



Eastern Area Tenants Service

local tenancy information resource

number 4B

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Try to get all the important details of your housing agreement in writing. This could be vital if things go wrong in future.

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Find out proper contact details for the person you are renting your from – their postal address, phone number, and whether they own or are renting the property you live in.



Legal options for boarders, lodgers and non-standard renters

Many renters living in share housing or small boarding houses don't have the same legal rights as mainstream tenants or people who live in large boarding houses. Most of these people can get their cases dealt with by the NSW Civil and Administrative Tribunal (NCAT).

Small Claims Division of the Local Court

If you are a lodger renting from a head tenant or a subtenant without a written agreement, or you are boarding or lodging in a property with less than 5 residents it can sometimes be hard to recover your security deposit or overpaid rent. You may be able to make an application in the Small Claims Division of your Local Court to recover money under \$10,000.

Before you consider legal action in the Local Court

Going to a court of any kind can be costly, time consuming and inconvenient. The Small Claims Division is no exception. Before you think about going to court you should consider:

- Can you negotiate with the person you are renting from to get an outcome that you are satisfied with?
- Have you tried mediation at a Community Justice Centre?
- How much money do you want to recover and how does that balance with the costs of applying and the time and effort required to go through the court?
- How much information do you have about the person you

are renting from? Do you have their legal name and address (home or work)?

- Do you have evidence that you have paid the money you want returned to you? You should have a receipt from the person you paid it to. You also should have evidence of what the money was for and why you should have it back;
- How much time do you have to commit to going to the Court? You may have to take time off study or work and will probably have to attend the court a number of times

Going through the Local Court small claims division

If you want to go to the Small Claims Court to recover money owed to you your first step should be to go to the Local Court New South Wales Website:

<http://www.localcourt.justice.nsw.gov.au>

You should also check out LawAccess NSW online:

http://www.lawaccess.nsw.gov.au/Pages/representing/lawassist_debt_small_claims_home/lawassist_debt_small_claims_home.aspx

The first step is sending a letter of demand to the person who owes you the money. A sample letter of demand can be found on the Law Access website:

If the person who owes you the money ignores your letter of demand, or refuses to pay, the next step is to file a Statement of

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It is a very good idea to get informed advice about your legal rights from a service like EATS (see number below).

It is important that you find out your legal position BEFORE you start on a course of action.



Claim at your Local Court in the small claims division.

Filing a Statement of Claim

You (the 'creditor') file a statement of claim with your local court and pay the fee to file the statement of claim – this fee is \$95 at the time of writing

Serving the Statement of Claim

The statement of claim must be given directly to the person who owes you money (the 'Debtor'). This is called 'service'. The Court will serve the statement of claim on the person who owes you money for a fee – this fee is \$40 at the time of writing – or you can serve the statement of claim yourself. For information on how to serve documents, check out the "small claims" tab at <http://www.lawassist.lawaccess.nsw.gov.au>.

The person who owes you money decides what to do

The person who owes you money can decide to:

- Ignore the notice;
- Argue that they should not have to pay the money;
- Negotiate with you;
- Admit the debt

If the person who owes you money ignores the statement of claim you can apply for default judgment and an order will be made by the Court for the money to be paid to you.

If the person who owes you money argues that they should not have to pay the money they will file their own document called a defence. This must be served on you.

If they negotiate with you and a good outcome is reached, the matter is resolved and you can ask the court to discontinue your case.

If the person who owes you money admits the debt, they must file an acknowledgement of liquidated claim. The court will

then order them to pay the money to you.

If the debtor denies the debt

If the debtor denies the debt and files a defence, you and the debtor (now called the defendant) will have to go to a pre-trial review.

A pre trial review is an opportunity for you and the defendant to discuss the debt with a legal officer to try to negotiate a settlement of the matter. If this does not work, a hearing date before a Magistrate will be made. The Magistrate will make a decision based on the law and evidence of the parties.

The court hearing will not be too technical/legal. The Magistrate will ask you questions about the debt and will ask to see your evidence. The Magistrate will also give the defendant an opportunity to put their side and show their evidence.

The Magistrate may decide that the defendant does not owe you the money, and dismiss your claim. If the Magistrate decides that the defendant does owe you money, they will make an order for the defendant to pay you.

What if they don't pay?

Sometimes going to court and getting an order is not the end of the matter. If the defendant does not follow the court order, you may have to take further steps to get your money back. This is called enforcing a judgment.

Before you try to enforce a judgement, you should think about the following:

- Does the person you are claiming against have the ability to pay you?
- Do you want to pay the fees associated with enforcing the judgment? – The fees are added to the total debt paid by the person who owes you the money, but if they can't pay, then you are left with this cost

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Evidence is key when things go wrong. You should ensure that you have receipts for all money paid and that you keep your own records. You should also make sure you have the legal name of the person you are renting from and either their home or work address

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Negotiating with the person who owes you money may not get you all the money back, but it might save you a lot of time and effort.



You have 12 years from the date of the judgement to enforce the debt. You can also add interest to the debt from the date that the judgment was made to the date that it is paid.

Enforcing a judgment order

There are various ways of enforcing a judgement order. The most effective for people who want to recover money from someone they rent from are the following:

- Writ for the levy of property
 - The sheriff will go to the property of the person who owes you money and will seize goods equal in value to the judgment debt to be sold.
 - (No filing cost, but \$80 each time the sheriff attends the defendant's property, plus 3% levy on money made by selling the defendant's goods)
- Garnishee Order (no filing fee)
 - This is where the judgment debt owed is taken out of the debtor's wage in instalments. A certain amount of the debtor's wage is protected each week for them to live off.

For more information on these and other methods of enforcing judgement debts, check out the "small claims" tab at <http://www.lawassist.lawaccess.nsw.gov.au>.

If you do not know the financial circumstances of the person who owes you money you can make them tell you their financial situation by getting an examination notice or an examination order. More on examination notices and orders can be found at under the "small claims" tab at <http://www.lawaccess.nsw.gov.au>.

Things to keep in mind

- Getting money that is owed to you can be very difficult, time consuming and can cost you more money;
- Evidence is key when things go wrong. You should ensure that you have receipts for all money paid and that you keep your own records. You should also make sure you have the legal name of the person you are renting from and either their home or work address;
- Negotiating with the person who owes you money may not get you all the money back, but it might save you a lot of time and effort.

Useful Contacts:

LawAccess

T: 1300 888 529

<http://www.lawaccess.nsw.gov.au>

Community Justice Centres (CJC)

T: 1800 990 777

http://www.cjc.nsw.gov.au/cjc/com_justice_index.html

Redfern Legal Service

(02) 9698 7277

W: <http://www.rlc.org.au>

Kingsford Legal Centre

T: (02) 9385 9566

<http://www.klc.unsw.edu.au>

Macquarie Legal Centre

T: (02) 8833 0911

Marrickville Legal Centre

T: (02) 9559 2899