Circle Green Community Legal

Court Process

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

The minor case jurisdiction in the Magistrates Court is less formal than other courts, but it is still normal to feel nervous about the court process, especially if you have not attended court before.

Make sure you arrive on time, or early if possible, and let the court staff know that you are there (either at the reception or with the court orderly).

Be prepared to be at court for a while – although you may be listed early in the morning, your matter may not be called until the afternoon. This will depend on the court and the number of matters listed for that day.

The hearings are held in private, meaning that it is usually only you, the lessor (or their real estate agent), your representatives (if any, such as a person employed as a tenant advocate), and the court staff present in the room. The hearings are not open to the public.

REPRESENTATION

In residential tenancy matters, parties usually present their own case.

A tenant may only be represented or assisted by another person if that person is employed or engaged by a non-profit association or similar body to act as an advocate for tenants in proceedings (a tenant advocate working in a community legal centre).

A lessor may only be represented or assisted by their property manager.

Solicitors may only represent a party in the following circumstances:

- All the parties agree, and the court hearing the proceedings is satisfied that any party who is not represented will not be unfairly disadvantaged;
- One of the parties is a legally qualified person;
- One of the parties is a body corporate and any other party elects to be so represented;
- The court is satisfied that one of the parties is unable to conduct the proceedings without representation by a legal practitioner; or
- The proceedings are instituted or defended, or the conduct thereof has been assumed, by the commissioner.

A legal practitioner can represent a tenant against a body corporate (e.g., Housing Authority or Community Housing) but cannot usually represent in private matters unless one of the above applies.

DUTY ADVOCACY

At court, there may be a tenant advocate or solicitor from the local community legal centre providing a duty advocacy service. If so, the advocate may be able to provide you with initial advice and potentially assist in negotiations (if they have time to do so). A duty advocate cannot represent you at a final hearing.

Contact your local community legal centre to see if they offer this service at the local court.

THE FIRST HEARING – PRE-TRIAL CONFERENCE

The first hearing is typically a negotiation or mediation before a Registrar called a pre-trial conference (this may be different in regional or remote courts). The Registrar will assist parties to reach an agreement rather than proceeding to trial.

If the matter is listed before a Magistrate, the Magistrate can still refer it to a pre-trial conference before proceeding to trial. The pre-trial conference is conducted on without prejudice basis, meaning that anything discussed in the conference, or any offers made, will have no impact on further hearings.

The Registrar can only make orders if both parties agree to the orders. Do not feel pressured to agree to something you definitely do not agree with.

The Registrar will give both parties an opportunity to speak. The Registrar may also speak to both parties separately, to see what each party may be willing to accept/offer to settle the matter rather than proceeding to trial.

The Registrar may view your evidence to assist with the negotiations but cannot make a decision or give any orders based on the evidence, unless both parties agree to it.

Before you attend court you should have an idea about what the best and worst outcomes are in your circumstances. You will have to do some research and/or get some advice before attending court to decide what this will be. This will assist your negotiation and avoid you agreeing to something you do not want.

If parties reach an agreement then the Registrar can draft consent orders. The Registrar will read the orders to you and make sure you understand them before making them. In some cases, the Registrar will have you sign the orders. In other cases, the Registrar will simply make the orders after you verbally agree to them. This ends the matter and there is no need to proceed to trial.

If you and the lessor cannot reach an agreement, the matter will be listed for trial before a Magistrate. The hearing may be on the same day, or set down on another day depending on the court's availability.

If the hearing is listed for a later date, you can continue to negotiate up to the hearing, however once the trial is conducted and the Magistrate makes a decision, it is final and binding on all parties. This is important to keep in mind because the Magistrate may make an order that is less favourable than you would have been willing to accept during the negotiations.

The first hearing is also a good opportunity to request copies of any documents that you have not received from the lessor yet (e.g.property condition report, rent ledger, quotes, invoices, photos of alleged damage). It is a good idea to seek consent orders for the lessor to provide these to you within a certain time frame.

THE FINAL HEARING - TRIAL

If you cannot reach an agreement at the pre-trial conference then the matter will proceed to a trial before a Magistrate.

At the trial, the Magistrate will listen to you, the lessor and either of your representatives. They will view any documents (letters, emails, invoices, quotes), photos or other evidence, and will ask both parties questions.

There is no more ability to negotiate at this stage – the Magistrate takes into account all of the evidence and makes a determination based on the law and the evidence provided. This decision is usually made on the same date and then the Magistrate will also make orders (directing parties to do something).

CONDUCT OF THE HEARING AND PRESENTATION OF EVIDENCE

Both you and the lessor will be given the opportunity to present your case. As you have limited time, it is best to prepare a statement of what you want to say and have it ready in front of you. Highlight the most important parts and have any relevant documents easy to access (see our Preparing for Court factsheet.

Oral evidence is typically given on the stand, under oath or affirmation –you and your witnesses are required to tell the truth and it is an offence to mislead the court.

The person who has lodged the application (the applicant) presents their case first. The applicant provides their oral evidence, any documents in support of their case and calls their witnesses. The respondent will be given the opportunity to cross-examine (question) the applicant and their witnesses.

The respondent then has the opportunity to provide their evidence in response to the applicant's case, provide their documents and call their witnesses. The applicant has the opportunity to cross-examine (question) the respondent and their witnesses.

The Magistrate can also question parties and their witnesses on their evidence or clarify any points if necessary.

Do not interrupt the other party or the Magistrate while they are talking. If you do not agree with what is being said, take a note of this and clarify it later or when you are given the opportunity to speak or question the other party/witness.

THE OUTCOME

After hearing both parties, the Magistrate may stand the matter down and take some time to consider the evidence and the law before making a decision.

The Magistrate will then give their decision and provide orders – these are directions on what both parties are required to do. If you do not understand the decision or the orders, you can ask the Magistrate to explain it to you again. You will be sent a written copy of the order after the hearing.

Examples of orders that the Magistrate may make include:

- Ending a tenancy agreement – orders will usually include a date when the tenant is required to vacate the premises;

- How bond money will be divided and paid out;
- Stopping an action that is a breach of the tenancy agreement (e.g. tenant not to cause or permit a nuisance);
- Requiring an action in performance of the tenancy agreement (e.g. for the lessor to conduct maintenance) ;
- Payment of compensation due to breach of agreement for loss or injury (other than personal injury), caused by the breach (e.g. rent reduction or compensation due to lessor failing to conduct repairs to the proeprty);
- Payment of rent into the court until the lessor carries out the Magistrate's order to remedy a breach or for compensation; and
- That the application is dismissed (e.g. if the lessor has applied for termination, the Magistrate can order that their application is dismissed if the application is unsuccessful).

REVIEW OF A DECISION (APPEALING A DECISION)

There are limited opportunities to appeal a minor case decision from the Magistrates Court, which is why it is important to attend court when required. It is important to obtain legal advice based on your individual circumstances before applying for a review of a decision.

If you miss a court hearing and an order has been made in your absence by a Magistrate, you may be able to lodge an application to vary or set aside the order. This application needs to be made within 14 days of the decision being made.

If the order was made by a Registrar, you have a right of appeal. You will need to call the relevant Court to determine which form you should lodge. This will either be a Form 1B (Appeal against a Registrar's Decision in a claim not exceeding $10 000) or a Form 16 (Application to vary or set aside). The Form 1B must be lodged within 21 days of the order being made, and the Form 16 must be lodged within 14 days of the order being made. If you need the orders to be suspended until your appeal is heard, you should also lodge a suspension application (Form 9), with a supporting affidavit (Form 2) (you might need to get the orders suspended if you have been ordered to vacate the premises).

There are no appeals against the decision of the Magistrate where both parties were present, except on the grounds that the court did not have jurisdiction to hear the case or natural justice was denied (for example, if you can show you were at court but you weren't given any opportunity to state your case). The appeal must be made to the Supreme Court of Western Australia.

If you are considering seeking a review of a decision, contact Circle Green Community Legal or your local community legal centre as soon as possible for advice.

This fact sheet is current as at 18 December 2025.

FURTHER HELP – TENANTS ADVICE AND ADVOCACY

Circle Green Community Legal
(08) 6148 3636
www.circlegreen.org.au

Consumer Protection for consumer and tenancy related matters
commerce.wa.gov.au/consumer-protection | 1300 304 054

To find a tenant advocate in your area, visit our website or use the QR code →

https://circlegreen.org.au/resource/find-a-tenant-advocate

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