

# GENERAL POINTERS – defending bond claims

## ► Update your details

Make sure you tell Rental Services (Fair Trading, Rental Bond Section, 133220) of your new address and contact details immediately you leave the property. Do not leave this up to the real estate agent or landlord. Otherwise, the landlord may make a claim on your bond and it will be paid to the landlord if Rental Services cannot contact you.

## ► Condition reports

Section 29(4) of the *Residential Tenancies Act 2010* stipulates that *incoming* and *outgoing* condition reports should, if possible, be filled in by both parties to a lease together.

Towards the end of a tenancy, a tenant should contact the landlord or real estate agent to organise a time for an *outgoing* inspection. A date and time should be confirmed by email.

## ► Landlord not 'mitigating loss'

If the tenant can show that they made reasonable efforts to organise an outgoing inspection, but that the landlord or agent did not attend, the tenant could claim that the landlord failed to limit their own loss by not giving the tenant an opportunity to fix minor defects themselves.

## ► Value of condition reports

Section 30 of the *Residential Tenancies Act* says an incoming or outgoing condition report is taken as a true statement of the state of the premises if it is signed by both parties (in the absence of evidence to the contrary). A report that is signed by only one party has much lesser value.

## ► Landlord must provide receipts – BEFORE NCAT hearing

Section 165 of the Residential Tenancies Act 2010 requires that a landlord who claims a bond without the tenants agreement must give the tenant a copy of the completed condition report AND copies of any quotes, estimates, invoices or receipts for work for which the bond is being claimed within seven days of the claim being made. Failure by the landlord to do this is an offence under the Act which could incur a penalty of \$2,200 (at the time of writing, in December 2014). Note however that NCAT does not issue penalties and the Fair Trading compliance section rarely do.

## ► Value of evidence

A bond is the tenant's money, and landlords must, theoretically, be able to justify with evidence any claim they make on a tenant's bond.

In practice however, it is often easier for a landlord to pocket a tenant's bond than it is for a tenant to get their own money back. Tenants should watch out for the following pitfalls:

A quote from a contractor is usually seen as evidence of damage AND the value of the damage. Real estate agents and landlords can organise quotes easily from their usual contractors.

To fight such evidence, in a case where there is damage which is not fair wear and tear, a tenant will usually have to organise their own quote for the work. This can be difficult once a tenant has left the property. If they could not organise a quote any other way, a tenant could ask the Tribunal to order a landlord to give access for that reason.

This is why it is important that tenants pay attention to condition reports, and take photos of areas they think could be claimed by the landlord at both the beginning and end of the tenancy. See EATS Bond 2A Factsheet (at <http://www.tenantsrights.org.au/Resources/2.%20Bond/Bond2A.-precautions.pdf>) for more information on how to protect your bond at the end of the tenancy.

In the Tribunal, a tenant could also demand that a landlord provide evidence of the age of a fixture and its original price.

## ► If the property is relet...

A landlord can claim money for a tenant's bond even if they do not do the work they say is needed. However, if the tenant has evidence that the property has been re-let at the same or increased rent they could claim that the landlord's loss is reduced.



