

Policy Name: Tenant Damage

Approved by: Chief Executive Officer

Date effective: May 2019

Due to be reviewed: May 2022

Section 1 – Introduction

PURPOSE

This policy establishes the approach of VincentCare Community Housing (VCCH) when damage occurs at a tenanted property. The policy clearly defines both a tenant's and VCCH's responsibilities for property maintenance.

VincentCare Victoria operates a diverse range of accommodation and support services for people experiencing disadvantage, and is committed to applying an appropriate duty of care to all people in contact with VincentCare services. This includes protecting people's personal and cultural safety regardless of ability, cultural background, ethnicity, gender identity, sexual orientation or religion.

SCOPE

This policy applies to all tenants managed by VCCH whilst residing in properties owned or managed by VCCH.

For the purpose of this policy, the term 'tenant' is inclusive of the term 'resident'.

REVIEW CYCLE

This policy will be reviewed every three years. It will be modified or replaced whenever VCCH becomes aware that this policy no longer complies with the requirements of the organisation.

Section 2 – Policy Statement

VCCH may charge tenants for the cost of repairing tenant-caused damage to a property. This includes engaging suppliers to undertake repairs for property damage that the tenant is responsible for. Tenant caused damage includes damages caused by children, partners, pets or any visitors invited into the property by the tenant.

Guiding principles/approach

Prior to taking any action in relation to property damage, VCCH will investigate. Through the investigation VCCH will confirm who is responsible for the damage. VCCH will consider the tenant's human rights when determining whether to issue a tenancy breach relevant to the level of damage at the property.



The approach to property damage will involve:

- Part 2 of the Residential Tenancies Act (RTA) outlines the rights and duties of the tenant and the landlord (general duties of tenants and landlords) which forms the basis of this Tenant Damage Policy.
- VCCH will perform repairs to ensure that the premises are maintained in good repair.
- A tenant who becomes aware of any damage (whether the damage is caused by the tenant or not) to the rented premises must inform VCCH as soon as possible.
- A tenant must avoid damage to premises or common areas:
 - (a) A tenant must ensure that care is taken to avoid damaging the rented premises.
 - (b) A tenant must take reasonable care to avoid damaging the common areas.
- VCCH will seek to recover repair charges from tenants in circumstances where repairs to the premises are necessary, as a result of deliberate damage or neglect caused by the tenant, another household member or a visitor who enters the property with the tenant's permission.
- VCCH will not seek to recover repair charges for fair wear and tear that occurs to the premises through ordinary day-to-day use of the property by a tenant.
- VCCH may not seek to recover repair charges for damage caused by a tenant's mental and physical health, instances of family violence, or third party criminal damage.
- VCCH may] not seek to recover repair charges for any item, fixture or fitting at the end of its useable life or that is due to be replaced.
- The policy may not apply to circumstances where tenants, residents or visitors have caused intentional, extensive and malicious damage to the property. In these circumstances, VCCH may serve an immediate notice to vacate and seek an Order of Possession under Section 243 of the RTA.

2.1 Repair Charges

Charges for damage and repairs will be sought from tenants in the following circumstances:

2.1.1 Intentional damage to the property:

- alterations being made without approval
- alterations carried out by or on behalf of the tenant which don't comply with VCCH requirements
- fixtures or fittings installed do not meet the required standards of VCCH
- floor coverings being removed without the consent of VCCH
- malicious damage to the premises
- punctured internal cabinets, doors and walls
- sewer and/or drainage blockages caused by items flushed down the toilet, such as sanitary products, wipes, nappies or toys

2.1.2 Neglectful damage:

- broken and damaged clotheslines and hoists
- broken windows
- burns or other damage to carpets that cannot be considered fair wear and tear
- damage caused by neglect
- damage to toilets, basins, showers, and bathtubs

- damaged/missing doors and security screens
- unnecessary call outs
- failure to keep the property in a reasonably clean condition
- failure to take care to prevent damage to the property
- pest control and associated failure to keep the property clean

2.1.3 Compliance with third party instructions:

- instances where emergency services are required to gain access to the premises, the tenant may be invoiced for the cost of any associated damage
- a direction from Victoria Police
- a direction from council by-laws [e.g. hoarding]
- a direction from the Metropolitan Fire Brigade or the Country Fire Authority
- the premises being damaged or destroyed by fire as a result of the actions of the tenant, as confirmed by the Metropolitan Fire Brigade or the Country Fire Authority
- a compensation or compliance order from Victorian Civil and Administrative Tribunal (VCAT)

2.1.4 Conclusion of the tenancy:

- approved alterations made during the tenancy and the premises not being restored to the condition existing at the start of the tenancy or as at completion of the most recent works undertaken by VCCH (fair wear and tear excepted)
- broken locks or where keys have not been returned to VCCH at the end of a tenancy
- end of tenancy cleaning
- any costs associated with the removal of tenant property such as furniture, appliances, personal effects or vehicles left behind at the end of the tenancy.

2.2 Responsibilities

2.2.1 Tenant responsibilities

Tenants are expected to uphold their responsibilities under the RTA:

- Abide by the terms and conditions of their Tenancy Agreement
- Take good care of the property and keep it reasonably clean
- Tell VCCH as soon as possible if the property has been damaged
- Pay costs for damage that results from deliberate action, mistreatment or negligence of a tenant, household member or visitor has been proven and to comply with orders to pay the cost of repairs or cleaning
- Report to the Police any damage that is suspected to have resulted from criminal activity, such as break and enter, vandalism or family violence (if possible); and provide VCCH with a police report reference number
- Rectify any alterations carried out by the tenant before handing the keys back
- Restore the property to the condition it was in at the start of the tenancy, after allowing for fair wear and tear
- Return all keys to VCCH at the conclusion of a tenancy

2.2.2 Landlord responsibilities

VCCH commits to fulfil its role as landlord under the RTA and will:

- Ensure the premises is in reasonably clean condition prior to a tenancy commencing, is maintained to a community standard, and never below a habitable standard
- Provides tenants with a written statement setting out the rights and duties of the VCCH and the tenant under a tenancy agreement
- Inspect the premises 3 months after lease commencing and then 6 months
- Undertake responsive and cyclical maintenance, and has a flexible program of upgrades that can take advantage of vacancies
- Ensure all maintenance is undertaken by qualified tradespeople

VCCH will communicate clearly with tenants when investigating and responding to incidents of property damage.

2.3 Determining responsibility for damage to the premises

To determine who is responsible for the cost of repairing damage to the premises VCCH will ensure the process is fair, timely and evidence based by:

- Inspecting the premises and documenting the damage where appropriate
- Taking 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
- Taking into account damage due to fair wear and tear, which VCCH are responsible to repair
- Taking into account damage due to an emergency situation where there was good cause to believe that the tenant's health and wellbeing was at risk
- Considering whether ill health or inability to maintain the premises has contributed to the damage. In these circumstances the tenant is required to provide evidence
- Considering whether the damage is a result of criminal activity such as family violence, break and enter or vandalism. In these cases a Police report should be supplied by the tenant where possible
- Discussing the items of damage with the tenant and recording information the tenant or a third party gives VCCH about the possible cause of the damage
- Taking into account the type of damage and any information concerning liability the tenant gives to VCCH when reporting the damage

In circumstances of criminal activity the tenant is requested to provide evidence within 3 business days, such as a Police statement or a Police report reference number.

2.4 Managing tenant repair charges

If VCCH determines that the tenant has breached their responsibilities as outlined in the tenancy agreement or in this or any other applicable policy, VCCH may seek reimbursement of the costs to repair damage.

VCCH will undertake the following steps to seek to recover repair charges:

- Inspect the premises and document the damage ideally with the tenant present
- Collect evidence of the damage sustained at the premises, and identify how the damage may have occurred, including photos
- Detail in a transparent and comprehensive manner the repair charges to recover the costs of the repairs and maintenance
- Provide the tenant a written notice of the proposed tenant repair charges. The notice will outline the proposed terms of the repair charges, and will also provide the tenant with the option to negotiate on these terms in certain circumstances.
- In the interests of transparency and accountability, the VCCH may provide written information to the tenant relating to how the cost of repairs was determined.
 - Taking into account the type of damage and any information concerning liability the tenant gives to VCCH when reporting the damage

VCCH will seek to resolve these matters directly with the tenant, however will apply to VCAT if necessary. Refer to Section 2.7.

2.5 Appealing decisions about tenant repair costs

If a current or previous tenant disputes the amount of the tenant repair charges or denies responsibility for the damage, VCCH will advise them of their right and the process to lodge an appeal for a review of the decision.

VCCH will advise the tenant that they can apply to VCAT to have the condition of the premises and any damage determined by the tribunal (where applicable) as per the RTA.

2.6 Repayment Agreement

After responsibility has been resolved, VCCH and the tenant will both sign a repayment agreement detailing the costs involved and how it will be paid (lump sum or series of instalments).

Tenants may choose to have third party support in resolving and negotiating the matter. During the negotiation, staff will take into account fair wear and tear. Fixtures and fittings at the end of their useable life or programed for replacement will not be subject to tenant repair charges.

If the tenant accepts liability for the identified damage, the claim should be considered a substantiated tenant repair charge. The tenant may either pay the amount in full, or enter into a repayment agreement. The total repayment amount cannot exceed 10% of the household's total income unless approved by the General Manager Housing, and agreed by the tenant.

If the tenant has vacated the property, the tenant repair charge will be held against the bond, (for long term properties).

2.7 Breach and Compliance Process

If an agreement cannot be reached, or an agreement is broken, VCCH will pursue the costs through the breach and compliance process under the RTA.

This may include:

- issuing a breach of duty notice under s. 208: *Breach of Duty Notice* for:
 - s. 61: *Tenant must avoid damage to premises or common areas*
 - s. 63: *Tenant must keep rented premises clean*
 - s. 64: *Tenant must not install fixtures, etc. without consent*

COMMUNICATION

VCCH will provide clear information to tenants on this policy, and will inform tenants when the policy is being used to recover costs.

Section 3 – References

Related policies

Policy name	Description
VCCH Maintenance and Repairs Policy	https://vincentcare.org.au
VCCH Inspections Policy	https://vincentcare.org.au
VCCH Complaints and Appeals Policy	https://vincentcare.org.au
VCCH Arrears Management and Hardship Policy	https://vincentcare.org.au
VCCH Evictions Policy	https://vincentcare.org.au

Legislation and standards

This policy implements the obligations of VincentCare Community Housing under:

- Residential Tenancies Act 1997
- Housing Act 1983 (Vic)
- Guidelines for Registered Housing Agencies published by DHHS
- Performance Standards for Registered Housing Agencies

Transparency and accessibility

This policy will be available on the VincentCare Community Housing website
<https://vincentcare.org.au>

Section 4 – Governance

Responsibility

Process Owner	General Manager Housing
Content Holder/s	Housing Program Managers
Recommending body	Quality Committee
Endorsed by	Chief Executive Officer

Change history

Version	Effective Date	Author	Change
1	May 2019	General Manager Housing	<ul style="list-style-type: none">• This is a new policy for publication on VincentCare's website• This policy is a compliance requirement for registered agency participation in the Victorian Housing Register (VHR)