



# Occupancy *TIPS*

## Maintenance, Repairs and Essential Services

*All too often occupants have difficulty getting grantors to make repairs*

*... but when it's bond refund time, every scratch is structural damage!*

*Be sure to get full value for your occupancy dollar by insisting that grantors meet their legal obligations to keep your home in good repair.*

### **The law in the ACT**

In the *Residential Tenancies Act 1997* (RTA), the Occupancy Principles require that grantors provide and maintain the premises in a reasonable state during the occupancy. It says that-

**(a) an occupant is entitled to live in premises that are-**

- i) reasonably clean,**
- ii) in a reasonable state of repair; and**
- iii) reasonably secure.**

The occupancy agreement and any house rules can also spell out additional obligations on the grantor to make repairs, as well as any obligations on the occupant to look after the premises. But the obligations on both parties need to meet this standard of "reasonableness." What is reasonable in each case will depend on the circumstances.

Also note that "premises" include the occupant's particular room or van, as well as communal areas for eg living rooms, kitch-

ens, bathrooms, driveways and paths on the premises etc.

### ***Reasonably clean***

Occupants are entitled to live in premises that are reasonably clean. What is reasonably clean is not necessarily what the grantor thinks is reasonable, or even what the person you chat to over coffee thinks is reasonable. Being reasonable is measured by current objective, community standards. There are not clear rules about what is objectively reasonable, but the premises might not be reasonably clean if there is;

- Excessive dirt in the carpet/ floor
- Excessive mould spores or residue in living areas
- A high concentration of soot and fumes
- A concentration of dangerous pests, for example European wasps or dead animals

Furthermore, the law states that premises have to be reasonably clean both at the start of the agreement and during the agreement. Who has responsibility for keeping certain areas clean will be set out in the occupancy agreement. However, unless the agreement states otherwise, it is likely that the grantor has responsibility for maintaining communal areas that they have access to. Communal areas might include the gardens, access roads or driveways, kitchens, halls and/ or bathrooms.

Although occupants do not need to fill in a condition report when they move in, it is a good idea. The condition report is evidence about how clean the premises were at the start of the occupancy. The condition report can assist you to accurately record the condition of the premises and any changes. (See *Occupancy Tip Sheet: Bond*)

### **A reasonable state of repair**

The grantor needs *to provide* the premises in a reasonable state of repair. What is a reasonable state of repair will depend on the circumstances. Factors that may be taken into account will include; the age and life expectancy of the premises, as well as the purposes that the occupant will use the premises for. However, at a minimum, the premises must not put at risk the health and safety of the occupant. Rotten stairs that could lead to a fall might indicate that premises that are not in a reasonable state of repair.

The grantor also needs *to maintain* the premises in a reasonable state of repair. There are no rules about what repairs must be made, or how soon different types of repairs will need to be made. However, if there are repair timeframes in the occupancy agreement or contract, the grantor is legally obliged to keep to the arrangement. Some examples of timeframes for normal and urgent repairs include;

#### **Normal repairs:**

Non-urgent repairs are those that do not have an immediate and significant effect or impact on the occupant's ability to live in, or use, the premises.

#### **Urgent Repairs:**

Damage that requires urgent repair is damage that has a significant impact on the ability to live in, or use the premises. Damage might result in an inability to use essential facilities (toilet, cooking, heat, hot water), to safely live on the premises (electrical faults, broken steps or handrails), or might damage an occupant's property (water damage to clothes/ furniture, faulty locks making possessions insecure). Examples of urgent repairs could include;

- (a) A burst water service;
- (b) A blocked or broken lavatory system;
- (c) A serious roof leak;
- (d) A gas leak;
- (e) Dangerous electrical fault;
- (f) Flooding or serious flood damage;
- (g) Serious storm or fire damage;
- (h) A failure of gas, electricity or water supply to the premises;
- (i) The failure of a refrigerator supplied with the premises;
- (j) The failure or breakdown of any service essential for hot water, cooking, heating or laundering;
- (k) A fault or damage that causes the premises to be unsafe or insecure;
- (l) A fault or damage likely to cause injury to person or property;
- (m) A serious fault in any door, staircase, lift or other common area which inhibits or unduly inconveniences the tenant in gaining access to or use of the premises.

While the timeframes for repair will mostly to depend on what is in your Occupancy Agreement and House Rules, if the repairs are too slow in being made, then the grantor might not be able to argue that they are keeping the premises in a reasonable state of repair. You may then be able to resolve the dispute by applying to the Residential Tenancies Tribunal (RTT).

If there are no timeframes in the occupancy agreement, it is worth negotiating to have reasonable timeframes included specifically in your agreement. For example, it would be reasonable to ask the grantor to undertake urgent repairs "as soon as reasonably possible depending upon the nature of the repairs necessary".

And in the case of normal or non-urgent repairs such as a cupboard door not working, it would be reasonable to ask the grantor to complete the repairs within 4 weeks of being informed that the repairs need to be done.

If reasonable repairs are not done and damage to an occupant or an occupant's possessions occur, then an occupant may also be entitled

to claim compensation through the RTT. For more information, seek specific legal advice.

Note that a grantor may object to making repairs if the damage was done by wilful or negligent acts of the occupant and/or their invited guests. In such circumstances, the occupancy agreement may set out how repairs are conducted and charged for. Be aware that the occupant may be required to pay for the damage to be repaired.

### ***Reasonably Secure***

An occupant is also entitled to premises that are reasonably secure. There is no definition about what reasonably secure means, and it will depend on the circumstances including the geographical location of the premises, the lighting, fencing and the construction material of the premises.

At the very least however, the grantor needs to ensure that reasonably foreseeable risks or dangers to an occupant or an occupant's possessions are avoided. So, a grantor would probably be obliged to ensure that locks to doors and windows that provide external access are fitted and working properly. Extra security devices such as screens, dead locks and surveillance cameras etc might go beyond "reasonable" security measures, depending upon the circumstances.

Also, it is likely that the grantor does not need to make the premises secure according to standards for insurance purposes. Although this area of law is unclear.

### **OCCUPANT OBLIGATIONS**

There are no explicit rules as to what the occupant has to do to take care of the premises. However, your house rules may state that you are obliged to take reasonable care of the premises and keep them reasonably clean. You might also be asked:

(a) not to intentionally or negligently damage (or permit damage of) the premises (this covers not only

the occupant, but also any guests, animals, children etc);

(b) notify the grantor of any damage as soon as possible (it is a good idea to put this in writing, sign, date and keep a copy);

(c) take reasonable care of the premises and keep the premises reasonably clean, having regard to the condition at the start of the occupancy and the normal incidents of living. (*see Occupancy Tip Sheet: Bond*)

### **COMPELLING A GRANTOR TO DO REPAIRS**

Start by requesting the repairs in writing and keep a copy of your letter. If the letter does not achieve the desired result, you can now take the matter to the Residential Tenancies Tribunal (RTT). You should get specific advice before embarking on this course of action.

The RTT may make orders that:

- require performance of the agreement and compel making the repairs, and/or,
- require payment of compensation for breach of the agreement.

### **Can I withhold board (or rent)?**

**NO.** It is often tempting to withhold board and apply it to the cost of necessary repairs, however it is counterproductive. Even if the grantor fails to carry out repairs, your obligation to pay rent continues and you risk eviction if you are in arrears. It's fine to reach agreement with the grantor to be reimbursed for the cost of repairs out of board, **but confirm the agreement in writing first!** You could write to the grantor setting out what you agreed and noting the amount and timing of the rent deductions. Also attach copies of any receipts. (Keep a copy of this letter and any receipts or invoices).

## Supplying Essential Services: Gas, Water and Electricity

Under an occupancy agreement, the grantor does not have to provide gas, water or electricity. However, if they do not provide these essential services, it might be difficult for the grantor to argue that they are keeping the premises in a reasonable state of repair.

Where the grantor does provide those services, they do not need to be separately metered. The money for these services is either included in the board or rent or charged separately as a utilities levy.

At times, the grantor might need to interrupt the supply of essential services. For instance when the grantor needs to repair the services, or the metering mechanisms, or even conduct repairs in the area. However, if the grantor interrupts essential services because of an alleged breach of the occupancy agreement by the occupant, it is worth seeking further legal advice. The resolution of occupancy disputes can now be taken to the Residential Tenancies Tribunal. This means that unfair practices about the provision of essential services can be quickly remedied.

## Charging for Essential Services

The *Utilities Act 2000* ACT states that the grantor is not supposed to make a profit

from supplying essential services. If the services are not individually measured using an approved meter, then it is possible that you are paying too much. But if there is no meter, it may be a difficult issue to work out what would be a reasonable amount to pay.

Grantors can charge the maximum rate that they are charged by the utility, as well as any reasonable fees incurred for collecting and maintaining those services. However, if you believe that the grantor is still making a profit, then you can

- take the dispute to the Residential Tenancies Tribunal for resolution, or
- call the Office of Fair Trading on 6207 0400.

**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 1026 .....www.tenantsact.org.au	collective strength through membership general renting/tenancy information and news
Welfare Rights and Legal Centre .....6247 2177 .....www.welfarerightsact.org	free legal advice and assistance for low income tenants
Office of Rental Bonds .....6207 1178 .....www.rgo.act.gov.au	bond lodgement, return and inquiries
Residential Tenancies Tribunal .....6217 4260 .....www.courts.act.gov.au/	dispute resolution and enforcement of tenancy legislation
Office of Fair Trading .....6207 0400 .....www.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