

Bond claims – Blinds and Curtains

Fair wear and tear

“Fair wear” is deterioration caused by the reasonable use of the premises. “Fair tear” is deterioration caused by the ordinary operation of the forces of nature. Importantly, intentional or negligent damage are not fair wear and tear.

The landlord must prove that damage is beyond fair wear and tear for compensation from the bond (*Barrera v Meyer* [2003] NSWCTTT 57; *Sunray Investments Pty Ltd v Cruwys & Ors* [1992] NSWRT 95). If the tenant wishes to argue that the damage is fair wear and tear, or to disprove any of the landlord’s claims or evidence, it is advisable that the tenant should produce evidence to support that argument (*Barrera v Meyer* [2003]).

NSW Tribunal must consider:

- the age, quality and condition of any item at the beginning of the tenancy;
- the average useful lifespan of the item;
- the reasonable expected use of such an item;
- any special terms of the tenancy agreement relating to that item; and
- the number and type of tenants, and the length of the tenant’s occupancy

(A. Anforth, P. Christensen, B. Taylor, *Residential Tenancies Law and Practice New South Wales*, 5th ed, Federation Press, Sydney, 2011, p. 120; *Tedja v Li (Tenancy)* [2012] NSWCTTT 298 [12]).

Is it fair wear and tear?

In *Fourmaris v Andrews* [2007] NSWCTTT 583, the Tribunal held that a small tear and water mark (caused by ironing) was fair wear and tear.

In *McGuire v Robins* [2013] NSWCTTT 500, there was water damage and mould on the blinds. The Tribunal held that the tenant was partially responsible for the neglect, and apportioned costs.

In *Weber v Franks* [2002] NSWCTTT414, the Tribunal held that the blinds had been in use in excess of 10 years, which is beyond the life of the blinds. In that case, the tenant had the blinds professionally cleaned and any damage was not beyond fair wear and tear.

In *Cancio v Ware* [2004] NSWCTTT 498, the blinds were 5 years old. The Tribunal held that the damage was more than fair wear and tear, so the tenant was liable to pay 50% of costs.

In *Archer v Pacific link Community Housing Association* [2008] NSWCTTT 1345, the blinds were 16 years old and exceeded its useful life. The Tribunal held that any damage was the result of fair wear and tear.

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

Negligence: not fair wear and tear

Fair wear and tear does not include deterioration in the premises that could be prevented by reasonable conduct on the tenant’s part (*Alamdo Holdings Pty Limited v Australian Window Furnishings (NSW) P/L* [2006] NSWCA 224).

Lifespan

The lifespan of blinds and curtains is 10 years, and is depreciable by 10% per year.

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). 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 repairs...

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 for use in the Tribunal		
Tenants' arguments	You need to show	Evidence that could be helpful
No Damage	That there has been no deterioration of the fixtures	<ul style="list-style-type: none"> Photographs from the start and end of the tenancy An ingoing condition report showing that the blinds or curtains were already damaged or dirty Receipts for cleaning or maintenance of the blinds or curtains undertaken by the tenant, such as dry cleaning, laundering etc.
Normal wear and tear	<ul style="list-style-type: none"> That damage or deterioration is due to normal use of the premises by the tenant Damage was not caused by the tenant's negligence or deliberate actions 	<ul style="list-style-type: none"> Evidence of the length of the tenancy Evidence of the age of the blinds or curtains Evidence of the type of tenancy: are there children, is it a share house, etc. Photographs from the start and end of the tenancy An ingoing condition report showing that the condition of the fixtures Photographs showing that the damage was not excessive Evidence that the condition of the blinds or curtains is a result of the landlord's failure to repair, for example, if there is mould due to a water leak, but not the tenant's failure to ventilate the property (see below) Evidence of that you notified the landlord of repairs required or damage Evidence that the blinds or curtains were subject to excessive wear – such as from the amount of sun the window is exposed to.
Damage caused by landlord's failure to repair	That the landlord is claiming the tenants bond for damage caused by the landlord's own failure to maintain the premises	<ul style="list-style-type: none"> Evidence that the damage to the fixtures has been caused by the landlord's inaction. Photos of the damage Evidence of that you notified the landlord of repairs required or damage Written reports by experts saying the damage to the fixtures was caused by the landlord's failure to maintain the property Ingoing condition report <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 leaks – 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 the cost of replacing all the blinds/curtains when only a small section needs replacing	<ul style="list-style-type: none"> A quotation from cleaners, blind or curtain contractors showing a lower cost of rectification. The landlord did not consider depreciation (see below).
<u>Depreciation</u> Normal life of and curtains: 10 years	<p>The original fixtures were old and the landlord should not claim the new value of the item because they have already benefited from its use for a period of time.</p> <p>For example, if the curtains are 6 years old, the landlord could only claim 40% of the cost of the repair or replacement.</p>	<ul style="list-style-type: none"> A copy of the Australian Taxation Office's Depreciation Tables for rental properties Evidence of the age of the fixtures. You could also ask the landlord to provide evidence of the age of the fixtures. If they refuse, you could ask the Tribunal to order the landlord to do so. Photographs of the state of the blinds and curtains at the start of the tenancy