

Tenant Damage

Policy

Date effective: 8 February 2019

1. Purpose

To determine liability for damage to premises owned or leased by the Chief Executive Officer (Housing) in a transparent and evidence-based manner that is procedurally fair and allows for reasonable wear and tear.

2. Scope

This policy applies to all Department of Local Government, Housing and Community Development ('the department') public housing tenants and premises owned or leased by the Chief Executive Officer (Housing).

3. Policy

Tenants have a responsibility not to intentionally or negligently damage the premises, ancillary property or common property in unit complexes. This responsibility extends to any improvements made to the premises by the department during a tenancy.

Tenant damage is considered to be any intentional or negligent damage caused or permitted to the premises, ancillary property or common property by the tenant, a recognised occupant of the household, pets or a visitor the tenant has given consent to being on the premises.

3.1. Determination of tenant damage

Damage is determined by comparing the condition of the property at an inspection to the condition agreed in the ingoing condition report, allowing for reasonable wear and tear. Reasonable wear and tear is defined as deterioration or damage that happens as the result of normal use or ageing of the premises.

Information from previous inspections may also be used to assess changes in the condition of the premises.

In all cases, the department will work with tenants to ascertain whether damage identified is the responsibility of the tenant.

If there is no ingoing condition report, damage caused or permitted by a tenant cannot be determined. If, however, an ingoing condition report is provided to the tenant and the tenant fails to confirm, sign and return the report, it will be deemed by the department that the tenant has accepted the department's assessment of the condition of the premises.

3.2. Costs

In calculating the cost of damage caused or permitted by a tenant, tenants will be charged a depreciated cost as per the expected lifespan of the item in the Expected Lifespan Guidelines.

Costs associated with deterioration due to reasonable wear and tear are the department's responsibility.

3.3. Vicarious liability

The tenant has vicarious liability for a person that they have given consent to being on the premises. The tenant is responsible for any damage resulting from an act, or omission of an act, by that person, and will be charged accordingly.

3.4. Criminal damage

A tenant is not considered responsible for damage when the damage is the result of a crime against the tenant.

Where the damage is the result of criminal activity, the tenant must provide the department with evidence that the crime which caused the damage has been reported to the police in a timely manner. The following documents are accepted by the department as evidence:

- a Police Case Summary Report which names the department as a victim in the matter and identifies the offences committed;
- a copy of the statement provided to police to enable the matter to proceed to court, including details of damage; or
- where there is no police presence in a community, statutory declarations from tenants or support letters from other Northern Territory Government departments stating that the damage was a result of criminal activity and caused by someone who the tenant did not consent to being on the premises.

The Manager has discretion to accept other sources of evidence (such as a PROMIS number) which can be used to verify that the damage was criminal damage and has been reported to the police close to the time of the incident.

3.5. Domestic and family violence

A tenant will not be held liable for damage if the damage was caused by a person with whom they are in a domestic relationship and the act was an act of violence under the *Domestic and Family Violence Act*.

In line with the Domestic and Family Violence policy, supporting documentation may be requested to substantiate a client's claim, but it is not mandatory that supporting documentation is provided. Examples of the types of documentation that may be provided are listed in the Domestic and Family Violence policy.

3.6. House swaps

Tenants must request approval from the department prior to swapping premises.

Tenants who swap premises without the department's approval may be liable for damage to the premises not caused by them, their household, or their visitors.

House swaps require termination of both existing tenancy agreements and establishment of new tenancy agreements, including inspections and condition reports (refer to the Public Housing Transfers policy, section 6.5). The signed ingoing condition report must be given to the ingoing tenant within three business days after the tenant takes approved possession of the premises.

3.7. Tenant options to repair damage during a tenancy

Where damage caused or permitted by a tenant is considered an emergency repair, the department will fix the damage and seek to recover costs from the tenant.

Where damage caused or permitted by a tenant is considered not to be an emergency repair and the tenant accepts responsibility for the damage, the tenant may be given the option to repair the damage. In these cases, the department and the tenant will negotiate a reasonable timeframe for the tenant to repair the damage. In cases where repairs are not completed or to an acceptable standard, the department may redo the work and seek to recover costs from the tenant.

For all other damage, the department may arrange for repairs and seek to recover costs directly from the tenant where the tenant accepts responsibility for the damage.

The tenant is not legally obligated to enter an agreement with the department for the recovery of costs. The department may apply for compensation through the Northern Territory Civil and Administrative Tribunal.

If the tenant cannot pay the cost of the repairs upfront, the tenant will have the option to enter into an Agreement to Pay.

3.8. Vacating

On vacating, if an outgoing condition report shows that there is damage caused or permitted by a tenant, the department will arrange for repairs and notify the vacating tenant of the amount of bond to be retained to cover costs of repairing damage.

Where the bond does not fully cover the cost of repairs, and the vacating tenant cannot pay the invoice for the associated costs, the department may apply for compensation through the Northern Territory Civil and Administrative Tribunal.

3.9. Deceased tenants

Damage caused or permitted during a tenancy that is identified in the outgoing condition report of a deceased tenant may be claimed from the deceased tenant's estate.

4. Discretionary decision making

Discretion can be applied to this policy using the Discretionary Decision Making policy.

5. Complaints and/or appeals

If a client is not satisfied with either a decision or action of the department, they can access the department's complaints and/or appeals processes. For further information, please refer to the Complaints and/or Appeals policies.

6. Review of the policy

If at any time the legislative, operating or funding environment is so altered that the policy is no longer appropriate in its current form, the policy shall be reviewed and amended accordingly. This policy will be reviewed within two years of release.

7. References

7.1. Legislation

Domestic and Family Violence Act

Housing Act

Residential Tenancies Act

7.2. Policies

Appeals policy

Complaints policy

Discretionary Decision Making policy

Domestic and Family Violence policy

Public Housing Transfers policy

Termination of Tenancy policy

Vacating policy

7.3. Key related documents

Expected Lifespan Guidelines

8. Document change control table

Release Date	Version Number	Approved by (position)	Section amended	Category
8/02/2019	1.00	Chief Executive Officer	all	New