

Tenant Repair Costs

Purpose and Objective

The purpose of this document is to explain the policy for *Tenant Repair Costs*. This includes social housing, affordable housing, and transitional housing.

The intent of this policy is to identify liability for damage to a property in which Housing Plus, determines the tenant is responsible for and the associated cost of repairs. This is done in a way that is procedurally fair for the tenant and the landlord.

Scope

- This policy applies to all clients (including applicants, former tenants and existing tenants) who accept accommodation in properties owned or managed by Housing Plus
- This policy applies to all Housing Plus properties except Crisis Housing.
- This policy describes the organization's objectives and policies regarding *Tenant Repair Costs*.

References

Housing Plus will start a tenancy in accordance with:

- a) The Housing Act 2001
- b) Residential Tenancies Act 2010 and Regulations
- c) Housing Plus Policies.

Both the client and Housing Plus have rights and obligations under the above Acts, the residential tenancy agreement and this policy.

Definitions

Term: Tenancy Agreement

Definition: The Residential Tenancies Act 2010(NSW) (the RT Act 2010) defines a residential tenancy agreement as 'an agreement under which a person grants to another person for value a right of occupation of residential premises for the purpose of use as a residence' (section 13(1)).

Term: Market Rent

Definition: Market rent is the amount of rent that a real estate agent or landlord would charge each week if the property were rented in the private market.

Term: Rent Subsidy

Definition: A rent subsidy is the difference between the market rent and the rent a tenant pays based on their household's assessable income and rent assessment rules.

Responsibilities

Executive

- 1) Establish policy objectives

Management

- 1) Develops policies and procedures to achieve policy objectives
- 2) Coordinates and implements policy for *Rent Charging*

- 3) Oversees training and ensures adoption by all employees responsible for *Rent Charging*.
- 4) Reviews policy and procedure on biannual basis to ensure compliance with legislation and adopts accordingly

Employee responsibilities

- 1) Understand and comply with Housing Plus policies regarding *Rent Charging*.

Policy

Tenant Responsibilities

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 and criminal activity or damage caused by a third party. A third party is someone that is not living in or invited into the property.

Where it is determined that the tenant is responsible for damage to the premises, and a Housing Plus maintenance contractor repairs the damage, Housing Plus will recover the cost of the repairs from the tenant. These are Tenant Repair Costs.

Housing Plus will charge the Tenant Repair Costs to the tenant if the tenant has accepted liability or Housing Plus has sufficient evidence of the tenant's responsibility for the damage. The tenant has the right to accept or dispute liability for Tenant Repair Costs. If the tenant disputes liability Housing Plus will suspend the cost recovery process and review the decision to charge the tenant.

Housing Plus expects the tenant to:

- Abide by the terms and conditions of the Residential Tenancy Agreement.
- Take good care of the premises and keep them reasonably clean.
- Tell us as soon as possible if the premises have been damaged.
- Pay for Tenant Repair Costs.
- Comply with NCAT or local court orders to pay the cost of repairs or cleaning.
- Report to the NSW Police and Housing Plus, any damage that is suspected to have resulted from criminal activity, such as break and enter, vandalism or domestic or family violence or caused by a third party. And, provide Housing Plus with a copy of any police reports made and the Event Number of the police report.
- When the tenant vacates the premises, to:
 - give Housing Plus written notice in line with Housing Plus Ending a Tenancy Policy before vacating the premises if they have a fixed term tenancy;
 - restore the premises to the condition it was in at the start of the tenancy, allowing for fair wear and tear; and
 - return the keys to Housing Plus. Relying on a neighbour or third party, or leaving the keys at the premises is not an excuse for keys not being returned.

Housing Plus Responsibilities

The tenant can expect Housing Plus:

- To abide by the terms and conditions of the Residential Tenancy Agreement that relate to the landlord's responsibilities.
- To 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 Housing Plus considers the tenant is responsible for Tenant Repair Costs.
- To provide the tenant with written notice when Housing Plus claims repayment for Tenant Repair Costs.
- If the tenant disputes liability and seeks a review of Housing Plus decision to charge Tenant Repair Costs Housing Plus will then either:
 - cancel or amend the Tenant Repair Costs and advise the tenant in writing; or
 - take cost recovery action before the NSW Civil and Administrative Tribunal (NCAT) or the local court.
- Housing Plus will make every attempt to carry out a final inspection of the property in the tenant's presence, completing an Outgoing Property Condition Report. This Outgoing Property Condition Report will be completed without tenant present and provide a complete copy to tenant via anyway possible.
- Not to charge Tenant Repair Costs caused by damage that occurs after the tenant provides vacant possession of the premises to Housing Plus.

Determining responsibility for a Repair Cost

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

- Inspect the premises and document the damage where appropriate.
- Take into account the type of damage and any information concerning liability the tenant gave Housing Plus when reporting the damage.
- Discuss the items of damage with the tenant and record information the tenant or a third party gives Housing Plus 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 Property 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, which the Housing Plus or Landlord is responsible to repair.
- Take into account damage due to an emergency situation where there was good cause to believe that the tenant's health and wellbeing was at risk.
- Consider whether ill health or inability to maintain the premises has contributed to the damage. For example, if the damage has been caused by children or adults with challenging behaviours, mental illness or disability which could not be reasonably prevented. In these circumstances the tenant is required to provide evidence.
- Consider whether the damage is a result of criminal activity such as:
 - Domestic or family violence. If the damage is the result of domestic or family violence inflicted on the household (except where the tenant is the perpetrator), they should provide evidence of this so that it can be taken into consideration when determining liability. Housing Plus is committed to reducing the incidence and effects of domestic or family violence and encourages people subjected to domestic or family violence to speak with Housing Plus or domestic or family violence support workers in the area.

- Other criminal activity such as break and enter or vandalism or damage caused by a third party.

Damage caused by Criminal Activity or a Third Party

In circumstances of criminal activity or damage caused by a third party the tenant is requested to provide evidence that they have reported the matter to the NSW Police, such as a Police statement.

Tenant Repair Costs

Tenant Repair Cost that are the tenant's responsibility include:

- Intentional Damage
- Accidental Damage
- failure to take care to prevent or report damage (neglect);
- failure to report damage;
- failure to keep the premises in a reasonably clean condition;
- failure to restore the premises to their 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.

Tenant Communication

If Housing Plus considers the tenant responsible for Tenant Repair Costs, a letter will be sent to the tenant stating:

- the nature of the repairs.
- that Housing Plus requires the tenant to pay for the repair costs in accordance with responsibility under Section 51 of the *Residential Tenancies Act 2010*.
- That the tenant can accept liability by signing a declaration of liability (stat dec) within 14 days of receipt (included with letter).
- That the tenant can dispute liability by telling Housing Plus immediately and providing written reasons.
- That if the tenant disputes liability Housing Plus will stop sending letters requesting payment and review the decision that the tenant is responsible for the damage. In some circumstances the tenant can choose to have the decision reviewed externally (see Appeals and Reviewing Decisions). Pending review, Housing Plus will then either cancel the claim and advise the tenant in writing, or take action before the NCAT or a local court to recover the costs from the tenant. At the NCAT or local court the tenant will have an opportunity to tell why the tenant disputes liability and the NCAT or local court will determine if the tenant is liable and if so how much the tenant will have to pay.

Repeat or serious incidents of Tenant Repair Costs

Where Housing Plus has sufficient evidence of repeat or serious incidents of tenant-responsible damage, Housing Plus will immediately take action before the NCAT to obtain a specific performance order. In certain circumstances, Housing Plus will take action to end the tenancy.

Valuation of Tenant Damage

Housing Plus categorises tenant damage in various ways, including:

- Damage to the structure of the dwelling. This is recovered at the actual cost of repair;
- Removal of any rubbish or household items left by the tenant or household at the end of the tenancy. This is recovered at the actual cost of removal;
- Any additional cleaning or repairs to removal of any authorised or unauthorised fixtures. This is recovered at the actual cost of removal and repair;
- Damage to fixtures and fittings within the dwelling. Most items are recovered at the actual cost of repair, however in some instances Housing Plus will allow for depreciation on fixtures and fittings in calculating the damage costs.

Tenant Damage Charges where Asbestos is Present

WorkCover NSW and NSW Health advises that living in a home built with asbestos-cement building products is not considered a health risk.

Asbestos-cement can be a health risk if asbestos fibres become airborne and are inhaled. This can happen when asbestos-cement building products are broken, sanded, drilled or disturbed in any way that results in airborne asbestos fibres. If a tenant damages their property that has material containing asbestos, they could potentially disturb the asbestos. For example if a tenant damages a wall that has asbestos material in it.

Where there is evidence that a tenant has damaged their property, Housing Plus will pursue Tenant Damage Charges in relation to the costs involved in replacing the structure that had asbestos in it but not the costs associated with safely removing the asbestos.

Vacating Tenants

Before vacating, the tenant must restore the premises to the condition it was in at the start of the tenancy, allowing for fair wear and tear. This includes the removal of any additions the tenant may have installed, cleaning, rubbish removal and the non-abandonment of goods, including furniture and vehicles. Before vacating, Housing Plus will make a concerted effort to complete a final inspection with the tenant and complete a final Property Condition Report. This will establish whether there is any unrepaired damage and will enable the tenant and Housing Plus to agree on who is responsible for the damage.

Once the tenant has returned the keys to Housing Plus and provided vacant possession Housing Plus will complete an Outgoing Inspection within two business days. The tenant is no longer responsible for damage that occurs after that the keys have been returned. It is the tenant who is responsible for returning the keys to Housing Plus, not the neighbours or another third party.

If the tenant abandons the premises or fails to return the keys, Housing Plus will obtain possession of the premises and assess its condition. If Housing Plus obtains sufficient evidence that the tenant is responsible for damage that goes beyond fair wear and tear, or end of tenancy cleaning that is required, Housing Plus will take action as appropriate before the NCAT or the local court to recover from the tenant the cost of repairing the damage. This includes removal of any goods that remain on the premises or the removal of any additions that the tenant may have installed.