

DAMAGE to your HOUSING ACT PROPERTY

A TENANT'S OBLIGATIONS ABOUT DAMAGE TO THE PROPERTY

All tenants, whether public or private, are required to:

1. Take reasonable care of the premises that they rent;
2. Not intentionally or negligently damage the premises; and
3. Notify the lessor of any damage that occurs as soon as possible.

When the tenancy ends, there is also a requirement that the premises be left in substantially the same condition as when the tenancy began, fair wear and tear excepted.

WHAT DOES 'FAIR WEAR AND TEAR' MEAN?

'Fair wear and tear' is a phrase that has been used in tenancy agreements for centuries. There are two parts to its meaning:

1. The 'fair' part of the phrase relates to the cause of the damage. For the damage to be excused, it must have occurred in the course of fair use of the property for residential purposes. So, something like carpet deterioration in high traffic areas of the premises (e.g. hallways) would be excused. On the other hand, motor oil stains on a lounge room carpet clearly would not occur during fair use, and therefore this type of damage would be considered to fall outside fair wear and tear.
2. The words 'wear and tear' refer to the severity of the damage. Minor scuff marks on walls, sun-fading of curtains, or minor oil stains on a concrete driveway would all likely constitute 'mere wear and tear'. Conversely, a large red wine or cordial stain on a

carpet would probably be considered to be beyond mere wear and tear, even though such a stain clearly could have happened through fair use.

So for damage to be considered fair wear and tear, it must: a) have occurred in the course of fair use; and b) be relatively minor.

WHAT IF HOUSING ACT ASKS ME TO PAY FOR DAMAGE TO THE PREMISES?

When a tenancy ends, Housing ACT will often send the vacating tenant/s a bill for 'tenant responsible maintenance' (or 'TRM') charges. If you get such a bill, a large part of it is likely to be costs arising from Housing ACT having to repair damage to the premises. You should carefully consider this part of the bill. Did you cause the damage? Does the quoted cost of repairing the damage seem to be reasonable? Is any of the claimed damage really just wear and tear? Work out whether or not you dispute all or any part of the debt.

WHAT IF SOMEONE ELSE CAUSED THE DAMAGE?

In general, you are responsible for damage caused by anyone who is on the premises with your permission. You are not personally responsible for

damage caused by someone who is on the premises at the request of the lessor, or without your permission. So, if a tradesperson sent by Housing ACT to mend the tiles in the bathroom chips the bath in the process, you are not liable for this damage. Similarly, if an intruder causes damage during an attempted burglary, or someone who refuses to leave your home after you have asked them to leave, you are not liable.

HOW DO I DISPUTE A TRM DEBT?

When Housing ACT raises a TRM debt against you, you can ask for a review of the charges. You should state clearly which of the charges you dispute and why. If possible, attach copies of any evidence you have.

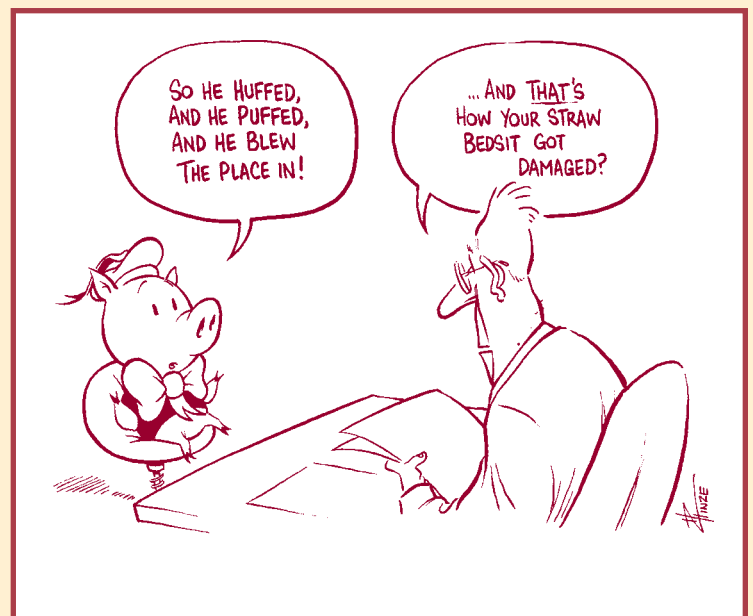
Examples of evidence include:

- ▶ Photographs you took of the premises just before vacating;
- ▶ A condition report from the start of the tenancy that shows the damage you are now being charged for was there when you moved in; and
- ▶ A police report of the incident when an intruder caused damage.

If you are not satisfied with the results of this review, there

Welfare Rights & Legal Centre

Advice line
6247 2177



is unfortunately no further avenue of appeal.

If you decide not to pay the charges, recovery action may begin. If the tenancy has ended, Housing ACT will pass the debt to Collection House, a debt collection agency. Collection House will write to you at any known address and you can at that point enter into an arrangement with them to pay by installments. If no repayments are made, or they

start but then lapse, Collection House may seek to recover the debt in the Residential Tenancies Tribunal ('RTT'). Housing ACT must then prove that the debt is owed, so it is worth defending the application, particularly if you have previously sought an internal review and still have the documentation.

TRM charges are legally not a proven debt until the RTT says that a debt is owed.

Unfortunately, Housing ACT will regard TRM charges they have raised in the same way as any rent owing — as a debt. The law allows Housing ACT to refuse assistance to someone who has a debt to them, so even if they do not take any action to recover the debt, it could later be an obstacle to getting housing assistance.

See also **Debts From A Previous Tenancy** (Housing fact sheet number 9).



Disclaimer

This fact sheet contains general information available at the time of printing. It does not constitute legal advice. If you have a specific legal problem, please contact the Welfare Rights and Legal Centre's advice line on 6247 2177. The Welfare Rights and Legal Centre is entirely independent of Housing ACT. All assistance is free.

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