

# Defending a compensation claim

If your landlord believes they have suffered loss as a result of you breaching your tenancy agreement (lease) or the *Residential Tenancies Act 1997*, they may apply to the Victorian Civil and Administrative Tribunal to make a compensation claim against you.

Common claims by landlords include:

- > lease breaking costs
- > lost rent if you leave without giving proper notice
- > damage to the rental property or to fixtures or goods supplied with the property
- > failing to leave the property reasonably clean
- > unpaid rent

Usually the landlord will wait until you move out before making a compensation claim, and they will only apply for compensation if the amount they are seeking is more than your bond. However a landlord can make a compensation claim at any time during a tenancy, or for up to 6 years after the damage or loss is supposed to have occurred.

➔ The Tribunal has a \$10,000 limit on compensation claims. If the landlord wants to claim more than \$10,000 they will need your consent, or they must go to the Magistrates' Court or a higher court. Alternatively, they may be able to make a claim under the *Fair Trading Act 1999*, which has unlimited financial jurisdiction. Contact the Tenants Union for advice if your landlord is making such a claim.

## How a claim is made

If you are still living in the property and your landlord wants to claim compensation from you for loss suffered as a result of you breaching a duty under the *Residential Tenancies Act 1997*, they must give you a Breach of Duty Notice. See the **When you get a Breach of Duty Notice** fact sheet for more information.

If you have moved out of the property the landlord does not have to give you a Breach of Duty Notice; they can apply directly to the Victorian Civil and Administrative Tribunal. The landlord must send you a copy of their

application to the Tribunal. Their application should include the amount of compensation they are seeking and what they are seeking compensation for.

If the amount of the compensation claim is the same or less than your bond, the landlord should make a claim against your bond. See the **Bonds** fact sheet for more information.

If the amount that the landlord wants to claim from you is more than your bond, the landlord can make a claim against your bond and a compensation claim at the same time.

## Agreeing to pay

If you decide that you will pay the landlord's claim, or you negotiate with the landlord or agent to pay a lesser amount than they are claiming, you must get a letter from the landlord or agent clearly stating how much you have agreed to pay and how it will be paid, and confirming that they will not make a further claim against you in the future. You should also get a receipt.

## Defending the claim

If you do not agree to pay compensation and the landlord applies to the Victorian Civil and Administrative Tribunal, the landlord will have to convince the Tribunal that:

- > they have suffered financial loss or property damage; and
- > the loss or damage resulted from your breach of the lease or the *Residential Tenancies Act 1997*; and
- > the amount they are claiming is reasonable.

The landlord must provide evidence to support their claim, and they must show you or give you copies of any documents or photos they present to the Tribunal. The Tribunal will also give you the chance to tell your side of the story. If you present any documents or photos, you will also have to show these to the landlord or agent.

If you do not agree that you are responsible for the landlord's loss, you should state your

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reasons and provide whatever evidence you can to support your claim. For example, if the damage was already there when you moved in or was caused after you moved out of the property, you should provide evidence of the state of the property when you left (eg Condition Report, photographs, witness statements).

If the landlord is claiming for property damage, the Tribunal must also take into account whether the damage is simply 'fair wear and tear' (eg the carpet has worn down over time as a result of normal use) which is the landlord's responsibility, not the tenant's.

If you agree that the landlord is entitled to compensation for property damage but believe that the amount they are claiming is unreasonable, you will need to provide evidence of this. If the landlord is claiming the cost of repairs or replacement of property or fixtures, you should get quotes from shops or tradespeople to show that the landlord is trying to claim too much.

The landlord cannot claim the full cost of replacing something that was not new when it was damaged. The Tribunal will also allow for 'depreciation', which means the older something gets, the less it is worth.

➡ The landlord's claim must be in proportion to the damage caused. For example, they cannot claim for the cost of repainting the entire house when the paintwork is damaged in just one room.

## Orders for compensation

If the Tribunal orders that you have to pay compensation to the landlord, you will need to consider how you will pay the claim. After the hearing, you can try to negotiate a repayment plan with the landlord (make sure you get any agreement in writing) or speak to a financial counsellor. You can phone Consumer Affairs Victoria on ☎ 1300 55 81 81 for the number of your nearest financial counsellor.

**For more information phone the Tenants Union Advice Line on ☎ (03) 9416 2577.**