

I have been working in property management since . I'd like to ask the Real Estate and Housing Policy Team to consider additional guidance on what is considered 'wear and tear' and 'damages' on rental properties.

A property manager conducts an outgoing inspection of the rental property after a tenant has vacated the property and returned keys. The property manager records and makes notes based on what they see and refers to the original ingoing report. If there are issues that are considered beyond 'wear and tear' by the property manager they will raise this with tenant. If the tenant agrees with the property manager's assessment, then the tenant will pay for the needed repairs.

The issue arises when there is a dispute between what is considered 'wear and tear' and what is not.

Under current regulations the only guidance that all stakeholders (property manager, tenants and owners) have are;

-Residential Tenancy Act 2010 S51-3b

On giving vacant possession of the residential premises, the tenant must do the following-

- (b) leave the residential premises as nearly as possible in the same condition, fair wear and tear excepted, and, if there is a condition report, as set out in the condition report

applicable to the premises when the agreement was entered into,

-Residential Tenancy Regulation 2010- 17

The tenant agrees, when this agreement ends and before giving vacant possession of the premises to the landlord:

17.2 to leave the residential premises as nearly as possible in the same condition, fair wear and tear excepted, as at the commencement of the tenancy

- Residential Tenancy Regulation 2019 Schedule 2

Clause 7

(c) A tenant is not responsible for fair wear and tear to the premises. Fair wear and tear is a general term for anything that occurs through ordinary use, such as the carpet becoming worn in frequently used areas. Intentional damage, or damage caused by negligence, is not fair wear and tear.

Ending a residential tenancy | NSW Fair Trading

Fair wear and tear is the deterioration that occurs over time to the property. This table provides examples of fair wear and tear compared to damage.

Fair wear and tear	Damage
Faded curtains or frayed cords	Missing or torn curtains
Furniture indentations and traffic marks on the carpet	Stains or burn marks on the carpet
Scuffed up wooden floors	Badly scratched or gouged wooden floors
Faded, chipped or cracked paint	Unapproved, poor quality paint job
Worn kitchen benchtop	Burns or cuts in bench top
Loose hinges or handles on doors or	Broken glass

Fair wear and tear	Damage
windows and worn sliding tracks	
Water stains on carpet from rain through leaking roof or bad plumbing	Water stains on carpet caused by overflowing bath or indoor pot plants
Paint worn off wall near light switch	Damage to paint caused by removing posters stuck with blu-tack or sticky tape

In addition to my own experiences I have spoken to many property managers that have to spend inordinate amount of time dealing with this issue. The fact that Fair Trading provides only eight examples of the difference between what is considered 'fair wear and tear' vs damages is inadequate. This affects all landlords, tenants and property managers as it creates tension and animosity that need not arise should there be more clarity for all parties on what 'wear and tear' is.

For example, scuff marks on walls is widely considered fair wear and tear in the industry as the main test for fair wear and tear is a "general term for anything that occurs through

ordinary use". We are not told how big and how deep the scuff marks are allowed to be anywhere in the regulation. An inch? Two inches? Five? Ten? How dark can the mark be? Barely noticeable or be so dark it's like a black sharpie was used.

I've personally dealt with a tenant that left a scuff mark that is two meters long because their couch rubs against the wall and for them to claim that it is fair wear and tear because it's just a 'scuff mark'. I've dealt with owners who insisted that a small 10 cent piece sized burn mark on an 11 year old kitchen bench is 'damage' beyond wear and tear.

The point here is not to affix blame but rather to illustrate how under current regulations there is enough grey area on the interpretation of 'fair wear and tear' to drive a truck through. Often you can have an owner, a tenant and the property manager have three different views on what is considered fair. The property manager should be able to turn towards regulation for guidance but instead finds more problems as if you showed what little the regulation says on this matter to the landlord or the tenant, both parties will find that they are in the right. For tenants moving home is already a stressful event, it should not require one to be able to interpret legislation, regulation and look up case law in order to make sure one is been treated fairly by their property manager/landlord. For landlords they should know what is within their rights to claim and what is not without having

to dig through tax depreciation schedules and guess what 'ordinary use' means. For property managers, we should have something much more clear and simple to interpret to show both landlords and tenants to avoid disputes and move the process forward without resorting to tribunal action.

In addition, this lack of clarity adds to the workload of the tribunal members who often must deal with tedious discussions on what is considered 'fair ordinary use' and try to make judgements based on a few pictures taken by the property manager and tenants. Based on last year's NCAT Annual Report, over 30000 cases were overseen by tribunal members in NSW regarding tenancy matters. I would wager a significant amount of these cases dealt with landlord claims to do with tenancy damage to the property after an outgoing report was conducted. Many of these cases could be avoided if all parties are more clear on what is considered 'fair wear and tear' and what is 'damages'.

What could add more clarity to this issue would be for the relevant government regulator to issue clear and in depth examples that guides what is wear and tear and what is damage. A two bedroom apartment and a four bedroom house can be used as model examples. Each section of the property can be labelled along with examples shown in detailed pictures or even video demonstration. Whilst there is no way to

eliminate the pettiness of human nature, clear guide lines with visuals to aid will allow each party to more accurately calibrate their own expectations and allows better understanding on what can and can not be achieved based on the situation facing them.

The specifics of each example can be discussed and decided after consultation with groups representing tenants, landlords and agents. The main goal is to reach an agreement which can then be used as a model moving forward to drastically reduce disputes and costly tribunal actions.