

## PROPERTY DAMAGE (by tenant)

### Policy & Procedure

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| <b>QA REFERENCE</b>           | M't P&P No 32   |
| <b>DATE INTRODUCED</b>        | 28 03 2019  |
| <b>DATE REVIEWED</b>          | 28 03 2019  |
| <b>DATE OF NEXT REVIEW</b>    | 28 03 2022  |
| <b>REVIEW RESPONSIBILITY</b>  | Chief Financial Officer   |
| <b>SIGNATURE OF APPROVAL</b>  | Chief Executive Officer   |
| <b>REFERENCES</b>             |   |
| - <b>Relevant Legislation</b> | <ul style="list-style-type: none"> <li>• Housing Act 1983 (Vic)</li> <li>• Performance Standards for Registered Housing Agencies</li> <li>• DHHS Victorian Housing Register Operational Guidelines</li> <li>• Guidelines for Registered Housing Agencies published by DHHS</li> <li>• Residential Tenancies Act 1997</li> </ul>   |
| - <b>Other MASP Policies</b>  | <ul style="list-style-type: none"> <li>• Allocations</li> <li>• Bond payment</li> <li>• Code of Conduct</li> <li>• Complaints and Appeals</li> <li>• Eligibility</li> <li>• Inspections</li> <li>• Maintenance and Repairs</li> <li>• Privacy and Confidentiality</li> <li>• Privacy Information Sharing</li> <li>• Rent Arrears Management and Evictions</li> <li>• Rent Setting and Collection</li> </ul> |
| <b>FORMS &amp; TEMPLATES</b>  |   |

#### PURPOSE

This policy establishes the approach of MASP to clearly define the tenant's responsibilities and MASP's responsibilities in maintenance.

MASP may charge tenants for the cost of repairing tenant-caused damage to a premises or undertaking services 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.

#### SCOPE

This policy applies to all tenants managed by MASP under all relevant programs.

#### Approach to repair charges

- 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 the Tenant Damage Policy.
- A tenant who becomes aware of any damage (whether the damage is caused by the tenant or not) to the rented premises must inform MASP as soon as possible.
- MASP will perform repairs to ensure that the premises are maintained in good repair.

- 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.
- MASP 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.
- MASP 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.
- MASP may not seek to recover repair charges for damage caused by mental and physical health, instances of family violence, or third-party criminal damage.
- MASP 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, MASP may serve an immediate notice to vacate and seek an Order for Possession under s243 of the RTA.

## **Repair charges**

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

### **Intentional damage to the property:**

- alterations being made without approval
- alterations carried out by or on behalf of the tenant not conforming to MASP requirements
- fixtures or fittings installed do not meet the required standards of MASP
- floor coverings being removed without the consent of MASP
- 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.

### **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
- erroneous call outs
- failure to keep the property in a reasonably clean condition
- failure to take care to prevent damage to the property
- pest control.

### **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 [eg 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).

## **Conclusion of the tenancy:**

- approved alterations being 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 MASP (fair wear and tear excepted)
- broken locks or where keys have not been returned to MASP 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.

Prior to taking any action in relation to damage to the premises / tenancy breaches, MASP will investigate and confirm the tenant's responsibility for the damage, including discussing the matter with the tenant. MASP will undertake a human rights impact assessment before determining whether to issue a tenancy breach relevant to the level of damage at the property.

### **Tenant responsibilities**

Tenants will:

- abide by the terms and conditions of their tenancy agreement
- take good care of the property and keep it reasonably clean
- tell MASP as soon as possible if the property has been damaged
- pay costs for damage that results from deliberate action, mistreatment by or negligence of a tenant, household member or visitor that 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 MASP with an event 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 MASP at the conclusion of a tenancy.

### **Landlord responsibilities**

MASP commits to fulfil its role as landlord under the RTA.

MASP 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 MASP and the tenant under a tenancy agreement
- inspect the premises after three months and every six months thereafter
- 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.

### **Managing tenant repair charges**

If MASP considers that the tenant has breached their responsibilities as outlined in the tenancy agreement or in this or any other applicable policy, MASP may seek repair charges for the costs to repair damage.

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

- inspect the premises and complete a property condition report ideally with the tenant present
- collect evidence of the damage sustained at the premises, and evidence of how the damage may have occurred, including photos
- detail in a transparent and comprehensive manner to the tenant the repair charges to recover the costs of the repairs and maintenance

- provide the tenant a written notice of the proposed (tenant) repair and maintenance 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 the interests of transparency and accountability, MASP will provide information relating to how the cost of repairs were determined.

### **Determining responsibility for damage to the premises**

To determine who is responsible for the cost of repairing damage to the premises, MASP 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 MASP is 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 MASP about the possible cause of the damage
- taking into account the type of damage and any information concerning liability the tenant gives to MASP when reporting the damage.

In circumstances of criminal activity, the tenant is requested to provide evidence within (5) days, proving the tenant has reported the matter to the police, such as a police statement or police event number.

Where MASP determines that the damage is a result of intentional damage, mistreatment or neglect, the tenant will be responsible for the cost of repair work.

MASP will seek to recover the cost of repairing the damage from the tenant or, in certain circumstances, for example where the damage is a result of criminal activity.

### **Appealing decisions about tenant repair costs**

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

MASP 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.

### **Repayment Agreement**

After responsibility has been resolved, MASP 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 programmed 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 5% of the household's total income unless approved by the Chief Executive Officer and agreed by the tenant.

If the tenant has vacated the property, the tenant repair charge will be held against the bond.

### **Breach and Compliance Process**

If an agreement cannot be reached, or an agreement is broken, MASP 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**

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

### **Transparency and accessibility**

This policy will be available on the MASP website [www.masp.org.au](http://www.masp.org.au).

### **Acknowledgement**

MASP acknowledges the policy work undertaken by Bridge Housing Limited, the Department of Health and Human Services and Aboriginal Housing Victoria in developing this policy template.