

Rental Bond Disputes

The rental bond held at NSW Fair Trading rental bonds online service will not be released if a dispute arises between the landlord and the tenant. The dispute will have to be resolved at the NSW Civil and Administrative Tribunal (NCAT). In many cases, the Tribunal will require documentary evidence such as, witness statements, invoices of payments, expert reports, photographs and so on.

Who owns the Rental Bond?

A rental bond is a security deposit against any failure of the tenant to make payments required under the Residential Tenancies Act 2010 (RT Act). There is a presumption that the rental bond remains the property of the tenant. The landlord has a legal interest in the rental bond. A landlord's right to claim the rental bond at the end of the residential tenancy depends on facts about whether the tenant owes money payable under the residential tenancy agreement and/or failed in their legal obligation under the agreement leading to loss suffered by the landlord.

Rights to claim rental bond

A landlord's claim on part or whole of the rental bond at the end of the residential tenancy can be made with the consent of the tenant. The RT Act does not limit matters that the landlord may claim the rental bond for. Section of the 166 (1) makes an attempt to set out examples of the some of the matters that the rental bond claim can cover. It states:

- (1) A landlord is entitled to claim from the rental bond for the residential tenancy agreement any of the following--*
- (a) the reasonable cost of repairs to, or the restoration of, the residential premises or goods leased with the premises, as a result of damage (other than fair wear and tear) caused by the tenant, an occupant or an invitee of the tenant,*
 - (b) any rent or other charges owing and payable under the residential tenancy agreement or this Act,*
 - (c) the reasonable cost of cleaning any part of the premises not left reasonably clean by the tenant, having regard to the condition of the premises at the commencement of the tenancy,*
 - (d) the reasonable cost of replacing locks or other security devices altered, removed or added by the tenant without the consent of the landlord,*
 - (e) any other amounts prescribed by the regulations.*

However, section 166(2) says:

- (2) This section does not limit the matters for which the landlord may claim from the rental bond for a residential tenancy agreement.*

According to section 166(2), a landlord can claim the rental bond for any liabilities of the tenant. It is not unusual to expect matters subject to a rental bond dispute to exceed the actual amount of rental bond held by the rental bond service at NSW Fair Trading.

Given that damages or claims of loss of some of the items under section 166(1) can be significant, the RT Act sets the limit at \$30,000 for such matters. This means that if the landlord succeeds at NCAT, the tenant may be liable for an amount that is over and above the rental bond amount.

Claiming rental bond without consent

Landlords do not always understand that the rental bond remains the tenant's property. A landlord who makes any claims on the rental bond without consent must substantiate their claim to the tenant. They must give notice to the tenant within 7 days of making their claim on the rental bond held by the rental bond service at NSW Fair Trading. This is mandatory requirement under the RT Act.

Section 165 of the RT Act provides that:

(1) A landlord, landlord's agent or a person on behalf of a landlord who makes a claim for payment of a rental bond without the consent of the tenant must give the tenant--

(a) a copy of a completed condition report about the residential premises at the end of the residential tenancy agreement, and

(b) copies of any estimates, quotes, invoices or receipts for work for which the rental bond is claimed.

(2) The documents must be provided within 7 days of the claim being made.

(3) The documents must also be provided to the Secretary of the Department of Family and Community Services if the whole or part of the rental bond was paid by or on behalf of that Department.

(4) A person who, without reasonable excuse, contravenes this section is guilty of an offence.

Maximum penalty--20 penalty units.

It is an offence under section 165 of the RT Act if the landlord fails to comply with the requirements when lodging claims on the rental bond without consent.

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