

Costs

When two parties go to a hearing at the Victorian Civil and Administrative Tribunal they usually have to cover their own costs. However, in some rare circumstances, the Tribunal will order that one party pay the other party's costs.

When will costs be ordered?

The Tribunal will only award costs when it believes that one party has behaved unreasonably, and that their behaviour has cost the other party money. For example, when one party has:

- > behaved in a way that caused unreasonable delay or extra costs
- > applied to the Tribunal without good reason (eg just to 'get at' the other party)
- > forced the other party to take the matter to the Tribunal even though they were clearly entitled to what they were asking for (eg the landlord refused to sign a Bond Claim Form even though they had no claim against the bond)
- > refused a formal offer of settlement from the other party, and the amount of the Tribunal order is less than the amount offered (there are special rules which apply to offers of settlement and costs as explained below)

Offers of settlement & costs

If one party makes a formal offer of settlement and the offer is refused, the person refusing the offer runs the risk of having costs awarded against them. If the result at the Tribunal is less favourable than the offer of settlement, the party that made the offer can ask the Tribunal to order that the other party pay their costs from the date that the offer was made.

For example, if your landlord offered you \$1000 to settle your compensation claim and you refused the offer, and the Tribunal only awards you \$800, the landlord could be awarded costs from the date that they made the offer to the date of the Tribunal hearing.

Formal offers of settlement are not very common in tenancy disputes. For these rules to apply, the offer of settlement must:

- > be in writing
- > be open for acceptance for at least 14 days
- > specify the amount of money that is to be paid, if the claim is for money

Acceptance of the offer must also be in writing. If you receive a formal offer of settlement from your landlord, you should carefully consider whether you are likely to get a better result at the Tribunal, keeping in mind the time and effort required to attend a hearing. Contact the Tenants Union for advice.

What can be claimed as costs?

Costs can be any reasonable amount that the party has had to spend in order to go to the Tribunal and present their case. Costs that have been successfully claimed in the past include:

- > the Tribunal application fee (known as 'disimbursement')
- > travel expenses (eg train ticket, petrol, parking fees)
- > lost income for the time spent attending the hearing
- > costs of getting evidence (eg photo processing charges, photocopying)
- > legal fees (if the party was represented by a solicitor)

How do you claim costs?

If you believe you are entitled to costs, you should ask the Tribunal for an order that the landlord or agent pay costs. You will have to present evidence to show the amount you have lost or spent in going to the hearing (eg a letter from your employer stating the amount of wages you have lost, parking receipts, train tickets etc). The Tribunal can order that the landlord pay you a certain amount, or order that the Principal Registrar

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of the Tribunal decide how much you should be paid.

If you and the landlord agree on the costs, you should ask the Tribunal to make an order to formalise that agreement in writing.

What if the landlord claims costs?

If the landlord asks the Tribunal for a costs order, you can argue that they are not entitled to have their costs paid. You can also dispute the amount that the landlord claims if you think it is unreasonable. The Tribunal will decide the costs you are to pay (if any) or refer the matter for the Principal Registrar to decide. If the matter is referred to the Principal Registrar, contact the Tenants Union for advice on defending the landlord's claim.

For more information phone the Tenants Union Advice Line on ☎ (03) 9416 2577.