed a copy of the Shire of Wickepin's Code of Conduct and who maintain a history of quality work for the Shire.

#### **Responsible Person**

The staff member at the Shire of Wickepin with responsibility for management of the ILU

#### **Tenant/s**

Those people occupying Independent Living units and Seniors Accommodation in Wickepin, who are named on the Tenancy Agreement (Agreement), are age qualified and have signed the Shire's ILU Tenancy Agreement, are the signatories to the Agreement. Other non-signatory people residing in the property are considered to be residents only.

#### ***Western Australian Residential Tenancies Act 2013 (Act)***

This is the Act of Parliament that regulates the residential tenancies industry in Western Australia. The intent of the Act is to protect the rights, responsibilities and obligations of a landlord and its tenants. The ILU management operates within the requirements of relevant Acts and legislation.

The scope of this Manual covers all residential housing policies, procedures, systems and activities pertaining to the Shire of Wickepin's Independent Living Seniors Accommodation and applies to all officers performing duties in relation to the administration of this facility.

### **1.2 Purpose, Scope and Use of Manual**

This Housing Management Manual is approved by Council as the basis for the housing management operations of the ILU and has been developed to provide clear direction.

The purpose of the Manual is to provide guidance and information on the management of the ILU and to assist in establishing operational policies and procedures for management and staff. The policies and procedures are designed to meet the National Community Housing Standards (NCHS) (currently dated 2003).

### **1.3 Maintenance of the Manual**

The Manual will be updated as required, including:

- thorough reviews of the application and effectiveness of ILU management policies and procedures; and/or
- when sections of the Manual are affected by changes in policy, legislation, or any other approved housing management procedures.

Any changes will be by Council resolution.

#### **1.4 Providing the Manual to Third Parties**

This Manual is copyright to the Shire of Wickepin and may only be reproduced with the express permission of the Shire. The Shire will not be liable for any action from any party arising from the use of this Manual.

#### **1.5 Strategic Community Plan**

**GOAL 9:** Our community are engaged, have a healthy lifestyle and are safe

9.7 Seniors are encouraged and able to age in place

Sound housing management practices, to support the Shire's ILU, include collection of rent from tenants. This income goes towards the associated costs of providing housing, such as:

- Water rates;
- Property (building) insurance;
- Projected repairs & maintenance;
- Administrative expenses; and
- Contributions towards purchase of additional housing stock/replacement of existing units.

## 2. ALLOCATION OF HOUSING

### 2.1 *Housing Allocation Guidelines* (MP1)

The Shire of Wickepin owns and manages two ILU;

- Johnston Street (four x 3 bedroom units)
- Wogolin Road (three 1 bedroom units, two 2-bedroom units)

In order to consider applications for tenancy fairly, separate Waiting Lists will be maintained for each ILU complex. Applicants may request to be placed on one or more Waiting List.

Due to the specific requirements of funding bodies associated with the development of the Johnston Street units, the eligibility requirements and allocation process for the Units are separate to those requirements for the remainder of Council's ILU.

#### 2.1.1 Housing Eligibility Criteria and Allocation Guidelines – 4 Units Johnston Street Wickepin

*Note:*

*These units were funded through Royalties for Regions (Regional Aged Accommodation Program (RAAP)) Funding via the State Department of Primary Industries and Regional Development and this eligibility criterion for these units should not be altered without first seeking written approval of the Department.*

**Process:**

1. The lists of interested and eligible tenants is maintained by the Shire (see eligibility criteria below):
  - Band A Waiting List – refers to *Department of Communities Income and Assets limits Policy: Social Housing (Band A) Income Eligibility Limits;*
  - Band B Waiting List – refers to *Department of Communities Income and Assets limits Policy: Affordable Housing (Band B) Income Eligibility Limits;*
  - The above lists to be maintained under the main Johnston Street Waiting List
2. Each list is prioritised in date order when prospective eligible tenants lodge an interest (first in, first served);
3. When a unit becomes vacant, it is offered to the first person on the list for Band A. If the first person offered declines, then it is offered to the next person on the list until such time as a prospective tenant accepts;
4. If the unit cannot be tenanted from the list for Band A, it is offered to the first person on the list for Band B. If the first person offered declines, then it is offered to the next person on the list until such time as a prospective tenant accepts;
5. If a prospective tenant refuses an offer, they retain their relevant position on the list;
6. The Shire does not maintain a priority list;
7. Once a Unit is leased, the lease agreement is valid until such time as the lessee may not operate independently as defined under the lease agreement;
8. Carers are permitted to live-in but once a lease holder ceases occupation, the Carer must vacate the premises as well.



### **Eligibility Criteria:**

To be eligible to be placed onto the Waiting List for Band A or Band B referred to above, residents must:

a) Satisfy the means testing outlined in the (former) Department of Housing 'Community Housing Income and Asset Limits' Policy – refer to [http://www.dhw.wa.gov.au/HousingDocuments/Community\\_Housing\\_Income\\_and\\_Asset\\_Limits\\_Policy.pdf](http://www.dhw.wa.gov.au/HousingDocuments/Community_Housing_Income_and_Asset_Limits_Policy.pdf);

and

b) Be over the age of 65 years at the commencement of the lease (over the age of 55 years for indigenous Australians);

If there are no applicants on the Waiting List that meet the criteria above, or if the offer to lease is not taken by anyone on the List for Band A or List for Band B, then the unit may be offered to residents on the Wickepin ILU Waiting List in accordance with the policy or procedure for Johnston Street Units Wickepin.

### **2.1.2 Housing Eligibility Criteria and Allocation Guidelines – Wogolin Road Units**

#### **Eligibility Criteria**

To be placed on the Waiting List for Wogolin Road Units, all applicants are to satisfy the following eligibility criteria:

- a. **Age:**  
Tenants must be 55 years of age or older. In the event that a tenant's spouse/partner is younger than 55 years of age and the age eligible tenant passes away or vacates their unit, the younger spouse/partner's eligibility to remain will be assessed on an application by application basis. The otherwise ineligible younger spouse/partner will not be named on the original tenancy agreement.
- b. **Previous Tenancy History with ILU:**  
**Previous Debt** - Where an applicant for a tenancy is in debt to the Shire and the debt is not subject to an approved payment plan arrangement, the tenant shall not be eligible for tenancy of the ILU property unless approved by Council.  
  
**Previous Eviction** – Where an applicant for a tenancy has previously been subject to eviction from an ILU property, for failure to pay or for breach of agreement, they shall not be eligible as an ILU tenant unless approved by Council.
- c. **Residency Status:**  
Tenants must hold Australian Citizenship or have permanent residency status.
- d. **Independence:**  
Tenants must be able to live independently (with external support if required).
- e. **Local identification:**  
Tenants must, where possible, be able to be identified as a person local to the Shire of Wickepin.

### **2.1.3 "Need Based" Criteria**

An applicant may make an application for a unit that has been purpose built for disabled persons and be given priority if a disability is verified by a medical professional. Council may also consider applications made as a result of extreme hardship (e.g.; persons displaced due to natural catastrophe). Any decision made is at the discretion of Council.

#### **2.1.4 Proof of Identity (MP2)**

An applicant must provide proof of identity (see MP2) when applying for tenancy.

### **2.2 Application for Tenancy**

#### **2.2.1 Application for Rental Housing Form**

To apply for ILU rental housing, applicants must complete the standard *Application for Rental Housing* form that is available from Council's administration office in Wickepin (Appendix 1).

If an applicant believes their application should be given priority, they can arrange a meeting to discuss their situation with appropriate Shire staff and/or provide details (e.g. medical certificate) with the application form.

All eligible household members need to be listed on the application. If applicants are eligible for Commonwealth Rent Assistance, a copy of income statements and proof of identity need to accompany the tenancy application.

If required, applicants will be offered assistance to complete the application form.

Applicants are welcome to bring an advocate/family friend if they wish do so when applying for tenancy.

The head applicant/s and household members must meet the eligibility criteria (refer to sections 2.1 and 7.11).

All tenancy agreements will include a 'no smoking within the ILU property' clause.

#### **2.2.2 Records Management (MP3)**

Council will maintain electronic and paper copies of tenancy applications and supporting documents.

#### **2.2.3 Consent Authority**

By signing the *Consent Authority for Rental Housing* form (Appendix 4) applicants agree that, for the purpose of processing the application, Council may make enquiries to individuals, agencies or government departments on matters relating to the application.

By signing the *Income Confirmation Service Consent Authority* form (Appendix 5), CRA eligible applicants agree, for the purpose of processing the application, that Council may access income details direct from Centrelink prior to signing the Residential Tenancy Agreement and during the term of the tenancy.

#### **2.2.4 Acknowledgement Letter**

The *Acknowledgement of Housing Application* letter (Appendix 9), with a copy of the application form, will be forwarded by post to the applicant/s postal address confirming an application has been received, accepted (or declined) and placed on the ILU Waiting List. The Shire will consider tenants openly and fairly without cronyism and nepotism (Councillors and Staff members will declare any Conflicts of Interest – Appendix 38).

### **2.2.5 Appeal against Refusal of Application for Tenancy**

Applicants can appeal against a refusal of Application for Tenancy within 14 days of receiving advice in writing of the decision announcement. Appeals must be in writing. For further details, refer to Section 11- Appeals.

## **2.3 Managing the Waiting Lists**

### **2.3.1 Waiting Lists**

All eligible tenancy applications will be placed on a Waiting List (as advised by applicant) in order of application receipt date (if all documentation is determined as correct) and recorded.

As units become available, applicants at the top of the Waiting List will be considered before the applicants below. When applicants are allocated a unit they will be removed from the list and all other applicants below will move forward one position.

If a tenancy offer is declined by an applicant at any stage and the applicant wishes to remain on the waiting list, that applicant will retain their position on the Waiting List and be re-contacted when a unit becomes available again.

### **2.3.2 Conditions of Removal from the Waiting List**

An applicant for rental housing may be removed from the Waiting List in the following circumstances:

- The applicant is housed in ILU;
- The applicant no longer meets the eligibility criteria;
- The applicant can no longer be contacted; or
- The applicant advises that they no longer need housing or they request the removal of their details from the Waiting List.

### **2.3.3 Reinstating a Person Removed from the Waiting List**

A person may have their tenancy application reinstated (Appendix 28) on the Waiting List under the following circumstances:

- If a person reapplies after having their name removed due to loss of contact, their time on the Waiting List may be calculated from the date of their original registration. Persons will only be eligible for reinstatement if they have contacted Council within six months of being sent advice that they have been removed from the Waiting List.
- If an applicant is removed from the list because they no longer meet the eligibility criteria, the application may be reinstated to its original position if within six months they become eligible.

Other reinstatement requests will be treated as a “new” application.

### **2.3.4 Appeal against the Removal from Waiting List**

Applicants can appeal against the removal from the Waiting List within 14 days of the decision announcement. Appeals must be in writing. For further details, refer to Section 11 - Appeals.

## **2.4 Housing Allocation Process**

### **2.4.1 Housing Allocation Decision**

Once a unit is identified as vacant or is to become vacant, the applicant at the top of the current Waiting List will be advised; however, the Responsible Person will first re-consider whether any further, updated information is required from this applicant (e.g. where a lengthy period of time has elapsed prior to the vacancy arising). Tenancies will be awarded on a ratio of one applicant (including a spouse/partner) to one unit. As per 2.2, the Shire will consider tenants openly and fairly without cronyism and nepotism (Councillors and Staff members will declare any Conflicts of Interest – Appendix 38).

### **2.4.2 Housing Allocation Report (MP4)**

Staff will prepare a brief report on a tenancy application for a unit as an application is received. All allocations are to be approved by the Chief Executive Officer.

## **2.5 Conflict of Interest**

All Councillors and staff members will declare a 'Conflict of Interest' when making decisions regarding tenancy allocations (Appendix 38) if such a conflict applies. It should be ensured that decisions are not made by people who have a conflict of interest. This does not mean that the relatives of the Councillor or staff member must be automatically denied tenancy; rather, it means that these staff members should not participate in that decision. The application should be determined on its merit.

Paramount to this ruling is the determination by the Shire to ensure:

- The Shire's dealings with all its customers and respective customers are undertaken without favour or prejudice;
- No staff member of the Council, friend, associate or family member of any staff member may financially or otherwise advantage themselves to the disadvantage of Council;
- It is the responsibility of the individual staff members to judge whether any conflict of interest exists, and to inform the Chief Executive Officer. If in doubt, the matter must be referred to the Chief Executive Officer/Council for consideration;
- The Chief Executive Officer or Council's decision on the matter will be final;
- If a related party of a staff member is an applicant for housing, the staff member will have no say in the tenancy offering process.

## **2.6 Offer of Housing Notification**

Applicants will be notified in writing of an offer and given the opportunity to make an informed choice of whether to accept it or not. If there is no response from the applicant within a reasonable time, efforts will be made to contact the applicant in writing again. In all situations where telephone contact details have been provided, the applicant should also be contacted by telephone.

Applicants have ten days to respond to an offer of accommodation. Consideration for additional time will be given at the Chief Executive Officer's discretion. If applicants decline the offer or, if no response is received within the above period, the offer will lapse and the property will be offered to the next eligible applicant.

## **2.7 Grounds for Refusal**

An applicant can refuse an offer of accommodation without penalty.

### 2.7.1 Acceptance/Refusal of Offer

To make an informed decision, the applicant must be given the opportunity to:

- Meet with the Responsible Officer;
- Ask any questions;
- Visit the residence;
- Refuse the offer; and
- Request modification and repairs (appropriate to the purpose of the units, as per 3.9.1).

Applicants must take up tenancy within one calendar month of the date of the original tenancy offer unless prior arrangements have been agreed upon by the Chief Executive Officer.

Upon accepting the offer of a unit, an eligible applicant is required to sign the following:

- Residential Tenancy Agreement (eligible tenant/s initials on each individual page) (Appendix 6);
- Property inventory;
- Lodgement of Security Bond Money Form;
- Direct Deduction Authority authorising routine payments of the rent to the Council's bank account when the rent is due;
- Property Condition Report with photographs (Appendix 14);

All of the above documents will be placed on the tenant's file.

### 2.7.2 Documents and Information the Organisation Must Give to the Tenant (MP5)

In addition to a copy of the *Residential Tenancy Agreement*, signed by the landlord and the tenant, the Organisation will give the tenant a copy of *Schedule 2 Residential Tenancies Act 1987 Information for Tenants (A statement of your rights and duties)*. A Handbook for Tenants will also be issued to each household.

Before handover of the keys to the unit, the Organisation must receive from the applicant:

- two weeks rent in advance; and
- Bond payment amounting to a maximum of four weeks' rent (where applicable).

No applicant shall be given keys or allowed to move into a unit until the *Residential Tenancy Agreement* and *Direct Deduction Authority* forms have been signed, the bond and two weeks rent in advance have been paid and an incoming *Property Condition Report* form (Appendix 14) has been completed and signed by both parties.

If the above payments are not completed within 10 days of acceptance of the offer of tenancy, or an arrangement is not made with the Chief Executive Officer to do so within a reasonable period of time as determined by the Chief Executive Officer, then the offer will be withdrawn and the tenancy offered to the next person on the Waiting List.

When all the appropriate documents have been signed and received, the tenant will be given the keys for the property. A 'hand-over keys receipt' (Appendix 21) will be processed and held on the tenant's file.

## 2.8 Monitoring Allocations

The Chief Executive Officer will regularly monitor allocations to ensure that they are made as quickly and efficiently as possible to minimise the length of time units are vacant, ensuring that documented procedures are followed.

All efforts will be made to ensure that unit vacancies are kept to a minimum. Where a unit remains un-tenanted or without application for tenancy, for longer than 21 days, the vacancy timeframe will be brought to the attention of the Chief Executive Officer.

## Reports on Allocation to Chief Executive Officer

Regular reports on allocations will include:

- frequency and length of vacancy periods;
- issues, if any, with tenancies or property;
- satisfaction of tenants with the process; and
- assessment of how well the properties match tenant needs.

## 2.9 Feedback

The Shire will seek feedback from tenants on matters such as:

- satisfaction with the tenancy allocation process;
- how well the property has been matched to tenant needs;
- the usefulness and accessibility of information provided to them;
- views about the services provided;
- the quality of the units;
- whether complaints have been handled in an expedient manner;
- satisfaction with the rent management system; and
- satisfaction with overall approach to repairs and maintenance.

This information will be collected (in the form of a survey) on an annual basis (Appendix 36) and/or when a tenancy is ending (Appendix 37). The results will be collated to form a report for Councils perusal.

### 3. ESTABLISHING AND MAINTAINING TENANCIES

#### 3.1 *Rights and Responsibilities*

The Committee will provide appropriate information to enable tenants to better understand their tenancy rights and responsibilities, and how the Committee can assist them.

##### 3.1.1 **Tenant Rights and Responsibilities**

The responsibilities of tenant/s (signatories to the Residential Tenancy Agreement) are as follows:

- a tenant must abide by the conditions of the Residential Tenancy Agreement and the Residential Tenancy Act, if continuation of the tenancy is to be assured;
- a tenant is to ensure that the terms of this agreement are complied with by the occupants and visitors on the premises;
- a tenant must pay a security bond (four weeks' rent);
- a tenant must pay the agreed rental amount on time (two weeks in advance);
- a tenant is responsible for the payment of utility and communication charges;
- a tenant may not do anything on the premises, or permit someone else entering the premises with the tenant's permission to do anything on the premises, which causes a nuisance;
- A tenant must not allow any anti-social behaviour in or around the premises including but not restricted to loud music, swearing, drunken behaviour, uncontrolled parties, fighting, acts of physical violence, unwanted entry into neighbouring properties;
- Injure and/or threaten any Shire officer acting in an official capacity;
- a tenant must not cause or permit any interference with the reasonable peace, comfort or privacy of another person who resides in the immediate vicinity of the premises;
- a tenant shall not intentionally or negligently cause or permit damage to the property;
- a tenant must not use the premises or permit the premises to be used for illegal purposes;
- a tenant is responsible for keeping the premises clean and undamaged and their own garden and yard maintained;
- a tenant must pay for all damage and neglect (tenant liability) not deemed 'wear and tear';
- a tenant is responsible for all costs associated with the maintenance of the property due to neglect, misuse, wilful damage and rubbish removal - these costs will be charged as tenant liability;
- a tenant must report damage within 3 working days, to the Shire. Where there are concerns of health or safety, damage should be reported as soon as possible;
- tenants must not affix any fixture or make any renovation, alteration or addition to the premises without the prior noted consent of the CEO. Such consent must not be unreasonably withheld;
- tenants must not keep unlicensed or un-roadworthy vehicles on the premises without the noted consent of the CEO;
- a tenant must abide by the by-laws governing the area and any other applicable bylaws;
- tenants must maintain the property as their principal place of residence and advise the CEO if leaving the property vacant for more than four weeks;
- the CEO, at its discretion, will give permission for a tenant to be absent from a property for **up to** a continual three-month period (in accordance with insurance requirements), providing that rent continues to be paid as per usual practice;
- tenants must advise the CEO if a household member leaves the unit and must obtain permission from the CEO if another person enters the household on a longer than four-week basis;
- tenants are to cooperate fully with the Shire to undertake property inspections;
- tenants may apply to keep a small, quiet animal on the premises – keeping of a pet is subject to prior approval by Council and incurs a Pet Bond to be paid as per the RTA.
- tenants must leave the premises, at the end of the tenancy, free of all rubbish including any vehicles;
- tenants may not sub-let a unit;
- tenants are not to authorise the installation of pay television services without obtaining written Council approval;

- tenants must not store hazardous materials in/on ILU property; and
- tenants are responsible for the eradication of vermin (rats and mice) and cockroaches.

### 3.1.2 The Organisation's Rights & Responsibilities

Where a tenant does not adhere to the contractual obligations of the Residential Tenancy Agreement, the Shire may take legal action to recover its property consistent with the provisions of the *Residential Tenancies Act (RTA) 1987* and reserves the right to withhold future tenancies.

The Shire also has responsibilities under the contractual obligations of tenancy. These are:

- to provide security of tenure to tenants who abide by the conditions of their Residential Tenancy Agreement and the RTA;
- to receive rents and issue receipts for cash;
- provide prompt response to requests for repairs and maintenance;
- attend emergency repairs within 24 hours where possible;
- to provide possession of property which is clean and in good repair;
- be fair in deciding liability for damage other than wear and tear;
- to advise tenants promptly of any matters requiring their attention, cooperation or action;
- to provide a tenant with quiet enjoyment of property;
- to provide secure premises;
- to insure the property and provide public liability insurance;
- to provide and maintain the property in a reasonable state of repair and to be responsible for all maintenance and repairs that is not due to neglect, misuse, wilful damage and rubbish;
- to comply with relevant building, health and safety laws;
- to provide the tenant with the copy of the Residential Tenancy Agreement;
- to ensure privacy and confidentiality of tenants;
- to inspect the property on a three monthly basis and to maintain contact with the tenant for asset management purposes (regularity may be lessened at the discretion of Council);
- to treat the tenant without favour or prejudice;
- to treat the tenant with courtesy and understanding at all times;
- to inform the tenant of in-house and external support services and assistance programs in circumstances where they may be relevant;
- (where appropriate) to ensure staff are trained in the principal aspects of Indigenous culture;
- to have annual termite checks undertaken by a qualified person;
- to conduct external spraying for ants and spiders, by a qualified person, on an annual basis; and
- to remove bird and wasp nests and beehives.

### 3.2 Residential Tenancy Agreements

With acceptance of an offer to occupy a unit, made by the Shire to the applicant/s, a copy of the *Residential Tenancy Agreement* form will be provided to the applicant to bring to their attention their rights, responsibilities and obligations stated in the *Residential Tenancy Agreement*.

For the purpose of a tenancy application, the Shire must obtain written consent from the applicant before making enquiries with the persons given as referees by the Applicant, and/or other persons or agencies as the Shire may see fit. A signed Application for Tenancy with referee names and addresses included will constitute written consent for the purpose of the tenancy application.

A copy of the *Residential Tenancy Agreement* will be provided to the tenant for signing and any issues relating to the house will be resolved at this time.



After the *Residential Tenancy Agreement* has been signed by all the relevant parties, a copy of the signed Agreement will be provided to the tenant. The signed original copy will be placed on the tenant's file and retained for at least seven years following the tenancy's end date.

### **3.3 The Property Condition Report**

A *Property Condition Report* (Appendix 14) is an inventory report used to describe the condition of a property.

This record is documented evidence of the condition of the property at the time of occupation (in-coming tenant) and at the time the tenant vacates the property. These are called the in-going and out-going (vacating) *Property Condition Reports* respectively.

A property inspection will be undertaken jointly by both parties prior to the commencement of a tenancy. The Shire, in consultation with the tenant, will document the inspection using the *Property Condition Report*. Both parties will sign the report and each party will retain a signed copy.

If the tenant is unable to (or fails to) attend the scheduled inspection, the Shire will carry out the inspection, complete the report, and provide a copy to the tenant. If the tenant disputes any item in the report, the Shire will arrange a meeting to resolve the matter; otherwise, the original *Property Condition Report* will remain valid.

Any repairs needed must be documented and maintenance needed followed up through the Shire's repairs and maintenance procedures.

The *Property Condition Report* is an official record and protects both parties should any dispute arise concerning damage or missing items. The *Property Condition Report* prepared and agreed at the start of the tenancy can be compared directly with a report prepared at the time the tenant moves out.

### **3.4 Security Bond (MP6)**

The Shire may charge a bond consistent with the provisions within the *RTA*. Where a bond is paid, it must be managed in accordance with the *RTA*. A security bond is a payment made in advance by the tenant to cover any costs for which the tenant may be liable at the end of the tenancy (e.g. for damage). In general, a landlord cannot ask for more than the equivalent of four weeks' rent.

The Shire must record details of bond monies received and issue a receipt to the person paying the bond. A copy of the receipt will be placed on the tenant's file.

All security bond payments will be forwarded to the Bond Administrator at the Department of Commerce (who will then acknowledge receipt to both parties).

#### **3.4.1 Alterations and Additions to the Form**

*Form 9 – Notice of Variation of Security Bond* must be completed in the following circumstances (where applicable):

- change of tenant(s) details;
- change of ownership or property management; or
- bond increase (resulting from variation to rent payable)

### **3.5 Vacant Possession (MP7)**

A tenant will have vacant possession of the property on the day the tenant is entitled to take occupation, as specified in the *Residential Tenancy Agreement*.

### **3.6 Privacy and Quiet Enjoyment**

The Shire will not interfere with the tenant's peace, privacy, comfort and enjoyment, except when exercising a legal right to enter the premises. The Shire complies with Section 46 of the *Residential Tenancies Act 1987* regarding owner's right of entry.

The Shire may enter the premises in the following circumstances but not otherwise:

- In case of an emergency;
- The tenant gives permission at the time;
- To inspect the premises, providing a notice of intended inspection was given to the tenant;
- To carry out or inspect necessary repairs after giving at least 72 hours' notice;
- To show the premises to prospective tenants in the 21 days before the end of an Agreement, after giving the tenant reasonable notice (usually taken to be at least 24 to 48 hours); or
- To show the premises to prospective tenants, after giving the tenant reasonable notice.

The Shire will only enter a property at a reasonable hour in these circumstances, except in an emergency, or where the tenant gives approval. The tenant has the right to be present on these occasions.

If the Shire gives proper notice to enter the premises, and the tenant does not advise that the time of entry is unsuitable, the Shire may use its spare key to enter the property.

If the Shire enters the premises without proper notice, the tenant can request that it doesn't happen again, serve a notice on the owner for not keeping to the Agreement, or seek an order from the Small Dispute Division of the Local Court about acceptable access.

### **3.7 Periodic Inspections - (MP8)**

A periodic inspection will be undertaken by the Shire every three months- timeframes can vary for some properties and tenants, at Council's discretion. Also, by discretion of the Shire, more regular inspections may occur for some tenants, in accordance with the *Residential Tenancies Act 1987*. The inspection will be documented by completing the supplied *Property Inspection Report* (Appendix 14).

The Shire will provide tenants with a *Notice of Intended Inspection* (Appendix 20) 14 days prior to the inspection and enclose a *Helpful Guide to Having a Successful Property Inspection* or similar document.

Following the inspection, a copy of the *Property Inspection Report* (Appendix 14) will be sent to the tenants with a *Notice to Tenant – Attention to Property Required Letter* (Appendix 15) to attend to any matters raised in the inspection report.

### **3.8 Absences from Property**

#### **3.8.1 Temporary Absences**

A tenant may without notice be absent from their house up to a maximum period of 4 weeks. If the tenant will be absent for longer than this, advice must be received by the Shire.

### **3.8.2 Order that Premises are Abandoned**

If the Shire believes the tenant has abandoned the premises, the owner may apply to a competent court for an order declaring that the tenant has abandoned the premises.

A court may, upon application by the Shire under this section, declare that the premises were abandoned by the tenant on a day specified by the court and the tenant shall be deemed to have abandoned the premises on that day. As applicable, Refer RTA Section 77 amended by No. 50 of 1988 s. 18; No. 59 of 2004s. 120(1) and (3).]. Refer to Section 7.6 Abandoned Premises and/or Goods, for more information.

### **3.8.3 Special Absences**

The Shire, at its discretion, will consider a request from a tenant to be absent from their unit for **up to** a continual three month period.

All requests are to be made in writing to the Shire - written approval must be obtained from the Shire.

In the event of the tenant being absent for a period longer than three months (unless arrangements are negotiated with the Shire), the house will be considered ABANDONED and action will be taken to terminate the tenancy. This action will only be taken after the Shire has taken steps to make contact with the tenant (without success).

The Shire will endeavour to ensure units are regularly tenanted to meet the demands of other waiting applicants and to provide a fair and equitable system for all.

## **3.9 Changing Needs of Tenants**

The Shire will strive to respond to the changing needs of tenants, in a fair and flexible manner, within its capacity (appropriate to the purpose of the units).

### **3.9.1 Home Modifications**

The Shire will respond to requests for modifications to the property when it comes to the attention of the Shire that the tenant's/household members have changed needs. Tenants are requested to provide supporting information such as an Occupational Therapist assessment. Any home modifications will be considered bearing in mind the appropriateness to the purpose of the units.

### **3.9.2 Transfers**

When a unit becomes vacant, a tenant of another of the Shire's units may apply to transfer to the vacant unit; approval to do so will be at the Shire's discretion. Any such transfer must be treated as a new tenancy for which a new agreement must be signed. The tenant must have no outstanding rent arrears or the transferring tenant must be prepared to pay off any rental arrears owing at a negotiated level. Any rental deduction arrangements must remain in force until all the rental arrears have been paid.

### **3.9.3 Mutual Exchange**

Tenants may approach the Shire with transfer offers they have arranged themselves. Final approval of such a transfer will rest with the Shire as per the allocation policy.

Tenants who wish to exchange residences must both apply in writing to the Shire, stating their reason for seeking the exchange. Tenants can apply for exchange only if both parties to the exchange have no outstanding rent. Note

that any such exchange will result in new tenancies, for which new *Residential Tenancy Agreements* must be signed. All such decisions will be at the Shire's discretion.

### **3.9.4 Utilisation of Housing Stock**

The Shire recognises that identifying under/over-utilisation situations and encouraging exchanges may be mutually beneficial to tenants and the financial viability of the ILU. All such exchanges should, however, be voluntary. Where the Shire instigates exchanges, tenants will be offered assistance with relocating costs, as an incentive.

### **3.9.5 Notices - (MP9)**

The Shire will issue Notices to tenants in accordance with the Residential Tenancy Agreement.

## **4. RENT SETTING, COLLECTION AND ARREARS**

Sound housing management practices to support the Shire's housing services include regular collection of rent from tenants. This income goes towards the associated costs of providing housing, such as:

- Water rates;
- Property (building) insurance;
- Projected repairs & maintenance;
- Administrative expenses; and
- Contributions towards purchase of additional housing stock.

### **4.1 Rent Setting (agreed rent)**

Agreed rent is the amount of weekly rent calculated at the time of the tenant and the Shire signing the *Residential Tenancy Agreement* (as recorded in the *Residential Tenancy Agreement*). This rental amount and method is subject to reviews and/or policy changes. Rents will be reviewed in accordance with Section 4.3 Rent Reviews.

### **4.2 Rental Payments - (MP10)**

#### **4.2.1 Commencement Date for First Rental Payment**

During the first two weeks of a *Residential Tenancy Agreement*, the Shire cannot require the tenant to pay more than two weeks' rent in advance.

Where applicable, the Shire will request tenants to make cash payment for the number of days between the commencement of the tenancy and the commencement of direct deposit.

After two weeks, the *Residential Tenancy Agreement* can change to an advance payment (if this is set out in the written agreement), with payments on a weekly, fortnightly or four-weekly basis or any other period as agreed by the Shire and the tenant.

The Shire cannot ask for post-dated cheques nor insist that any rent be paid before the period covered by the previous payment is finished.

Apart from rent in advance and a security bond, the Shire cannot require a tenant to make any other payment in connection with a *Residential Tenancy Agreement*.

#### **4.2.2 Rent Payment System**

The method of payment is agreed prior to signing the *Residential Tenancy Agreement*; that is, by direct deposit.

The tenant will pay rent fortnightly using a direct deduction from their bank account (all tenants are required to arrange a *Direct Debit* from their bank account). It is required that tenants use this method to pay the shire any rent or rental arrears owing.

#### **4.2.3 Proof of Rental Payment**

Receipts will not be issued for payments received through direct deposit; however, *Rental Account Statements* will be provided.

#### **4.2.4 Proper Records of Rent to be Kept**

The Shire will keep a record showing the rent received in respect of the premises (RTA Section 34). A record of rent received must be retained by the Shire for at least seven years.

#### **4.2.5 Failure to Pay Rent with Intention to be recovered from Security Bond**

Where a bond has been paid, a tenant shall not fail or refuse to pay any rent due under a *Residential Tenancy Agreement* with the intention that the amount of such rent be recovered by the owner from the security bond paid by the tenant.

#### **4.3 Rent Reviews - (MP11)**

All of the units occupied by tenants under *Residential Tenancy Agreements* will be reviewed on an annual basis in keeping with the *RTA*. Rent will not be increased within a six-month period of the commencement of the tenancy and there must be at least six months between each consequential rental increase.

In accordance with the *RTA*, when a rent review demonstrates that an increase in rent is justified, staff will send the tenant a letter giving 60 days' prior notice of that increase.

#### **4.4 Increases in Security Bond**

Where a bond has been paid, the Organisation will follow the requirements of the *RTA* in relation to bond increases. Refer to Section 31 '*Increase in Security Bond*' of the *RTA*.

#### **4.5 Rent Arrears**

When rent is not paid on time (when due), the money that is owed is referred to as "rent arrears" and is recorded as a debt, owed to the Shire by the tenant/s.

Tenants should contact Shire staff if they have any difficulties in meeting their rental obligations. Tenants are encouraged to discuss with the Shire arrangements to pay the arrears in affordable instalments. Tenants may be encouraged to seek financial counselling.

A tenant with a debt to the Shire will be requested to enter into a *Payment Plan Agreement (Appendix 17)* to repay the debt in affordable instalments, and the payments must be maintained until the debt is cleared.

The tenant can arrange to repay the outstanding arrears weekly/fortnightly using direct deduction from their bank account.

The Shire cannot seize a tenant's belongings in lieu of rent owed.

Tenants who reasonably believe that they are not in arrears (behind with their rent) can remain in the unit while the matter is being resolved. This may be resolved through negotiation or when the Shire applies for an eviction hearing in the Small Dispute Division, where both parties can put forward their case. A tenant cannot be forced out of a unit without a court order ending the *Residential Tenancy Agreement*.

#### **4.5.1 Identifying Rent Arrears**

The Shire becomes aware of rent arrears when:

- Staff review rental statements;
- A regular rent payment does not appear on the bank statement;
- An agreed arrears payment does not appear on the bank statement;
- The tenant informs the Shire that they are unable to make a payment.

#### **4.5.2 How Residential Tenancies are Terminated - (MP12)**

The Shire is committed to assisting tenants to maintain tenancies. Where a tenant breaches the conditions of the *Residential Tenancy Agreement* (other than for non-payment of rent), the Shire will make all reasonable attempts to resolve the problem before proceeding with an eviction.

Where problems with a tenancy, which may constitute a breach, are identified, staff will make contact with the tenant as soon as possible to attempt to resolve the issue, whilst at the same time complying with the *RTA*.

#### **4.6 Tenant Liability for Repairs**

Tenants are responsible for the cost of all repairs to ILU property if due to neglect, wilful damage or misuse. They are also responsible for the cost of heavy cleaning and rubbish removal. These costs are termed Tenant Liability.

Where a person other than the tenant is lawfully on premises, the tenant is responsible for, and will be held liable for, any act by that person if he or she intentionally or recklessly causes damage to the premises.

##### **4.6.1 Occupied Tenant Liability**

Occupied Tenant Liability is incurred while a tenant is in occupation. Tenants must report to the Shire all wilful damage caused, as soon as practicable, after the occurrence.

Upon receiving the report, staff will visit the premises to assess the amount of damage.

The Shire will send the tenant a *Notice of Costs (Appendix 25)* along with an invoice and *Payment Plan Arrangement (Appendix 14)*, for the tenant to pay either liability in full, or to enter into an arrangement to repay the Tenant Liability in instalments, and the repayments must be maintained until the liability is cleared.

Failure to make a full payment or *Payment Plan Arrangement (Appendix 17)* to pay by instalments within 14 days, or the tenant's default on an arrangement to pay in instalments will result in a termination of tenancy under Section 62 of the *RTA*.

The tenant can arrange to re-pay the Tenant Liability weekly or fortnightly, if not able to pay immediately, by using direct deduction from their bank account or by bank deposit or cash.

The Shire will send an *Acknowledgement of Arrears Arrangement* (Appendix 10) to the tenant, identifying the amount of arrears payment and total amount to be paid.

Staff will record all Tenant Liability action and details.

Tenants will be provided with a statement of Tenant Liability repayments on request or three monthly.

#### **4.6.2 Vacated Tenant Liability**

Vacated Tenant Liability is identified at a property inspection when a tenant vacates a unit.

Upon vacation, staff inspect the property and complete an outgoing *Property Condition Report* (Appendix 14), noting all items of Tenant Liability.

Tenants are responsible for any damage to the property if they have abandoned the property or failed to return the keys at the time of vacating, until the *Property Condition Report* is undertaken. The Shire will take all steps to secure the property once they are aware of the property having been abandoned (and will proceed in accordance with the RTA).

When one or more signatories to the *Residential Tenancy Agreement* do not vacate, the *Property Condition Report* must be carried out at the time of vacation of the person/s leaving, but only damage and emergency maintenance will be assessed. General cleanliness will not be assessed. Costs will be apportioned at this stage.

Where all signatories to the *Residential Tenancy Agreement* are vacating the property, full maintenance will be undertaken and costs apportioned in proportion to the number of tenant signatories.

In all instances photos must be taken to validate Tenant Liability and kept on the tenant/s' file.

All details collected through the *Property Condition Report* will kept on the tenant's file.

#### **4.7 Charging Tenant Liability**

Tenant Liability is to be charged for cleaning, rubbish removal, and wilful damage in keeping with clause 4.6.

All items assessed and identified as Tenant Liability will be charged and recorded.

Where the Shire makes a forced entry, any damage will be charged to Tenant Liability (e.g. forced entry due to an abandoned property).

In all instances photos must be taken to validate the Tenant Liability and are to be kept in the tenant's file.

In some situations the Shire may waive Tenant Liability items (e.g. where a property is earmarked for demolition, refurbishment or sale). This should include consideration of maintenance items that have been previously deferred pending the refurbishment, length of tenancy, whether the tenant has been relocated at the Shire's request and the age of the property/item.

#### 4.7.1 Fair Wear and Tear

Fair wear and tear means the gradual and expected deterioration to fixtures and fittings caused by normal usage over time.

Examples:

##### (a) Normal Fair Wear and Tear

- Vinyl and/or carpet wear in corridors and other heavy traffic areas
- A lock that is broken because it is old and worn out
- Paint flaking or paint discoloured over time
- Plaster cracks due to building settling
- Tiles that have lifted in high traffic areas
- Worn enamel and rust stains on the bath or basin

##### (b) Non Fair Wear and Tear – Wilful or Neglected Damage

- Cigarette burns or stains to carpet or vinyl
- A lock broken by tenants because they forgot/misplaced their keys
- Fire damage from cooking, heating, or candles
- Holes in the wall or door
- Removing, disabling or damaging smoke detectors
- Water damage to vanity cupboards that has been ongoing
- Damage that has worsened due to not reporting

Persistent damage or failure to pay tenant liability may result in termination of the tenancy.

#### 4.7.2 Appeal Rights

The tenant can appeal against the amount of Tenant Liability charges in line with the Shire's Appeal Mechanism. For further details see Section 11 - Appeals.

#### 4.7.3 Disputes between the Organisation and Tenants Concerning Tenant Liability Charges

The Shire will use its Appeal Mechanism wherever possible to resolve disputes regarding Tenant Liability.

When this fails, the Shire and the tenant are able to initiate action under the *RTA*, through the Small Dispute Division of the Local Court. The *RTA*, Section 12 covers Determination of Disputes and 13A the Magistrates Court's jurisdiction. *The Shire's appeals mechanisms are outlined in Section 11.* The tenant may dispute the amount of Tenant Liability charges.

The Shire will initiate action to recoup unpaid Tenant Liability charges.

Where the Shire has not substantiated a Tenant Liability debt this will be waived and the tenant will not be charged.

#### 4.8 Debt Recovery

The Shire will take all necessary steps:

- to recover monies owed by tenants or former tenants, whether such debt is the result of unpaid rent, unpaid water consumption accounts or from the cost of making damage to its property, fixtures or chattels; and
- to prevent, by means of counselling in the first instance and prompt legal action thereafter, the accumulation by tenants of large amounts of debt.



#### **4.8.1 Debts Relating to Current Tenancy**

*For example: rental arrears, Tenant Liability, and/or water consumption debts incurred during current tenancy.*

- Tenants must enter into a proposal to repay the debt and maintain payments until the debt is cleared;
- Failure to enter into a proposal to repay and maintain payments until the debt is cleared will result in a termination of tenancy under Section 62 of the RTA.

#### **4.8.2 Vacated Debt**

All accounts should be finalised before vacating the property. A tenant with a debt to the Shire will be requested to repay the debt in full or to enter into a *Payment Plan Arrangement (Appendix 17)* to repay the debt in instalments. The repayments must be maintained until the debt is cleared.

#### **4.8.3 Joint Liability of Tenants**

Tenants who jointly sign the *Residential Tenancy Agreement* are jointly liable for any debt from the tenancy. This means that a debt is split evenly between all parties signatory to the Agreement.

#### **4.8.4 Debt Subject to Dispute**

Where the debt is the subject of a dispute which is being pursued through court action or the Shire's Appeal mechanism, no action will be taken until the process has been completed.

#### **4.8.5 Referral to Commercial Debt Collection Agency**

A debt will only be referred to a commercial debt collection agency after all reasonable approaches from the Shire have failed.

Where contact can be made, the debtor will be contacted by the Shire, advised of the debt and the intention to refer the debt to a commercial agency, and offered an opportunity to make repayments.

If payment or an arrangement to pay by instalments is not received within 14 days, the debt may be referred to Council's debt collection agency for appropriate legal action if the amount justifies such expense.

## **5. PROPERTY OUTGOINGS**

### **5.1 The Shire's Responsibility**

The Shire is responsible for:

- building insurance premiums;
- public liability insurance and other insurance premiums, as required;
- water rates (but not water consumption);
- all property damage (other than that caused by tenant damage or neglect);
- all capital and recurrent maintenance (other than that caused by tenant damage or neglect); and
- charges and costs as otherwise agreed to in writing in the *Residential Tenancy Agreement*.

Refer to section 3.1 'Rights and Responsibilities' for additional information.

### **5.2 The Tenant's Responsibility**

The tenant is to:

- comply with the *Residential Tenancies Act 1987*
- pay a security bond (4 weeks' rent)
- pay agreed rent on time (two weeks in advance)
- report any damage to the premises
- pay for all damage not deemed 'wear and tear'
- pay all utility and communication charges
- maintain and keep the premises tidy
- maintain the gardens and remove all rubbish from the property on a regular basis
- use the premises for residential purposes
- co-operate with Shire staff
- report capital and recurrent maintenance attributable to, or caused by tenant damage or neglect; and
- pay charges and costs as otherwise agreed in writing in the *Residential Tenancy Agreement*.

Refer to section 3.1 'Rights and Responsibilities' for additional information.

### **5.3 Insurance**

Where the Shire is responsible for building (residential property) insurance premiums, it will arrange appropriate insurance coverage through a reputable insurance company.

The tenant's personal property and assets are not covered by the Shire's insurance, including any broken windows or damages incurred by the tenant. The tenants are responsible for their own insurance of their personal goods and possessions. The Shire ensures that all homes that the Shire is responsible for must be insured by a reputable insurance company

### 5.3.1 Tenant Insurance

As above, a tenant's personal property and assets are not covered by the Shire's insurance, including any broken windows or damages incurred by the tenant. Each tenant is responsible for insurance of their personal goods and possessions.

Public liability is covered by the Shire in the case of any person/s who may take action of a legal nature against the Shire regarding public liabilities.

### 5.4 Condition of the Property

The Shire's obligations include:

- providing the property in a reasonable state of cleanliness at commencement of tenancy;
- providing, at commencement of tenancy, and maintaining the property in a reasonable state of repair having regard to the housing age, character and prospective life;
- complying with requirements in respect to health and safety, in so far as they apply to the property;
- responsibility for the cost of all repairs and maintenance required on a property due to general wear and tear (this excludes all repairs and maintenance required due to neglect, misuse, wilful damage and litter);
- annual spraying for ants and spiders by a suitably qualified person;
- annual termite checks by a suitably qualified person;
- removal of bird and wasp nests and beehives;
- ensuring that repairs and maintenance are provided in an efficient and timely manner to maintain the life of the property and that repairs and maintenance are equitable between tenants and across properties; and
- gardening within common areas.

A tenant's obligations include:

- keeping the premises in a reasonable state of cleanliness;
- notifying the Shire, as soon as practicable, of any damage to the premises;
- ensuring there is no damage to the property caused by intentional or negligent action;
- reporting damage to the Shire as soon as possible, where there are concerns for health or safety;
- ensuring the premises are not used for any illegal purpose;
- ensuring urgent or non-urgent maintenance or repairs to the premises, fixtures or chattels belonging to the Shire, are not performed without the prior written consent of the Shire;
- continuing to pay rent under all circumstances, even if the Shire fails to do maintenance and repairs (if the tenant stops paying rent they are breaching the *Residential Tenancy Agreement* and the Shire can take action);
- upkeep of the garden belonging to their individual unit;
- eradication of vermin (rats and mice) and cockroaches; and
- replacing consumables such as light bulbs and plants (the latter within the tenant's individual unit garden and with the CEO's prior approval).

The tenant will be held liable for the cost of all repairs and maintenance required on the property caused through neglect, misuse, wilful damage. The landlord is responsible for the costs of repairing and maintaining any fixtures such as air-conditioners except for when damage is caused by neglect, misuse or wilful damage.

#### 5.4.1 Refurbishments, Renovations and Home Improvements

The Shire is under no obligation to undertake refurbishments or renovations (e.g. new bathrooms, new kitchens, new carpets or window treatments) requested by tenants.

The Shire only accepts responsibility for repairs and maintenance, as is required. Refurbishments and renovations undertaken by the Shire are subject to a satisfactory tenancy and availability of funds. Any requests for refurbishment, renovation or maintenance must be conveyed in writing and, where approved, arranged by the Shire.

## **6. REPAIRS AND MAINTENANCE**

### **6.1 Repairs and Maintenance (general)**

Repairs and maintenance is the repair or maintenance or replacement of items of like type. This is as opposed to refurbishment or renovation, which are the installation or addition of new appliances or facilities. Repairs and maintenance fall under the following categories:

- day-to-day
- emergency
- vacated
- planned
- minimal (where the property is scheduled for demolition or redevelopment)

### **6.2 Responsive Repairs and Maintenance Procedure**

The Shire aims to ensure that repairs and maintenance:

- are provided in an efficient and timely manner;
- are of sufficient quality;
- assist in maintaining the life of the property; and
- are equitable between tenants and across properties.

Refer to Section 5.4 – *Condition of Property* for a summary of the Shire's and the tenant's obligations.

The following repairs and maintenance will be considered URGENT and will be initiated promptly as a priority:

- electrical repairs and maintenance that are health threatening;
- plumbing and gas repairs and maintenance that are threatening; and
- security repairs and maintenance when the tenant's safety/security is at risk.

The Shire aims to have general repairs and maintenance carried out as soon as practicable. Some day-to-day maintenance (such as a hot water system or a stove not working) will be treated as a priority. Especially in cases where contractors will be charging travel costs to the Shire, staff will seek to make cost effective use of the contractor. Staff will assess whether any planned or routine maintenance pertaining to the units can be brought forward if there appears to be a need to do so or whether same can be delayed until the planned timing.

The tenant must report damage to the premises as soon as possible but, at the latest, within three days of the occurrence. When advised of the need for repairs, staff will attempt to arrange the service as soon as possible in order of reporting date. Where repairs are urgent; that is, creating a risk to people, work will be carried out within 24 hours if possible. The tenant is responsible for all costs associated with the maintenance of the property due to neglect, misuse, willful damage and rubbish removal.

### **6.3 Contracts for Repairs and Maintenance**

The Shire will select and work with appropriately qualified contractors to ensure that the interests of the Shire and the tenants are protected and that repairs and maintenance undertaken provide value for money.

### 6.3.1 Preferred Contractors

The Shire will have a list of Preferred Contractors. Prior to engaging contractors, the Shire will receive and sight copies of the contractors' current relevant certificates (e.g. Trade Licence, Public Liability Insurance etc). Contractors must also sign the Shire's Code of Conduct (Appendix 16).

### 6.4 Code of Conduct - (MP14)

The Shire's Code of Conduct must be observed at all times. The Shire's Code of Conduct is its commitment to providing quality customer service and applies to the conduct of the Shire's employees.

The Code of Conduct also applies to the conduct of the Shire's Contractors and Sub Contractors and their respective staff and visitors.

The Shire has a duty to the Contractors, Sub Contractors and all their respective staff to:

- act fairly;
- maintain high ethical standards in their dealings;
- honour agreements and undertakings and act in good faith;
- establish a fair and equal basis for relationships; and
- be courteous at all times.

Prior to maintenance and other works, the Shire will advise and confer with tenants regarding when contractors will be undertaking such works, and set and confirm times in cooperation with the tenant wherever practicable.

Contractors have a duty to:

- act fairly and in good faith;
- adopt high ethical standards in their dealings with the Shire and its tenants;
- honour agreements and undertakings;
- be courteous to Shire staff and the Shire's tenants at all times;
- advise the tenant the purpose of the visit;
- comply with reasonable requests made by customers with special needs or disabilities; and
- perform all work in accordance with this Code of Conduct.

#### 6.4.1 Property Visit

When visiting a property, the Contractor will:

- park in the street or designated parking area;
- make contact with the tenant, provide identification and explain the reason for calling;
- seek the tenant's permission to enter the property;
- take all necessary steps and reasonable precautions to prevent any damage or loss to the occupant's possessions, property or personal effects. Any damage or loss should be reported to the Shire immediately. Any reimbursement by the contractor to the tenant for any damage or loss caused will be by the mutual agreement of the two parties concerned.

When visiting a property, the Contractor will not:

- smoke within the Shire's property;
- be under the influence of drugs or alcohol when entering the property or while performing work for the Shire;
- accept or provide drugs or alcohol from the occupants of the property or induce any occupants of the house to partake in any such activity;

- use offensive language when conducting business with the Shire or its tenants;
- in action or words do or say things that could be interpreted as intimidating or discriminatory;
- discuss or divulge information with the tenants in relation to the Shire's business or activities;
- discuss or divulge with any other person any private details concerning the occupants of the units;
- advise the occupants of any financial details concerning the contract or the cost of works carried out;
- make any public comments concerning the policies of the Shire or its contracting system.

#### **6.4.2 Right of Entry**

The Contractor may enter the premises without consent in a genuine emergency (e.g.; to carry out urgent repairs or to protect the premises from damage). Contractors must have the express approval of the Shire to enter premises in such circumstances.

The Code of Conduct will be included in any Contractor agreements for ongoing contractors.

#### **6.4.3 Urgent/emergency maintenance (after Shire hours)**

In cases of after-hours urgency (e.g.; electrical or water issues that are considered unsafe and cannot reasonably wait until Shire office hours resume), tenants may call the Shire's preferred contractors (as listed in the Handbook for Tenants). In these instances, the contractor and tenant must advise Shire staff, during the next available office hours, of any contractor work that has occurred after hours.

#### **6.4.4 Contractor's Performance**

Material used in the work and standards of work must be in conformity with the provisions of the contract arrangements.

Any materials not otherwise specified shall be new and, where applicable, materials and standard of work shall be in accordance with the relevant Australian Standards. Occupational Health and Safety regulations and any other relevant requirements must be adhered to.

It is good practice to regularly review contractors' work to ensure quality of service and provide feedback.

To measure a Contractor's work performance, the Shire will:

- seek feedback from tenants following each job and/or following introduction of new Contractors;
- review the reliability/timeliness of a Contractor's quality of work for the cost paid; and
- make regular inspections of the works completed and actively identify and attend to any contractor's warranty issues.

Where the Shire receives complaints of performance these will be recorded and dealt with through the Shire's formal complaints system.

#### **6.5 Performance Targets**

The Shire will measure its performance in areas of repairs and maintenance, using indicators such as tenant satisfaction (Appendices 36 & 37), timelines, quality of workmanship and price.

## **7. TENANCIES**

### **7.1 Tenancies (general)**

#### **7.1.1 Visitors**

Any visitors who wish to stay longer than two weeks will require prior approval from the Shire.

#### **7.1.2 Supporting Tenancies**

The Shire is committed to assisting tenants to maintain their tenancy. Where a tenant breaches the conditions of a *Residential Tenancy Agreement* (other than for non-payment of rent), the Shire will make all reasonable attempts to resolve the problem before proceeding with an eviction and will take a preventative approach, working with the tenant to address the breach issues. The Shire may discuss unacceptable behaviour with the tenant (that is, behaviour that breaches the terms and conditions of the *Residential Tenancy Agreement*); this includes the behaviour of visitors. All such discussions must be documented and filed on the tenant's file.

The Shire will make accurate file notes, including the date of contact and any actions taken.

Other preventive actions may include:

- providing information (for example, on housing alternatives);
- encouraging the tenant to attend any legal hearings;
- consulting with support workers prior to evicting a tenant in a special needs program; and/or
- facilitating access to support agencies or advocates.

The tenant must be made aware that failure to remedy the breach may eventually lead to eviction. The decision for eviction will be made in consultation with Chief Executive Officer and Council. The legislative termination processes will be followed.

### **7.2 Tenant Damage**

Tenants are liable for damage to the property, other than wear and tear, including damage caused by visitors.

Persistent damage or failure to pay the liability may result in the Shire instituting proceedings.

The Shire may seek to end a tenancy through the Small Dispute Division of the Local Court if the tenant has intentionally or recklessly caused or permitted, or is likely to intentionally or recklessly to cause or permit, serious damage to the premises or injury to the owner, agent, or a neighbour. A court will also make an order for possession of the premises of immediate effect.

### **7.3 Termination by Tenant**

A tenant may give notice of termination of a *Residential Tenancy Agreement* to the Shire without specifying any ground for the notice (where a tenant gives notice of termination in this circumstance, the period of notice must be not less than 21 days before the termination day [in accordance with Section 68 of the *RTA*]).

### **7.4 Termination by Mutual Agreement**

The *Residential Tenancy Agreement* may be terminated if both the Shire and the tenant agree in writing signed by both parties that the *Residential Tenancy Agreement* be ended and the date it is to be ended.

## 7.5 Termination by Frustration of Agreement

Where, otherwise than as a result of a breach of an agreement, the premises or a part of the premises are destroyed or rendered uninhabitable or are appropriated or acquired by any authority by compulsory process:

- the rent will decrease accordingly; and
- the owner or tenant may give notice of termination of the agreement to the other upon that ground.

Where the Shire gives notice of termination under this section, the period of notice will be not less than seven days.

Where a tenant gives notice of termination under this section, the period of notice shall be not less than two days.

Refer to Section 69 of the RTA 'Notice of Termination by Owner or Tenant Where Agreement Frustrated'.

## 7.6 Abandoned Premises and/or Goods

If a tenant abandons a property without giving any notice, or leaves behind personal possessions, the *Residential Tenancy Agreement* is terminated. In such instances, the Shire will ensure the security of the premises and attempt to return the personal possessions to the rightful owner.

However, before taking any action with regard to abandoned premises, the Shire must be certain the premises or goods have actually been abandoned (e.g. the tenant may have gone on holiday or been taken to hospital). The Shire will check with the neighbours, next of kin (if known), other community members, and the post office (for uncollected post). Only when the Shire is certain the property has been abandoned, can the Shire take steps to gain possession and secure the property.

If the Shire is not certain the property has been abandoned, the Shire can apply to the Magistrates Court for an order stating that the tenant has abandoned the premises (using *Court Form 12*.)

The Court may, upon application by the Shire, order the tenant to pay the Shire any compensation to which the Shire is entitled for any loss (including loss of rent) caused thereby. The Shire will take all reasonable steps to mitigate such loss.

Where a property is abandoned, the ex-tenant will be responsible for any damage, including vandal damage recorded by staff in the completed *Property Condition Report (Appendix 14)*.

The Shire will address the issue of abandoned property as per its responsibilities under the RTA.

- **Section 77: Order that premises are abandoned**  
Where the Shire believes that a tenant has abandoned premises, an application to a court will be made for an order declaring that the tenant has abandoned said premises.
- **Section 78: Compensation where tenant abandons premises**  
The Shire shall seek compensation from the tenant for any loss caused thereby, but shall take all reasonable steps to mitigate such loss and shall not be entitled to compensation in respect of any loss that could have been avoided.
- **Section 79: Abandoned Goods**  
Where the Shire staff believe that section 79(1) applies and that the value of goods left at an abandoned premise does not exceed the cost of removal, storage and sale of said goods, the Shire will exercise its right to apply to the Commissioner for Consumer Protection for an Indemnity Certificate.



- Shire staff will photograph the property and abandoned goods, list all items of value and approximate their worth. Shire staff will also take all reasonable steps to contact the former tenant and show evidence of doing so. All photographs and documentation must be included in the application to assist the Commissioner of Consumer Protection in making a determination whether Section 79 (1) of the RTA applies.

### **7.6.1 Abandoned Goods (as a guide)**

(1) Perishable foodstuffs: dispose after two days.

(2) Goods of little or no value: If the estimated value is less than it would cost to remove the goods, store and sell them at public auction. The Shire may then contact the Department of Consumer and Employment Protection requesting an indemnity certificate.

To apply for an indemnity certificate staff will be required to include:

- The name of the tenant;
- The property address;
- The name of the owner of the property;
- The name and contact details of the person that manages the property on behalf of the owner (if applicable) and;
- The reason/s why and the date on which the goods were abandoned;
- Evidence that the Shire has taken all reasonable steps to contact the tenant;
- List of items to be included in the certificate, their approximate value and any court orders.

(3) Goods of higher value: Goods of higher value must be stored at once in a safe place and manner for at least 60 days. Within the first seven days of that period, the Shire must notify the former tenant in writing (where a forwarding address has been given). Someone with a lawful right to the goods may reclaim them within the 60 days or after that time, if they remain unsold, after paying reasonable removal and storage costs. Goods not claimed within 60 days must be sold at public auction and the Shire is entitled to claim the costs incurred in their removal, storage and sale.

The Shire cannot seize the tenant's goods or property as compensation for rent owing.

## **7.7 Property Inspection at Termination of Tenancy**

As soon as practicable, but no later than 14 days prior to the termination of a tenancy (either approved or not approved), the Shire will provide the tenant with a copy of the *Tenants Guide to Vacating Premises*.

A joint outgoing property inspection using the *Property Condition Report* will be undertaken by the parties on the termination of a tenancy on the last day of occupation. The *Property Condition Report* should be signed by both parties immediately after the inspection.

The tenant is responsible for the property until the keys have been handed over to the Shire. Keys should be handed over after the property inspection is completed.

Where the tenant has already departed the premises and failed to attend an arranged property inspection, the above procedure will be followed without the tenant's signature to the *Property Condition Report*, noting the tenant as absent.

The tenant is responsible for the cost of repairs to a property due to neglect, wilful damage and misuse. The tenant is also responsible for heavy cleaning and rubbish removal. The Shire will compare the outgoing *Property Condition Report* to the original incoming *Property Condition Report* and calculate any maintenance costs required and outstanding service charges that will be deducted from the amount of security bond to be refunded.

Where Security Bond collection/payment arrangements are in place, unless there are exemption/exclusion clauses, processes and steps must be followed under the RTA.

## **7.8 Account Finalisation**

All accounts will be finalised within six weeks of vacation of the property. This includes the bringing to account of the Security Bond. Accounts will include details of any work done.

The Shire will advise tenants of adjustment to their Security Bond by posting a *Notice to Previous Tenant – Security Bond Adjustment* with enclosed *Form 4 – Joint Application for Disposal of Security Bond* which incorporates Security Bond adjustments. Tenants are required to sign the Form 4 and return it to the Shire office. This form is available from the DMIRS website or ring the Advice Line on 1300 304054 to arrange a copy to be posted.

If the amount exceeds the value of a security bond, the procedures detailed in Section 4.7 Debt Recovery will apply.

A tenant may appeal the Shire's decision in accordance with Section 11 - Appeals.

## **7.9 Security Bond Disposal**

At the end of the tenancy, the Security Bond money will be paid out less any deductions for work required that is not due to normal wear and tear (see section 7). If there is no dispute over the condition of the property on handing it back to the Shire, the Security Bond will be refunded in full, in the same proportions as it was paid if more than one party was responsible for its payment. The Department of Commerce matches signatures against those held on the tenant's file.

### **7.9.1 Signatories Change**

The names of the parties who are to receive refunds can be changed and the amounts to be paid to them can be altered, but these changes must be verified by the full signature of all the affected parties at the site of the change, or by way of a signed note that clearly states that they agree to the precise details of the change.

### **7.9.2 In the Case of a Dispute**

If the tenant refuses to sign the disposal form or the Shire cannot contact the outgoing tenant, the Shire may apply to the Magistrates Court by lodging (within seven days and with the appropriate fee) an *Application for Disposal of Security Bond Money* (Form 6). This form is available from the DMIRS website or ring the Advice Line on 1300 304054 to arrange a copy to be posted.

Form 6 is available from the Court. If the tenant doesn't respond when sent a copy of Form 6, the Court may then issue an order for the release of the Security Bond after seven days.

If the tenant completes a Form 6 application, the Shire will receive a copy. There are three options:

- agree to settle the dispute;
- dispute the tenant's application by lodging (within seven days) a Notice of Intention to Dispute Application for Disposal of Security Bond Money (Form 5); or
- ignore the Notice.

If a dispute goes to court, the magistrate will make an order as to how the Security Bond money is to be paid out. A magistrate may order the tenant to pay compensation to the Shire for losses caused by any breach of the *Residential Tenancy Agreement*. This includes failing to comply with an order for possession or for losses incurred as a result of the premises being abandoned.

### **7.10 Exit Tenant Interview**

The Shire will seek feedback (where possible) from tenants, via a survey (Appendix 37), when they end their tenancy. The results of the survey will be recorded to enable a report to be compiled for the ILU Committee's perusal.

This can provide useful information for the Shire on matters such as:

- the reason for ending the tenancy;
- the type and allocation of housing the tenant is moving to, if applicable;
- the tenant's views about the housing services provided;
- the condition of the property;
- any repairs and maintenance that are needed;
- the usefulness and accessibility of information provided to the tenant;
- the satisfaction of the tenant with the rent management system; and
- the satisfaction of the tenant with responses and processes for repairs and maintenance.

### **7.11 Transfer of a Tenancy to an Eligible Tenant**

Where the signatory to the *Residential Tenancy Agreement* leaves or dies, the property can be transferred into the names of the remaining tenant/s at the discretion of the Committee and, where the Committee is in agreement, a new Tenancy Agreement will be entered into (as per eligibility criteria guidelines).

There is no right of succession to a tenancy by another household member who is not a signatory to the *Residential Tenancy Agreement*.

The status of other household members when the signatory to the *Residential Tenancy Agreement* leaves or dies will be considered by the ILU Committee and determined by applying the following rules:

#### **Other Household Members (Residents)**

The status of other family members will be considered at the discretion of the Committee regarding factors such as:

- length of time the property has been occupied by the other household members;
- relationship to tenant;
- eligibility to be a tenant of the ILU;
- whether or not they have paid rent at the tenancy;
- whether they are applicants on the Waiting List;
- previous tenancy history; and
- other household members' needs.

In all cases staff will also apply the considerations of the allocations policy in making a final determination on transferring a tenancy. The final decision will rest with Council.

## **8. ILU MANAGEMENT SYSTEMS**

### **8.1 System Description**

All documentation relating to tenancies is to be added to the Shire's record systems (paper and electronic). The Shire recognises a requirement to maintain a secure filing system for tenant correspondence and property documentation. All documentation/correspondence relating to the tenant/property is required to be kept in a secure environment to ensure privacy and confidentiality requirements are adhered to.

#### **8.1.1 Tenant Files**

Tenant files should comprise information relating to the tenancy management.

Tenant files to comprise of the following documents:

- Residential Tenancy Agreement
- Tenancy Startup Documents
- Repairs & Maintenance records
- Correspondence
- Property Condition Reports
- Inspections
- Utilities
- Payment Plan Agreements
- Key Release Form
- Consent Authority
- Acknowledgement Letter
- Incident Reports
- Police Reports
- Relevant photographs
- File Notes
- Referrals

Council's current IT support contractor is 'Perfect Computer Solutions'.

## **9. PRIVACY AND CONFIDENTIALITY**

### **9.1 Privacy Protection**

Under the Commonwealth *Privacy and Personal Information Protection Act 1998* information is considered confidential if it was obtained from an applicant, tenant or third party, and could identify an individual or is personal in nature.

The Shire will strive to ensure that applicants' and tenants' confidentiality and privacy are respected and maintained.

#### **9.1.1 Principle of 'need to know' and 'informed consent'**

Generally, information should be kept confidential within the Shire on a 'need to know' basis (that is, only those who need the information should have access to it). Council will need to know how many tenants are in arrears, but only the people who work with tenants need to know their names.

Sharing information with other agencies should be limited on the same basis. Tenants' should provide consent for this information to be released (Appendix 4 & 5). For instance, other community agencies may ask for a mailing list to enable them to send their information directly to tenants. This would constitute a breach of confidentiality unless tenants have given their consent.

#### **9.1.2 Privacy for Interviews**

For customers wishing to discuss or present confidential information the Shire will provide a suitable private place for this purpose. This same provision of privacy applies to telephone conversations of this nature.

#### **9.1.3 Protecting Confidential Information Internally**

Unless there is a reason to identify specific customer details, steps should be taken to ensure their anonymity. This follows the 'need to know' principle when discussing confidential information. Code systems for sharing information concerning specific customers, (such as Tenant 1 or Tenant X) can be used for reporting purposes (e.g. reporting to Council).

In situations that, for valid reasons, require the sharing of information, the applicant's consent should be sought first.

Where tenants have concerns about privacy being used to protect vested interests, this will be handled through having processes in place to monitor and review delegations and ensure that any conflicts of interest are managed properly.

#### **9.1.4 Situations where 'Informed Consent' is Not Possible**

Where tenants cannot give consent to information being shared, staff will consider how privacy and confidentiality can best be protected.

There may be instances where customers are not in a position to give consent. Staff will attempt to preserve confidentiality where possible and will carefully consider what information can be released in such circumstances.

### **9.1.5 File Management**

The Shire will ensure that all tenant files are stored and destroyed in a confidential manner. Files will be stored in a lockable area and managed as per the Shire's record keeping requirements. Under no circumstances are staff to remove tenants' information from the Shire's premises unless authorised by the Chief Executive Officer.

Where files are computerised, the Shire will ensure that access is restricted to approved users through passwords and that computers have screen savers that are locked when not in use. Computerised files are not to be removed from the shared drive via thumb drives or other means unless authorised by the Chief Executive Officer.

### **9.1.6 Records Management**

The Shire will ensure that records management requirements will be adhered to in accordance with the Shire's policies and procedures.

### **9.1.7 An Organisational Culture of Privacy Protection**

The Shire will regularly review whether all those involved in the business activities of the Shire understand and act in accordance with their responsibilities concerning protecting confidentiality.

The Shire has a responsibility to make sure that those with access to customer information are aware of the confidentiality policy and procedures. Therefore, the Shire will provide confidentiality written guidelines, training, and discussion to all staff.

### **9.1.8 Confidentiality Guidelines**

For the purpose of a tenancy application, the Shire must obtain written consent from the applicant before making enquiries with the persons given as referees by the Applicant, and/or other persons or agencies as the Shire may see fit. A signed Application for Tenancy with referee names and addresses included will constitute written consent for the purpose of the tenancy application (also noted in Section 3).

The personal information the prospective tenant provides in the application, or collected from other sources, is necessary for the Shire to verify the applicant's identity, to process and evaluate the application and to manage the tenancy. Personal information collected about the Applicant in the application and during the course of the tenancy, and if the application is successful, may be disclosed for the purpose for which it was collected.

Information already held may also be disclosed to a third party. If the Applicant enters into a Residential Tenancy Agreement, and if the Applicant fails to comply with their obligations under that Agreement, then all other relevant personal information collected about the applicant during the course of the tenancy may also be disclosed to a third party (e.g.; for legal purposes).

## **10. COMPLAINTS MECHANISM**

### **10.1 Complaints Management**

An effective complaints and feedback mechanism can benefit the Shire and its customers. In the longer term it can reduce complaints and provide the Shire with important feedback on how to perform better.

### **10.2 Procedures to Support Good Practice**

Procedures to support good practice:

- Complaints and feedback are welcomed and will be used to improve the Shire’s performance;
- Simple to follow information about the complaints process, how to make a complaint and customer rights will be readily available for tenants (Handbook for Tenant);
- Complaints received will be formally documented and acknowledged by the Shire;
- Complaints will be dealt with promptly and fairly by the Shire;
- Tenants will be kept informed of the progress of any complaint by the Shire;
- Complainants will not be disadvantaged or suffer any reprisal by the Shire for making a complaint;
- The Shire will provide training to staff for complaints handling;
- The Shire’s Chief Executive Officer will be kept informed of all complaints;
- If a complainant is not satisfied with the decision of the Shire, they have the right to take the matter to an independent mediator.

### **10.3 Taking a Complaint - (MP13)**

- Complaints considered to be minor in nature by both Parties will be noted but not lodged through the formal complaints system for further action;
- Matters considered by one or both Parties to be of a more serious or complex nature must be recorded and lodged and the complaints management process followed;
- The tenant will be encouraged to complete a Complaint and Feedback Form and/or the complaint details will be recorded by the Shire on a *Complaint Form (Appendix 35)*.
- Tenants may complain to the Shire about a range of issues that fall outside of the Shire’s jurisdiction. Matters could include issues such as Centrelink fraud, abuse, drug dealing etc. The complainant should be advised to refer such matters to the relevant authority (e.g. Centrelink, Ombudsman, Police etc).

### **10.4 Complaints Management Procedures**

Tenants will be provided with information on how to lodge a complaint and a Complaint Form (Appendix 35) – Handbook for Tenants – in accordance with relevant Acts.

Information will be displayed and readily available in the Shire office, and provided as requested. The information will be made available in alternative formats upon request, as per Council’s complaint handling process.

#### **10.4.1 Assistance to Complainants**

Staff will be able to provide verbal advice about the complaint handling process, including offering assistance in making a complaint or providing appropriate assistance to people with specific needs (e.g. provide an interpreter service). Tenants will be provided with information on tenant advocacy services, should they want assistance with lodging a complaint or making an appeal.

#### **10.4.2 Investigating Complaints**

Staff will coordinate the investigation of complaints with relevant other staff/parties and refer matters to the Committee/CEO as needed, such as when there may be a conflict of interest.

The appropriate staff member is responsible for ensuring a complaint is properly assessed to determine the appropriate action to be taken in response to the complaint.

#### **10.4.3 Remedies**

Remedies should be consistent and fair for both the complainant and the Shire. Types of redress or responses that are appropriate and reasonable could include:

- apology;
- refund;
- admission of fault;
- change of decision;
- replacement;
- repair/rework;
- correction of misleading or incorrect records;
- protection of complainants;
- technical or financial assistance;
- explanation of how and why the problem occurred and what steps have been taken to avoid it recurring;
- develop or amend policy/procedure;
- a waiver of debt;
- ongoing monitoring of an issue; and/or
- no action recommended.

#### **10.4.4 Response**

The Shire will ensure that the outcome and recommendations resulting from a complaint are clearly communicated to a tenant. Where necessary, internal practices, processes or procedures should be reviewed and changes made if required.

#### **10.4.5 Serious Complaints**

The investigation of serious complaints would generally involve the following steps:

- establish a list of people to be interviewed and any files or locations to be inspected;
- conduct interviews and inspect sites and documents;
- gather and record information;
- provide relevant information to those involved in the investigation;
- give people an opportunity to comment on information adverse to them before deciding whether to act on it (natural justice);
- observe any legal requirements involved in making decisions;
- research and apply any relevant law;
- evaluate the evidence and make findings;
- identify the factors that contribute to the complaint arising;
- formulate recommendations; and
- prepare a report clearly summarising the matter and results of the investigation, setting out findings and recommendations.



The final decision reached for serious complaints should be provided in writing to the complainant and the correspondence signed off by the CEO.

The final response must be factually correct and:

- address each of the points the complainant has raised and provide a full explanation or reason(s) why it is not possible to comment on a specific matter;
- give specific details about the investigation (i.e. source of information, what was discovered, etc);
- give details of action taken as a result of the complaint;
- provide the name and telephone number of the investigating officer for further queries/discussion;
- offer to meet the complainant with the key staff involved; and
- include details of further action available to the complainant.

If the complainant is not satisfied with the investigation or outcome, they may be referred to an independent complaints body.

#### **10.4.6 External Reviews**

If complaints are not resolved by the Shire, the complainant has the right to refer the complaint to an external body, such as the Commissioner for Consumer Protection.

The RTA allows the Commissioner for Consumer Protection to give advice to parties to a *Residential Tenancy Agreement*, to look into the complaints and, wherever possible, help to resolve them. The Commissioner's role is one of mediation and conciliation (s/he cannot issue orders or make determinations in respect of disputes).

Other bodies that can hear some types of complaints include the Equal Opportunity Commission and the WA Police.

Where there is a problem that relates to the Shire's own corporate governance (e.g. financial fraud, lack of transparency in its election processes), it is not appropriate for the governing body to investigate itself. Such complaints/appeals must be referred to an appropriate regulatory body having authority to investigate the matter.

### **10.5 Monitoring and Reporting on Complaints**

The Shire will regularly monitor the complaints process to ensure its effectiveness and accessibility for customers.

For the purpose of measuring the Shire's performance and effectiveness of customer service, statistics may be included in the Annual Report of the Shire for the information of tenants and other stakeholders.

## **11. APPEALS PROCESS**

### **11.1 Appeals**

The appeal process ensures that any customer concerns about the Shire's decisions are dealt with in a fair and open manner before an Appeals Committee. A tenant has the right to appeal most of the Shire's decisions relating to the ILU (11.2 for examples).

### **11.2 What Decisions can be Appealed?**

Most decisions concerning rental housing can be appealed, such as but not limited to:

- an application for accommodation;
- removal from the Waiting List;

- transfer applications;
- rental arrears; and
- Tenant liability for repairs or any other charges.

### Exceptions

Decisions that have general application and therefore apply to all customers cannot be appealed.

### **11.3 How to Appeal**

A tenant may request an *Appeal Form* from the Shire office (Appendix 13).

The Shire's appeal mechanism will offer customers an efficient, fair and inexpensive way of appealing an unfavourable decision.

An Appeals Committee should have a mix of appropriate members with a minimum of three people, including one representative from Management and a person independent of the Organisation.

Where there may be perceived conflict of interest (e.g. if the person who made the decision is the Management member) another staff/Committee member or equivalent member should take the place on the Appeals Committee.

### **11.4 Appeal Procedures**

#### **11.4.1 Natural Justice (Procedural Fairness)**

The Shire's appeal mechanism will be governed by principles of natural justice or procedural fairness. This means that the decision will be reviewed fairly, equitably and without prejudice.

The rules of natural justice (procedural fairness) require:

- that all persons be given the right to be heard before decisions are taken which affect their rights, interests and legitimate expectations;
- the person be entitled to be made aware of any matters which the decision maker uses in the decision making process;
- the person be given the reason for a particular decision being reached and have the opportunity of responding to them;
- the right to reasonable notice (to give the person time to prepare or answer the case);
- the right for the person to have the case heard in a convenient place;
- the right for the person to appear and have representation by an advocate; and
- that any hearing be fair and unbiased.

#### **11.4.2 Appeal Notice**

If a person disagrees with a decision made by the Shire, they are required to lodge written notice of an appeal within 14 days of receiving written notification of a decision. Appeal notice forms are available from the Shire upon request. Written letters will be accepted.

If the person fails to lodge written notice within 14 days of receiving a decision, no further action can be taken and the original decision will stand.

#### **11.4.3 Acknowledgement of Appeal Notice**

Upon receipt of a written notice, the Shire will forward an *Acknowledgement of Appeal* letter (Appendix 12).

#### **11.4.4 Notice of Appeal Hearing/Ineligible Appeal**

Within seven days of sending the above letter, the Appeals Officer will contact the appellant with either the *Notice of Appeal Hearing* (Appendix 34), if an appeal is to be heard, or the *Ineligible Appeal* letter (Appendix 19).

The Notice of Appeal Hearing will inform the appellant of the place, date and time of the set down Appeal hearing. Appeals will be considered by the Appeal Committee within 14 days of lodgement.

#### **11.4.5 Appellant's Right to Attend Hearing**

The hearing will take place either at the Shire's Tambellup administration office or a neutral venue. An interpreter will be arranged for persons of non-English speaking background.

An appellant has the right to attend the hearing of their appeal and have the opportunity to present their case. They may bring an advocate or friend if they wish.

If an appellant is unable to attend a hearing in person but they wish to speak to the Appeal Committee, arrangements will be made for a hearing by conference telephone.

#### **11.4.6 Examination of Appeal Documents**

Prior to the hearing, the Appeal Committee will examine all documents relating to the case. Documents relevant to the Appeal are to be copied and forwarded to Committee members at least five working days before the hearing.

#### **11.4.7 Conflict of Interest**

On receipt of the Appeal documents, each Committee member is to ascertain whether they are able to hear the appeal without bias. Conflicts of interest must be advised immediately (within 24 hours of receipt of the appeals material), so that a substitute can be arranged.

#### **11.4.8 Appeal Hearing**

The Appeal Committee will review the person's situation and the original decision made.

Hearing Committee members prior to the hearing meeting should select a Chair and nominate a member to take notes of the proceedings.

Prior to hearing from an appellant, members are to prepare, discuss and appportion questions designed to ensure all the facts about the appellant's case are understood.

At the hearing, the Chairperson is to provide an overview of the appeal process, including an assurance that the hearing is informal and that the appellant's case can be told in their own words.

An explanation will be given that one member will be taking notes for record purposes and information provided about notification of the decision and of further avenues of appeal.

Should it become apparent in the course of the hearing that additional evidence is required about the appellant's case; the Committee and the appellant are to agree on the nature of the information and the time for it to be obtained/provided.

If an appellant fails to keep the appointment, without providing an adequate reason, the Appeal Committee will proceed to consider the appeal and make its decision based on documentary evidence.

The Appeal Committee will take note of all information presented and the processes used to arrive at the original decision. Ultimately, the Appeal Committee is looking to see that the decision has been fairly determined, having regards to the facts and appropriate policy. The Appeal Committee reserves the right to either re-apply the original decision or change the decision as they see fit.

When it has all the relevant facts, the Committee will discuss all the evidence and then make its decision, documenting the reasons the decision was reached. An *Appeal Committee Decision Form* (Appendix 11) will be completed and signed by all the Committee members.

#### **11.4.9 Result of Appeal**

Decisions of the Appeal Committee are final and binding.

The Appeal Committee must inform the appellant in writing within seven days of the outcome of their Appeal by sending a *Result of Appeal* letter (Appendix 24).

Tenant Liability appellants will be advised that they can proceed to the Small Dispute Division of the Local Court.

Total time of providing written decision to the appellant should not exceed 30 days of the appeal being lodged.

#### **11.5 Monitoring and Reporting on Appeals**

The Shire will ensure that the effectiveness of the appeals process is regularly monitored. A report to the CEO/Committee must provide information about the number and nature of appeal applications received, their outcomes and any trends (while maintaining customer confidentiality).

## **12. SETTLING DISPUTES IN COURT (WHERE THE RTA APPLIES) - (MP15)**

### **12.1 Hearings**

#### **12.1.1 Where to Apply for a Hearing**

The Local Court has a section known as the Small Dispute Division which is authorised under the RTA to hear and determine minor case procedure disputes relating to *Residential Tenancy Agreements*, such as application relating to Security Bonds and other matters, where the amount of the claim is not more than \$10,000.

Claims over \$10,000 other than in an application relating to a Security Bond must be brought in a Supreme, District or Magistrates Court, that is competent to hear and determine a claim founded on contract for the amount of the claim. If the claim is dealt with in the Magistrates Court, the parties may consent in writing to the minor case procedure.

#### **12.1.2 Disputes which End Up in Court**

The most common disputes that find their way into court include:

- refusal to return Security Bond money;
- overdue rent;
- damage to the property;
- maintenance of the premises; and
- problems when ending Residential Tenancy Agreements.

Applications must be made to the court closest to the rented premises, unless the parties in the dispute agree to a different arrangement.

The address of the Court, where the hearing will take place, is shown on a form, which will be sent to the Shire. Court staff will advise on the correct form to lodge for a hearing or to defend a matter in dispute, and the application fee cost. However, Court staff cannot give advice about the strength of the case, the possible result or what evidence might be needed.

#### **12.1.3 Attending Court**

The Registrar has authority to hear disputes if neither party objects.

Where only one party to a dispute attends Court, the Court can deal with the application without input from the absent party.

If both parties attend Court, a conference may be held before the hearing. This is not compulsory and either party may choose to go straight to a full hearing. Such a conference can be held to:

- relax the parties;
- shorten proceedings by defining the matters at issue;
- resolve the matter, either partially or fully;
- make any orders with the consent of both parties; and
- advise the parties of the procedure in court, if the dispute is not resolved.

If the matter appears likely to be settled in this way, it is important to be aware what each party is agreeing to, as it is final and binding on both.

#### **12.1.4 How the Case is Heard**

The Magistrate usually conducts the hearing in the following way (except in the case of a Form 6 Application for a Security Bond dispute, where the owner always proceeds first):

1. The applicant tells their story (evidence) and presents any documents in support of their case;
2. The respondent questions (cross-examines) the applicant about their evidence;
3. If the applicant has witnesses, they tell their story;
4. The respondent can cross-examine each witness;
5. The respondent then tells their story and produces any supporting documents;
6. The applicant can cross-examine the respondent;
7. If the respondent has witnesses, they tell their story;
8. The applicant can cross-examine each witness.

#### **12.1.5 The Decision**

When both parties have finished telling their stories, the Magistrate will make a decision, which is final.

Generally, the Magistrate will outline the problem, summarise what has been said and then give the decision, known as an Order.

Everyone must listen to what the Magistrate says when making the Order. The Court will usually send a copy of the Order by mail after the hearing. The Magistrate will advise if this will be done, as procedures vary from Court to Court.

The Magistrate can be asked to explain the Order.

Orders handed down by the Magistrate can include:

- ending a Residential Tenancy Agreement;
- how Security Bond money will be paid out;
- requiring that an action be carried out in accordance with the Residential Tenancy Agreement;
- stopping any action which breaches the Residential Tenancy Agreement;
- payment of compensation by the person in breach of the Residential Tenancy Agreement, for loss or injury (other than personal injury), caused by the breach; and
- payment of rent into the court until the owner carries out the Magistrates Order to remedy a breach or for compensation.

If an Order is granted and the tenant can demonstrate that they would suffer hardship if it was effective immediately, they can ask the Magistrate to suspend the order for up to 30 days.

If the tenant does not pay an amount ordered by the Magistrate, the Shire can take action to enforce the Order. There are different actions.

#### **12.1.6 If a Court Order to Pay is Ignored**

If the Small Dispute Division rules that an amount of money be paid but the other party in the dispute does not pay, action can be taken to enforce the order through the Local Court.

