

Bent colourbond fences? Cracked driveways?



Bond Special: Fences & Driveways

Information for Tenants

WHAT ARE MY OBLIGATIONS AT THE END OF A TENANCY?

The tenant must return the premises to the landlord as nearly as possible in the same condition as set out in the ingoing condition report, apart from reasonable wear and tear.

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 fences or the driveway is reasonable wear and tear, the Residential Tenancy Commissioner will consider a range of factors including:

- the age, quality and condition of the flooring at the beginning of the tenancy;
- the average lifespan of the fence or driveway, according to the Australian Tax Office is 40 years - depreciating at 2.5 per cent per annum. However, lifespan could be estimated as less than 40 years depending on material, location and normal use of the fence or driveway;
- the extent and noticeability of the damage;
- the number of tenants and household composition;
- the length of the tenancy;
- the impact of the damage on future tenancies.

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

BOUNDARY FENCES

In general, boundary fences are the responsibility of the landlord, and the owners of any adjoining property. This includes repairs and replacement if damage is caused by weather and wear and tear. However, a tenant may still be responsible for damage to the boundary fence if it is the fault of the tenant and is not reasonable wear and tear.



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
Bent Colourbond fence panels	Although eight Colourbond panels were bent, <u>only two were found to exceed reasonable wear and tear</u> . Each panel was considered separately. Tenant required to pay cost of replacing two panels	<i>Murphy v Woods (Tenancy)</i> [2010] NSWCTTT 609
Dents in Colourbond fence	Dents in Colourbond fence <u>is reasonable wear and tear</u> with a family of eight (including six children) living at the property	<i>Richardson v Morrison (Tenancy)</i> [2011] NSWCTTT 610
Child hitting fence with a ball	Five Colourbond fence panels dented in the backyard. Likely that minor damage caused by child hitting the fence with a ball. When property is let to tenants with a child some minor damage is expected. If no loss of functionality, then <u>is reasonable wear and tear</u>	<i>Garzo Holdings P/L v Landwi & Kalouche (Tenancy)</i> [2003] NSWCTTT 413
Oil stains on garage floor	Minor oil stains on garage floor caused by old car that leaked occasionally <u>was reasonable wear and tear</u> - as is some marks from cars parked in designated spaces	<i>Barrera v Meyer (Tenancy)</i> [2003] NSWCTTT 57
Cracks in driveway	A 40-year-old driveway with cracks is <u>reasonable wear and tear</u> and does not need to be replaced even where tenant may have caused further cracking to driveway	<i>Wilson v Bowman (Tenancy)</i> [2011] NSWCTTT 225
Dilapidated bitumen	<u>Reasonable wear and tear</u> considering that bitumen had reached end of its useful and expected life; however, does not include deterioration that could be prevented by erasable conduct on the tenant's part (theoretically the tenant should have notified landlord about worsening of condition, but irrelevant here due to age of bitumen)	<i>Alamdo Holdings Pty Ltd v Australian Window Furnishings (NSW) Pty Ltd</i> [2006] NSWCA 224
Dent to garage door I	Landlord believed that garage door had been dented during tenancy, probably by tow bar. Tenant denied as did not have tow bar and was unaware of any visitor causing damage. Unless landlord can provide proof that tenant or visitor caused damage <u>not tenant obligation</u> as driveway may be accessed by others (including people sent to perform repairs)	<i>Batkin v Kinna (Residential Tenancies)</i> [2018] VCAT 669; <i>JC v The Qs Residential Tenancies</i> [2008] VCAT 2538
Dent in garage door II	Negligently damaging the garage door by backing a car into it and causing a dent is <u>not reasonable wear and tear</u>	<i>Dowse v Butler</i> [2019] NSWCATCD 83

EVIDENCE YOU SHOULD PROVIDE IN A BOND CLAIM OR DISPUTE

As well as arguing that any damage to the driveway or fencing is reasonable wear and tear, you can also defend a claim to your bond on the basis that, for example:

- The driveway or fencing has not been damaged;
- The driveway or fencing has been damaged and it is not reasonable wear and tear, but the amount of money the landlord is asking for is excessive; and/or
- The driveway or fencing has been damaged but it is the landlord's responsibility.

ARGUMENT	EVIDENCE NEEDED
No damage	<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
Reasonable wear and tear	<ul style="list-style-type: none"> • Evidence of the length of the tenancy • Evidence of the number of people living in the property • Evidence of household composition (eg children) • Evidence of age of the driveway or fence • The ingoing condition report and/or photos demonstrating the condition of the driveway/fence at the beginning of the tenancy • Photos demonstrating that damage not excessive
Landlord's claim is unreasonable	<ul style="list-style-type: none"> • Cheaper quotation/s from different suppliers • Receipts demonstrating that repairs were carried out • Evidence demonstrating the extent of the damage • Evidence demonstrating the impact of the damage on the function of the driveway or fence • Proof that the landlord has rented out the property again for the same or higher rent without fixing the damage • Evidence of the age of the driveway or fencing. Both are generally seen as part of the capital fittings in a home. According to the <i>Australian Taxation Office they lose value at a rate of 2.5 percent per year</i> • Sometimes the normal lifespan of either driveway or fence will be less than 40 years - components wear out, depending on the original materials, use location and so on. Estimates of items' lifespan from manufacturers or maintenance contractors is useful evidence