



Occupancy Factsheet

Repairs and Electricity, Water and Gas

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](#), the Occupancy Principles require that grantors provide and maintain the premises in a reasonable state during the occupancy. Section 71E(1)(a) of the Act says that:

an occupant is entitled to live in premises that are-

- i) reasonably clean; and*
- 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, kitchens, 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 no 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; or
- A concentration of dangerous pests, for example European wasps.

Furthermore, the 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 (and any photos you take) are 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 Factsheet: [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, or damage to their belongings. Eg., rotten stairs that could lead to a fall would indicate that the premises 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. If there are repair timeframes in the occupancy agreement or contract, the grantor is legally obliged to keep to the arrangement. If the agreement does not set out timeframes, then the type of repair issue might determine what timeframe is reasonable. If the repairs are needed urgently, they should be carried out sooner than if they are not urgent.

Non-urgent repairs

Non-urgent repairs 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 burst water service
- A blocked or broken lavatory system

- A serious roof leak
- A gas leak
- Dangerous electrical fault
- Flooding or serious flood damage
- Serious storm or fire damage
- A failure of gas, electricity or water supply to the premises
- The failure of a refrigerator supplied with the premises
- The failure or breakdown of any service essential for hot water, cooking, heating or laundering
- A fault or damage that causes the premises to be unsafe or insecure
- A fault or damage likely to cause injury to person or property
- 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 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 ACT Civil and Administrative Tribunal (Tribunal).

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 Tribunal. For more information, seek legal advice from the Tenants' Advice Service on 6247 2011.

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, but it is the same standard under an occupancy agreement as under a tenancy agreement. 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 and surveillance cameras etc might go beyond "reasonable" security measures, depending upon the circumstances.

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:

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)

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)

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 Factsheet: [Bond](#))

COMPELLING A GRANTOR TO DO REPAIRS

Start by requesting the repairs in writing and keep a copy of your letter. Notify the grantor of any loss, damage or inconvenience you have suffered or will suffer if repairs are not carried out. Also notify the grantor if the damage is likely to become more serious, or cause other damage to the property (for example, if a leak in the shower is damaging the carpet in the next room). Ask for the grantor to respond by a certain date and show you what steps they have taken to organise repairs.

If the letter does not achieve the desired result, you can take the matter to the Tribunal. You should get specific advice before starting this course of action.

The Tribunal may make orders that:

- require the grantor to make repairs
- 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 board 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. Keep a copy of this letter and any receipts or invoices.

SUPPLYING ESSENTIAL SERVICES: GAS, WATER AND ELECTRICITY

There is no law that specifically says that a grantor has to supply essential services. However, it would be very difficult for a grantor to argue that they are keeping the premises in a reasonable state of repair, and that the occupant has quiet enjoyment of the premises, if the occupant has no gas, water or electricity.

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 be taken to the ACT Civil and Administrative Tribunal. This means that unfair practices about the provision of essential services can be quickly remedied.

Charging for Essential Services

A grantor is not supposed to make a profit from providing services. The [Utilities Act 2000](#), sections 98-100, state that a grantor cannot charge an occupant more than a

supplier can charge under a standard contract. That means that a grantor can pass on the consumption and supply costs that they are charged by their provider, but are not allowed to charge anything else. The charge for services can be included in the board or rent or charged separately as a utilities levy.

Services do not need to be separately metered. If the grantor does not separately meter the consumption for individual occupants, you can ask the grantor for evidence of the total amounts that the grantor charges and is charged for the property. That way, you can work out if they are breaching the Utilities Act or not. Grantors can be fined up to \$5000 for each service that they overcharge for.

If you believe your grantor is breaching the Utilities Act, you can make an application to the ACT Civil and Administrative Tribunal for resolution of the dispute. If the grantor is represented by a real estate agent, you can also make a complaint to the Office of Fair

**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 for all ACT tenants (& others renting their homes)

Tenants' Union (ACT)	6247 1026	publications, information, workshops, law reform general information and news on tenancy/renting issues
www.tenantsact.org.au		
Welfare Rights and Legal Centre	6247 2177	free legal advice and assistance for low income tenants
www.welfarerightsact.org		
Office of Regulatory Services (Bonds)	6207 1178	bond lodgement, return and inquiries
(Fair Trading)	6207 0400	complaints against real estate agents
www.ors.act.gov.au		
ACT Civil and Administrative Tribunal	6207 1740	dispute resolution & enforcement of tenancy legislation
www.acat.act.gov.au		
Housing ACT information line	6207 1150	ACT public housing enquiries
www.dhcs.act.gov.au/hcs		