

The Backus Bulletin

"Your Management, Your Way"

Who Is Responsible for That Repair?

July 2021

Maintaining a property is important to any investment and normally the property owner's responsibility. However, there are times when the tenant could be responsible and that may be difficult to determine.

Habitability is essential

Even if landlord and tenant sign an agreement in writing that the tenant is responsible for ALL maintenance, no owner can hold a tenant responsible for all repairs. This evolved from the Uniform Residential Landlord Tenant Act (URLTA), which established that landlord's must provide "habitability" for all tenants. Using this as a basis, courts have passed down many judgments against owners who have tried to use a written rental agreement to avoid their responsibilities.

This act, however, does not mean that a tenant cannot be responsible for any damage that caused "inhabitability." Property owners must prove the tenant caused the damage prior to charging them for the repair. In addition, it is a mistake for owners to withhold a repair until the tenant pays, particularly when it affects habitability. Make the repair in a timely manner, then charge the tenant, seeking legal methods, if necessary, to obtain the damages.

Here is an example. A resident, Mrs. Wilson, placed a frantic call to her Property

Manager because the toilet was overflowing and flooding the upstairs bathroom. The manager calls for a plumber to go to the property immediately. He resolves the problem and stops the flooding, but discovers that Mrs. Wilson's son, Timmy, dropped a small toy truck in the toilet where it became lodged, causing the blockage and damage. The Property Manager acted responsibly on behalf of the owner by quickly calling the plumber to resolve the problem. However, the Property Manager charged the tenant, Mrs. Wilson, with the plumbing and repair bills, which Mrs. Wilson then paid, reimbursing the owner.

What is a reasonable tenant repair?

There is maintenance that property owners can require of residents, such as replacing light bulbs, keeping the residence clean, picking up debris, cleaning the trash receptacle, landscape care as agreed in writing, etc. This falls under "reasonable care of the property," and is contained in the rental agreement. It is the tenant's residence and while living there, they should maintain it in a clean and orderly manner.

If the property does have a washer, dryer, and refrigerator in a single-family residence, there can be an

option to require the tenant to maintain the units if they wish to use them but that they will not repair or replace them. This does need to have clear-cut terms because this can often lead to a strained landlord/tenant relationship. In most instances, this is an owner responsibility to maintain the appliances, and the tenant is to use them with reasonable care.

When is a repair the tenant's responsibility?

Simply put, the tenant is responsible for a repair if they were the direct cause of the repair. Mrs. Wilson's son, Timmy, was the cause of the flooding; therefore, it was a definite tenant responsibility. If large tree roots had caused a sewer blockage, backing up the toilet, it would have been an owner charge.

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Here is another example - the tenant moves in a large appliance and damages the flooring. This is a clear-cut case of tenant caused damage.

It can also be the tenant’s responsibility if they do not report a necessary repair that leads to unnecessary damage, such as continual leaking under the kitchen sink. This is why property owners should *encourage* tenants to report maintenance. Many times, when residents do not report a problem, it becomes a battle to determine what the owner should pay and what the resident should reimburse to the owner because the initial problem was the owner’s but the tenant contributed to the damage.

Educate and work with the tenant

Preventative maintenance is always the simplest route. Educating tenants is a key to avoiding unnecessary maintenance and charges to the tenants. As your Property Manager, we outline what is their responsibility and what is not, require them to report maintenance, and define what is “reasonable care of the property.”

If a tenant-caused repair occurs, we act first, resolving the problem to protect your investment. Then we determine and document the problem. Last of all, we work with the tenant to achieve a peaceful resolution and reimbursement to the owner if it has been a true tenant-caused repair.