



Occupancy *TIPS*

Bond

If bond is charged it can be lodged... you can also do your own condition report if you need to!

The bond is your money, make sure you are not giving it away!

What is a bond?

A bond is security in case an occupant leaves owing board or does damage to the property that has to be repaired. It is not meant to cover the grantor's potential losses.

There is no requirement that the grantor ask for a bond. However, if they do ask that you pay bond, it is recommended that you lodge the bond money with the Office of Rental Bonds (ORB), not with the grantor. This is because if you lodge bond with the ORB, you have the protections of the *Residential Tenancies Act 1997* (ACT) when it comes time to get your bond back.

AT THE START OF AN OCCUPANCY

How is bond lodged?

Office of Rental Bonds

To lodge the bond with the ORB, the bond should be lodged in the names of the occupant/s who paid a proportion of the bond.

The ORB will provide a receipt that acknowledges lodgement of the bond. If you do not receive a receipt within a few weeks of payment contact ORB to check that the money was properly lodged.

If you lodge bond with the Office of Rental Bonds, then you may not be entitled to possession of the premises until they produce evidence to the grantor that the bond has been paid.

Paid to the grantor

If you lodge bond directly with the grantor, make sure you get a written receipt for the full amount. Ask them to date the receipt, and include your name, the amount and what the amount was for (ie bond). Any dispute you have about the return of the bond money can still be taken to the Residential Tenancy Tribunal.

Condition reports or 'inventories'

Condition reports can be evidence of the condition of the premises when you move in. If there is a dispute later and the grantor wants to subtract money from your bond, a condition report can become very useful.

Unlike for residential tenancy agreements, there is no obligation under occupancy agreements to fill in a condition report or inventory. But it is a very good idea to do one anyway. There is a copy of a condition report in the Occupancy Kit, or you can also get one directly from the Office of Rental Bonds or the Tenant's Union website located at www.tenantsact.org.au.

Within a week or two after moving in, fill in the condition report for the property and sign

it. Take your time to fill in the report because it gives you an opportunity to live in the property and maybe identify problems that are not immediately visible. You should keep a copy, and give a copy to your grantor.

If you are given a report already filled in by the grantor, you can respond in one of two ways. If you agree with the report, simply sign it and return the copy to the landlord or agent. If you do not agree with part or all of the statements, add your own comments, then sign and return their copy. Remember to make the same comments on your own copy.

It is very important that you keep a copy of the report. Keep it with your occupancy agreement and other documents. Photos of the premises taken at the start of the occupancy agreement can also be helpful.

REMEMBER: If you do not complete, sign and return a copy of the condition report, it could be difficult to disagree with the grantor saying the damage was done while you were the occupant.

DURING YOUR OCCUPANCY

If there are changes to the occupancy agreement during your stay, and the changes affect who is listed at the ORB and in which room/ premises, you must fill out a "*Transfer of Bond*" form and advise the ORB of the changes. This is very important because the ORB will only release bond to those occupants listed with them for the particular premises.

AT THE END OF YOUR OCCUPANCY

It is essential that when you end your occupancy you finalise your responsibilities for the room or house.

Usually, an occupant will be expected to return the property back to the condition it was in at the beginning of the agreement (as

per the original condition report), allowing for fair wear and tear. **You cannot be made to improve the property.** Extensive lists provided by the grantor detailing things you have not agreed to do in the initial agreement, may not be valid.

The grantor may arrange an inspection of the premises when you move out to note any changes in its condition. It is in your interest to attend this inspection. Return keys at the inspection—you could be charged board for the time you hold the keys.

When you move out contact the ORB to confirm they have your forwarding details.

What can the grantor claim from my bond?

If you have lodged your bond with the ORB, and you disagree with the grantor about how much should be given back to you when you move out, then the dispute will be heard by the Residential Tenancies Tribunal. In deciding whether to give you back the full amount of the bond, or a part of it, the Tribunal will take into account a number of different factors. Amongst other things, some of those factors might include;

- The *real* cost of repairing any damage other than fair wear and tear;
- Any outstanding board owing under an occupancy agreement at the time it terminates;
- The cost of replacing any fuel used by the grantor during the occupancy which was supplied to the premises by the grantor;
- Real legal costs incurred by the grantor for assigning or transferring the occupants' rights under the occupancy agreement;

The grantor must be able to support their claim, preferably with documentation. It is not sufficient for them to merely make a claim of damage. The grantor must show that the occupant (or one of their invited guests) was

responsible for causing or permitting that damage. The Tribunal will consider a reasonable alternative cause provided by the occupant.

If you have not lodged your bond with the office of rental bonds, then what amounts the grantor can claim from your bond will be set out in your agreement and House Rules. The RTA and its rules will not protect you. Examples of fees that could be detracted from your bond if you pay it straight to the grantor, but which could be questioned under the RTA include:

- Any blanket charge, for example a "blue tac fee" on student dorm rooms
- Cleaning or steam cleaning of carpet fees
- Any other "exit" fee

So it is in your best interests to lodge your bond with the Office of Rental Bonds wherever possible!

What is 'fair wear and tear'?

'Fair wear and tear' is a very old phrase that has been used in legal agreements for centuries. There are two parts to its meaning:

The 'fair' part relates to the *cause* of the damage. What it is saying is that for damage to be excused, it must have occurred in the course of *fair use* of the property for residential purposes. So something like carpet deterioration in high traffic areas of the premises (e.g. hallways), which could definitely occur in the course of fair use, would be excused. On the other hand, it would be hard to argue that motor oil stains on a lounge room carpet occurred during fair use. This type of damage would therefore almost certainly be considered to fall outside fair wear and tear.

The words 'wear and tear' refer to the *effect* of the damage, and work to limit the severity of allowable damage. For example, minor scuff marks on walls, sun-fading of curtains

and minor oil stains on a concrete driveway would all likely constitute fair wear and tear. On the other hand, a large red wine or cordial stain on the carpet would probably be considered to be more than merely wear and tear, even though such a stain clearly could have happened in the course of fair use. What is considered 'fair wear and tear' depends on the facts of each case.

Ultimately, if you and the grantor cannot agree, it may be necessary to have it decided in the Residential Tenancies Tribunal. The RTT may take into account:

- The nature of each specific claim;
- The condition of the property at the start of the occupancy;
- The condition of the property at the end of the occupancy; and/or
- The general age and condition of the property.

Claiming the refund of your bond

By Agreement -

If you and the grantor agree;

- that you do have no liabilities (ie you do not owe anything), or
- that you do owe something but you agree on how much,

then you can both sign the 'Refund of Bond' form. You can then take the signed form to the ORB and you will receive a cheque for the agreed amount immediately.

Even if you have a verbal agreement with the grantor about liability, insist on the amounts and details being included on the form before you sign it.

NEVER SIGN A BLANK BOND FORM!!

If you disagree -

If you and the grantor cannot agree on whether you are liable for alleged damage, you can still claim the amount you think is relevant, sign the claim form and lodge it with the ORB without the grantor's signature.

The ORB will then notify the grantor that they have received a claim for the bond. The grantor has 2 weeks to dispute this claim.

If they don't dispute your claim within the time your bond will be released to you. If they dispute your claim, any undisputed amount is returned to you and the rest is withheld. Either party may make an application to the RTT for an order for how it is to be paid.

It is worthwhile to write to the grantor when you lodge your claim, advising them of your actions and stating why you are not liable for the damages they are claiming (sign, date and keep a copy of the letter). This may be enough to deter them from disputing your claim.

Bond forms are available from;

- Office of Rental Bonds Ph: 6207 1178
www.rgo.act.gov.au,
- Tenant's Union (ACT) Ph: 6247 1026
www.tenantsact.org.au

**This is a summary of your rights and responsibilities.
If you have a specific problem, you should seek more detailed advice.**

Tenants' Advice Service 6247 2011 free legal advice and information for all ACT tenants

Tenants' Union (ACT) 6247 1026www.tenantsact.org.au	collective strength through membership general renting/tenancy information and news
Welfare Rights and Legal Centre 6247 2177www.welfarerightsact.org	free legal advice and assistance for low income tenants
Office of Rental Bonds 6207 1178www.rgo.act.gov.au	bond lodgement, return and inquiries
Residential Tenancies Tribunal 6217 4260www.courts.act.gov.au/	dispute resolution and enforcement of tenancy legislation
Office of Fair Trading 6207 0400www.fairtrading.act.gov.au	complaints against real estate agents
Housing Review Committee 6207 1507	appeals against ACT Housing decisions
Housing ACT Website www.dhcs.act.gov.au	Housing ACT policies, general information