

## Bond claims – Cleaning

### Tenant's Obligations

On giving vacant possession of the residential premises, the tenant must leave the premises in a reasonable state of cleanliness, having regard to the condition of the premises at the beginning of the tenancy. This is a term of every residential tenancy agreement.

“Residential premises” refers to everything provided with the residential premises, whether under the residential tenancy agreement or not, for use by the tenant.

If the landlord is seeking costs for cleaning, the landlord must prove on the balance of probabilities why damages should be recoverable from the tenant (*Tedja v Li (Tenancy)* [2012] NSWCTTT 298).

### Who has to pay?

*Fossati v Travers, Neave (Tenancy)* [2012] NSWCTTT 320: tenant was responsible for cleaning and restoration costs to the premises after a fire negligently caused by the tenant.

*Pepper v Claney (Tenancy)* [2012] NSWCTTT 522: condition reports suggested that the premises were clean at commencement and required cleaning at the end of the tenancy. Tenant and a witness gave evidence that she cleaned at the end of the tenancy. As a result, tenant was only responsible for 10% of the landlord's costs of cleaning.

*Collins v Caruana (Tenancy)* [2011] NSWCTTT 569: even though the Tribunal held that the premises were not left in a reasonable state of cleanliness, since the tenant had hired a professional cleaner, the tenant was only liable to pay about 10% of the landlord's costs of cleaning.

*Tedja v Li (Tenancy)* [2012] NSWCTTT 298: the Tribunal held that grease stains on the kitchen cooktop, oven and range hood, as well as cobwebs is not a reasonable state of cleanliness for the end of the tenancy. Since the tenant gave evidence that she spent days cleaning, the Tribunal apportioned the cleaning costs, and the tenant was only liable for 50%.

*Graham, Caste, Pilonchery v French (Tenancy)* [2013] NSWCTTT 15: a reasonable state of cleanliness is distinct from a “perfect” state. A landlord's claim for small amounts of damage is a repairs claim, not a cleaning claim.

*Ariel v Lane (Tenancy)* [2011] NSWCTTT 509: a reasonable state of cleanliness is determined by comparing the condition of the property at the beginning and end of the tenancy, and not just whether there is any cleaning required at the end of the tenancy.

*Lark v Hayman (Tenancy)* [2012] NSWCTTT 369: there were a number of cleanliness issues with the kitchen, which were not noted on the entry or exit condition reports. However, even though the tenant made good most areas when asked except some dirty areas in cornices, the tenant was ordered to pay for cleaning of the cornices.

*Georgiades v Sayer (Tenancy)* [2012] NSWCTTT 125: even though the landlord changed the locks and did not provide the tenant with an opportunity to do further cleaning to the carpets, the tenant was still liable for the landlord's cleaning fees.

*Minotti v Bird (Tenancy)* [2013] NSWCTTT 501: the Tribunal held on the balance of probabilities that the premises were not left in a reasonable state of cleanliness, and relied on the incoming and outgoing condition reports. There were no photos produced and no other evidence. The Tribunal also held on balance, the infestation of cockroaches likely arose because the premises weren't left in a reasonable state of cleanliness. The Tribunal allowed the reasonable costs of the landlord.

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

### 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](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 cleaning...

Some landlords claim that premises or the carpets must be professionally cleaned (see section 19(2)(a) of the *Residential Tenancies Act 2010*). 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 you may need at the Tribunal

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 extra cleaning required	<ul style="list-style-type: none"> <li>• That you have paid for cleaning or done the cleaning yourself</li> <li>• Photographs from the start and end of the tenancy</li> <li>• Incoming/outgoing condition reports showing the cleanliness of the premises</li> <li>• Photos of premises showing cleanliness</li> <li>• Signed and dated witness statements or statutory declarations outlining that you did the cleaning yourself</li> <li>• Receipts for any professional cleaners and/or cleaning products</li> </ul>
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"> <li>• Evidence that the damage to the fixtures has been caused by the landlord's inaction.</li> <li>• Photos of the damage</li> <li>• 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</li> <li>• Ingoing condition report</li> </ul> <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 – 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 excessive charges for cleaning the premises when less work is required to bring the premises back to the condition it was in at the start of the tenancy	<ul style="list-style-type: none"> <li>• A quotation from cleaners showing a lower cost of rectification.</li> <li>• Receipts showing that the tenant had the premises professionally cleaned.</li> <li>• The landlord failed to mitigate or limit their own losses by not allowing the tenant to attend to the cleaning themselves</li> <li>• Evidence that the landlord has let the premises again without extra cleaning for the same or increased rent.</li> </ul>