

6.02 Seeking a Performance Order from the Magistrates Court

If you are unable to resolve a dispute with the owner/agent, or the owner/agent is not doing something they are obliged to do, you may choose to proceed directly to the Magistrates Court. You do not need to go through the process of issuing written requests and/or breach notices to the owner/agent.

If the problem is urgent, or the owner/agent has made it perfectly clear that they have no intention of doing what ever it is you are asking them to do, it may be quicker and more effective to go directly to court.

Section 15 of the Residential Tenancies Act (1987) enables the tenant to apply to the Magistrates Court for an Order.

An order may be made:

- Restraining any action which breaches the tenancy agreement (s.15(2)(a)(i)) - also see chapter [3.09 When the Owner is in Breach of the Agreement](#); or
- Requiring action in performance of the tenancy agreement (s.15(2)(a)(ii)) - also see chapter [2.08 The Tenancy Agreement](#); or
- To pay compensation for any loss or injury (other than personal injury) that has been incurred due to a breach of the tenancy agreement (s.15(2)(c)) - also see chapter [3.11 The Duty to Mitigate Loss](#).

Do not withhold or make deductions from the rent in an effort to get the owner/agent to do repairs. This constitutes a breach of your tenancy agreement.

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). 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.

Making the Application to the Magistrates Court

You will need to make application on a [Form 12: Application for Court Order](#). The Form 12 asks for you (the applicant) and the owner's (the respondent) details. You should name the owner as the respondent, even if the property is managed by an agent. If you do not know the owner's address, list it as care of the agent's address. If you're not sure about the owner's name check your tenancy agreement; the name should be written there.

The form has two main sections which must be filled in:

- **Reason for Application**

State what you have requested the owner to do or not do. Give brief details of the attempts you have made to resolve the problem and the owner's response. Attach a separate piece of paper if more space is needed to write the details. On the application form write "See Attached". Copies of any significant documents may also be attached. The court will require you to provide four (4) copies of any attachments.

- **Order Required**

State clearly what you want the owner to do or not to do (whichever is applicable). You can also ask for a time limit. For example, that the owner fix the hot water system within three days. Make sure to be reasonable when specifying time limits. A reasonable time limit will vary according to what is required to be done.

PLEASE NOTE: Tenants and advocates should refer to the chapters in this Manual that relate to particular tenant problems as specific details need to be included on the application form and considered when presenting the case.

Also see chapter [6.04 Going to Court](#) for more details about the Form 12, and chapter [6.03 Preparing for Court](#) for more information on presenting your case in court.

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

- [2.08 The Tenancy Agreement](#)
- [3.09 When the Owner is in Breach of the Agreement](#)
- [3.11 The Duty to Mitigate Loss](#)
- [6.03 Preparing for Court](#)
- [6.04 Going to Court](#)

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