

Bond claims – Doors and Fly Screens

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?

Burgin v Primrose (2010); *Cancio v Ware* [2004] CTTT 498: scratch marks on the door likely caused by a dog is not fair wear and tear, particularly if the tenant did not have permission to keep a dog.

McGuire v Robins [2013] NSWCTTT 500: where damage was caused by the dog, and the landlord did not provide consent for a dog on the premises, the Tribunal accepted that most of the damage was fair wear and tear. Compensation was apportioned between the landlord and the tenant.

Kent v Cheng & Shiu [2004] NSWCTTT 520: damage on wall from door handles is fair wear and tear (even though door stoppers were behind the door).

Johnson v Arnaud & Ors [2002] NSWCTTT 2: broken door handle to bedroom is fair wear and tear. The Tribunal held that it was irrelevant that the tenant failed to report this repair, as it is minor. There was also no evidence that handle broken through intentional or negligent actions of tenants

Mills v Neill [2012] NSWCTTT 478: broken door handle of mesh security door is fair wear and tear, given that it was at least 10 years old. But Tribunal allowed \$100 for its replacement on a fair and equitable basis.

Murphy v Woods (Tenancy) [2010] NSWCTTT 609: two holes in fly screens noted in condition report and photos is fair wear and tear.

Argyle Community Housing v Natim Pty Ltd [2009] NSWCTTT 233: old and rusty gauze on bathroom window that fell apart is fair wear and tear.

Wilson v Bowman [2011] NSWCTTT 23: screws connecting the security chain to the door that had fallen out of the wooden door is fair wear and tear.

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).

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 is no damage to the doors or screens	<ul style="list-style-type: none"> Photographs from the start and end of the tenancy Incoming/outgoing condition reports
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 doors or screens Evidence of the type of tenancy: are there children, is it a share house, are pets allowed etc. Photographs from the start and end of the tenancy An ingoing condition report showing the condition of the doors and screens Evidence that the condition of the doors is a result of the landlord's failure to repair, for example, if there is mould or staining due to a water leak Evidence that damage to exterior doors / screens was likely to have not been the result of the tenant's negligence, for example, by somebody trying to break in to the property. A police report could be good evidence here.
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 a water leak – 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 replacing items which could be repaired	<ul style="list-style-type: none"> A quotation from repairers showing a lower cost of rectification. Quotes for the provision of second hand or lower cost doors or screens
<p><u>Depreciation</u></p> <p>No set depreciation for fitted cupboards</p>	<p>Doors and flyscreens are seen as part of the capital fittings in a home, and, as far as the Australian Taxation Office is concerned depreciate at the rate of 2.5 % per annum.</p> <p>It is commonsense however that normal life could often be less than 40 years – components wear out, depending on original materials, use, location (i.e. is the home near the coast), and so on. Estimates of items' lifespan from manufacturers or maintenance contractors may be useful here.</p>	<ul style="list-style-type: none"> A copy of the Australian Taxation Offices Depreciation Tables for rental properties Evidence of the age of the items. You could ask the landlord to provide evidence of the age of the items. If they refuse, you could ask the Tribunal to order the landlord to do so. Photographs of the state of the items at the start of the tenancy Estimates of items' lifespan from manufacturers or maintenance contractors Evidence of external conditions: exposure to weather, closeness to the coast, etc