

Tenant responsible maintenance

Tenant responsible maintenance is often referred to more simply as "TRM".

Tenants are responsible for the cleaning, repair or replacement of items which was not the result of fair wear and tear. This can include repairs that are required as a result of:

- a purposeful act by the tenant; or
- neglect or negligence by the tenant; or
- accidental damage

Tenants are responsible for repairs where the damage, neglect or accident was the responsibility of another occupant or visitor.

Common requests from tenants for maintenance, which are considered by NCCH to be the responsibility of the current tenant, are:

- replacement of light globes
- cleaning of gutters*
- pest control*
- upgrade of facilities to provide for PAY-TV installation
- accidental damage, even where there is no evidence of neglect or malicious intent
- removal or trimming of trees*

* Some restrictions apply

For serious and/or repeated incidents of property damage, NCCH will apply to the NCAT for a Specific Performance Order (to prevent the damage from reoccurring) or, in some cases, may seek termination of the tenancy.

NCCH will provide information to tenants about NCCH's policies. Each new tenant will receive a copy of the Tenant Charges factsheet.

The law

- NCCH tenants have a responsibility to comply with the provisions in the Residential Tenancies Act NSW (2010) and the residential tenancy agreement that they have signed with NCCH.
- In relation to TRM, relevant sections of the law include:
- NCCH has an obligation to provide a Property Condition Report prior to or at the time of entering into an agreement with a tenant (s.29)
- NCCH must provide the property in a reasonable state of cleanliness and in a state fit for habitation by the tenant (s.52)
- NCCH must maintain the property in a reasonable state of repair (s.63)
- A tenant must:
 - not intentionally or negligently cause or permit any damage to the residential premises; and
 - keep the residential premises in a reasonable state of cleanliness; and
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- notify NCCH of any damage to the residential premises (s.51)
- Upon vacation; the tenant must:
 - remove all goods and rubbish; and
 - leave the residential premises in a reasonable state of cleanliness, as nearly as possible in the same condition, fair wear and tear excepted; and
 - return all keys for the premises (s.51)
- A tenant is responsible for an act or omission by a person who is lawfully on the premises (s.54)
- Tenant must not make alterations to premises without consent:
 - A tenant must not, without the landlord's written consent or unless the residential tenancy agreement otherwise permits, install or cause to be installed a fixture or make or cause to be made any renovation, alteration or addition to the residential premises.
 - A landlord must not unreasonably withhold consent to a fixture, or to an alteration, addition or renovation that is of a minor nature.
 - A landlord may withhold consent to any other action by the tenant that is permitted under this section whether or not it is reasonable to do so.
 - A fixture installed by or on behalf of the tenant, or any renovation, alteration or addition to the residential premises by or on behalf of the tenant, is to be at the cost of the tenant, unless the landlord otherwise agrees (s.66)

Commitment to resolving tenant disputes about TRM

NCCH is committed to managing and resolving TRM matters with:

- a strong focus on local resolution and agreement; and
- in an inclusive and responsive manner including problem solving and negotiation with the tenant as early as possible.

Post vacation TRM charges

At the completion of each tenancy, the former tenant will be responsible for the repayment of all identified TRM costs. Where NCCH is required to undertake repairs or cleaning because the former tenant has not complied with their obligations and the damage is beyond normal 'fair wear and tear', the work order is raised as Tenant Damage against the tenant.

Such costs can include works required to:

- remove or store of goods (including furniture) left behind, in accordance with sections 126-133 of the Act
- return the property to a reasonable state of cleanliness
- return the property to its condition upon the original letting to the tenant, fair wear and tear excepted; and
- make good the property following the omission of the tenant to make good any renovation, alteration or addition to the residential premises.

Examples of when the former tenant (or when caused by a household member or visitor) may have breached their obligations include:

- intentional or malicious damage to the property's fixtures or fittings
- reckless behaviour which indicates a failure to take reasonable steps to prevent damage from occurring
- reasonable care was not taken to avoid damage to the rented premises or common area, and
- the tenant has failed to return the rented premises in a reasonably clean condition.

NCCH will generally not claim costs from the tenant for property damage if the damage was caused by:

- an accident which could not be reasonably prevented and where a reasonable level of care was shown
- works completed by a contractor which do not meet the required standards
- the criminal actions of a third party and the tenant could not prevent it from occurring
- police action at the property
- natural disasters, e.g. storms or floods

NCCH will not generally claim costs from the tenant if there is no documented proof or evidence that can substantiate the required works being considered as TRM.

Pre-vacation inspections

Where a tenant has been given notice of their intention to vacate, a pre-vacation inspection should be arranged. The pre-vacation inspection is an opportunity for NCCH to clarify with the tenant our expectations concerning any required property repairs, internal and external cleaning and goods removal. The tenant should also be provided with a copy of the Vacating Your Home factsheet.

Vacant properties

For all vacant properties, NCCH will inspect the property and prepare a scope of work using the Vacant Schedule of Rates to cost all work to be completed.

All TRM will be identified by comparing the ingoing Property Condition Report and any other relevant information concerning the ingoing condition of the property (e.g. photos or file notes) against the current standard of the property.

The onus is on NCCH to prove all works identified as TRM. Wherever possible, documentary evidence, will be collected and retained to support such charges. A tenant will be charged a reasonable cost for all identified TRM.

Wherever possible, the former tenant should be directly notified by telephone or email of NCCH's intention to charge for this work and be given the opportunity to remedy the work themselves. A former tenant is not to be given more than 48 hours to complete the required works.

Depreciation

The costs of all planned maintenance items will be depreciated, according to the NCCH schedule of Component Lifecycle and Replacement Cost Data.

Goods are left behind

NCCH acknowledges the Bundjalung, Arakwal, Gumbaynggir and Yaegl peoples who are the traditional custodians of the land that comprises the Northern Rivers

Whilst NCCH is legally bound to provide a minimum period in order for goods left behind to be collected by the former tenant, all reasonable measures should be taken in order not to prevent this period from prolonging the total void period. Measures can include:

- moving goods left behind to off-site storage
- moving goods left behind to a discreet area within the property, e.g. the garage

TRM charges against current tenants

Where NCCH is required to undertake repairs or cleaning because the tenant has not complied with their obligations and the damage is beyond normal 'fair wear and tear', a work order is raised as Tenant Damage against the tenant.

Such charges can be identified by:

- a report or admission being made to NCCH directly by the tenant
- a report being received from a tradesperson of repairs being required at the property, likely to be TRM
- NCCH staff during routine property inspections

Such costs can include works required to:

- cleaning the property in order to return the property to a reasonable state of cleanliness
- repair the property in order to return its condition upon the original letting to the tenant, fair wear and tear excepted
- making good the property following the omission of the tenant to make good any renovation, alteration or addition to the residential premises.
- remedy any immediate health or safety concerns.

Examples of when the tenant (or household member or visitor) may have breached their obligations are:

- intentional or malicious damage to the property's fixtures or fittings
- reckless behaviour which indicates a failure to take reasonable steps to prevent damage from occurring
- reasonable care was not taken to avoid damage to the rented premises or a common area
- any failure or omission by the tenant that has created an immediate health or safety concern, e.g. disengaging of smoke alarms/detectors, exposed wiring as a result of property damage, damage to stairs/balustrades which make stairs unsafe to use,
- the tenant has not maintained the rented premises in a reasonably clean condition.

Exclusions

NCCH will generally not claim costs from the tenant for property damage if the damage was caused by:

- an accident which could not be reasonably prevented
- works completed by a contractor which do not meet the required standards
- the criminal actions of a third party and the tenant could not prevent it from occurring



- police action at the property
- natural disasters, e.g. storms or floods

NCCH will not generally claim costs from the tenant if there is no documented proof or evidence that can substantiate the required works being considered as TRM.

Tenant opportunity to rectify

Tenants are generally provided with a reasonable opportunity to rectify the TRM themselves at their own cost.

However, this opportunity is only provided where:

- It is expected that the matter will be attended to within a reasonable timeframe
- The rectification works are likely to be completed in a professional manner and it is unlikely that further costs will be incurred as a result of the rectification works
- The TRM matter does not present an immediate danger to the health or safety of the residents

Property inspections

NCCH manage a system of routine inspections of all properties under its management. There is an obligation on all NCCH staff visiting our properties that TRM items are identified, discussed with the tenant and then appropriate remedial action is taken in order for the issue to be resolved.

The appropriate actions to be taken in relation to TRM identified during property inspections is dependent upon the extent and seriousness of the issue identified.

Critical matters

These are issues that immediately affect the health and safety of the residents or immediately threaten the condition of the property. Examples include a smoke alarm being wilfully disengaged, exposed wiring due to wall damage, damaged balustrades that have made stair-use unsafe, damaged asbestos sheeting/products, etc.

The Act provides for landlords to access a premises (with or without a tenant's consent or without notice in some instances) in order to have urgent repairs completed or to have NCCH respond to its statutory requirements in relation to health and safety.

Conditions apply to these provisions and must be understood prior to undertaking such serious actions. Refer to the NCCH Responsive Maintenance procedures (Urgent Repairs) for further information

Serious matters

These matters include items where a failure of (either the tenant or NCCH) to repair the items is likely to result in further property damage or create a compliance issue for NCCH. This can include:

- NCCH needing to respond to a local authority order to remedy (e.g. a Council order for poorly kept yards or for the removal of an unregistered vehicle)
- A failure by the tenant/s to clean has resulted in a vermin infestation or is likely to result in further property damage if unattended (e.g. failure to clean/prevent mould);
- A continuing act or omission by the tenant resulting in deterioration of the property (cleaning methods are

causing damage; children are writing on the walls; tenant is unwilling to complete regular garden maintenance, etc.)

Matters will be discussed with the tenant. The tenant will be advised that unless the matters are attended to, the work will be undertaken by NCCH and charged as TRM. At this time, an estimate of the total cost of the remedial works should be provided to the tenant.

The tenant is given 7 days to complete the works. The required remedial works should be detailed and clear. A further appointment is made so that completion of the required work can be checked.

If there is evidence to suggest that the tenant does not have the capacity to complete the works (or 7 days is not considered appropriate given the amount of works required), a longer period (not exceeding 28 days) can be approved. If the work is not completed by the due date, the tenant should also be advised that NCCH can also seek a Specific Performance Order from the NCAT, in order to have the works completed.

If appropriate, the works can also be completed by the NCCH and the tenant will be charged the full remedial cost. However, other preliminary actions (as noted above) should be considered prior to undertaking such works.

General matters

These are items that, even if left unattended, would be unlikely to cause any property damage or pose any legal liability issues for NCCH. For example, this can include minor internal or external cleaning requirements

Tenant advised of the required remedial action. The actions taken by the tenant will not necessarily be monitored, but will be checked again at the next property inspection.

If not completed by the tenant, NCCH would not intervene to have the works completed

Claiming Costs

Where tenant responsibility for the damage is confirmed and the repairs completed, NCCH will send a Debit Note of repair to the tenant. The notice will provide a detailed description of the damage that was caused by the tenant's failure to take reasonable care to avoid damaging the premises, and advise that NCCH has repaired the same and expects the former tenant to pay for the costs of repair.

The tenant will also be advised of:

- timelines for payment (14 days)
- the option of NCCH applying to the NCAT for an order to recoup these costs if the tenant does not pay for repairs, and
- the tenant's ability to seek independent representation in resolving and negotiating the matter.

Resolution and agreement

Tenants may have independent representation or seek legal advice in resolving and negotiating the matter.

Tenants are entitled to appeal all TRM charges made against them, using the NCCH Client Appeals Process.

If the former tenant is found not to be responsible for the identified tenant property damage, the charges will be

reversed and the tenant will be advised accordingly.

If the tenant continues to refuse to accept liability for the identified tenant property damage or refuse to accept responsibility, NCCH will apply to the NCAT to claim the disputed amount.

Insurance Claims and Third-Party Damage

If a property has been damaged due to break and enter or other criminal activity, the tenant must provide evidence that they or a member of their household or invited guest are not liable for the cost of repair of the damage. The onus is on the client to provide sufficient evidence to convince staff that the client should not be liable for the cost of repair of the damage.

Provision of a Police Event Number is not always sufficient evidence on its own given this only confirms that the matter was reported, it does not confirm that the incident has been investigated and confirmed that the damage was done by an outside party.

The following conditions will apply in relation to repair costs against the client being waived due to break and enter or criminal activity:

- the client must have reported the incident to the NSW Police within 48 hours of the damage to the property occurring and have been provided with a Police issued Event Number which the client will provide to NCCH;
- if NCCH has reason to believe that the tenant (or household members or visitors) may have caused the damage, the tenant must be asked to provide additional evidence to confirm their claim that the damage was done by an outside party. This can include (but is not limited to) sworn witness statement/s (completed on a Statutory Declaration Form and witnessed by a Justice of the Peace) that:
 - details of the date and time that the damage was reported to the Police
 - any other information which the client deems is relevant to their claim.

The evidence provided will be assessed to determine if sufficient evidence has been provided to make a decision (without any doubt) in relation to liability.

If NCCH considers the client is responsible for the repairs following consideration of all evidence provided, staff will advise the tenant in writing.

Repeated Incidents of Property Damage

In cases where there are repeat incidents of property damage reported to which the tenants advises that break and enter or other criminal activity is the cause of the damage for which the client does not claim responsibility, staff will determine if sufficient evidence as noted above has been provided by the client to be sure that the client, household member or guest is not responsible for the damage.

Where staff suspects that the damage has been done by the client or other household member etc., the onus will be on the client to provide evidence as noted above that they were not responsible for the damage. The provision of an Event Number will not be sufficient evidence on its own.

Household Violence and Property Damage

NCCH targets its housing to households in greatest need, including victims of domestic violence and to people who may have a history of sleeping rough (and therefore may be more prone to violence from associates).

Where property damage is the result of domestic violence, NCCH generally considers this to be an exclusion to the TRM criteria (i.e. "the criminal actions of a third party and the tenant could not prevent it from occurring"). However, this is only an exclusion to the policy where the perpetrator is not a joint tenant under the residential tenancy agreement.

In matters where the perpetrator is a joint tenant under the residential tenancies agreement, the full remedial costs will be charged to the tenants. The tenants remain joint and severally liable for the costs.

Debt recovery

Current tenants

NCCH will proceed with action against current tenants with TRM debts. This action includes, but is not limited to:

- seeking to make an arrangement with the tenant to repay the debt;
- making an application to the NCAT for a relevant payment order from the former tenant
- denying a request from the tenant for a transfer to alternative housing, on the basis of the outstanding TRM debt.

See NCCH's [Tenant Debtor Management Procedures](#) for further information about managing the non-rent debts of tenants.

Former tenants

NCCH will proceed with action against tenants who leave NCCH tenancies with monies owing, or who incur end-of-tenancy debts.

Debts to be pursued by NCCH must be validated by an order of the NSW Civil and Administrative Tribunal (NCAT)

This action includes, but is not limited to:

- seeking to make an arrangement with the tenant to repay the debt;
- making an application to the NCAT for a relevant payment order from the former tenant;
- ensuring that information about the debt is accessible to other social housing providers, and ensuring that action is taken in relation to the debt, prior to the former tenant receiving further social housing assistance
- denying the former tenant access to further assistance from NCCH until:
 - the debt is cleared in full; or

- an acceptable arrangement for repayment has been made and the tenant has reduced that debt to less than \$500

Special issues

Smoking

Tenants will be held responsible for any remedial works required as a result of smoking in NCCH residential tenancies.

Tenants will be advised that the cost of remedy damage to ceilings and walls from cigarette smoke can be substantial

Gutter cleaning

The responsibility for the clearing of gutters is generally considered to be the responsibility of the tenant (i.e. as TRM).

NCCH will generally take responsibility for gutter cleaning where:

- The tenant resides within a medium-density complex (where the responsibility for gutter cleaning rests with the common area maintenance contractor); or
- The tenant resides in a property of more than one-story/level; or
- The tenants is an older person or suffers from a disability, where it is considered impractical, unreasonable or unsafe for the tenant to be expected to clean gutters; or
- The gutters were not cleared immediately prior to nor since the occupation by the current tenant.

Pest control

NCCH carries out limited pest control services. Generally, **pest control services** are provided to common shared areas, such as common gardens or foyers and communal facilities. Pest control services are often charged as TRM

For individual properties, NCCH provides the pest control service as required,

- as directed by a local authority
- where an infestation occurs across multiple dwellings
- Where there is an immediate danger to tenants, the public or the property, such as termite or borer infestation, or wasp nests.

Control of pests such as cockroaches, mice, fleas, ants and spiders is the responsibility of the tenant in individual properties.

Eradication works that are arranged by the tenants at their own expense are to be carried out by a licensed pest control agent.

Abandoned and unregistered vehicles

Abandoned vehicles

Tenants are responsible for taking reasonable precautions to prevent vehicles (including cars, motorbikes, caravans, trailers, and remains of vehicles including parts and accessories) from being left, stored or abandoned on NCCH property.

A tenant will be in breach of their residential tenancy agreement where a vehicle:

- Causes a nuisance to other residents because it is blocking access to common areas, including derelict vehicles left in resident car park spaces.
- Interferes with the comfort of surrounding neighbours because it is occupying car spaces allocated for visitors.
- Represents a hazard because it is in a state of disrepair and has been left in a common area.

NCCH will investigate the ownership of abandoned vehicles on NCCH property. Every effort will be made to contact the owner of the vehicle and provide them with an opportunity to remove it. If the vehicle is not removed, where appropriate, NCCH may:

- Seek an order from the NCAT to remove and/or dispose of it, or for the tenant to remove it
- Remove and store it, or dispose of it according to the relevant circumstances.

In such cases where tenants are in breach of their agreement where a vehicle is considered abandoned or is creating a nuisance, any costs incurred by NCCH in rectifying the breach will be considered as TRM, and will be charged to the tenant.

Note: Local Councils and the Roads and Traffic Authority (RTA) are responsible for vehicles abandoned on public land.

Unregistered vehicles

Unregistered vehicles, owned by the tenant, can be stored on the premises, provided:

- The vehicle does not create a nuisance to or interfere with the comfort of neighbours
- It does not block access to the property of others
- It is not stored on any common areas or on neighbouring property
- It does not represent a hazard (because it is in a state of disrepair and is considered a risk to others)
- It storage does not contravene the conditions of any superior lease and/or the private landlord of a headlease property has given consent
- It does not create an eyesore for neighbours or interfere with the streetscape or local community amenity

Where the unregistered vehicle does not meet the above conditions, the tenant will be advised to remove the vehicle from the premises.

INFORMATION	
Title	Tenant Responsible Maintenance
Section	Property and Development
National Regulatory Code Evidence Guideline	Performance Outcome 1: Tenant and Housing Services
National Community Housing Standard	Standard 2.2 Responsive maintenance and repairs
Last review	30 June 2015
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