

# Repairs

**All too often tenants have difficulty getting landlords to make repairs...**

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

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

## The law in the ACT

The terms of every tenancy are set out in the [Residential Tenancies Act 1997](#) ('RTA') and [Standard Lease](#). These terms set out procedures relating to the condition of the premises, maintenance and urgent repairs. References below are to the RTA and clauses in the standard terms.

## LANDLORD'S OBLIGATIONS

### At the beginning of your tenancy

A landlord is required to provide premises in a reasonable state at the start of the tenancy.

Standard term cl 54 says that, the landlord must ensure that the premises, including furniture, fittings and appliances (unless specifically excluded from the tenancy agreement in writing), are:

- (a) fit for habitation;
- (b) reasonably clean;
- (c) in a reasonable state of repair; and
- (d) reasonably secure.

What is reasonable depends on the circumstances in each case.

### During your tenancy

A landlord is required to maintain the premises in a reasonable state of repair, having regard to their condition at the beginning of the tenancy (cl 55(1)).

When it comes to repairs, the law makes a distinction between normal (non-urgent) and urgent repairs

### Normal repairs:

The landlord is obliged to make non-urgent repairs within 4 weeks of being notified of the need for the repairs, unless otherwise agreed (cl 57). However, the landlord is not obliged to repair damage caused by the negligence or wilful act of the tenant (cl 56).

**Urgent repairs** are those that have an immediate and significant effect or impact on the tenant's ability to live in, or use, the premises.

## Urgent Repairs:

In recognition of the need for some repairs to be made within a very short time frame, the standard terms (cl 60) include the following list of urgent repairs (note that this is not an exhaustive list):

- (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.

**In these cases the landlord is required to carry out repairs as 'soon as necessary', having regard to the nature of the problem (cl 59).**

## TENANT'S OBLIGATIONS

The standard terms specify that you are obliged to take reasonable care of the premises and keep them reasonably clean. Cl 63 says that during the tenancy the tenant must:

- (a) not intentionally or negligently damage (or permit damage of) the premises (this covers not only the tenant, but also any guests, animals, children etc);
- (b) notify the landlord 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 their condition at the start of the tenancy and the normal incidents of living.

## Alterations and Renovations

You can only make alterations or additions with the written permission of the landlord (cl 67). However, their consent should not be unreasonably withheld (cl 68).

Keep in mind that if you act without permission, you risk eviction for breach, and improvements or fixtures you install may become property of the landlord if you don't remove them when you leave. You would not be

paid or compensated in this case.

The RTA prohibits any requirement on you to make any improvements, alterations or repairs to the premises as a condition of getting the tenancy (s15(3)), and a tenant cannot be required to improve the premises (cl 65).

## HOW TO GET YOUR LANDLORD TO DO REPAIRS

Request repairs in writing (sign, date, and keep a copy of your letter). If they fail to make repairs within the specified time, you have several options, depending on the type of repairs needed:

### General repairs

Write a "Notice to Remedy" to the landlord, pointing out their obligations under cl 55(1). State that the repairs are still outstanding, meaning the landlord is in breach of the lease agreement. Set a final time limit for completion of the repairs.

If the notice does not work, you can take the matter to the ACT Civil and Administrative Tribunal (ACAT) seeking an order requiring the landlord to carry out the repairs within a specified time. ACAT may also order a **rent reduction** (see below).

### Urgent Repairs

If the landlord or agent refuses to respond to your request for urgent repairs, you can make an urgent application to ACAT for an order compelling the landlord to conduct the repairs.

Or you are able to authorise those repairs — but **only** if set procedures are followed:

If the landlord cannot be contacted, or fails to do the urgent repairs within a reasonable time, you may arrange for repairs to a maximum value of up to 5% of the rent of the property over a year (cl61). Eg if you pay \$350 per week rent, your annual rent is \$18,263. You could authorise urgent repairs costing up to \$913.

This procedure is set out in cl62:

- (a) the repairs must be made by the qualified tradesperson nominated by the landlord in your tenancy agreement;
- (b) if a tradesperson hasn't been nominated, can't be contacted or is unavailable, the repairs must be performed by a qualified tradesperson of your choosing;
- (c) where the repairs are arranged in accordance with these procedures, the landlord is liable for the cost of repairs and may be billed directly;

**(d) where you have not acted in strict compliance with these procedures you are liable for the cost of the repairs you have arranged.**

Depending on the seriousness of the problem, or if it persists over a long period, you *may* have grounds for termination of the agreement for breach. You should get specific advice before embarking on this course of action.

## Rent Reductions and Compensation

If the repair issue has significantly reduced your use or enjoyment of the premises, ACAT can order a rent reduction from when the problem began (see Tenancy Factsheet: [Rent Increases & Reductions](#)). If the landlord has breached the agreement, eg by failing to carry out repairs within the required timeframe, or by providing the premises with repair issues, ACAT can also order compensation for losses caused by the breach, eg damage to your belongings or increased electricity bills. This can be useful to use in negotiations, because the longer the landlord waits before doing repairs, the larger the rent reduction or compensation.

### CAN I WITHHOLD RENT?

**As a tenant you must never just stop paying rent!** Even if the landlord fails to carry out repairs, your obligation to pay rent continues and you risk eviction if you fall into arrears.

**HOWEVER**, you can seek to pay all or part of rent money into ACAT until the work is carried out. **You can ONLY do this if you get orders from ACAT FIRST:**

Sections 83 (b) and 83 (g) of the RTA states that ACAT may make orders:

- (b) requiring performance of a residential tenancy agreement;
- (g) requiring payment of all or part of the rent payable under the standard residential tenancy terms or standard occupancy terms into the ACAT until the ACAT orders otherwise.

Hopefully the prospect of ACAT making such an order will persuade the landlord to make the repairs.

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

### Tenants' Advice Service 6247 2011 free legal advice for all ACT renters (tenants and occupants)

- Tenants' Union (ACT) .....6247 1026 — publications, information, workshops, law reform and news on renting issues  
[www.tenantsact.org.au](http://www.tenantsact.org.au)
- Welfare Rights and Legal Centre.....6247 2177 — free legal advice and assistance for low income tenants  
[www.welfarerightsact.org](http://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](http://www.ors.act.gov.au)
- ACT Civil and Administrative Tribunal .. .....6207 1740 — dispute resolution and enforcement of tenancy legislation  
[www.acat.act.gov.au](http://www.acat.act.gov.au)
- Housing ACT information line .....6207 1150 — ACT public housing enquiries  
[www.dhcs.act.gov.au/hcs](http://www.dhcs.act.gov.au/hcs)