

Before Applying To Court

As a tenant you have rights and responsibilities under the *Residential Tenancies Act 1987* (the Act). This fact sheet explains the law in Western Australia about applying to court and incorporates the changes made to the Act, which came into effect on 1 July 2013. Please note that while changes were made to the Act effective 1 July 2013, some of the old laws may still apply to you. If, for example, you entered into a lease prior to 1 July 2013, the old laws may still be valid. Accordingly we strongly encourage you to get appropriate legal/tenancy advice from your local tenancy service concerning the application of the new laws.

In the Residential Tenancies Act the landlord is referred to as the lessor.

It is always best to try to negotiate an outcome with the lessor before applying to court.

If you and the lessor cannot resolve the dispute by negotiation then either party may apply to the Magistrates Court to settle the matter.

Be aware that the first court hearing is typically a negotiation or mediation with a Registrar, and a number of matters are settled at this stage rather than proceeding to trial.

THE MAGISTRATES COURT

In Western Australia, residential tenancy matters are heard in the Magistrates Court of Western Australia.

The most common tenancy disputes that proceed to the Magistrates Court include:

- Bond disputes (usually where there is a significant amount in dispute);
- Rent arrears terminations;
- Maintenance and compensation or rent reduction claims; and
- Compensation claims for intentional or negligent damage.

Depending on the amount and nature of the claim, either a residential tenancies claim (under the minor case jurisdiction), minor case claim or a general procedure claim will be commenced

Residential Tenancy Application

A residential tenancy application can be commenced in the Magistrates Court if your agreement is covered by the *Residential Tenancies Act 1987* (WA) (**Residential Tenancies Act**), you have a dispute with your lessor or co-tenant and the amount being claimed is not more than \$10,000.

A residential tenancy claim is made under the minor case jurisdiction but residential tenancy matters have their own forms, specific to disputes between tenants and lessors. If you are unsure if you are covered by the Residential Tenancies Act, read our "Residential Tenancies Act 1987" factsheet or contact Tenancy WA on 9221 0088 or your local tenant advocate.

Minor case application

A party claiming any debt or damages up to \$10,000 can lodge a minor case application (this is not specifically residential tenancy claims).

The most common example of when you may need to lodge a minor case application, rather than a residential tenancy application, is if you are not covered by the Residential Tenancies Act (e.g.: if you are a boarder or lodger, or if you are on a holiday agreement).

This fact sheet is not specific to minor case claims so you should seek legal advice if you think this may apply to your situation.

General Procedure Claim

If the claim is for an amount of \$10,000 - \$75,000 then it is heard under the general procedure jurisdiction. If a claim is more than \$10,000, parties can still agree in writing that the matter is heard in accordance with the minor cases procedure.

Under the general procedure jurisdiction –

- Parties are entitled to legal representation;
- Successful parties can usually recover costs from the unsuccessful party; and
- The application fees are higher.

If a claim is for more than \$75,000, it must be dealt with by the applicable higher court, in accordance with that court's practice and procedures, and with reference to the Residential Tenancies Act.

This fact sheet does not apply to claims above \$10,000 - If the amount claimed is more than \$10,000, you should seek legal advice from Tenancy WA, your local community legal centre or a private lawyer.

RELEVANT LEGISLATION

A number of Acts and Regulations co-exist to govern how residential tenancies claims, up to \$10,000, proceed in the Magistrates Court. The Acts outline various things including, but not restricted to, jurisdiction (what court can hear what matters), the process for lodging and serving documents, and the procedure for hearings etc.

The relevant legislation is:

- Residential Tenancies Act 1987;
- Residential Tenancies Regulations 1989;
- Magistrates Court Act 2004;
- Magistrates Court (Civil Proceedings) Act 2004;
- Magistrates Court (Civil Proceedings) Regulations 2011;
- Magistrates Court (Civil Proceedings) Rules 2005;
- Magistrates Court (Fees) Regulations 2005; and
- Magistrates Court (Minor Case Procedure) Rules 2005.

FURTHER HELP – TENANTS’ ADVICE AND ADVOCACY

Tenancy WA provides state wide telephone advice services and referrals.

Metro: (08) 9221 0088 • Country: 1800 621 888 (free call) • www.tenancywa.org.au

Department of Commerce 1300 304 054

METROPOLITAN COMMUNITY LEGAL CENTRES	REGIONAL COMMUNITY LEGAL CENTRES
<p>Fremantle CLC (Western Suburbs) 9432 9790 www.fremantle.wa.gov.au</p> <p>Gosnells CLC (South Eastern Suburbs) 9398 1455 www.gosclc.com.au</p> <p>MIDLAS (Eastern Suburbs) 9250 2123 www.midlas.org.au</p> <p>Northern Suburbs CLC (Northern Suburbs) 9440 1663 www.nslc.org.au</p> <p>SCALES (South Western Suburbs) 9550 0400 www.law.murdoch.edu.au/scales</p> <p>Sussex Street CLS (South Central Suburbs) 6253 9500 www.sscls.asn.au</p> <p>Welfare Rights & Advocacy Service (North Central Suburbs) 9328 1751 www.wraswa.org.au</p>	<p>Albany CLC (Great Southern) 9842 8566 www.albanyclc.com.au</p> <p>AccordWest (South West) 9729 9000 www.accordwest.com.au</p> <p>Regional Alliance West (formerly GRC) (Mid-West/Gascoyne) 9938 0600 www.raw.org.au</p> <p>Goldfields CLC (Goldfields) 9021 1888 www.gclc.com.au</p> <p>Kimberley CLS (Kimberley) 9169 3100</p> <p>Peel CLS (Peel) 9581 4511 www.peelcls.com.au</p> <p>Pilbara CLC (Pilbara) Karratha - 9185 5899 Newman - 9175 0148 Roebourne - 9182 1169 South Hedland - 9140 1613 www.pcls.net.au</p> <p>Wheatbelt CLC (Wheatbelt) 9622 5200 www.wheatbeltclc.com.au</p>

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