



Bond Special: Gardening

Information for Tenants

WHAT ARE MY OBLIGATIONS AT THE END OF A TENANCY?

The tenant must return the premises to the landlord in a reasonable state of cleanliness having regard to the condition of the premises at the beginning of the tenancy and as nearly as possible in the same condition as set out in the ingoing condition report, part from reasonable wear and tear.

WHAT IS A REASONABLE STATE OF CLEANLINESS?

In the *Guide to the Residential Tenancy Commissioner*, Tasmania's Department of Justice observes that a tenant does not have to return the garden to the standard of a professional gardener:

The appropriate standard is that which a normal person would achieve and not the standard that a professional gardener would achieve. This means that a tenant is responsible for general weeding and lawn mowing but not pruning or any specialist treatment of the garden that would orderly require expertise. This also safeguards owners from tenants attempting to prune or cut back shrubs, trees or hedges. Blackberry bushes and creeper vines are also considered to be outside a tenant's obligation.

WHAT IS "REASONABLE WEAR AND TEAR"?

Living in a home will cause wear and tear through ordinary day to day use and/or natural forces. This is what is known as "reasonable wear and tear".

Damage that is caused by your intentional, negligent or careless actions is not reasonable wear and tear.

In determining whether damage to the garden is reasonable wear and tear, the Residential Tenancy Commissioner will consider a range of factors including:

- the age, quality and condition of any item at the beginning of the tenancy;
- the length of the tenancy;
- the size, extent and noticeability of the damage;
- the cause of the damage;
- the average lifespan of plants, trees and shrubs.

Please be aware, that you are also responsible for damage caused by guests that you have invited onto your property.

EXAMPLES OF WHAT IS REASONABLE WEAR AND TEAR

None of the following decisions are binding on the Residential Tenancy Commissioner or the Magistrates Court of Tasmania, though they may provide a guide as to how your case may be decided. Any decision will be highly dependent on the specific circumstances of your case.



ITEM	DECISION	CASE
Garden not reasonably clean at beginning of tenancy	The ingoing condition report listed paving as being covered in moss, lawn as patchy, weeds in garden bed and with debris from previous tenancy. <u>Tribunal not satisfied that garden was reasonably clean at commencement of tenancy</u>	<i>Armstrong v Goyal (Residential Tenancies)</i> [2018] VCAT 1781
Pine needles and some weeds	Pine needles and some weeds in garden <u>is reasonable state of cleanliness</u> particularly when condition report noted a few small weeds	<i>Batkin v Kinna (Residential Tenancies)</i> [2018] VCAT 669
Dead tree	Landlord must provide proof that the tree is dead or needs to be removed	<i>Sharman v Flanagan (Residential Tenancies)</i> [2021] VCAT 451
Dead shrub	In circumstances where the tenants gave evidence that they regularly watered the garden, a <u>landlord bears the onus of proof</u> in establishing that a dead shrub (camellia) was not due to underwatering, hot weather or disease	<i>Alexopoulos v Morley (Residential Tenancies)</i> [2015] VCAT 56
Decline in garden	Landlord is <u>unable to establish that decline of garden due to tenant's negligence or intentional conduct</u> . Plantings made by landlord prior to tenancy unsuited to poor soil, weeds and lack of light.	<i>Adoncello v Sazdanoff (Tenancy)</i> [2006] NSWCTTT 577
Removal of fairy lights and bolts screwed into tree in courtyard	Removal of Fairy lights and bolts screwed into tree <u>is responsibility of tenant</u> as property not returned in similar condition as when moved in	<i>Linke v Hazebroek (Tenancy)</i> [2004] NSWCTTT 608
Lost garden hose	<u>Tenant responsible</u> for replacement of garden hose which was lost during the tenancy	<i>Georgiades v Sayer (Tenancy)</i> [2012] NSWCTTT 125
Rubbish removal	<u>Reasonable state of cleanliness</u> if rubbish bags placed neatly beside full bin	<i>Sharman v Flanagan (Residential Tenancies)</i> [2021] VCAT 451
Skip bin - rubbish removal	Tenant will be liable for the entire cost of a skip bin only if the landlord can prove that it was used exclusively for the tenant's rubbish	<i>Weber v Franks (Tenancy)</i> [2002] NSWCTTT 414



EVIDENCE YOU SHOULD PROVIDE IN A BOND CLAIM OR DISPUTE

The onus is on the landlord to prove that you have not left the property in a reasonable state of cleanliness: *Pedler v Im & Deane* [2018] SACAT 10. However, it is recommended that you supply your own evidence and submissions to support case.

ARGUMENT	EVIDENCE NEEDED
Reasonable state of cleanliness	<ul style="list-style-type: none"> • Ingoing condition report • Outgoing condition report • Photos and/or videos from start and end of tenancy • Photos and/or videos from the end of the tenancy • Receipt from gardening company
Tenant is not responsible for uncleanness	<ul style="list-style-type: none"> • Evidence that the uncleanness was caused by: <ul style="list-style-type: none"> ▸ the landlord; ▸ an agent of the landlord (eg a tradesperson); ▸ another party that you did not invite onto the property; ▸ the landlord's failure to carry out repairs. • Notice of the uncleanness and its cause provided to the landlord (eg email or text message)
Landlord's claim is unreasonable	<ul style="list-style-type: none"> • Cheaper quotation/s from different suppliers • Evidence that the landlord had cheaper/free options available to them (eg council bins as opposed to the tip) • Evidence that the landlord refused tenant access to clean affected areas, if the disorder is minor • Receipt from gardening company • Evidence that the landlord has rented out the property again for the same/higher rent without doing additional gardening • Proof that the landlord did the work themselves, and that they are not a professional