

The Backus Bulletin

"Your Management, Your Way"

August 2019

The Security Deposit vs. Normal Wear & Tear

If you have 100 property managers in a meeting, the majority will agree that settling a security deposit dispute is one of the more difficult tasks in property management, particularly when it comes to determining "normal wear and tear," also referred to by some as "ordinary wear and tear."

Why does this become such a difficult problem? It is because there is NO clear-cut definition for this phrase in legislation. It becomes very subjective, depending on the party or parties involved. You will get different viewpoints from a property owner, a property manager, a judge, an attorney, a vendor, and mostly likely, an opposing view from the tenant. Tenants are prone to use this term, particularly in court, to defend any type of damage, large or small. The burden of proof usually falls to the landlord to show that the damage is not "normal wear and tear."

The laws that govern the security deposit vary from state to state, but the term "normal wear and tear" generally describes the allowable amount of use of a rental without the tenant being financially

responsible for repairs or maintenance. A certain amount of "normal" use of the rental unit will result in an anticipated and reasonable amount of wear that will result in the need for repair, replacement, or other maintenance work.

The law generally will rule the tenant should not be responsible for these costs because it is normal maintenance and the cost of being a landlord. However, neither the courts nor the legislators have defined exactly what "percentage" of this maintenance is the owner's responsibility or that of the tenant.

How do you determine what to do about a "normal wear and tear" issue in a security deposit? It is not easy, but there are definite steps to avoid or reduce the problem.

- Put the property in good condition before the tenant moves in. Document the condition in writing and pictures before any move in, and then have the tenant agree and sign to the condition of the property.
- Be realistic about the condition of the property. Is the carpet new, in good condition, or is it just serviceable for this tenant? Plan to accept what items will not stand up to tenant charges when they move out, such as a frayed

or worn carpet.

- When the tenant moves, consider how long the tenant has been there. There is a big difference between a one year and five-year tenancy. Then, if necessary, figure out a percentage for the maintenance item in question that is fair to both tenant and owner.
- Identify the problems that are actual "damage." Normal wear and tear does not apply to *filth* - heavy soil, black marks, dye stains, bleach stains, etc. It does not apply to *negligence*, such as allowing mildew to collect on walls or not reporting a toilet leak that caused damage. It does not apply to *abuse*, such as ripped linoleum from a refrigerator installation, punching a hole in the wall, or stained window coverings.

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WHAT CAN WE DO TO MAKE OWNING A RENTAL PROPERTY EASIER FOR YOU?

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- Use common sense – it is really worth a court battle to fight over carpet cleaning when a tenant has been in the property 3 years?

As property managers, we know that it is much less expensive to settle a dispute than go to court with a shaky defense on "normal wear and tear." We will continue to use sensible solutions to avoid this and *protect your investment.*

Please feel free to contact your Property Manager in our office with any questions.

