

WHAT IS “FAIR WEAR AND TEAR”?

FAIR WEAR AND TEAR CAN BE AN ISSUE:

At the end of the tenancy when you are trying to get your bond money back. (See chapter Getting the Bond Money Back for more information).
In disagreements about who is responsible for repairs to the rented premises. (See chapter Maintenance and Repairs for more information).

WHAT DOES THE RESIDENTIAL TENANCIES ACT SAY ABOUT FAIR WEAR AND TEAR?

What does the Residential Tenancies Act say about fair wear and tear?

There is no definition of fair wear and tear in the Residential Tenancies Act (1987). However, the Act (section 38) does describe the tenant’s responsibilities for cleanliness and certain repairs.

WHAT ARE MY RESPONSIBILITIES?

According to section 38 of the Residential Tenancies Act, you have the responsibility to:
keep the place reasonably clean (s38(1)(a));

tell the owner within three days if there is any damage (s38(1)(b));

make sure you don’t cause or allow damage to be caused, either on purpose or by being careless (s38(1)(c)).

If you have done these three things you may be able to argue that the owner is responsible for fixing any damage (as set out in section 42 of the Residential Tenancies Act). See chapter Maintenance and Repairs for more information.

Remember to always report any damage whether it is your fault or not. It is always best to do this in writing and keep a copy of the letter.

CAN I EVER BE HELD RESPONSIBLE FOR FAIR WEAR AND TEAR?

Generally, you are not responsible for fair wear and tear. However you must check your tenancy agreement. Be aware that an owner/agent can, in a written agreement, get out of some of their responsibilities under the Residential Tenancies Act. This is called “contracting out”. See chapter The Tenancy Agreement for more information on contracting out. Generally, you are not responsible for fair wear and tear.

Fair wear and tear can be an uncertain issue if you and the owner/agent cannot agree on the cause of the damage. Sometimes it can be difficult proving which damage was from fair wear and tear and which was not.

Any argument over what is fair wear and tear should be decided on the individual circumstances of your case.

However, you can argue that you are only responsible if you intentionally (on purpose) or negligently (not taking enough care) caused or permitted damage to occur.

Here are some examples of what could be considered fair wear and tear and what probably wouldn’t be: Fair Wear and Tear (Owner/agent responsible).

Fair Wear & Tear	Careless or Negligent Damage (Tenant Responsible)
Cracked window pane due to old warped frames.	Cracked window pane from carelessly slamming window shut.
Garden mulch breaking down over time.	Tenant’s dog digging up garden mulch.
Paint fading and discoloring over time.	Paint discoloring through candle smoke.
Plaster cracks as building settles.	Plaster chipped by nails being hammered in.
Worn carpets due to day-to-day use.	Scratches on kitchen benchtops due to cutting food on the surface.

WHAT IF THE OWNER IS UNFAIRLY CHARGING ME FOR FAIR WEAR AND TEAR?

If the owner/agent is trying to charge you for damage which you think is fair wear and tear, you should question the charge and ask them to explain why they are trying to charge you for these things.

It may be useful to refer back to your property condition report (PCR). This report describes the condition of your rented home when you first moved in. In the case of a dispute over whether you or the owner/agent has looked after the place properly, a property condition report will be proof of the condition the premises are or were in.

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