



How to protect your bond at the end of the tenancy



Before you hand back the keys, it is important that you collect and keep evidence that the property is in good condition.



Follow up telephone conversations with real estate agents with a written letter setting out what has been agreed

A tenant’s bond belongs to the tenant. A bond is a large amount of money, and for tenants it is worth following some basic steps to make sure they get all of their money back. The following are a good guide. See page 2 of this resource if the agent will not organise an inspection with you.

1. About a week before moving out, call the agent to organise a final inspection of the premises by the landlord or agent with you, preferably in the afternoon of the last day.
2. Fax or email a letter to the agent to confirm the arrangement – see the sample at right.
3. When your furniture is gone and the property is cleaned and any damage fixed, organise an inspection with a witness, if possible, just before the inspection with the agent. The witness should be over 18 and not related to you. Use a copy of your Condition Report and fill it in as you inspect the premises. Take photographs of items where there could be a dispute. Ask your witness to sign this copy and keep it for your records. (You can download Condition Reports from the NSW Fair Trading website.)
4. Do the final inspection with the agent and (preferably) the witness. Fill in the original Condition Report.
5. After the final inspection, try to negotiate an agreement with the agent. If you agree, both parties can sign the “Claim for

Name and address of tenant
Date

Name, address and fax. number of agent

Dear _____,

Re _____
(address of rented premises)

This letter is to confirm our telephone conversation of _____ (date). In this conversation you agreed to attend to the final inspection and complete the condition report with me at _____ (time) on _____ (date).

I would appreciate you confirming the above in writing at your earliest convenience.

Yours sincerely

◆
Good evidence to support your bond claim includes photographs, statutory declarations signed by witnesses not related to you, or letters you have sent to the agent or landlord advising them of repairs that could be needed

◆
NEVER EVER give a Real Estate Agent a bond claim form that has been signed by you. Send it to Fair Trading yourself

◆
Your Condition Report is important evidence, and should be filled out and sent to the Agent or landlord. ALWAYS keep a copy


Eastern Area Tenants Service
9386 9147

Refund of Bond Money” form available from the Fair Trading website. Have a copy of this form with you when you do the inspection.

6. If the agent signs, make sure either “nil” or the amount you have agreed to give the landlord is written in the square at the top of the form. Once the form is filled in you can fax it to NSW Fair Trading. Read the instructions on the form beforehand.

NEVER give the agent a signed copy of the form for them to fill in or send to NSW Fair Trading.

7. If you don’t reach agreement with the agent or the landlord about the amount of bond to be refunded, you can either:
– Continue to negotiate until you do reach agreement, then follow step 6, or
– Complete and fax the claim form to NSW Fair Trading, without the agent’s signature, as soon as possible. If NSW Fair Trading gets your claim form before the agent’s, they will send a Notice of Claim to the agent. The agent has 14 days to dispute your claim and lodge an application with the NSW Civil and Administrative Tribunal. The agent can apply for part of the bond, the full bond or up to \$20,000 if damage to the property exceeds the bond.

8. If the agent lodges the claim form first, the tenant has to apply to the Tribunal to dispute the amount claimed by the Agent. Make sure that NSW Fair Trading has your new address as soon as you move, so they can send you the *Notice of Claim*.

9. If an application is made to the Tribunal, the landlord or agent has to prove that the tenant owes them money. Rent receipts, the condition report, photos and Statutory Declarations can be used to prove that you are not liable for the landlord’s claims.

10. If a landlord or agent claims money from a tenant, Section

165 of the Residential Tenancies Act says they must provide the tenant with a copy of the completed condition report, and copies of any quotes, invoices or receipts within seven days of claiming the bond. Check these documents carefully.

11. Beware of landlords or agents who may try to claim money to replace old worn out fixtures with brand new ones. (See “depreciation” below.)

12. Seek advice from your local tenancy service as soon as you receive a Notice of Conciliation and Hearing from NCAT. You may need advice and information on matters such as conciliation, NCAT procedures, submission writing, evidence, wear and tear, depreciation and counter-claims.

13. Read the Bond factsheet on the Tenants’ Union website. This contains important information, and has a specific section for bond claims in share housing.

If the agent will not inspect the property with you

A particular problem is that some agents will refuse to inspect a property before the tenant leaves, or to inspect it with the tenant at all. Many agents will claim that they cannot sign off on anything until the landlord inspects the property.

The Residential Tenancies Act 2010 provides in Section 29:

(4) At, or as soon as reasonably practicable after, the termination of a residential tenancy agreement, the landlord or landlord’s agent and the tenant must complete the copy of the condition report reprinted by the landlord or the tenant under this section, in the presence of the other party.

(5) It is not a breach of subsection (4) for the condition report to be completed in the absence of the other party if the party completing the report has given the other party a reasonable opportunity to be present when it is completed.

There is little that a tenant can effectively do to force an agent to inspect the property with them before they hand the keys back, although tenants should keep copies of correspondence asking the agent or landlord to do an inspection with them.



A landlord or agent making a bond claim against a tenant has to supply a copy of the Condition Report, and copies of any quotes, invoices or receipts, within seven days of the landlord making the claim

In these circumstances, tenants need to be extra careful about making sure everything is in good order and that they have evidence, such as photographs and witness statements, BEFORE they leave the property.

Depreciation: Landlords claiming new for old

Sometimes landlords will try to get tenants to pay for renovations, by claiming the replacement cost of worn items or, for example, the cost of painting a whole room because of a small mark. It is a rule of law that a person cannot expect to profit when an agreement (like a lease) is broken by the other party.

This means that landlords should not claim “new for old” for items that are damaged. They are only entitled to the depreciated value of the damaged item.

The Australian Tax Office publishes depreciation tables of household items. They are not binding on NCAT, but are a good starting point when working out the depreciated values of items. This table is included in a separate resource.

What does “reasonably clean” mean

The *Residential Tenancies Act 2010* says that a tenant has to return the premises in the same condition they found it in, excepting “fair wear and tear”. The Act says the premises need to be “reasonably clean”, (depending on the condition at the start of the tenancy).

Landlords cannot claim that tenants pay for professional carpet cleaning unless it is needed, or if the tenant has agreed to have the carpets cleaned as a condition of having pets.

At right is an example of a “to do” list that one property manager in Sydney’s east gave to outgoing tenants. These are not required under the Act, but shows what landlords and agents expect. At the start of a tenancy, tenants could use this list, in addition to the Condition Report, to record the state of the property when they move in.

Landlords’ bond checklist

- All marks on walls & ceilings, light switches, doorframes etc. Take extra care to see that the paint work is not damaged while doing so.
- Cobwebs to be removed (walls & ceiling cornices)
- Carpets to be professionally steam-cleaned where necessary. (EATS NOTE: this cannot be enforced when the carpet is just normally worn.)
- All air conditioning filters to be cleaned
- All light fittings to be cleaned inside and out
- All light bulbs should be working. Must be replaced if blown
- Vertical and Venetian blinds should be cleaned and dust free
- All tiled floors to be washed
- All windows and window sills to be cleaned
- Exhaust fans and covers properly cleaned
- All wardrobes and cupboards to be cleaned inside and out. All personal items removed
- Stoves, surrounding walls, oven, griller and drip trays to be cleaned thoroughly inside and out. Remove knobs and element rings and clean underneath
- Bench tops & wall tiles to be cleaned
- Particular attention should be paid to bathrooms, toilets & bathroom cabinets. All floor tiles to be scrubbed for mildew especially in shower recess. Shower screens should be free of soap residue and mildew. Any mould must be washed off walls & ceilings. Both mirror and cabinets should be cleaned
- Balconies to be clean & free of rubbish/pot plants/pots etc
- All personal items and rubbish must be removed from the property
- Please note that any damage, missing items or further cleaning required may result in claims on your bond