



Before Applying to Court

It is always best to try to negotiate an outcome with the lessor before applying to court.

If you and the lessor cannot resolve the dispute by negotiating, then either party may apply to the Magistrates Court to settle the matter.

The first court hearing is usually a negotiation or mediation. A Registrar assists with this process and may make orders if you negotiate an agreement with the other party. A number of matters are settled at this stage rather than proceeding to trial.

*In the
**Residential
Tenancies Act**
the **landlord** is
referred to as
the **lessor**.*

THE MAGISTRATES COURT

In Western Australia, residential tenancy matters are heard in the Magistrates Court of Western Australia. The most common tenancy disputes that proceed to the Magistrates Court include:

- Bond disputes (usually where there is a significant amount in dispute);
- Rent arrears terminations;
- Maintenance and compensation or rent reduction claims; and
- Compensation claims for intentional or negligent damage.

Depending on the amount and nature of the claim, either a residential tenancies application (under the minor case jurisdiction), minor case claim or a general procedure claim will be commenced.

RESIDENTIAL TENANCY APPLICATION

A residential tenancy application can be commenced in the Magistrates Court if your agreement is covered by the *Residential Tenancies Act 1987 (WA)*, you have a dispute with your lessor or co-tenant and the amount being claimed is not more than \$10,000.

A residential tenancy claim is made under the minor case jurisdiction, but residential tenancy matters have their own forms, specific to disputes between tenants and lessors. If you are unsure if you are covered by the Residential Tenancies Act, contact [Circle Green Community Legal](#) or your local community legal centre.

MINOR CASE APPLICATION

A party claiming any debt or damages up to \$10,000 can lodge a minor case application (this is not specifically residential tenancy claims). The most common example of when you may need to lodge a minor case application, rather than a residential tenancy application, is if you are not covered by the *Residential Tenancies Act 1987 (WA)* (i.e., if you are a boarder or lodger, or if you are on a holiday agreement).

This fact sheet is not specific to minor case claims so you should seek legal advice if you think

this may apply to your situation.

GENERAL PROCEDURE APPLICATION

If the claim is for an amount of \$10,000 - \$75,000 then it is heard under the general procedure jurisdiction. If a claim is more than \$10,000, parties can still agree in writing that the matter is heard in accordance with the minor cases procedure.

Under the general procedure jurisdiction:

- Parties are entitled to legal representation;
- Successful parties can usually recover costs from the unsuccessful party; and
- The application fees are higher.
- If a claim is for more than \$75,000, it must be dealt with by the applicable higher court, in accordance with that court's practice and procedures, and with reference to the *Residential Tenancies Act*.

This fact sheet does not apply to claims above \$10,000 - If the amount claimed is more than \$10,000, you should seek legal advice from Circle Green Community Legal, your local community legal center or a private lawyer.

RELEVANT LEGISLATION

A number of Acts and Regulations co-exist to govern how residential tenancies claims up to \$10,000, proceed in the Magistrates Court. The Acts outline various things including, but not restricted to, jurisdiction (what court can hear what matters), the process for lodging and serving documents, and the procedure for hearings etc.

The relevant legislation includes:

- *Residential Tenancies Act 1987* (WA);
- *Residential Tenancies Regulations 1989* (WA);
- *Magistrates Court Act 2004* (WA);
- *Magistrates Court (Civil Proceedings) Act 2004* (WA);
- *Magistrates Court (Civil Proceedings) Regulations 2011* (WA);
- *Magistrates Court (Civil Proceedings) Rules 2005* (WA);
- *Magistrates Court (Fees) Regulations 2005* (WA); and
- *Magistrates Court (Minor Case Procedure) Rules 2005* (WA).

This fact sheet is current as at 1 July 2022.

Disclaimer

This fact sheet only contains general information. This fact sheet is not legal advice and should not be relied on as a substitute for legal advice. You may wish to seek advice from a lawyer regarding your own particular circumstances. We are not responsible for any consequences arising from your use of, or reliance on, the information contained in this fact sheet.

Further information about our disclaimer and your use of this fact sheet can be found here:

www.circlegreen.org.au/disclaimer/

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FURTHER HELP – TENANTS’ ADVICE AND ADVOCACY

Circle Green Community Legal

(08) 6148 3636

www.circlegreen.org.au

Department of Mines, Industry Regulation and Safety

www.dmirs.wa.gov.au, **Consumer Protection** for consumer and tenancy related matters

commerce.wa.gov.au/consumer-protection | 1300 304 054

METROPOLITAN COMMUNITY LEGAL CENTRES

Fremantle CLC

(08) 9432 9790

www.fremantle.wa.gov.au/fclc

Gosnells CLC

(08) 9398 1455

www.gosclc.com.au

Midland Information Debt & Legal Advocacy Service

(08) 9250 2123

www.midlas.org.au

Northern Suburbs CLC (Joondalup)

(08) 9301 4413

www.nsclegal.org.au

Northern Suburbs CLC (Mirrabooka)

(08) 9440 1663

www.nsclegal.org.au

Southern Communities Advocacy & Legal Education Services (SCALES)

(08) 9550 0400

murdoch.edu.au/School-of-Law/Clinical-Legal-Education-SCALES

Sussex Street CLS

(08) 6253 9500

www.sscls.asn.au

Welfare Rights & Advocacy Service

(08) 9328 1751

www.wraswa.org.au

REGIONAL COMMUNITY LEGAL CENTRES

Albany CLC

(08) 9842 8566

www.albanyclc.com.au

Goldfields CLC

(08) 9021 1888 | 1300 139 188 (if outside Kalgoorlie-Boulder)

www.gclc.com.au

Kimberley Community Legal Services :

www.kcls.org.au

- **Kununurra**
(08) 9169 3100 | 1800 686 020 (freecall)
- **Broome**
(08) 9192 5177

Peel CLS

(08) 9581 4511

www.peelcls.com.au

Pilbara Community Legal Services:

www.pcls.net.au

- **Karratha**
(08) 9185 5899
- **Newman**
(08) 9140 1613
- **Roebourne**
(08) 9185 5899
- **South Hedland**
(08) 9140 1613

Regional Alliance West

(08) 9938 0600

www.raw.org.au

South West CLC

(08) 9791 3206 | 1800 999 727 (freecall)

www.swclc.org.au

Wheatbelt CLC

(08) 9622 5200

www.wheatbeltclc.com.au