



May 2009

## RentCover Report – we've got you covered

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Welcome to the May edition of the *RentCover Report*.

As the Budget season arrives for another year, we have seen various governments announce large budget deficits as the effects of the global financial crisis mount.

But in the face of these mounting deficits, there has been increased attention being paid to the spending habits of governments and the possible continuation of stimulus packages aimed at breathing new life into the domestic economy.

One package to garner considerable attention has been the Federal Government's First Home Owners Boost, which was part of a \$1.5 billion package that offered first homebuyers a \$21,000 cash bonus for those who signed a contract to build a new home before 30 June 2009.

State governments have added their own incentives and last week the Victorian State Budget increased its incentives to first homebuyers.

Turning to this edition, this month we look at a recent High Court case involving extensive unauthorised remodelling work that was carried out by a tenant without their landlord's knowledge. We also take a look at the concept of positive and negative gearing and find out what fair wear and tear really means. We also meet Regina Tutai from EBM's Melbourne office as part of our staff profile series.

We hope you enjoy this edition and look forward to updating you next month!

**Sharon Fox-Slater**  
General Manager, RentCover



## Tenant pays highly for unauthorised alterations

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A recent High Court decision has held a tenant responsible for the cost of alterations done to the property without the owner's consent.



The case, *Tabcorp Holdings Ltd v Bowen Investments Pty Ltd*, concerned a lease between Bowen Investments as the landlord and Tabcorp Holdings as the tenant. The lease between the two parties included a covenant which prohibited Tabcorp from altering the premises without the prior written approval of Bowen.

Despite this and without the knowledge of its landlord, Tabcorp began carrying out extensive renovations to the property.

Upon arriving at the property one day, one of Bowen's representatives found demolition and remodelling works well underway – a most surprising development indeed!

Although the lease remained on foot, Bowen commenced legal proceedings against Tabcorp on the grounds that it carried out unauthorised alterations to the property that were in breach of its lease agreement.

The case was first heard before a single judge of the Federal Court who awarded Bowen \$34,820 in damages for the breach of the lease conditions. However, Bowen appealed this decision and the Full Court of the Federal Court increased Bowen's damages to \$1.38 million comprising \$580,000 for the cost of restoring the property to its original condition (i.e. before the unauthorised renovation) and \$800,000 for loss of rent while that restoration was taking place.

Tabcorp then appealed to the High Court seeking restoration of the trial judge's figure. But the High Court rejected Tabcorp's appeal and reinstated the increased figure of \$1.38 million against it.

Dismissing Tabcorp's appeal, the High Court made a special point of agreeing with the trial judge's assessment that Tabcorp's conduct involved a 'contumelious disregard' for Bowen's rights.<sup>1</sup>

Furthermore, Bowen was contractually entitled to the protection of its property against unauthorised changes or alterations. As such, the damages it was entitled to took into account Tabcorp's failure to abide by this obligation and included the cost of restoring the property to the condition in which it would have been if the lease agreement had not been breached.

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<sup>1</sup> *Tabcorp Holdings Ltd v Bowen Investments Pty Ltd* [2009] HCA 8 Pg 1.

The case highlights the importance of the provisions in lease agreements and the extent to which courts will go to protect the rights and obligations that those agreements confer on tenants and landlords.

## Highs and lows of positive and negative gearing

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In this instalment of RentCover's regular segment on property management, this month we look at the topic of positive and negative gearing.



A commonly misunderstood area for new homeowners and investors, the 'gearing' of a property relates to the difference between its purchase value and the costs of owning it.

Beginning with negative gearing, a property is said to be negatively geared if the costs of maintaining it are greater than the income it produces. The income from a property will typically be the rent that is paid by tenants, however the costs associated with the property can include items such as interest on bank loans, bank charges, maintenance fees, repairs and capital depreciation.

Although negative gearing is usually associated with rental property, it can be used for other types of investment such as managed funds and shares.

Many investors believe negative gearing is a desirable situation as it may offer certain tax advantages which can lead to a reduction in their taxable income. This is because the investors are able to claim the difference between the property's income and costs as a 'loss', thus reducing the amount of tax they would ordinarily be liable to pay.

On the other hand, positive gearing occurs when the income received from a property is greater than its expenses. To generate a positive cash flow, investment costs must be lower or equivalent to the income received from the property.

Positively geared properties are becoming more common with lower interest rates reducing mortgage repayments and thus decreasing the total costs of maintaining a property.

EBM General Manager Sharon Fox-Slater says positive and negative gearing can have advantages and disadvantages for property investors.

"Just as there are many types of investment properties, there are many factors affecting the gearing of an investment," Ms Fox-Slater said. "What may be right for one owner might not be right for another.

"While the taxation benefits associated with gearing can be appealing, investors should always seek advice from a finance expert and accountant to make sure their purchase is within their budget and will benefit them in the long run."

Ms Fox-Slater said all potential investors are reminded that having adequate landlord insurance for their property remains an essential part of maintaining a reliable and sound investment.

## Fair call on fair wear and tear

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The concept of fair wear and tear on rental property is one topic that many landlords and tenants find confusing.

Generally speaking, at the end of a tenancy, the tenant is responsible for leaving the premises in as close to the same condition as they found it. To describe this requirement, many lease agreements include the phrase ‘fair wear and tear excepted’.



The word ‘fair’ in the sentence relates to the cause of the damage. For damage to be reasonable, it must have occurred in the course of fair use of the property. So something like carpet deterioration in high traffic areas (e.g. hallways), would be reasonable. On the other hand, if there were large motor oil stains in the bedroom, it would be hard to argue that this is the product of fair use.

Secondly, the words ‘wear and tear’ relate to the effect of the damage. For example, minor scuff marks, sun-fading and minor stains would all be likely to constitute fair wear and tear. On the other hand, large stains, extensively broken tiles or torn carpets would probably be considered to be more than merely wear and tear.

What is considered ‘fair wear and tear’ will depend on the individual circumstances of the property but it has been enshrined into tenancy legislation.

Section 26 of the *Residential Tenancies Act 1987* deals with this issue in NSW and section 106 of Queensland’s *Residential Tenancies Act* states that:

*“At the end of the tenancy, the tenant must leave the premises and inclusions, as far as possible, in the same condition they were in at the start of the tenancy, fair wear and tear excepted.”*

Similar provisions are found in other states’ legislation and a myriad of case law has flowed from tenancy tribunals and other courts that have grappled with this issue.

EBM General Manager Sharon Fox-Slater says periodic property inspections are a good way of making sure the condition of the property is maintained at a good standard, and that any issues, either from the landlord or tenant, can be addressed in a timely manner.

“Property inspections are essential for good property management, however it is not uncommon for significant issues to arise during the final inspection of a property,” Ms Fox-Slater said.

“Landlords’ insurance offers investment property owners peace-of-mind knowing that their property is protected against any potentially costly acts that go beyond the boundaries of fair wear and tear. EBM’s very affordable products such as

RentCover*Ultra* allow them to continue renting their properties in confidence knowing that they are covered in the majority of circumstances.”

For more information about the RentCover range of products visit [www.rentcover.com.au](http://www.rentcover.com.au) or call 1800 688 820.

## Meet a member of the RentCover team...

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This month we meet Aerenga Tutai from EBM’s RentCover team in Melbourne.

Aerenga is currently completing a traineeship with EBM as a trainee Assistant Account Manager. She has been working with the RentCover team for the past 16 months.



She says she enjoys the flexible nature of her role which allows her to become involved in processing new applications, helping clients over the phone and much more.

Here are a few other things you might not know about Aerenga:

- 1. What do you like most about being at EBM?** I like the fact that I’m not restricted to one area, in other words there’s always something new to learn. My daily tasks include processing new business, helping to answer clients’ queries, sorting out mail and helping out with administration duties. No two days are the same and that’s the best part.
- 2. What aspect of your role do you find most rewarding?** Dealing with different people with different personalities, different age groups. It teaches me something new everyday.
- 3. When not at work I...** spend my Sunday afternoons with my family after church which has been a family tradition for decades even before I was born.
- 4. If I had a three week holiday planned, I would...** hit the beach back in the Cook Islands. There’s no place like home.
- 5. I like to splurge on...** chocolate.
- 6. One piece of advice that stays with you...** For an arrow to hit a spot you must have a target, to achieve it you must have a goal.

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