

Applying to the Magistrates 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 going 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.

If you cannot resolve your matter by negotiation, either party can then apply to court.

Applications must be made to the court closest to the rental property. The court can change the venue, upon application by either party, if it is satisfied that it would be more convenient or fair to the parties if the whole or a part of the proceedings in a case were conducted at another place in the State.

APPLICATION FORMS

The following forms are used to commence or dispute a residential tenancy application and can be found on the Magistrates Court website under “civil matters” and “Residential Tenancies Regulations 2005 Forms”:

- **Application for Disposal of Bond Money (Form 6)** is used for bond disputes where the amount in dispute is not more than the amount held in the bond account, and the bond has not been paid out. When a party lodges a Form 6 application, the court will send a copy to the other party, and, if they dispute the application, they need to return a **Form 5 (Notice of Intention to Dispute Application for Disposal of Bond Money)** within 7 days of service. This Form 5 is attached to the back of the Form 6. If the other party does not return the Form 5 within 7 days, then the court can make an order to dispose of the bond as per the Form 6.
- **Application for Court Order (Form 12)** is used for disputes other than the bond (such as unpaid rent, damage to property, termination) or a dispute where the amount being sought is greater than the bond.
- **Application to Vary or Set Aside Order (Form 16)** is used to vary or set aside an order that was made in the absence of one of the parties. If the original order was for termination and vacant possession, the applicant also needs to lodge a suspension application and an affidavit (see below).

Other Relevant Minor Case Forms (Also found on the Magistrates Court website under “Civil Matters” and then their relevant legislation heading):

- **Minor Case Claim (Form 4 under “Magistrates Court (Civil Proceedings) Rules 2005 Forms”)** is used to commence proceedings where a claim is not more than \$10,000, and does not fall under the Residential Tenancies Act (For example, boarder and lodger arrangements).

- **Appeal against a Registrar’s Decision (Form 1B under “Magistrates Court (General) Rules 2005 Forms”)** is used to appeal the decision of a Registrar. If the original order was for termination and vacant possession, the applicant also needs to lodge a suspension application and an affidavit (see below).
- **Application for a Suspension Order (Form 9 under “Civil Judgments Enforcement Act Forms”)** is used to suspend the enforcement of an order. This is most likely used in a residential tenancy matter where a tenant misses their court hearing and there has been a termination and vacant possession order made. It must be lodged with an affidavit.
- **General Form of Affidavit (Form 2 under “Magistrates Court (Civil Proceedings) Rules 2005 Forms”)**

Note: there are specific time limits that apply to appealing a Registrar’s decision or applying to vary or set aside an order. Please read the Court Process fact sheet on reviewing a decision and contact Tenancy WA or your local community legal centre for advice.

If you are lodging an application, you will need to list the lessor’s full name and address on the court application form. If the property is managed by a real estate agent then you can put the address of the real estate agency but you will still need to put the lessor’s name as the respondent (not the real estate agent or agency).

Residential tenancy forms (Form 6 and 12) and some minor case forms (Form 4) can be lodged online on the Magistrates Court website, or you can lodge the documents in person at the Court Registry.

Once you have lodged the application, the court will serve the documents on the other party and set a court date.

APPLICATION FEES AND OTHER COSTS

The minor case jurisdiction is generally a no cost jurisdiction, other than the application fees.

The application fees are:

- \$53.75 to lodge a Form 6 or Form 12 application;
- \$18.00 to lodge a Form 5 disputing a disposal of the bond application;
- \$118.20 to lodge a minor case application (any other dispute up to \$10,000 – not covered by the Residential Tenancies Act); and
- \$76.00 to lodge an appeal against a Registrar’s decision.

These fees are current as at June 2016 See the Magistrates Court website for updated fees.

Fee Reduction or Waiver

You can apply to have the application fee reduced or waived if you are a financially disadvantaged person. This application must be made using a Form 1A, Form 1B and Form 1C on the Magistrates Court website under “Civil Matters” and “Magistrates Court (Fees) Regulations 2005 Forms”.

To have the fee reduced or waived you need to satisfy the Registrar that you hold either a health care card, a health benefit card, or a pensioner health benefit card issued by either the Department of Social Security or the Department of Veteran's Affairs of the Commonwealth Government. Alternatively, you need to satisfy the Registrar that, by reason of your financial circumstances, you are unable to pay the prescribed fee.

The reduced application fee for a residential tenancies claim is \$19.50.

In a residential tenancies claim, the court will not award costs, unless:

- All parties to proceedings were represented by legal practitioners; or
- It is of the opinion that there are special circumstances justifying the award of costs.

However, the court **can** make an order for payment of the application fee to the successful party.

In a minor case claim (e.g.: a boarder and lodger bond dispute), the court can make an order for payment of the successful party's allowable costs.

Allowable costs include the court fees, service fees and the costs of enforcing a judgment. The court can only make an order for the payment of other costs if it is satisfied that:

- Because of the existence of exceptional circumstances an injustice would be done to the successful party if that party's other costs were not ordered to be paid; or
- The unsuccessful party's claim or defence was wholly without merit.

INTERPRETER

The Court can provide an interpreter for free. If you need an interpreter, write this on your application, including the language and dialect, or contact the Magistrates Court once you receive the notice of hearing to organise an interpreter.

ATTENDING COURT

It is important that you attend any court hearing because the court can make orders in your absence. If you lodge an application and do not attend the hearing, the court can dismiss your application.

Orders that the court can make in your absence include, but are not restricted to:

- An eviction order;
- The disposal of the bond to the lessor;
- The payment of compensation to the lessor;
- The payment of charges that you were not aware of or did not agree with; and
- Orders that the bailiff can attend your premises and take goods to the value of the judgment debt.

If the hearing is set for a date or time that you cannot attend, you need to contact the court as soon as possible before the hearing and ask for the matter to be adjourned for a later date when you can attend. If you have time, then the best way to do this is by writing a letter or email to the court and asking for this to be placed on your file (If it is urgent, make sure you call the court and advise them as a letter or email may not be received prior to the hearing).

You will need to provide a good reason as to why you cannot attend and you will need to provide evidence of this (e.g. if you are extremely ill in hospital). The court may still proceed in your absence.

The court also has facilities to arrange an audio link – contact the court to see if this is possible in your situation.

If you are unable to attend because you have moved interstate or overseas, contact the court to arrange an audio link for your hearing. You may also be able to lodge your relevant documents by fax or email.

You must attend in person unless the Court or Registrar orders otherwise, so the court will not accept a family member or friend attending in your absence.

If you are running late for a hearing, call the court and let them know that you are coming. You can ask for your matter to be called at the end of the list, otherwise the hearing may be over by the time you arrive. The court may still proceed in your absence.

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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