

## H9. DURING A TENANCY - TENANT REPAIR COSTS

Content:	Illawarra Aboriginal Corporation Policies and Procedures
Version:	2.0
Section:	Housing
Applies To:	Board, Management and Staff of all IAC Services
Date:	October 2015 (Review October 2018)

### Background and Purpose

The IAC's Housing policies articulate our aims, goals and philosophies in providing housing services for Aboriginal tenants and their families. They explain how the Illawarra Aboriginal Corporation works with its staff and other agencies to ensure that our tenants are afforded the best and most appropriate services and that we meet all of the requirements of the Aboriginal Housing Office and the Office of Community Housing.

### Property Damage

Tenants can expect the IAC to provide them with a property that is in a reasonable condition. Tenants are expected to take good care of their property, to keep it reasonably clean and to take responsibility for property damage other than that caused by fair wear and tear or the criminal activity of a third party.

*Under the Residential Tenancies Act 2010:*

- We are responsible for maintaining the tenant's premises to a reasonable standard; and
- The tenant is responsible for the cost of repairs due to intentional damage or neglect that is caused by the tenant or a member of the tenant's household or a visitor who enters the tenant's premises with the tenant's permission.

If the tenant is responsible for damage to the premises and the IAC repairs the damage, the IAC will recover from the tenant the cost of the repairs. These are Tenant Repair Costs. The IAC will charge the tenant Tenant Repair Costs only if the tenant has accepted liability or the IAC has sufficient evidence of the tenant's responsibility for the damage. The tenant has the right to accept or dispute liability for Tenant Repair Costs. If the tenant disputes liability the IAC will suspend the cost recovery process and review the decision to charge the tenant.

### IAC Responsibilities

*The tenant can expect the IAC:*

- To abide by the terms and conditions of the Residential Tenancy Agreement that relate to the landlord's responsibilities.
- To collect and record information about the type and extent of damage to premises and the circumstances under which the damage may have occurred.

### IAC Responsibilities (cont)

*The tenant can expect the IAC:*

- To provide the tenant with written notice when the IAC considers the tenant is responsible for Tenant Repair Costs.
- To provide the tenant with written notice when the IAC claims repayment for Tenant Repair Costs. If the tenant disputes liability, to review the IAC's decision to charge Tenant Repair Costs. The IAC will then either:
  - ◊ Cancel or amend the Tenant Repair Costs and advise the tenant in writing; or
  - ◊ Take cost recovery action before the NSW Civil and Administrative Tribunal (NCAT) or the local court.
- To carry out a final inspection in the tenant's presence and complete a Property Condition Report before the tenant vacates the premises
- Not to charge Tenant Repair Costs caused by damage that occurs after the tenant provides vacant possession of the premises to the IAC.

### Tenant Responsibilities

*The IAC expects the tenant:*

- To abide by the terms and conditions of the Residential Tenancy Agreement
- To take good care of the premises and keep them reasonably clean
- To tell us as soon as possible if your premises have been damaged
- To pay for Tenant Repair Costs.
- To comply with NSW Civil and Administrative Tribunal (NCAT) or local court orders to pay the cost of repairs or cleaning.
- To report to the NSW Police any damage that is suspected to have resulted from criminal activity, such as break and enter, vandalism or domestic violence.

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### Tenant Responsibilities (cont)

*The IAC expects the tenant:*

- When the tenant vacates the premises, to:
  - ◊ give the IAC 21 days written notice before vacating the premises if the tenant has a continuous tenancy or to give the IAC 14 days written notice before vacating the premises if they have a fixed term tenancy;
  - ◊ restore the premises to the condition they were in at the start of the tenancy, after allowing for fair wear and tear; and
  - ◊ return the keys to the IAC. Relying on a neighbour or third party is not an excuse for keys not being returned.

### Typical Incidents of Tenant Damage

*The following types of damage are typical of incidents where the tenant may be responsible for Tenant Repair Costs:*

- broken windows
- punctured internal cabinet doors and walls
- burns or other damage to carpets that cannot be considered fair wear and tear
- broken and damaged clotheslines and hoists
- broken locks
- damaged doors and security screens
- damage to toilets and basins
- sewer chokes caused by items flushed down the toilet, such as sanitary pads, nappies or toys; or
- abandoned furniture or vehicles at the end of the tenancy

### Determining responsibility

*Damage to the premises that is the tenant's responsibility includes:*

- damage that is intentional;
- failure to take care to prevent damage
- failure to keep the premises in a reasonably clean condition;
- failure to restore the premises to their condition at the start of the tenancy, after allowing for fair wear and tear;
- intentional damage, or neglect leading to damage, that is caused by any member of the household, pets or any visitor who enters the premises with the tenant's permission.

### Determining responsibility (cont)

*To determine who is responsible for the cost of repairing damage to the property the IAC will:*

- Take into account the type of damage and any information concerning liability the tenant gives the IAC when reporting the damage
- Inspect the premises and document the damage where appropriate
- Discuss the items of damage with the tenant and record information the tenant or a third party gives the IAC about the possible cause of the damage
- Take into account the condition of the premises at the beginning of the tenancy, as stated in the Property Condition Report and any evidence of work undertaken on the property at the start or during the tenancy
- Take into account damage due to fair wear & tear, which the IAC was responsible to repair
- Take into account damage due to an emergency situation where there was good cause to believe that the tenant's health and well being was at risk
- Consider whether ill health or inability to maintain the premises has contributed to the damage. In these circumstances the tenant is required to provide evidence.
- Consider whether the damage is a result of criminal activity such as:
  - ◊ Domestic violence.
  - ◊ Other Criminal activity such as break and enter or vandalism.

In circumstances of criminal activity the tenant is requested to provide evidence that they have reported the matter to the NSW Police, such as a Police statement or Police Event Number.

### Responsibility determined

*If the IAC considers the tenant is responsible for Tenant Repair Costs, the IAC will send out a letter to the tenant stating:*

- The nature of the repairs.
- That the IAC requires the tenant to pay for the repair costs in accordance with responsibility under Section 51 of the Residential Tenancies Act 2010.
- That the tenant can accept liability by signing and returning the Notice of Liability within 14 days of receipt (included with letter).

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### Responsibility determined (cont)

*If the IAC considers the tenant is responsible for Tenant Repair Costs, the IAC will send out a letter to the tenant stating:*

- That the tenant can dispute liability by telling the IAC immediately and providing written reasons.
- That if the tenant disputes liability the IAC will stop sending letters requesting payment and review the decision that the tenant is responsible for the damage. In some circumstances the tenant can choose to have the decision reviewed externally (see Reviewing decisions ). Pending review, the IAC will then either cancel the claim and advise the tenant in writing, or take action before the NCAT or a local court to recover the costs from the tenant. At the NCAT or local court the tenant will have an opportunity to tell why the tenant disputes liability and the NCAT or local court will determine if the tenant is liable and if so how much the tenant will have to pay.

### Repeat or serious incidents of Tenant Repair Costs

Where the IAC has sufficient evidence of repeat or serious incidents of tenant-responsible damage, the IAC will immediately take action before the NCAT to obtain a specific performance order. In certain circumstances, the IAC will take action to end the tenancy.

### Tenant damage charges where Asbestos Is Present

Asbestos-cement can be a health risk if asbestos fibres become airborne and are inhaled. This can happen when asbestos-cement building products are broken, sanded, drilled or disturbed in any way that results in airborne asbestos fibres.

Expert advice received from WorkCover NSW and NSW Health tells us that living in a home built with asbestos-cement building products is not considered a health risk.

### Tenant damage charges where Asbestos Is Present

When a tenant damages their property that has material containing asbestos, they could potentially disturb the asbestos (e.g. a tenant damages a wall that has asbestos material in it).

Where there is evidence that a tenant has damaged their property, the IAC should always pursue Tenant Damage Charges. Tenants will be liable for the costs involved in replacing the structure that had asbestos in it and not the costs associated with safely removing the asbestos.

### Vacating Tenants

Before vacating the premises the tenant must restore them to the condition they were in at the start of the tenancy, after allowing for fair wear and tear. This includes cleaning, rubbish removal and the non-abandonment of goods, including furniture and vehicles.

Before vacating, the IAC must carry out a final inspection in the presence of the tenant and complete a final Property Condition Report. Once the tenant has returned the keys to the IAC and provided vacant possession, the tenant is no longer responsible for damage that occurs after that. It is the tenant who is responsible for returning the keys to the IAC, not the neighbours or another third party.

The tenant must give the IAC 21 days written notice before vacating if the tenant has a continuous tenancy, or the tenant must give the IAC 14 days notice before vacating if the tenant has a fixed term tenancy. This allows the IAC time to complete the Property Condition Report. This will establish whether there is any unrepaired damage and will enable the tenant and the IAC to agree on who is responsible for the damage.

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### Vacating Tenants (cont)

The tenant must give the IAC 21 days written notice before vacating if the tenant has a continuous tenancy, or the tenant must give the IAC 14 days notice before vacating if the tenant has a fixed term tenancy. This allows the IAC time to complete the Property Condition Report. This will establish whether there is any unrepaired damage and will enable the tenant and the IAC to agree on who is responsible for the damage.

If the tenant abandons the premises or fails to return the keys, the IAC will obtain possession of the premises and assess its condition. If the IAC obtains sufficient evidence that the tenant is responsible for damage that goes beyond fair wear and tear, the IAC will take action as appropriate before the NCAT or the local court to recover from the tenant the cost of repairing the damage.

### Previous tenants with outstanding Tenant Repair Costs who reapply for housing

If a former tenant reapplying for housing assistance has an outstanding tenant repair debt, the IAC will take this into account when assessing eligibility for further assistance.

### Reviewing Decisions

#### Internal Reviews

*The tenant may request a review of an IAC decision:*

- to charge Tenant Repair Costs;
- not to waive Tenant Repair Costs on the grounds of ill health, domestic violence or the criminal activity of a third party; or
- that a person is ineligible for further housing assistance due to an outstanding tenant repair debt from a former tenancy.

The IAC will advise the tenant in writing of the review decision. If a person disputes the review decision, they may make an appeal based on our Appeals policy. See Appeals Policy

#### External Reviews

~~If a person disputes the first level appeal outcome they can appeal to the independent Housing Appeals Committee (HAC) on the following:~~

- ~~• Vacated property repair charges if these were not subject to an NCAT order;~~
- ~~• Not to waive Tenant Repair Costs on the grounds of ill health, domestic violence or the criminal activity of a third party; or~~
- ~~• That a person is ineligible for further housing assistance due to an outstanding tenant repair debt from a former tenancy.~~

~~For information see the Housing Appeals Committee website on [www.hac.nsw.gov.au](http://www.hac.nsw.gov.au) or telephone 02 9715 7955 or freecall 1800 629 794. Other disputes about Tenant Repair Costs may be heard by the NCAT or a local court.~~

### COMPLIANCE

*This policy complies with:*

- NSW Housing Act 2001
- NSW Residential Tenancies Act 2010

### REFERENCES

*This policy should be read with:*

- **Housing NSW** "During a Tenancy Policy"
- **National Regulatory Code** - 1. Tenant and housing services