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A Guide For Landlords



Wear and Tear – When is it Fair?

There are no precise rules on what is 'reasonable wear and tear'.

Here are some pointers from **my|deposits** to help landlords decide what is and what is not, fair wear and tear.

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Unlike office leases which can require tenants to leave the property as they found it, often involving complete redecoration, domestic tenancies must allow for reasonable wear and tear.

Unsurprisingly, there are no precise rules on what is 'reasonably acceptable'. Is that carpet just well used or irretrievably stained? What about picture hooks left on the sitting room wall? Or the cooker that looks as if it has produced a good three meals a day, every day?

The House of Lords defines fair wear and tear as:

'Reasonable use of the premises by the Tenant and the ordinary operation of natural forces'

Not exactly precise! When do 'natural forces' become 'extreme heavy use' or worse?

Instead, here are some pointers from **my|deposits** to help landlords decide what's fair and what's not. Clearly there are financial consequences when it comes to returning all or only part of a tenant's deposit, so they should be viewed in the context of each particular tenancy.

1. Length of tenancy

The longer the tenancy, the more natural wear. Common sense, but think, for example, how much wear a carpet in your own home shows after one, two or three years. Also consider what its condition was in the first place? Was it brand new or has it already seen a few tenancies come and go? Take account of all these factors.

2. Number and age of occupiers

The more bedrooms and occupants, the higher the wear and tear in all the common parts - sitting room, passages, stairs, bathrooms and kitchen. If some of them are children, factor that in too. Scuffs and scrapes are unavoidable in normal family life. A property occupied by a singleton will see far less wear than a family of four, so bear this in mind when it's time for tenants to check out.

3. Wear and tear vs actual damage

When is it no longer normal wear? If it's been broken, certainly - meaning either replacement or repair by a specialist. Or if it's possibly more than a conventional job painter and decorator? Light marks on the carpet might have to be viewed as unavoidable: fist marks in the plaster would not be. Equally, damage such as nail varnish spills on the floor or iron burns that have occurred due to negligence could see the tenant liable for repair. Consider whether the item has been damaged or worn out through natural use versus sheer negligence when making a judgement call.

In a debate about whether cleaning/repair is necessary versus complete replacement at the end of the tenancy, an adjudicator will examine the Check-in/out report, Statement of condition and any photos/videos in order to make an assessment of the condition of the property in relation to the original condition.

4. Quality of the accommodation

Another consideration is the quality or fabric of the property itself. Many new builds tend not to be quite as robust as older properties or conversions. Walls, partitions and internal painted surfaces tend to be thinner and therefore likely to suffer more stress, particularly in higher footfall areas of the property. This inevitably means that there is a greater need for redecoration at the end of the tenancy period.

5. Prevention

There are a number of ways in which wear and tear can be kept to a minimum. Firstly, keeping tenants happy; extending their tenancies to reduce tenant turnover means that you will not be redecorating/renewing the property as frequently as you would for shorter tenancies.

Secondly, if tenants are in for longer periods of time, say two years plus, try to freshen up the property at regular interims. For example, you could change the carpet or paint a room. Strategic upgrades or enhancement of the property on a regular basis helps to maintain the standard of the property and reduces the need for refurbishment at the end of the tenancy period. Treating the property as an owner occupier would mean that you are ultimately minimising the wear and tear and need for redecoration when the tenant moves out.

Finally, set your expectations of the tenants from the outset. Remind them that regular cleaning and maintenance can keep a property in good condition. Perhaps conduct a regular check every three months or so, particularly early on the tenancy, to check that everything is in order.

6. Photo & video evidence

Photo and video inventories are a helpful means of recording the condition of the property pre and post the tenancy and should provide a clear record of the property prior to its occupation. Equally, being able to document and provide photographic/video evidence to support a claim against a tenant will help everyone know where they stand. Make sure all photographic and video evidence is clearly dated.

For example, you should try to capture photos/video footage of burn marks/permanent carpet stains, damage to flooring, scratches/damage to woodwork, tears and rips in furniture. Photos and video evidence on their own may not be sufficient, so support this with a comprehensive, detailed inventory. If you are preparing the inventory yourself, rather than using an independent specialist, ensure that the tenant is provided with a copy, both at the Check-in/Check-out stage, and signs a copy so that they understand, and have a chance to discuss with you, what deductions you are proposing to take from the deposit.

Ultimately, the more evidence you have the better, so keep the inventory, photos, video, receipts and correspondence safe.

7. Common sense and best practice

It is important to correctly describe the condition of items when listing them e.g. if something is down as 'brand new' it needs supporting bills/receipts to prove this. Any professional inventory clerk would of course know this.

8. The Adjudication Process

Remember that the adjudication process in the event of a dispute, is independent and like a court of law, evidence based. An adjudicator cannot 'assume' and can only make a decision based on the evidence provided to him/her. You cannot challenge an adjudication decision unless it is via a Court of Law. The more evidence you produce and the more transparent you are with the tenant the higher your chance of success if a dispute is brought against you.

my|deposits cannot interfere or 'review' any decision made by the adjudicator and cannot tell you what evidence will be acceptable to the adjudicator and what will not

9. Conclusion

Wear and tear is a topic that is open to interpretation. Ultimately, as landlord, your aim is firstly to minimise the level of wear and tear in your properties and secondly to ensure that you have covered all bases in the unlikely event of a dispute with your tenant over the return of the deposit.