



Fact Sheet 8: 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 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 and substantially as clean as when the tenancy began, allowing for fair wear and tear.

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 would be excused. On the other hand, motor oil stains on a lounge room carpet clearly would not occur during fair use, and therefore would be considered to fall outside of 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 have occurred in the course of fair use and 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 former tenant/s a bill for 'tenant responsible maintenance' (TRM) charges. These will be the costs arising from Housing ACT having to repair damage to the premises. You should carefully consider this 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 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 your bathroom chips the bath in the process, you are not liable for this damage. Similarly, if damage is caused by an intruder during an attempted burglary, or by someone who refuses to leave your home after you have asked them to do so, 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;
- A police report of the incident when an intruder caused damage.

If you are not satisfied with the results of this review, there is no further avenue of appeal as such.

If you decide not to pay the charges, Housing ACT may begin recovery action in the ACT Civil and Administrative Tribunal (ACAT). These charges are not a debt until the ACAT makes a finding that they are and Housing ACT needs to provide the ACAT with clear evidence to obtain such a finding.

If you receive notice of a hearing, you should plan on attending and defending the application, particularly if you have previously sought an internal review and still have the documentation.

Although TRM charges are legally not a proven debt until the ACAT determines that a debt is owed, Housing ACT will regard TRM charges in the same way as any rent owing—as a debt. A TRM debt from a previous tenancy can be a barrier to being rehoused. If you find yourself in this position, you should obtain legal advice about your options.

See also Fact Sheet 9: *Debts from a Previous Tenancy*.

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 Canberra Community Law's advice line on 02 6218 7977.

Canberra Community Law is entirely independent of Housing ACT. All assistance is free.

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