



COMMUNITY HOUSING
Industry Association Victoria

Practice Guidance

Renter Related Damage (Recharge)



V2 May 2024

Contents

Purpose	3
Key resources	3
Definitions	3
Background	4
Fair wear and tear	4
Reasonably clean	5
Consider renters circumstances	5
Family violence	5
Disability or health condition	5
Mental health condition	5
Accidental damage	6
Third party damage	6
Replacement of keys	6
Human Rights considerations	7
Making decisions about liability for a maintenance charge	7
Determining reasonable costs for a maintenance charge	8
Escalation to VCAT	9
Process flow chart	9



Purpose

The purpose of this guide is to support Community Housing Organisations (CHOs) to deal fairly, efficiently, and appropriately with recovering maintenance charges from renters in circumstances of renter related property damage.

It is guided by the requirements outlined in the Residential Tenancies Act 1997 (Vic) (RTA) and the Charter of Human Rights and Responsibilities Act 2006.

This guide is designed to complement the template Renter Related Damage (Recharge) Policy by providing further details on how to assess liability for renter charges under that policy and assist to establish procedures and processes.

Should you have any questions or comments on any of the information in this guide, please email leadingpractice@chiavic.com.au.

Key resources

The key resources referred to in this guide can be found below.

Key resources	Links
Australian Taxation Office (ATO) depreciation rules	Prime cost (straight line) and diminishing value methods Australian Taxation Office
Charter of Human Rights and Responsibilities Act 2006	CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006
Residential Tenancies Act 1997 (Vic)	RESIDENTIAL TENANCIES ACT 1997
Consumer Affairs Victoria (CAV) Director's Guidelines	Guideline 3 - Damage and fair wear & tear

Definitions

The definitions for common terms used in this guide are set out below.

Term	Definition
CAV	Consumer Affairs Victoria, or the Director of Consumer Affairs
CHO	Community Housing Organisation. A registered community housing association or provider
Recharge	Reimbursement of maintenance charges liable to be paid by a renter to the rental provider



RTA	Residential Tenancies Act 1997 (Vic). The principal legislation governing rental housing in Victoria
VCAT	Victorian Civil & Administrative Tribunal. A legal institution set up to administer several Acts. For residential tenancies, the Tribunal administers the RTA 1997
VHR	The Victorian Housing Register. The waiting list for people seeking access to public and community housing

Background

There are times where Community Housing Organisations (CHOs) will need to recover maintenance charges from renters for costs incurred for the repair of property damage, or for services undertaken that the renter is responsible for.

The purpose of this guide is to inform decision making in relation to recharging a renter; it outlines definitions, considerations, escalation options and includes a renter recharge process flowchart.

Fair wear and tear

Under [s61\(1\)](#) of the RTA, a renter or their visitor must not intentionally or negligently cause damage to the property or any common areas, with the exception of fair wear and tear which is defined in [s3 Definitions](#) of the RTA to mean deterioration of the condition of the property caused by reasonable use by the renter, their visitor, or natural forces.

Under [s63](#) of the RTA, when renters move out, they are required to leave the property, as far as practicable, reasonably clean and in the same condition as when they moved in, taking into account fair wear and tear.

Section [61\(2\)](#) clarifies that damage does not count as fair wear and tear.

The Director of Consumer Affairs Victoria has issued guidelines [Guideline 3 - Damage and fair wear & tear](#) which VCAT must consider when determining related disputes. The guidelines detail key considerations in distinguishing the difference between damage and fair wear and tear.

Fair wear and tear occurs during normal residential use of a property and deterioration due to ageing and exposure to the environment.

Examples of fair wear and tear may include minor scuff marks on walls, flattened carpet pile due to furniture or foot traffic, faded paint or curtains due to exposure to sunlight.



Reasonably clean

“Reasonably clean” is generally where an item or surface is free from dirt, marks or stains and cannot be improved to a reasonable standard with additional cleaning.

CHOs may consider the need to charge a renter for maintenance in circumstances where the property requires cleaning to remove heavy build up of grime, stains, grease, dirt, marks and dust from floors, walls, surfaces and fittings. This applies to cleanliness issues identified during routine inspections and end of tenancy inspections for vacated properties.

Consider renters circumstances

When determining responsibility for property damage, consideration should be given to circumstances for renters and their household which may reduce or remove their liability.

Note that after these considerations are taken into account the renter still may be deemed liable for the maintenance charges.

Family violence

Family violence is any threatening, coercive, dominating, or abusive behaviour that occurs between people in a family, domestic or intimate relationship, or former intimate relationship, that causes the person experiencing the behaviour to feel fear.

Where family violence is the major contributing factor to the cause for damage, uncleanliness, or goods left behind by vacated renters, the related circumstances and associated trauma should be considered when making assessment for a maintenance charge.

Disability or health condition

Where a disability or health condition prevented or hindered a renter or a member of their household from undertaking an action or was a major contributing factor to the damage or uncleanliness, this should be taken into consideration when making an assessment for a maintenance charge.

Example: a vacated renter with a physical disability requiring a wheelchair left scratch marks on walls or doors.

Mental health condition

Likewise, where a mental health illness or psychiatric disorder prevented or hindered a renter or a member of their household from undertaking an action or was a major



contributing factor to the damage or uncleanliness, this should be taken into consideration when making assessment for a maintenance charge.

Example: a renter caused damage to their property during an acute psychotic episode, which led to their hospitalisation.

Accidental damage

An accident is defined as an unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage or injury, or an event that happens by chance and is without apparent or deliberate cause.

In determining liability, consideration should be given to the information provided by the renter and the nature of the damage. The renter's tenancy history should be taken into consideration, as a pattern of similar damage or behaviour previously may suggest reasonable care had not been taken to avoid damage.

Example: there has been an ongoing history of broken windows at the rear of the property caused by playing ball. (In this circumstance, it may be reasonable to pursue a maintenance charge).

Third party damage

A maintenance charge should not be pursued where the damage was caused by an unknown third party, or where the renter was not able to reasonably prevent the damage from occurring.

"Unknown third party" refers to persons not listed on the tenancy, and not known by the renter. Examples include criminal damage to the property caused during a break in, actions taken by police executing a search warrant, or where a property has been abandoned and it cannot be determined who caused the damage.

Also, of note, where a renter is away from their property due to an approved temporary absence, CHOs should undertake checks to ensure the property remains secure and that no damage has occurred.

Replacement of keys

Where a renter requests a change of locks and/or replacement of keys, CHOs should seek confirmation that the person making the request is the registered renter.

Consideration should be given as to whether the renter is responsible for the cost, for example if the renter has had multiple key changes during their tenancy.



Human Rights considerations

CHOs are required to consider the potential impact of any proposed action on the renter (and their household's) rights under the Charter of Human Rights before making any decision.

By taking a human rights-based approach, CHOs can ensure the renter is at the centre of all decisions made. It does not mean that a person's Charter rights can never be limited. It means that decisions that do limit their Charter rights must be lawful, necessary, logical, reasonable and proportionate.

Staff acting in line with these guidelines must:

- Understand the objective and rationale of the actions they are taking;
- Consider the impact of a proposed action on the person's Charter rights (more than one right may be relevant);
- Consider whether the proposed impact is balanced, proportionate and necessary to achieve the objectives for these operational guidelines (for example, when considering whether to move towards an eviction following malicious damage of a property, balancing the CHOs aim to support safe and habitable housing stock with the needs of renter and household members who may be evicted); and
- Choose the least restrictive, fairest and most reasonable lawful measure available to meet the objective.

For vacated renters, as they are no longer in the home, the relevant Charter rights may not be as clear. However, the individual needs and circumstances of vacated renters are to be considered (including if any Charter rights may be affected, such as s. 24 Right to a fair hearing) before making decisions about liability for property damage.

Assessments should be individualised for the renter and any affected household members.

Making decisions about liability for a maintenance charge

In determining liability for damage, whether in part or full, CHOs should consider the following:

- What evidence is available to support that the damage was caused by the renter or their visitor, and was not pre-existing damage (for example, property condition report, previous inspection reports);
- Whether the damage constitutes as a breach of the relevant sections of the RTA;
- The age and fair wear and tear of the items;



- Whether the damaged incurred a financial loss to the organisation;
- Any information provided by the renter or their supports;
- Whether any circumstances apply with regard to exemption of liability;
- The type and frequency of the damage (for example, a pattern of behaviour);
- Any previous related incidents or damage.

CHOs should ask the following questions:

- What were the circumstances that lead to the damage or condition of the property?
- What control did the renter have over the situation?
- Is the damage related to actions or events that could not have been reasonably prevented?
- What is the rental history, including length of tenure?
- What opportunities did the renter have to remedy the situation?
- Are there any other options that might limit further damages from occurring?
- Is there any evidence of squatters or that someone else accessed the property after it had been vacated?

Determining reasonable costs for a maintenance charge

The following assessments should be undertaken to identify the reasonable costs of repairs for each damaged item:

- Age;
- Condition;
- Depreciation (refer to the Australian Taxation Office depreciation rules);
- Fair wear and tear;
- Whether the cost is reasonable.

Example: a recently vacated property requires 6 sets of damaged blinds to be replaced throughout at a total cost of \$2,000. The blinds were 3 years old (were new at commencement of tenancy), with an effective life of 7 years. Factoring in depreciation of 14% per year for 7 years (\$280 per year x 3 years), and less fair wear a tear, the final cost the renter is liable to pay is \$1,160.

For more information on depreciation rates please see the [ATO website](#).

Repayment agreements should be set at an amount that is achievable for the renter and reflects the renter's current financial circumstances.



Escalation to VCAT

Where responsibility for the maintenance charge cannot be agreed between the CHO and the renter, it may need to be escalated to the Victorian Civil & Administrative Tribunal (VCAT). This should be a measure of last resort and only where charges are clearly attributed to the renter, their household member, or their visitor. CHOs should detail the repairs and the reasonable cost (following the above process).

The renter must be provided with copies of the following:

- VCAT application;
- Breach of duty notice or repair notice;
- Invoices;
- Photos;
- Inspection or exit reports.

When serving these documents, VCAT allows for these to be sent to the renter's last known address. If the renter has vacated and failed to provide a forwarding address, CHOs should make reasonable efforts contact the former renter to obtain this information (for example, phone calls, text messages, emails, Victorian Housing Register (VHR) search, white pages directory etc).

Process flow chart

