

Bond claims – Carpet

Fair wear and tear

“Fair wear” is deterioration caused by the reasonable use of the premises. “Fair tear” is deterioration caused by the ordinary operation of the forces of nature. Importantly, intentional or negligent damage are not fair wear and tear.

The landlord must prove that damage is beyond fair wear and tear for compensation from the bond (*Barrera v Meyer* [2003] NSWCTTT 57; *Sunray Investments Pty Ltd v Cruwys & Ors* [1992] NSWRT 95). If the tenant wishes to argue that the damage is fair wear and tear, or to disprove any of the landlord’s claims or evidence, it is advisable that the tenant should produce evidence to support that argument (*Barrera v Meyer* [2003]).

NSW Tribunal must consider:

- the age, quality and condition of any item at the beginning of the tenancy;
- the average useful lifespan of the item;
- the reasonable expected use of such an item;
- any special terms of the tenancy agreement relating to that item; and
- the number and type of tenants, and the length of the tenant’s occupancy

(A. Anforth, P. Christensen, B. Taylor, *Residential Tenancies Law and Practice New South Wales*, 5th ed, Federation Press, Sydney, 2011, p. 120; *Tedja v Li (Tenancy)* [2012] NSWCTTT 298 [12]).

Is it fair wear and tear?

In *Bell and Bell v Boccola, Campbell and Lawrence* [2009] ACAT 26, the Tribunal held that damage to the carpet caused by walking on it or by sunlight fading the carpet is fair wear and tear.

In *2 Test P/L v Rajasingham* [2010] NSWCTTT 106, the Tribunal held that baby vomit on carpet is not fair wear and tear.

In *Burgin v Primrose* (2010) CTTT, the Tribunal held that pet urine smells in the carpet is not fair wear and tear.

In *McCarthy v Isagai* [2009] NSWCTTT 643, the carpet was damaged by a red wine stain. The tenant paid for the carpet cleaning. The Tribunal held that any stains left after that clean is fair wear and tear. In this case, the landlord also did not suffer any loss, because they found new tenant at same market rent.

In *Fan & Philip, Xue Yuan & Sen v Rickets* [2013] NSWCTTT 647, the Tribunal held that carpets need to be in the same condition at the end of tenancy as the beginning. This means that there cannot be any special conditions of the contract requiring steam cleaning at the end of tenancy (see also section 19(2)(a) of the *Residential Tenancies Act 2010*).

NB. These cases provide a guide to how Tribunal members may decide your case and are not binding on the Tribunal’s decision.

Negligence: not fair wear and tear

Fair wear and tear does not include deterioration in the premises that could be prevented by reasonable conduct on the tenant’s part (*Alamdo Holdings Pty Limited v Australian Window Furnishings (NSW) P/L* [2006] NSWCA 224).

Lifespan

The lifespan of carpet is 10 years, with depreciation to be allowed at 10% per annum (*Abela v Walker* 1996; *Strog v Sabluas* 1998). This means the landlord is not entitled to the replacement costs of any portion of the carpet, after the carpet has reached 10 years of age (*Barrera v Meyer* [2003] NSWCTTT 57), as the landlord will not have suffered any real loss.

Landlord must limit losses

A landlord is not entitled to compensation for any loss that could have been avoided had the landlord taken reasonable action to limit the extent of the loss (called *mitigation*). Possible examples include: giving the tenant the opportunity to do further cleaning; using council rubbish removal services instead of expensive private providers, or attending to repairs promptly (NSW Fair Trading, Standard form Residential tenancy agreement, cl. 36, http://www.fairtrading.nsw.gov.au/pdfs/Tenants_and_home_owners/Residential_tenancy_agreement.pdf). The onus of proof lies with the tenant if they are claiming at the Tribunal that a landlord is not entitled to compensation because they did not *mitigate* their loss (A. Anforth, P. Christensen, S. Bentwood, *Residential Tenancies Law and Practice New South Wales*, 6th ed, Federation Press, Sydney, 2014, p. 356).

If the landlord is claiming your bond money for repairs...

If you think the landlord may make such a claim against you, you need to be proactive. Consider the options below and what you would need to do to beat the landlord's claim BEFORE you leave the premises.

Examples of evidence for use in the Tribunal		
Tenants' arguments	You need to show	Evidence that could be helpful
No Damage	That there has been no deterioration of the carpet	<ul style="list-style-type: none"> Photographs from the start and end of the tenancy An ingoing condition report showing that the carpet was already damaged Receipts for carpet cleaning or treatment undertaken by the tenant
Normal wear and tear	<ul style="list-style-type: none"> That damage or deterioration is due to normal use of the premises by the tenant Damage was not caused by the tenant's negligence or deliberate actions 	<ul style="list-style-type: none"> Evidence of the length of the tenancy Evidence of the age of the carpet Evidence of the type of tenancy: are there children, is it a share house, etc. Photographs from the start and end of the tenancy An ingoing condition report showing that the condition of the carpet Photographs showing that the damage was not excessive Evidence that the condition of the carpet is a result of the landlord's failure to repair, for example, if there is mould or staining due to a water leak, but not the tenant's failure to ventilate the property Evidence that the carpet was subject to excessive wear – such as from the amount of sun the window is exposed to Evidence that the landlord was notified of the required repairs or damage
Damage caused by landlord's failure to repair	That the landlord is claiming the tenant's bond for damage caused by the landlord's own failure to maintain the premises	<ul style="list-style-type: none"> Evidence that the damage to the fixtures has been caused by the landlord's inaction Photos of the damage Evidence that the landlord was notified of the required repairs or damage Written reports by experts saying the damage to the fixtures was caused by the landlord's failure to maintain the property Ingoing condition report <p>NOTE: Landlords often claim that mould and damp is caused by tenants not ventilating premises. If you are claiming that mould is the landlord's responsibility, you need to show it is a result of a structural issue – such as broken gutters or leaks – and/or that you properly ventilated the premises during your tenancy.</p>
The landlord is claiming too much for the work that needs to be done	The landlord is claiming the cost of recarpeting the whole unit when only one room / section needs recarpeting.	<ul style="list-style-type: none"> A quotation from carpet cleaners showing a lower cost of rectification. Receipts showing that the tenant had the carpet cleaned. A quote or report showing that he damaged part of the carpet can be cleaned / repaired / patched Receipts showing that the tenant cleaned the carpets at their own expense.
<u>Depreciation</u> Normal life of carpet: 10 years	<p>The original fixtures were old and the landlord should not claim the new value of the item because they have already benefited from its use for a period of time.</p> <p>For example, if the carpet is 6 years old, the landlord could only claim 40% of the cost of the repair or replacement.</p>	<ul style="list-style-type: none"> A copy of the Australian Taxation Office's Depreciation Tables for rental properties Evidence of the age of the carpet. You could also ask the landlord to provide evidence of the age of the carpet. If they refuse, you could ask the Tribunal to order the landlord to do so. Photographs of the state of the carpet at the start of the tenancy