

Bond claims – Kitchen Fixtures

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?

Fournaris v Andrews [2007] NSWCTTT 583: marks on stove knobs and missing rubber seals is fair wear and tear in the absence of evidence that damage was intentionally or negligently caused by the tenants.

Soun v Woods [2013] NSWCTTT: grease in range hood filters is fair wear and tear. However in this case, the tenants were ordered to pay \$100 on a fair and equitable basis.

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

See overleaf and refer to the Australian Taxation Office’s *Rental Properties 2014* Guide for the useful life of kitchen assets.

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 kitchen fixtures	<ul style="list-style-type: none"> Photographs from the start and end of the tenancy An ingoing condition report showing that the walls were already marked
Normal wear and tear	<ul style="list-style-type: none"> That the damage or deterioration of the kitchen fixtures were due to normal use of the premises by the tenant (depending on the extent of damage) 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 kitchen fixtures 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 fixtures were already damaged or worn Photographs showing that the fixtures were damaged at the start of the tenancy Evidence that the condition of the fixture is a result of the landlord's failure to repair, for example, if there is deterioration due to damp caused by a leak (see below).
Damage caused by landlord's failure to repair	That the landlord is claiming the tenants bond for damage caused by the landlord's own failure to maintain the premises	<ul style="list-style-type: none"> Evidence that the damage has been caused by the landlord's inaction. Photos of the damage Evidence that you notified the landlord of 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
The landlord is claiming too much for the work that needs to be done	The landlord is claiming the cost of fixing or replacing the whole fixtures when only one part needs fixing or replacing.	<ul style="list-style-type: none"> A quotation from a painter who has seen the fixtures and outlining the work required, and what could be reasonably accounted for by fair wear and tear
<p><u>Depreciation</u></p> <p>Normal life of Items: 10 years for dishwashers, microwaves, garbage disposals 12 years for stoves, cooktops, range hoods, refrigerators 5 years for crockery and cutlery</p>	<p>The original fixture was 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 an item's useful life is 10 years, and it is six years old, the landlord could only claim 40% of the cost of the replacement or possibly repair.</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 fixture You could also ask the landlord to provide evidence of the fixture's age. If they refuse, you could ask the Tribunal to order the landlord to do so. Photographs of the state of fixtures at the start of the tenancy
<p><u>Depreciation</u></p> <p>No set depreciation for fitted cupboards, benchtops, taps, sinks, tiles etc</p>	<p>Fixed benchtops, cupboards, taps, sinks and tiles 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 life from manufacturers or maintenance contractors may be useful here.</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 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 life from manufacturers or maintenance contractors