

Guide to public housing rental bonds

Tenants whose homes are managed by FACS Housing may be asked to pay a rental bond. The rules around this bond are different to bonds in the private market in a number of ways.

Please get advice from your local Tenants' Advice and Advocacy Service before taking action – see contact numbers at the end of this information sheet.

The rental bond scheme

FACS will request a bond be paid where:

- they have discovered damage which they hold the tenant responsible for
- the damage costs are more than \$500. They will include all items of damage discovered at the same time
- the damage was discovered in the last 6 years.

The new scheme will apply to:

- former tenants returning to public housing
- all current LAHC and AHO tenants (for properties managed by FACS)

The bond:

- will be four weeks' market rent, but not more than \$1,400
- can be paid by a scheduled instalment plan of between 24 and 36 months
- will be lodged with the Rental Bond Board
- will be reduced by 20% if you pay up front.
- can be deferred in extenuating circumstances

Seeking support to pay the bond up front may be a good idea for many people. However you should be careful about paying it on a credit card or other loans. There are services who can offer this support for free for eligible clients. You can seek advice and assistance from the National Debt Helpline on 1800 007 007.

What to do if you accidentally cause damage?

All tenants have a responsibility under their tenancy agreement to report damage to the property. With the introduction of the bond there is an extra incentive to report minor damage quickly. Reporting individual repairs early may mean you do not have to pay the bond.

CASE STUDY:

John brought home a new couch and getting it through the door damaged the frame. It will cost \$300 to fix. Two months later his daughter hit a ball into the back window and it will cost \$220 to fix.

If John reported the accidents when they happened he would have had to pay for the damage. However he would not be asked to pay a bond because they will each be counted as different 'instances of damage'.

If FACS discovers them at the same time they will count as a single instance of damage even though they are in different rooms. John will be asked to pay the bond.

If you are asked to pay rental bond and/or pay for damage to property

Consider whether FACS have satisfied their requirements to charge a bond.

Has the Tenant Repair Costs policy been applied correctly? (See facs.nsw.gov.au/housing/policies/tenant-repair-costs-policy)

There are a number of situations where FACS have said they will not apply charges to your account. These include

damage occurring through domestic violence, mental or physical health issues.

They must also allow for the age of the premises and the condition you received it in.

FACS can only apply a cost for damage to your account if you agree with the amount or if the NSW Civil and Administrative Tribunal (NCAT) has made an order for that amount.

At NCAT FACS must provide evidence of the damage and the cost of repair. NCAT must accept the cost of the work invoice that FACS provides. However NCAT may not award FACS the full amount if they accept you are not responsible for the damage, or the cost has not taken into account the age of the premises. See the Factsheet 3: Bond for more on bond claims at the Tribunal (tenants.org.au/factsheet-03-bond).

If you don't think FACS have applied the Policy properly or there are extra circumstances that FACS have not taken into account, you can consider asking FACS to review the decision. You can do this even if the damage was from some time ago. In some situations you may be able to do this even if NCAT has made an order.

How to Review or Appeal a FACS decision

You are entitled to require FACS to review a decision if you feel that:

- Inadequate consideration was given to your individual circumstances, or
- The decision was made contrary to policy, or
- The decision involved poor interpretation of policy, or
- The procedure used to reach the decision was not fair or correct.

There are two levels of review and appeal:

- First tier – internal review by FACS
- Second tier – independent appeal by the Housing Appeals Committee (HAC)

Rental Bond decisions that can be reviewed

- Decision to request payment of a rental bond
- Decline of a request for a deferral of bond payments

See FACS First Tier appeal policy within the Client Service Delivery and Appeals Policy at:

<https://www.facs.nsw.gov.au/housing/policies/client-service-delivery-appeals-policy>

See FACS factsheet on Appeals and Reviewing Decisions: facs.nsw.gov.au/housing/living/rights-responsibilities/appeals-and-reviewing-decisions

Second tier (Housing Appeals Committee) Appeals

An internal first tier review with FACS must be conducted before a second tier appeal can be lodged. The Committee can then assess whether the original decision was made fairly, in accordance with policy and whether all relevant information was taken into account.

An appeal form can be accessed from the HAC website: https://www.hac.nsw.gov.au/__data/assets/pdf_file/0003/333849/HAC-FORM-2016.pdf

Alternatively, tenants can request an application form by contacting the Housing Appeals Committee Secretariat on 1800 629 794 or via email at hac@facs.nsw.gov.au

Timeframes

Reviewing the application of Tenant Repair Costs policy:

- Within three months of being told of the original decision. If you were not aware of the original decision, an extension may be granted.

Decline of a request for a deferral of bond payments:

- Tenants or Applicants must provide consent for an accelerated appeal to occur when applying for a first tier appeal. If you have not consented to this in the first instance then you have 7 days from the date of receiving the decision to provide written consent. If you do not provide consent, FACS will not consider your review.

What happens if you refuse to pay a bond?

If you are on the waiting list, FACS will not offer you housing until it has been more than 6 years since the damage was discovered.

If you are a current tenant of LAHC or the AHO, FACS can issue a tenant a 14-day notice of termination for non-payment of all or part of the rental bond. Non-payment of rental bond will then be treated in the same manner as failure to pay rent under an agreement and eviction can be pursued at the NSW Civil and Administrative Tribunal. If you pay the bond before you have left the property the eviction will not continue. See Factsheet 5: Rent Arrears for more (tenants.org.au/factsheet-05-rent-arrears).

Getting your bond back at the end of your tenancy

Getting your bond back is the same process as all other tenants – see Factsheet 3: Bond (tenants.org.au/factsheet-03-bond).

Continued on the next page...

When you leave your property, FACS must give you the opportunity to be there when they inspect the premises. If you cannot be there, make your own record with photos.

If you do not agree with FACS about any damage or costs they claim you should lodge your bond claim with the Rental Bond Board. At the moment this must be done with a paper form which is available here. You can also call NSW Fair Trading on 13 32 20. The bond claim form can be accessed at: https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0009/367749/claim_refund_bond.pdf

If you do not put in your claim with the Rental Bond Board, you will need to pay to go to Tribunal to get your bond back.

Further useful resources

- **FACS Housing Rental Bonds factsheet**
<https://www.facs.nsw.gov.au/housing/living/rent-and-bills/facs-housing-rental-bonds>
- **FACS Paying a FACS Housing Rental Bond factsheet**
<https://www.facs.nsw.gov.au/housing/living/rent-and-bills/facs-housing-rental-bonds/paying-a-facs-housing-rental-bond-factsheet/>
- **FACS Rental Bonds policy**
<https://www.facs.nsw.gov.au/housing/policies/rental-bonds-policy>
- **Ministerial guidelines for paying a bond**
<https://www.facs.nsw.gov.au/download?file=634088>
- **FACS Tenant Repair Costs policy**
<https://www.facs.nsw.gov.au/housing/policies/tenant-repair-costs-policy>
- **Fair Trading: Getting your bond back**
<https://www.fairtrading.nsw.gov.au/housing-and-property/renting/ending-a-tenancy/getting-your-bond-back>

For free tenancy advice, call your local Tenants Advice and Advocacy Service:

SYDNEY:

• Eastern	9386 9147
• Inner	9698 5975
• Inner West	9559 2899
• Northern	9559 2899
• Southern	9787 4679
• South West	4628 1678
• Western	8833 0933

REGIONAL:

• Blue Mountains	4704 0201
• Central Coast	4353 5515
• Hunter	4969 7666
• Illawarra Sth Coast	4274 3475
• Mid Coast	6583 9866
• Northern Rivers	6621 1022
• Northwest NSW	1800 836 268
• Southwest NSW	1300 483 786

ABORIGINAL:

• Sydney	9833 3314
• West NSW	6881 5700
• South NSW	1800 672 185
• North NSW	1800 248 913

WEBSITE: tenants.org.au

NSW FAIR TRADING: 13 32 20

This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia. ©Tenants' Union of NSW