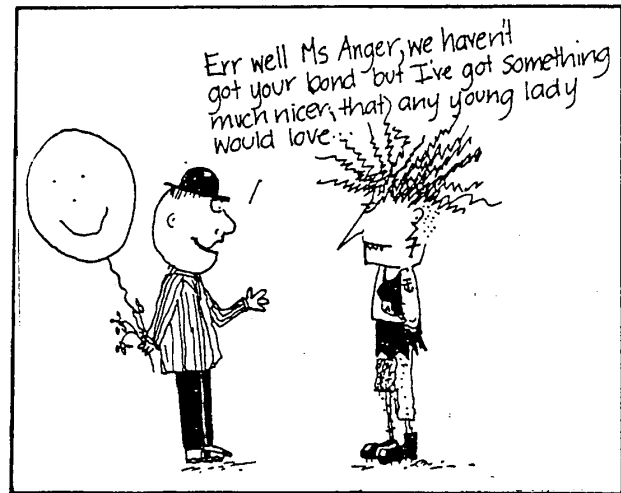


5.03 Applying to the Magistrates Court for a Bond Disposal Order

You can refuse to sign the Bond Disposal Form and instead apply to the Magistrates Court for an “order for the disposal of the bond money”.

You may need to do this if after leaving the tenancy:

- you have not been able to get your bond money back; OR
- you have not been able to reach an agreement with the owner/agent about how much bond you should get back.



The court application should be made to the Magistrates Court. The Magistrates Court may hear Bond Disputes applications of *any amount*. You should go to the court nearest to the tenancy that you have vacated. Application forms are available from the Court.

You will need to either fill out a **Form 6: Application for Disposal of Bond Money** or a **Form 12: Application for Court Order**. List your name and address in the “Applicant” section, and the owner’s name and address in the “Respondent” section. *A sample Form 6 and Form 12 have been attached to the end of this chapter.*

What if I am a Department of Housing tenant?

You will need to make your Court application on a **Form 12: Application for Court Order**. For the owner’s name and address (to be filled in the “Respondent” section), put down “Department of Housing”, with the address of the DH office that was managing your tenancy. Just remember that DH does not have to put your bond into a special account or with the bond administrator.

The bond cannot be taken out of the account by you or the owner unless you both agree OR the court makes an order.

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 1987(WA)*. 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.

What if the bond is still in a joint account?

For tenants renting privately owned housing, the bond money must be lodged by the owner/agent according to the conditions as set out in the *Residential Tenancies Act 1987 (WA)*. The Act states that the bond must be lodged in an approved account, which can be one of the three options listed below:

- lodged with the Bond Administrator; or
- a joint bank account between you and the owner entitled 'Tenancy Bond Account'; or
- a Tenancy Bond Trust Account held by a real estate agent.

If your bond has been lodged in this way, you will need to lodge your application with the Magistrates Court on a **Form 6: Application for the Disposal of Bond Money**. If you are not sure of where your bond money is being held, the Department of Commerce may be able to help you get the account details (Ph: 1300 304 054).

What if the bond hasn't been lodged properly?

There may be two reasons why your bond is not in a joint or approved account:

- If you signed a blank Bond Disposal Form (*Form 4 Joint Application for Disposal of Security Bond*); or
- If the owner/agent did not lodge the bond money according to the *Residential Tenancies Act 1987 (WA)* (s 29 and schedule 1).

If this is the case, it is probably easier to lodge your application with the Magistrates Court on a **Form 12: Application for Court Order**.

If the owner/agent has not lodged the bond correctly and your bond dispute goes to court, you can argue the owner should not be able to benefit from the illegal action of incorrect bond lodgement by claiming deductions. The Court may order the entire bond be returned, even if deductions appear to be valid and the owner can prove the claims. While there are no guarantees in a court hearing, it is worth bringing it to the court's attention.

If the owner/agent hasn't lodged the bond according to the *Residential Tenancies Act 1987 (WA)*, they may be penalised \$4000 (s.29) if prosecuted by the Department of Commerce. You will need to make a written complaint to the Department.

How do I apply to Court?

The following information will help you fill out the court application forms (either a Form 6 or Form 12) and understand the owner's response options. The form uses the terms "applicant" and "respondent". The person who fills out and lodges the form is the applicant; the person who the form is lodged against (and who is requested to also turn up at court so as to answer allegations), is the respondent.

If it is the owner/agent who has applied to court, you should read the the owner's three options (as listed in the section below on "What happens once the Form 6 application is lodged?") as if they were your own options.

Making a Form 6 Application

When making a Form 6 application, you will need to complete the following details:

- your name and address;
- the owner's name and the owner/agent's address - the owner is the respondent even if the tenancy has been managed by an agent. The owner's name can be found on your tenancy agreement. The address can be care of the agent.
- the address of the rented property;
- when the tenancy started and ended;
- the weekly rent;
- the amount of bond money paid;
- the place where the bond is lodged (if you don't know, the court may let you put the owner's name. Ask your Magistrates Court if you can do this);
- the amount you believe that should be returned;
- the amount of money (if any) you agree to give to the owner; and
- briefly state why there is disagreement on how the bond is to be divided.

If you don't have enough room on the Form 6, you can attach a separate piece of paper. Always retain a copy for yourself and attach a copies for the Court and for the other party.

If you believe you should get all of your bond money back, you may seek an order for the full amount to be returned. This means the owner will have to prove they are entitled to any of the deductions they are claiming from the bond money.

When you lodge the application, you will need to pay a fee of \$26.70, or \$19.70 if you have a Health Care Card or a pension card (as at February 2008). If you are financially disadvantaged you may make application for the fees to be reduced.

What happens once the Form 6 application is lodged?

Once you lodge the application, the court will send a copy to the owner and inform them that they have **seven days** to respond to your court application.

On receiving the notice the **owner** has **three** options (see over page):

1. Ignore the notice

If the owner/agent has not responded within seven days, the Court may issue an order for you to be paid the money you have asked for. If this happens, you won't have to present your case in Court (RTA Schedule 1, Part D, section 8).

2. Send the bond back within 7 days

When the Court sends out the notice to the owner informing them they have received your court application, some owner/agents realise they can't provide a legitimate reason for keeping the bond and choose to return the money. If this happens, inform the Court that you have received the bond money and no longer require an order. The Court will then cancel your application.

3. Lodge a Notice of Intention to Dispute the Application (Form 5)

The owner/agent may choose to dispute the application. If so, the owner/agent must lodge a **Form 5: Notice of Intention to Dispute Application for Disposal of Bond Money** with the Court within seven days of receiving notice of your application. *A sample Form 5 has been attached to the end of this chapter.*

What happens when your Form 6 application is disputed by the owner

If your application is disputed by the owner, you will be advised of the date when you and the owner/agent should appear in the Magistrates Court for a dispute hearing. You should also receive a copy of the owner/agent's *Form 5* which explains why the owner is disputing your claim. This will help you prepare a response to the owner/agent's allegations. See chapter [6.02 Preparing for Court](#) and [6.03 Going to Court](#) for further information.

If you have not received a copy of the owner/agent's *Form 5*, you should ring the Court and ask them to send it to you.

Making a Form 12 Application

If you are a private tenant and your bond money has not been lodged in an authorised joint account, or if you are a DH tenant, you may use a *Form 12* application instead of a *Form 6* when applying to the court for an order for the owner to return the bond.

The Form 12 has two main sections:

1) Reason for Application:

Clearly state you want the bond money returned, that the owner has refused to give it back and why. If you need more space you can attach an extra piece of paper. You must provide **four** copies of anything you attach to your application. If your bond is not in a joint account, state in your

reasons that the owner hasn't lodged the bond in accordance with the *Residential Tenancies Act 1987 (WA)* (s. 29).

2) Order Required:

If the bond was not in a joint account, state that you are seeking the following orders:

- Return of the full bond;
- Return of the court application fee;
- Owner to pay the interest payable to the Rental Accommodation Fund (RTA Schedule 1, Part C, section 6).

What happens once the Form 12 application is lodged?

When you (the applicant) lodge a Form 12 application, you will be given a date when the court will hear the claims of both you and the owner/agent.

The owner (the respondent) will also be sent a copy of the application and a notice of the hearing date and time.

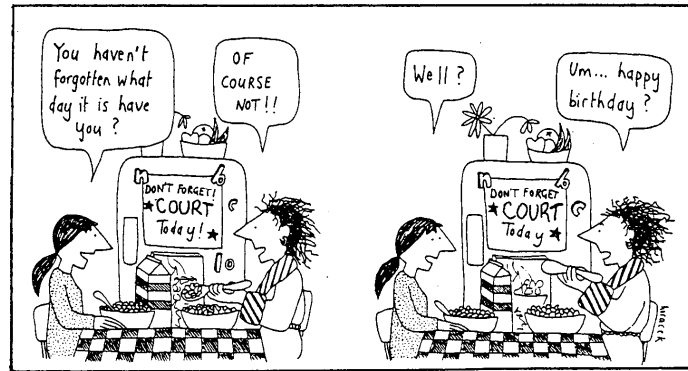
Unlike the Form 6, the owner doesn't have to let the court know if they intend disputing the application. They may attend the hearing to tell their side of the story if they want to. If the property is managed by a real estate agency, the agent may appear on the owner's behalf. See chapter [6.03 Going to Court](#) for more information.

How much will it cost to make an application to the court?

When you lodge the application, you will need to pay a fee of \$26.70, or \$19.70 if you have a Health Care Card or a pension card (as at February 2008). If you are financially disadvantaged you may make application for the fees to be reduced.

If you believe it is unfair that you have to bear the cost of the court application, you can ask the Court to order the owner to refund it to you. However, you cannot do this on a Form 6 application if you are claiming the **full** amount of your bond. This is because the Court cannot order the financial institution or bond administrator to pay more money than is in your bond account. Instead, you can ask the Court if you can use a Form 12 application.

A Form 12 allows you to claim compensation for costs over and above the bond. A Form 6 does allow reimbursement for the cost of the court application, but only if you are claiming **part** of your bond (as there would be sufficient funds left in the balance of your bond account to cover the cost).



What happens at the court hearing?

Once the Court has heard all the evidence, they will make a decision and issue a Court Order. You and the owner will be legally bound by this decision.

The order will state how much money each party will receive. If the order states the owner must pay the money, you can approach them immediately. Arrange a deadline for the owner to return the money if the order does not specify a particular date.

What happens after the court hearing?

A copy of the Court Order stating the amount of bond money to be returned to you, will be sent to you and the owner. If the bond was lodged correctly, the order will also be sent to the financial institution or place where the bond is lodged. When the financial institution holding the bond money receives the Court Order, they will send a cheque for the amount payable to you at the address on the court application form. Alternatively, you can take your copy of the Court Order to the place where the bond is being held and ask for immediate payment.

If the owner doesn't return the bond money, you will need to make an application under the Civil Judgments Enforcement Act 2004 (WA). See chapter [6.03 Going to Court](#) for more information.

The owner can take the same action against you if the court orders that you owe the owner more than the bond money.

Contact Tenants Advice Service for more information.

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

- [2.09 The Security Bond](#)
- [5.03 Applying to the Magistrates Court for a Bond Disposal Order](#)
- [6.02 Preparing for Court](#)
- [6.03 Going to Court](#)

SAMPLE FORMS ATTACHED:

- ***Form 5: Notice of Intention to Dispute Application for Disposal of Bond Money***
- ***Form 6: Application for Disposal of Bond Money***
- ***Form 12: Application for Court Order***

File copy

MAGISTRATES COURT:
PERTH REGISTRY:
LEVEL 3, 32 ST GEORGES
TCE, PERTH
PH: 9425 2247
FAX: 9421 1075

RESIDENTIAL TENANCIES ACT 1987 (WA)
Schedule 1
APPLICATION FOR DISPOSAL OF BOND MONEY
FORM 6

Case number:
Date lodged:

SAMPLE

Applicant <input type="checkbox"/> Owner <input type="checkbox"/> Tenant	Name:	
	Address:	Postcode:

Respondent <input type="checkbox"/> Owner <input type="checkbox"/> Tenant	Name:	
	Address:	Postcode:

Address of rented premises	
-----------------------------------	--

I request that the bond amount of \$ _____ held by _____
_____ at _____ be disbursed as follows:

1) The sum of \$ _____ to be paid to _____
2) The sum of \$ _____ to be paid to _____

Date tenancy commenced: / /	Weekly rental: \$ _____
Date tenancy terminated: / /	Date rental paid to: / /

The reason this request is made is as follows: (Description of claims and amounts of each claim in dollar value)

To: Respondent

UNLESS YOU NOTIFY THE COURT WITHIN SEVEN DAYS AFTER YOU RECEIVE THIS APPLICATION THAT YOU INTEND TO DISPUTE THIS REQUEST FOR PAYMENT, THE COURT MAY ORDER THAT THE BOND MONEY BE PAID IN ACCORDANCE WITH THE APPLICANT'S REQUEST.

Signature of applicant		Date	
------------------------	--	------	--

Registrar		Date	
-----------	--	------	--

MAGISTRATES COURT: Registry PH: FAX:	RESIDENTIAL TENANCIES ACT 1987 (WA) APPLICATION FOR COURT ORDER FORM 12	FILE COPY Case number: Date lodged:						
SAMPLE								
APPLICANT Tick [✓] a box <input type="checkbox"/> Owner <input type="checkbox"/> Tenant	Name: Address: _____ Postcode: _____							
RESPONDENT Tick [✓] a box <input type="checkbox"/> Owner <input type="checkbox"/> Tenant	Name: Address: _____ Postcode: _____							
Address of rented premises: _____								
Reasons for application: (Give full details) _____ _____ _____								
Order required: (Give full details) _____ _____ _____								
Signature of applicant _____		Date _____						
NOTICE OF HEARING TAKE NOTICE that this application has been set down for hearing in the Magistrates Court at: on the day of 20 at am/pm.	FINANCIAL DETAILS <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Amount of claim</td> <td style="width: 30%;">\$</td> </tr> <tr> <td>Court fee</td> <td>\$</td> </tr> <tr> <td>Total amount of claim</td> <td>\$ 0.00</td> </tr> </table>		Amount of claim	\$	Court fee	\$	Total amount of claim	\$ 0.00
Amount of claim	\$							
Court fee	\$							
Total amount of claim	\$ 0.00							
Registrar _____	Date _____							
IF YOU DO NOT APPEAR AT THE HEARING, THE ISSUE IN DISPUTE MAY BE RESOLVED BY THE COURT ON THE EVIDENCE PUT BEFORE IT.								