

## DAMAGE TO YOUR HOUSING ACT PROPERTY

### A TENANT'S OBLIGATIONS

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

- Take reasonable care of the premises they rent;
- Not intentionally or negligently damage the premises; and
- 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 common phrase used in tenancy agreements. There are two parts to its meaning:

- 'Fair' 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 (eg, 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.
- 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 beyond mere wear and tear, even though the stain could have resulted through fair use. So for damage to be considered fair wear and tear, it must have occurred in the course of fair use and be relatively minor.

### TENANT RESPONSIBILITIES

Tenants have certain responsibilities as regards the maintenance of the rented property:

- To keep the premises clean;
- To repair any damage caused by them, their household or any guests;
- To notify Housing ACT of any damage or need for repairs as soon as possible and to do what is necessary to avoid further damage;
- To leave the premises in the same condition it was found (excepting fair wear and tear). The condition report completed at the beginning of the tenancy will be relevant here, particularly if it records damage when you first occupied the premises.

### WHAT IF HOUSING ACT ASKS ME TO PAY FOR DAMAGE?

When a tenancy ends, Housing ACT may 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 appear reasonable?
- Is any of the claimed damage really just wear and tear?

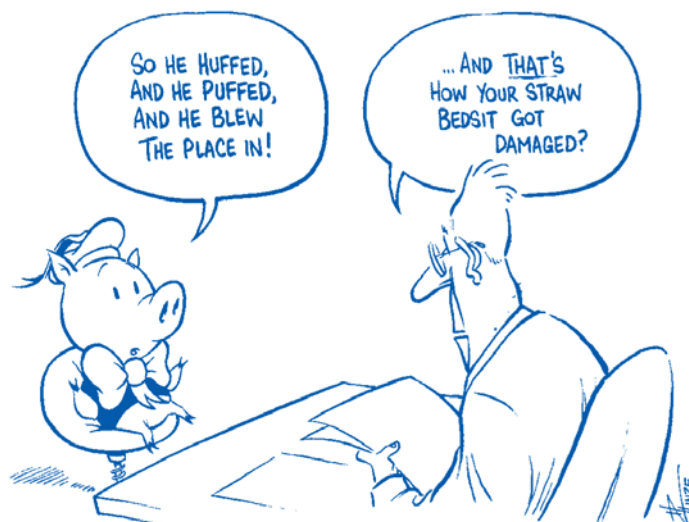
Work out whether or not you dispute all or any part of the debt.

### 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. However, 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

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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 causes damage, you are not liable.

## HOW DO I DISPUTE A TRM DEBT?

If a TRM debt is raised against you, you can appeal the debt if you don't think it is owed, or it is for too much, or it is unfair. To appeal the TRM debt you need to request a review by Housing ACT.

In asking for a review you should state clearly which of the charges you dispute and why. If possible, attach copies of any evidence you have. Evidence may include:

- Photographs you took of the premises just before vacating.
- A condition report from the start of the tenancy that shows the damage was there when you moved in.
- A police report of the incident when an intruder caused damage and a Statutory Declaration explaining what happened.
- Quotes from a number of providers (eg, reputable tradespersons or businesses) to prove that the amount claimed by Housing ACT is excessive.

You can also request a copy of your file from Housing ACT. Your file should contain a condition report from the start of the tenancy (if one was completed) and any correspondence between you and Housing ACT regarding repairs. Once you have your file you can review

the detailed account outlining the alleged TRM debt and any accompanying documents Housing ACT are relying upon to raise the debt.

To obtain your file you need to complete a Freedom of Information ('FOI') Request Form (available from Housing ACT). FOI Requests can be sent to:

FOI Coordinator  
Housing ACT  
Locked Bag 3000  
Belconnen ACT 2617

Housing ACT will acknowledge receipt of your request within 14 days and will usually process your request within 30 days. There is no fee for making an FOI request.

If you are not satisfied with the result of the review by Housing ACT, you should seek legal advice regarding any further avenues of appeal.

If you decide not to pay the TRM charges, recovery action may begin. If the tenancy has ended, and Housing ACT have not been able to arrange repayments from you, they will pass the debt to Collection House, a debt collection agency. Collection House will write to you at your last address seeing repayment of the debt. 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.

See **The Residential Tenancies Tribunal** (WRLC Fact Sheet 11).

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 housing assistance to someone who owes them a debt. So even if they do not take any action to recover the debt, it could be an obstacle to getting housing assistance in the future.

See also **Debts from a Previous Tenancy** (WRLC Fact Sheet 3).

### 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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