

## **FACS Housing - Ministerial Guidelines Rental Bonds - 2018**

These guidelines are issued by the Minister for Social Housing under section 156D of the Residential Tenancies Act 2010 (RTA) and are published on the Department of Family and Community Services (FACS) website.

### **Purpose**

This document specifies the classes of tenants in public housing and Aboriginal Housing Office (AHO) tenancies (together described in this document as FACS tenants) who may be required to pay a rental bond at the commencement of a new residential tenancy agreement or during a residential tenancy agreement, and to provide for the amount of rental bond payable and other associated matters.

Under the Residential Tenancies Act 2010 (the Act), FACS, may ask a tenant to pay a rental bond as a condition of their residential tenancy agreement at the commencement of the agreement.

Under section 156D of the Act, FACS may also require public housing and AHO tenants living in public or AHO housing (referred to in this document as FACS-managed properties) to pay a rental bond during the term of their residential tenancy agreement if they belong to a class of tenants prescribed by guidelines approved by the Minister.

### **Legislative framework**

The provisions of the Residential Tenancies Act 2010 and the Housing Act 2001 apply to the management of FACS Housing tenancies.

In summary:

- FACS, on behalf of the Land and Housing Corporation (LAHC) and the AHO, can require FACS tenants to pay a rental bond of up to four weeks market rent as a condition of their tenancy at the commencement of the tenancy agreement.
- FACS may require current tenants to pay a rental bond during the term of a tenancy agreement in certain circumstances, without the need to terminate or re-sign a tenancy agreement.
- If payment of a rental bond is a term of the tenancy agreement, the non-payment of all or part of the rental bond is a breach of the tenancy agreement.
- FACS may issue a termination notice to a tenant if the tenant fails to pay all or part of a rental bond.

Where there is a breach of the tenancy agreement, NSW Civil and Administrative Tribunal (NCAT) orders can be sought, including performance orders. Reasonable efforts will be made by FACS to support tenants to understand their obligations.

### **Classes of tenants who will be required to pay a rental bond**

The following FACS tenants will be required to pay a rental bond:

**(a) Current FACS tenants on fixed term or continuous leases at any time after a tenancy agreement has commenced**

Current tenants who have not paid a rental bond at the commencement of their tenancy and who cause damage to a FACS-managed property may be required to pay a rental bond at any time during the tenancy. This will apply where the tenant causes significant damage to their property on or from the date of publication of these Guidelines or where the tenant has not reported damage for which they are or were responsible before the date of publication of these Guidelines.

Tenant damage is intentional damage or neglect, or failure to keep the premises in a reasonably clean condition, after allowing for fair wear and tear.

A rental bond will be required where the costs to repair the tenant damage are assessed at \$500 or more in a single instance, where:

- The tenant accepts responsibility for the cost of damage, in writing, or
- NCAT has ruled that the tenant has caused damage of \$500 or more in a single instance.

A single instance of damage means damage that is discovered and assessed at a single point of time. This may include multiple tenant damaged items that have occurred across a period of time, which are identified and charged at a single point in time. It does not include repairs arising from fair wear and tear.

**(b) Former tenants returning to FACS-managed housing**

Tenants who have previously caused damage to a FACS-managed property, where the repair costs are assessed at \$500 or more in a single instance, will be required to pay a rental bond as a condition of signing a new tenancy agreement.

The damage must have occurred in the six years prior to their new lease being signed.

A rental bond will be required regardless of whether the previous debt was paid or a current payment arrangement is in place to repay the debt.

**Classes of FACS tenants who will not be required to pay a rental bond**

The following tenants will not be required to pay a bond:

- Tenants where damage was the result of domestic violence. Victims of domestic violence will not be charged for damage caused by perpetrators of violence.
- Tenants over 80 years of age.
- Tenants who are in receipt of a Veterans' Affairs benefit.
- Tenants that are not required to pay a tenancy damage charge in accordance with FACS' [Tenant Repair Costs Policy](#), including where FACS agrees that ill health or inability to maintain the premises has contributed to the damage.

- Clients approved for Emergency Temporary Accommodation. These clients are not eligible for social housing but are approved for emergency temporary accommodation in public housing for a period of up to three months due to being in crisis (as set out in FACS' [Eligibility for Social Housing policy](#)).
- Tenants relocated by FACS on portfolio or tenancy management grounds with a tenant damage debt which is older than six years; or the tenant damage debt was incurred prior to the commencement of these Guidelines. FACS initiated relocations may occur for reasons that include:
  - o Land and Housing Corporation (LAHC) or the AHO intends to sell or demolish a property.
  - o The property has features, i.e. modifications for people with a disability that are no longer needed by the people living in the property.
  - o LAHC or the AHO intends to carry out substantial upgrading work on the property and the property needs to be vacant for the work to be done.
- Tenants who are relocated to downsize to a smaller property, either at the initiative of FACS or the tenant.
- Tenants in the Social Housing Management Transfer Program in whole of location transfer areas.
- Other tenants whom FACS assesses should be exempt from paying a rental bond because of extenuating circumstances.

### **Rental bond amount payable**

The rental bond payable will be four weeks market rent, capped at a maximum payment of \$1400 (indexed annually at the same rate used by Centrelink).

### **Payment instalment options and plans**

Tenants will have two options for payment:

- Paying by a scheduled instalment plan of between 24 and 36 months as set out in FACS Rental Bonds Policy.
- Paying upfront (at a 20% discount).

### **Payment deferral**

FACS may defer payment of a rental bond, or a rental bond instalment, if it is satisfied that the tenant has experienced an increase in costs (and therefore a reduction in housing affordability) due to extenuating circumstances.

### **Claims**

FACS can claim the rental bond from NSW Fair Trading (NSWFT) in the same way as any other agent in the private sector, after a tenancy ends, if the tenant causes damage or has other outstanding charges. A bond can be claimed by a client directly with NSWFT or by FACS. Should the tenant have no debt owing to FACS at the end of the tenancy, the tenant will receive the bond back. This also includes any instalments that they may have made before the end of their tenancy.

### **Appealing Decisions**

A tenant can appeal a FACS decision relating to a request for a deferral on their rental bond instalments.

Appeals about decisions relating to rental bonds will be managed in accordance with the FACS [Client Service Delivery and Appeals Policy](#).

### **Legislation and compliance**

FACS manages tenancies in accordance with the provisions of the Residential Tenancies Act 2010 and the Housing Act 2001.

NSWFT administers rental bonds. A Memorandum of Understanding between FACS and the Rental Bond Board, through the Department of Finance, Services and Innovation sets out the management of rental bonds for FACS tenants, and defines roles and responsibilities, to ensure compliance with the Act.

Rental bonds will be deposited with NSWFT within the required period and in the required manner, and will be held by NSWFT which will be responsible for paying and refunding claims as it does for the private rental sector.

Date on which these Guidelines take effect: 1 November 2018.

Signed by

A handwritten signature in black ink, appearing to read 'Prudence Goward', written over a horizontal red line.

The Hon Prudence Goward, MP  
Minister for Family and Community Services  
Minister for Social Housing  
Minister for the Prevention of Domestic Violence and Sexual Assault