

6.04 Going to Court

This information sheet explains the process involved in making an application to, and appearing in, the Magistrates Court.

What is the Magistrates Court?

The Magistrates Court minor cases is the court which deals with disputes between owners and tenants under the *Residential Tenancies Act 1987 (WA)*.

Applications for hearings must be lodged as a minor case at the Magistrates Court closest to the address of the property being rented. If you are unsure, check with the Magistrates Court. It may be possible for another Magistrates Court to hear an application if both the owner and tenant give their consent at the time of lodging the application.

Why should I go to court?

You should go to the court if you want to take action against the owner, or if the owner takes action against you.

PLEASE NOTE: Do not withhold your rent to try and make the owner fix a problem (e.g. repairs) because you will be in breach of your tenancy agreement and the owner can take action against you.

Going to court is usually a last resort action if you and the owner have a dispute you can't sort out. You can apply straight to the court to try and sort out the problem. This may be appropriate if the owner has indicated they will not do what you ask. Otherwise it is usually more appropriate to try and resolve the problem before going to court.

The dispute might be about the owner's failure to meet their responsibilities to you (such as for repairs and maintenance, or your privacy and quiet enjoyment of the premises) or the owner's claim that you have failed to meet your responsibilities (such as to pay the rent owing and keep the place reasonably clean and undamaged). The dispute might also be about the return of bond monies and/or whether the tenancy should be terminated. If you are seeking a rent reduction, keep in mind that the court can only make an order that rent be reduced from the date of the court application.

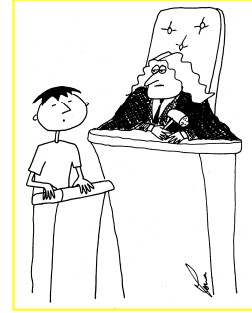
OWNER OR AGENT?

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 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.

Do I have to have a lawyer to go to court?

No! The Magistrates Court is a relatively low cost, informal court. Tenants and owners (parties to the proceedings) represent themselves. A party may be represented by an "agent", such as a real estate agent or tenant advocate, if the court is satisfied that:

- "the party is unable to appear personally or conduct the proceedings properly himself", and
- "no other party will be unfairly disadvantaged by the fact that the agent is allowed to so act" (*Residential Tenancies Act 1987 (WA)*, section 22(2)).



It is quite common for private owners to be represented by a real estate agent, and for the Department of Housing to be represented by one of its regional recovery officers. It is not common for tenants to be represented by an agent.

You can ask the court for permission to have another person to present your case for you. However, you will need to convince the court that it is fair that you have help that other tenants don't usually get. For example, if you have a medical reason (in which case a doctor's letter of support will be useful).

If you are representing yourself but would like some support, you can have a "friend" in court sitting beside you to help by taking notes and providing support (commonly known as a McKenzie's Friend). The "friend" may not address the court or act on your behalf without the court's permission.

A party may only be represented by lawyers in special circumstances. For example, if both parties agree and the court is satisfied that it will not unfairly disadvantage the other party, or if one of the parties is a legally qualified person (s.22(3)).

When will my case be heard?

You may have to wait two to three weeks before your dispute is heard (s.14). Waiting times for hearings vary from court to court. Further information can be obtained from the Registrar at the Magistrates Court. Urgent applications may be listed at short notice but you will need to convince the court as to why your case should be given urgent consideration.

What will it cost me?

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.

You can include the refund of the fee as a claim on your application if the application is made on a **Form 12: Application for Court Order** (see a sample Form 12 attached at the end of this chapter). The court may order the owner to pay the application cost to you if you are successful.

You will be charged \$18.00 (as at February 2008) if applying to defend a bond dispute. You will be charged this fee when the owner/agent applies to court on a **Form 6** and you have to lodge a **Form 5** stating why you dispute the owner/ agent's claims. See chapter 5.03 Applying to the Magistrates Court for a Bond Disposal Order for more information

What orders can the court make?

The *Residential Tenancies Act 1987(WA)* allows the court to make various orders depending on the individual circumstances.

The court may issue an order to:

- terminate the tenancy agreement (section 60);
- stop further breaches of the agreement (s 15(2)(a)(i));
- make sure obligations, under the agreement are acted on (s 15(2)(a)(ii));
- pay any amount payable under the agreement (s 15(2)(b));
- award compensation for loss or injury (except personal injury) caused by a breach of the agreement (s15(2)(c));
- authorise payment of rent into a registry (the court) until the owner carries out an order (eg. repairs)(s15(2)(d)); and
- provide for anything else the Magistrate considers appropriate (s 15(2)(e)).



How do I apply for a hearing?

To apply for a hearing you must lodge an application form with the Magistrates Court. There are two types of application forms, a **Form 12 Application** and a **Form 6 Application**. Samples of each are attached to the end of this chapter. *PLEASE NOTE: Tenants and advocates should also refer to the information sheets relating to particular tenant problems.*

A Form 12 Application

You must lodge this form for a general dispute, and sometimes if you are trying to recover bond money not lodged in a joint account, or you are applying for the return of your bond plus other orders.

This application form 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 12 Application** has two main sections:

1) Reason for Application:

You should state what you have asked the owner to do or not do, and that they refused to do what you have asked. Give brief details of the attempts you have made and the owner/agent's response. Provide as much information as necessary in brief point form. Attach a separate piece of paper if more space is needed. You will need to provide the court with four copies of any attachments when you lodge your application.

2) Order Required:

You must state the orders that you want the court to make. If it is a number of things you should list each one. For example:

- that the owner carry out maintenance and repairs (*list them*) (s. 42)
- that the owner install locks (*list them*) (s. 45)
- that the owner not enter the premises unless they have given the required notice (s. 46)
- that the owner reimburse the cost of urgent repairs (*list them*) (s. 43). (*Make sure you have receipts and can claim under this section of the Act.*)
- that the rent be reduced to \$XXX (s. 32). (*Rent can only be reduced from the date of the court application.*)
- that the tenancy be terminated for the owner's serious breach of agreement (s. 75). (*State the date you would like this to be effective from.*)

As a general rule, while in the court you can only raise the issues and request the orders listed on the application form. The court can allow an amendment to your application (s. 20) but this is not guaranteed. You should try to list all the problems when you apply.

A Form 6 Application

You must lodge this application for bond disputes when the bond is held by the Bond Administrator, in a joint bank account or a Tenancy Bond Trust Account. For further information see 5.03 Applying to the Magistrates Court for a Bond Disposal Order.

You must provide the following information:

- your full name and address;
- the owner/agent's full name and address;
- the address of the rented property;
- when the tenancy started and ended;
- the weekly rent;
- the amount of bond money you paid;
- which bank/building society/credit union the money is in;
- the amount of money you want returned and how much should be kept by the owner/agent (if any); and
- why there is disagreement on how the bond is to be given back or divided up.

What if I want to make an application in response to the owner's application?

This is called making a “**cross application**”. A cross application may be necessary if you believe there are issues which should be taken into account by the court but they are not stated on the owner's application. This is because the court may only hear matters which have been listed for hearing. If you try to bring up other issues, the court may not be able to hear them and you would have to apply separately about those matters; even if you believe they should be heard at the same time.

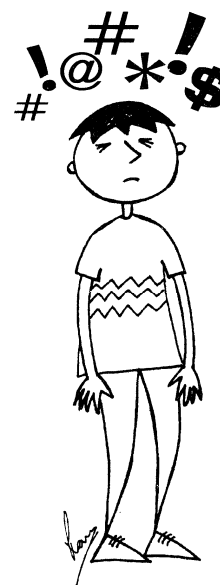
A cross application is made when a *Form 12 Application* has been made to the court and the other person wants to have their claim heard at the same time. Cross applications do not apply if the owner has applied on a *Form 6*. If the owner has applied on a *Form 6 (Application for Disposal of Bond Money)*, you will be sent a *Form 5 (Notice of Intention to Dispute Application for Disposal of Bond Money)* to make your response.

How do I make a “Cross Application”?

A cross application is made on a **Form 12**. When you lodge your form with the court you should take the owner's application with you so that it can be listed for hearing at the same time (s.20(j)).

You will usually have to pay a fee for a cross application. However, some Magistrates Courts do not charge a fee for a cross application as they consider it to be part of the dispute. Others do charge the usual filing fee and your cross application will carry a different Case number.

When the matters are heard by the court, the person hearing the case may choose to hear them both at the same time, or first one, then the other. See chapter [6.02 Preparing for Court](#) for more information on how to prepare for the hearing.



What is a Conciliation Conference?

Before appearing in court, the clerk may ask if you and the owner/agent want to try and come to an agreement at a conciliation conference or pre-trial conference. This is not compulsory. If you prefer, you can go straight to court. However, it is a good opportunity to find out what the owner wants to present to the court and if there is any chance of settling the matter.

If you work out a solution with the owner/agent at the conciliation conference it will be confirmed in court as a Consent Order without you having to go through a full hearing. A Consent Order is binding, the same as if your case had been heard in the court.

What happens at the court hearing?

You should arrive at the court before the listed hearing time and notify the bailiff (court official) that you are there. The court will have informed the owner/agent of the hearing date and time. Yours will not be the only case listed for a hearing at that time so you may have to wait a while to be called into the court. Sometimes it can take several hours so you might like to take some reading material and refreshments to keep you going! If you have children, it's a good idea if child care can be arranged or if someone can go with you to the court to look after them while your case is being heard.

If the owner/agent does not appear, you can tell the court that you want the hearing to go ahead and that you oppose any adjournment (putting the hearing off for another day) because you need the problem resolved as soon as possible.

If there was no conciliation conference, the court may ask you and the owner/agent to go outside and try to solve the problem before the hearing starts. If you feel that this would not be appropriate, you should say so and why. If you do go outside and reach an agreement, the court may confirm it as a Consent Order. Do not agree to anything you are not happy with. If your dispute is not sorted out the court will hear your case.

How do I present my case?

Each court has its own way of conducting a hearing, so what happens might be different to what is written on this information sheet. The general process is if you lodged either a **Form 12 application** or a **Form 6 application** you are the applicant and you should be allowed to speak and call your witnesses first.

You should take prepared notes to help you give clear evidence and remind you of what to say. Use your notes only as a prompt as the court will expect you to present evidence from memory. When presenting the case you should state:

- Each problem or issue and, if appropriate, how it affected your tenancy. Tell the court when and how you asked the owner/agent to resolve the problem. Present any copies of letters and/or breach notices as evidence; and
- What orders you would like from the court. Make sure you ask for a deadline for the owner to do whatever it is and, if relevant, ask that the rent be paid to the court until the problem is fixed.

What is cross-examination?

Once you have presented your case, the Magistrate may ask you some questions or ask the respondent (the owner) or the respondent's agent if they would like to cross examine you. This means that the owner/agent will ask you questions to "test" your evidence. Answer questions clearly and accurately. Take your time and if you do not know or cannot remember something just say so. If you don't understand the question, just ask for the owner/agent to ask it in a way that you can understand.

You may not have to respond to questions which are not relevant to the dispute. A question like "*Do you always pay your rent on time?*" may not be relevant to whether the owner should have done necessary repairs and you can ask the court if you have to answer it. However, under section 15(4), the Magistrate can take any previous breach by a tenant into account.

After you have called your witnesses (if you have any) and asked them questions that support your evidence, they may be cross-examined by the owner.

Can I question anything the owner/agent says in court?

When the owner/agent is asked to tell their side of the story you should listen carefully and take notes on anything you disagree with. When the owner/agent has finished the court will ask if you want to question (cross examine) the witness. Say yes if you want to ask any questions or challenge any evidence they have given.

You should question the owner/agent about anything they have said which is not true or is only partly true. If you don't question the owner/agent's evidence the court may think that you do not dispute the information. You will also get a chance to question the owner/agent's witnesses once they have presented their evidence. The Magistrate or Registrar may also ask some questions.

When does the Court make a decision?

Once all the evidence has been presented the court will make a decision and read it out. In some circumstances, You should receive a copy of the order from the court in the mail a few days later or you can arrange to collect it. (Make sure the court has your right address so you get the order.) If you have a good reason, some courts will let you wait while the order is written up. After the hearing, please contact Tenants Advice Service to let us know how it went, and any suggestions for other tenants going to court.

What if I wasn't in Court when a decision was made?

You can apply for a court order to be "varied" or "set aside" if you were not in court when a decision was made (s.17(1)). You will need to fill out a **Form 16: Application to Vary or Set Aside Order** (see sample form at the end of this info sheet). The cost for lodging this application is \$18.00 (as at February 2008). Upon lodgement you will be given a new hearing date.

The *Form 16* application must be lodged within 14 days of the order having been made (s.17(2)). However, if you have good reasons for not being able to lodge it within 14 days, the court may be able to give you an extension of time (s.20(f)). If the order was for termination of your agreement, you will also need to act quickly before the owner gets or applies for a Property Seizure and Delivery Order. See chapter [4.07 Evictions](#) for more information.

At the hearing to set aside the order, you will have to have a **valid reason** as to **why** you were unable to attend the first hearing. You will also need to convince the court that you have a good case and that you may be successful at a new hearing. If you are successful, some courts will set aside the order and make a date to come back for rehearing. Others will immediately hear the case, so you will need to be well prepared (see chapter [6.02 Preparing for Court](#)).

In addition to the application to vary or set aside, section 15 *Civil Judgments Enforcements Act 2004 (WA)* (CJEA) allows a party to apply for an order suspending any order if 'special circumstances' justify doing so. The application process under the CJEA is a little different to normal residential tenancy matters. In addition to filling out the form, the applicant must complete an affidavit (a written declaration made under oath), outlining the reasons for wanting the order suspended. Remember to include any 'special circumstances' (such as extreme hardship) in your affidavit to show why the Court will be justified in suspending the order. If you are successful in this application, the Magistrate may suspend the order for up to an indefinite period of time.

What happens after the hearing?

If the court order is to pay money:

If the court has ordered the payment of money and the money is not repaid, the person who is owed the money has the choice to:

- Apply for a **Property (Seizure and Sale) Order**. This means a bailiff can seize goods or land to the value of the order if the money is not paid. The bailiff can then sell the goods or land to get the money. There is a charge for a **Property (Seizure and Sale) Order**. The person who owes the money must also pay this back if the bailiff is successful.
- Apply for a **Means Enquiry**. This means the person who owes the money must go to court and explain their financial circumstances. If the person cannot afford to pay all the money owing at once, the court can order the

person to repay the money at a reasonable rate (by instalment) according to what is affordable given the budget of the individual.

If either of these circumstances apply to your case, you should seek advice from Legal Aid, a financial counsellor or a community legal centre (see chapter [1.12 Community Contacts](#)).

If the court order is to evict:

If an order is made that you must give "vacant possession" of the premises, this means you and all your belongings must be out of the premises by the date stated on the order. If you are not out by then you can be physically removed by the Bailiff. See chapter [4.07 Evictions](#) for more information.

You should leave the premises in the same condition as when you first moved in, less fair wear and tear. If you don't, the owner/agent can seek another order that you pay for anything that needs fixing. It is good to have a witness to the condition you left the premises in. Write out your own property condition report and have your witness sign it.

If you have left any of your belongings at the premises you should try to arrange with the owner to get them back. Any arrangements should be confirmed in writing. See chapter [4.06 Abandoned Premises and Goods](#) for more information on what happens to goods left at premises.

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

- [1.12 Community Contacts](#)
- [4.06 Abandoned Premises and Goods](#)
- [4.07 Evictions](#)
- [5.03 Applying to Magistrates Court for a Bond Disposal Order](#)
- [6.02 Preparing for Court](#)

SAMPLE FORMS ATTACHED:

- ***Form 6: Application for Disposal of Bond Money***
- ***Form 12: Application for Court Order***
- ***Form 16: Application to Vary or Set Aside 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	
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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	
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Registrar		Date	
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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.								

MAGISTRATES
COURT:
REGISTRY
PH:
FAX:

RESIDENTIAL TENANCIES ACT 1987 (WA)
Section 17
APPLICATION TO VARY OR SET
ASIDE ORDER
FORM 16

Case number:
Date lodged:

SAMPLE

Method of service:

APPLICANT(S) Tick [✓] a box <input type="checkbox"/> Owner <input type="checkbox"/> Tenant	Name:
	Address: Postcode:

RESPONDENT(S) Tick [✓] a box <input type="checkbox"/> Owner <input type="checkbox"/> Tenant	Name:
	Address: Postcode:

On the _____ day of _____ 20____ an order was made by the Court in my absence.

I hereby make application to have that order set aside/varied for the following reasons (*give details*):

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

Take notice that this application has been set down for hearing in the Magistrates Court at:

on _____ day, the _____ day of _____ 20____

at _____ am/pm.

Registrar		Court Seal	Date	
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To the owner (name and address)	
To the tenant (name and address)	