

## 3.12 Compensation for Loss Incurred Due to a Breach by the Owner

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Section 15 of the Residential Tenancies Act (1987) WA enables a tenant to apply to the Magistrates Court for an order that the owner compensate them for any loss or injury (except personal injury) the tenant may have suffered as a result of the owner breaching the tenancy agreement. The tenant will need to show a breach of the tenancy agreement was committed by the owner. Remember, the tenant is under an obligation to “mitigate loss” caused by the breach of the owner (see chapter [3.11 The Duty to Mitigate Loss](#) for further information).

**Tenants can claim compensation from the owner for costs they incur due to the owner breaching the agreement.**

The Magistrates Court has jurisdiction to hear an application for compensation up to \$10,000. Claims for over \$10,000 but less than \$75,000 will still be heard in the Magistrates Court but are subject to a different procedure. See chapter [6.01 The Magistrates Court](#) for more information.

Some examples of claims may include:

- Reimbursement for the cost of goods stolen from the property where the owner failed to provide the property with locks or other devices to ensure the property was reasonably secure (also see chapter [3.04 Locks and Security](#));
- If the tenant was illegally evicted by the owner, the costs incurred by the tenant as a result of this, for example removal and storage of furniture costs and staying in alternative accommodation (also see chapter [4.07 Evictions](#));
- Cost of damage done by tradespeople allowed entry by the owner (also see chapter [3.05 Maintenance and Repairs](#));
- Costs incurred because the owner did not keep the premises in a reasonable state of repair which lead to the tenant suffering a loss, for example damage to personal goods caused by a leaking or collapsed roof (also see chapter [3.05 Maintenance and Repairs](#));
- You may be able to claim compensation because of a reduction in the facilities provided with the property caused by a breach by the owner. For example, you entered the tenancy on the understanding that the property was air conditioned. 2 months into the tenancy the air conditioner broke and was not fixed for 4 months and during the whole period of time you continued to pay the full rent (also see chapter [3.01 Rent, Rent Increases and Rent Reductions](#)); and
- There may also be scope for a tenant to apply for compensation where a right under the agreement was lost. For example, the owner interfered with the tenant’s reasonable peace, comfort or privacy by failing to provide the required notice prior to entry of the property (also see chapter [3.03 Privacy and Quiet Enjoyment](#)).

## Applying for a Court Hearing

The application must be made to the Magistrates Court on a Form 12: Application for Court Order. The Form has two main sections.

### 1. Reason for Application

In this section the tenant should provide details of the breach by the owner, and identification of what loss and/or injury resulted from it. The claim must be quantified to include a monetary value, and supported by receipts and/or quotes.

### 2. Order Required

In this section the tenant should state that they are seeking an Order for the owner to pay compensation for the breach by the owner. If there are a number of costs, specify each one individually as well as giving the total value of the claim. You may also apply for reimbursement of the application fee.

See chapters [6.03 Preparing for Court](#) and [6.04 Going to Court](#) for more information on applying and appearing in court.

#### **OWNER OR AGENT?**

**It is important to know that whilst you may be dealing directly with the real estate agent about your tenancy, it is the owner who takes on all the landlord responsibilities under the *Residential Tenancies Act WA 1987*. If the agent or owner does something wrong and you have to fill out a breach notice or go to court, it is the owner you will list on the forms and notices.**

#### **List of Tenants' Rights Manual chapters referred to in this info sheet:**

- [3.01 Rent, Rent Increases and Rent Reductions](#)
- [3.03 Privacy and Quiet Enjoyment](#)
- [3.04 Locks and Security](#)
- [3.05 Maintenance and Repairs](#)
- [4.07 Evictions](#)
- [6.03 Preparing for Court](#)
- [6.04 Going to Court](#)

A sample [Form 12](#) can be viewed on the TAS website: [www.taswa.org](http://www.taswa.org) or downloaded from the Magistrates Court website: [www.magistratescourt.wa.gov.au](http://www.magistratescourt.wa.gov.au). The Perth Magistrates Court can be contacted on (08) 9425 2222.