

6.01 The Magistrates Court

Jurisdiction/types of disputes

The Magistrates Court can deal with minor civil matters and minor criminal offences. Residential tenancy disputes are civil matters.

The Magistrates Court has exclusive jurisdiction to hear residential tenancy disputes up to the value of \$10, 000 (*Residential Tenancies Act 1987* (WA) “Residential Tenancies Act”, sections 12 and 12A). Residential tenancy disputes are disputes that arise under the *Residential Tenancies Act*. A residential tenancy dispute to the value of \$10, 000 will be heard in the Magistrates Court as a ‘minor case’. The procedures outlined in the *Residential Tenancies Act* will apply.

Disputes in excess of \$10, 000

Although the Magistrates Court is limited to hear tenancy disputes to the value of \$10, 000, there are exceptions.

Any application for the disposal of bond money can be heard by the Magistrates Court no matter how much is claimed (*Residential Tenancies Act*, section 12). This type of application will be heard as a ‘minor case’ and the procedures outlined in the *Residential Tenancies Act* will apply.

If the amount claimed in a residential tenancy dispute is greater than \$10, 000 and it is not a bond disposal matter, the Magistrates Court can hear the dispute up to the value of \$75, 000 (*Residential Tenancies Act*, section 13). Residential tenancy disputes valued between \$10, 000 and \$75, 000 will be heard in the Magistrates Court but not as a ‘minor case’ and will be run according to the ‘general procedure’ outlined in the *Magistrates Court (Civil Proceedings) Act 2004* (WA). However, if both parties agree in writing the case can be heard in the Magistrates Court as a ‘minor case’. If your case is taken to court but is not a ‘minor case’ you can seek advice from the Tenants Advice Service about the process and how the hearing will be run in court.

Where the amount claimed in a residential tenancy matter is greater than \$75, 000 it will be heard in either the District or Supreme Court, depending on the amount claimed.

Who can appear?

Generally, the parties to a ‘minor case’ (the owner and tenant) must appear at the court hearing (*Residential Tenancies Act*, section 22). However, a party may be represented or assisted by someone else if they are not able to appear themselves (for example if the owner lives in Sydney) or if they are not able to present and conduct their case properly (for example because the tenant has a disability). The party will only be able to have representation or assistance if the other party is not unfairly disadvantaged.

You or the owner may be able to be represented by a lawyer in certain circumstances. Most commonly this will be allowed if all the parties agree and the court is satisfied that the party who does not have a lawyer will not be unfairly disadvantaged.

If your case is being heard in the Magistrates Court but not a ‘minor case’ you are entitled to be present in court and conduct your case personally (*Magistrates Court (Civil Proceedings) Act 2004* (WA), section 44(1)). You may also be represented by a lawyer or, if the court gives permission, you may have another person represent you (*Magistrates Court (Civil Proceedings) Act 2004* (WA), section 44(2)).

How to bring a claim

To get a hearing at the Magistrates Court you will need to complete and lodge an application form at the Magistrates Court nearest the rental property unless both parties agree for the application to be lodged at another court (section 13A (3)). A small application fee will be payable.

Particular bond matters require a Form 6: Application for Disposal of Bond Money to be completed and lodged. For more information see chapter [5.03 Applying to the Magistrates Court for a Bond Disposal Order](#). Other residential tenancy matters (up to \$10, 000) require a Form 12: Application for Court Order to be completed and lodged. For more information see chapter [6.02 Seeking a Performance Order from the Magistrates Court](#).

If you want to bring a case that is not a 'minor case' and need advice on how to begin your claim please seek advice from the Magistrates Court or the Tenants Advice Service.

Costs

Generally, each party will have to pay their own expenses to attend a court hearing (such as obtaining legal advice or taking time off work to attend the hearing). One expense that can be claimed is the reimbursement of the court application fee.

The Magistrate may award costs if all parties were represented by lawyers or if special circumstances were found to justify it (*Residential Tenancies Act*, section 24).

In a case that is not a 'minor case' the unsuccessful party will generally have to pay costs of the successful party (*Magistrates Court (Civil Proceedings) Act 2004 (WA)*, section 25). Costs may include expenses such as lawyer's fees and court application fees. The Court does have power to allocate costs between the parties differently.

Who presides?

Cases in the Magistrates Court are generally heard by a magistrate. However, a registrar may hear certain 'minor case' matters where there is no dispute about the application or where one of the parties does not attend court (*Residential Tenancies Act*, section 13A).

Appeals

A court order made in a residential tenancy matter (that is heard in the Magistrates Court as a 'minor case') is final and binding and no appeal can be made against that order (*Residential Tenancies Act*, section 26). In limited circumstances (ie a denial of natural justice or where the Magistrates Court had no jurisdiction) the Supreme Court may review an order made by the Magistrates Court.

If a residential tenancy matter was heard by a registrar the decision made by the Registrar may be appealed to a magistrate (*Residential Tenancies Act*, section 13B). The appeal must be started within 21 days of the Registrar's decision although that timeframe may be extended by a magistrate (*Magistrates Court Act 2004 (WA)*, section 29).

If you were not at the court hearing when a decision was made you can make an application to the court for an order to vary or set aside the initial order (*Residential Tenancies Act*, section 17). The application form ([Form 16: Application to Vary or Set Aside Order](#)) must be lodged at the Magistrates Court within 14 days of the initial order. An application fee will be payable. If the application is lodged after 14 days of the initial order you would also need to apply for the timeframe to be extended explaining why it is necessary in your case (*Residential Tenancies Act*, section 84). A Form 16 is available from the

Magistrates Court or can be downloaded from the Magistrates Court website (www.magistratescourt.wa.gov.au). For more information see 'What if I was not in court when a decision was made' in chapter [6.04 Going to Court](#).

Where an order is made in a case that has not been heard as a 'minor case', you may appeal the decision to the District Court in limited circumstances (*Magistrates Court (Civil Proceedings) Act 2004* (WA), section 40). The appeal must be started within 21 days and the District Court Rules will apply. If you want to appeal a decision in this circumstance you may want to seek legal advice from the Tenants Advice Service or a private lawyer.

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

- [5.03 Applying to the Magistrates Court for a Bond Disposal Order](#)
- [6.02 Seeking a Performance Order from the Magistrates Court](#)
- [6.04 Going to Court](#)