

# Tenant Charges

---

## 1. Purpose

The intent of this policy is to identify tenants' liability for damage to a property.

## 2. Guiding principles

- Housing Trust will charge tenants in accordance with tenant's responsibilities as per the *Residential Tenancies Act 2010*
- Housing Trust will only charge a tenant if they have accepted liability or if Housing Trust has sufficient evidence of the tenant's responsibility for the costs
- The tenant has the right to accept or dispute liability for tenant charges

## 3. What are tenant charges?

Housing Trust may charge tenants for repairing damage to a property or undertaking services that the tenant is responsible for.

If the tenant is responsible for repairing damage or undertaking services and Housing Trust arranges the repairs or services, Housing Trust will charge tenants for the costs. These are known as tenant charges.

## 4. Responsibilities under the *Residential Tenancies Act 2010*

Tenants can expect Housing Trust to provide them with premises that are in good condition and to maintain that condition throughout the life of the tenancy.

Tenants are expected to take good care of their premises and to take responsibility for property damage other than that caused by fair wear and tear or the criminal activity of a third party. Under the *Residential Tenancies Act 2010*:

- Housing Trust is responsible for keeping the property in a reasonable state of repair
- The tenant is responsible for:
  - The cost of repairs to rectify intentional damage or neglect that is caused by the tenant or a member of the tenant's household or a visitor who enters the premises with the tenant's permission
  - Leaving the property in the same condition at the end of the tenancy as it was at the commencement of the tenancy except for fair wear and tear; removing all belongings from the property; removing all rubbish from the property; leaving the property reasonably clean (having regard to the condition at the commencement of the tenancy) and returning all keys and similar devices to the landlord

Tenants can expect Housing Trust to:

- Abide by the terms and conditions of the Residential Tenancy Agreement and requirements of the Residential Tenancy Act
- Collect and record information about the type and extent of damage to premises and the circumstances under which the damage may have occurred
- To provide the tenant with written notice when HT considers the tenant is responsible for tenant charges and is claiming reimbursement
- Review the decision to charge a tenant if they dispute liability, HT will then either:

- Cancel or amend the tenant charges and advise the tenant in writing; or
- Take cost recovery action before NSW Civil and Administrative Tribunal (NCAT)
- Carry out a final inspection in the tenant's presence (where possible) when the tenant has vacated the premises and to complete an end of tenancy condition report and to hand the keys back
- Not charge tenants for damage that occurs after the tenant provides vacant possession of the premises to Housing Trust

Housing Trust expects tenants to:

- Abide by the terms and conditions of the Residential Tenancy Agreement and requirements of the Residential Tenancy Act
- Take good care of the premises and keep them reasonable clean
- Tell Housing Trust as soon as possible if their property has been damaged
- To pay all costs associated with tenant and property damage
- Comply with NCAT orders to pay the cost of repairs or cleaning or other tenant charges
- Report to the NSW Police any damage that has resulted from criminal activity, such as break and enter, vandalism or domestic violence
- Restore the property to the condition it was in at the start of the tenancy when they vacate the property except for fair wear and tear

## 5. Types of tenant charges

Tenant charges may include, but are not limited to, the following types of repairs;

- Broken windows
- Punctured internal cabinet doors and walls
- Burns or other damage to carpets that cannot be considered fair wear and tear
- Broken and damaged clotheslines and hoists
- Broken locks
- Damaged door and security screens
- Damage to toilets and basins
- Sewer chokes caused by items flushed down the toilet, such as sanitary pads, nappies or toys
- Costs for end of tenancy repairs and services such as cleaning and rubbish removal
- Organising one off property cleans (e.g. skip bins or a cleaner).

## 6. Determining responsibility

Damage to the premises that is the tenant's responsibility includes:

- Damage that is intentional
- Failure to take care to prevent damage (neglect)
- Failure to keep the premises in a reasonably clean condition
- Failure to restore the premises to the condition at the start of the tenancy, after allowing for fair wear and tear
- Intentional damage, or neglect leading to damage, that is caused by any member of the household, pets or any visitor who enters the premises with the tenant's permission.

To determine who is responsible for the cost of repairing damage to the property Housing Trust will:

- Take into account the type of damage and any information concerning liability the tenant provides when reporting the damage
- Inspect the property, document and photograph the damage where possible
- Discuss the items of damage with the tenant and record information the tenant or a third party gives Housing Trust about the possible cause of the damage
- Take into account the condition of the premises at the beginning of the tenancy, as stated in the condition report and any evidence of work undertaken on the property at the start or during the tenancy
- Take into account damage due to fair wear and tear
- Take into account damage due to an emergency situation where there was a good cause to believe that the tenant's safety, health or well-being was at risk
- Consider whether ill health or inability to maintain the premises has contributed to the damage. In these circumstances the tenant is required to provide evidence.
- Consider whether the damage is a result of a criminal activity such as:
  - Domestic violence
  - Other criminal activity such as break and enter or vandalism

In the circumstances of criminal activity, the tenant will not be charged if:

- The tenant provides sufficient evidence that the damage was caused by criminal activity and that they have reported the matter to the NSW police. Evidence may include witness/victim statement, police report, or a police event number and statutory declaration outlining how the damage was caused; and
- The damage is reported to Housing Trust and evidence is provided within 14 days of the damage occurring

Note: A Police event number on its own will not be accepted as sufficient evidence of criminal activity.

## 7. Repayment agreements

Housing Trust will develop and apply fair and consistent business rules in relation to repayment agreements for tenant charges (refer to debt recovery payment plan). These will ensure:

- Tenants' financial situation is taken into account
- Recovery of outstanding tenant charges occurs in a reasonable time period.

## 8. Repeat or serious incidents of tenant damage

Where Housing Trust has sufficient evidence of repeat or serious incidents of damage that the tenant is responsible for, Housing Trust may take action before NCAT to obtain a specific performance order for damage repayments. In some circumstances, Housing Trust may take action to end the tenancy where the damage is significant and ongoing.

## 9. Appealing decisions about tenant charges

Tenants can appeal decisions made about tenant charges. Tenants can firstly seek a review of the decision to charge tenants by management. Then, an appeal to the Housing Appeals Committee may be made.

The NSW Civil & Administrative Tribunal (NCAT) can also hear matters concerning claims for tenant charges. Housing Trust may apply to NCAT to resolve a matter if the tenant and HT cannot

come to an agreement. Tenants can obtain independent advice about such matters from the following sources:

- Illawarra Legal Centre Tenants Service 42743475
- NSW Aboriginal Tenancy Advice Service; Murra Mia 44729363 Freecall 1800 672 185
- Legal Aid NSW 1300 888 529
- Department of Fair Trading 133220