



EXPERT ADVICE

Wear and Tear - What is Fair?

Here is some guidance from mydeposits on how to approach and decide what is 'reasonable' wear and tear.

WHAT IS FAIR WEAR AND TEAR?



“ 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’ So when do natural forces become in excess of what is ‘ordinary’? ”

Suzy Hershman, Head of Dispute Resolution at mydeposits offers some valuable guidance to help landlords and agents understand what fair wear and tear is and how this can be judged by considering certain criteria. Clearly there are financial consequences when it comes to returning all or only part of a tenant’s deposit, so we advise each party to consider each of the following criteria in the context of the individual circumstances.

When negotiating deductions at the end of the tenancy it is important for all parties to understand that the landlord/agent is not entitled to be compensated in such a way that the property will be improved at the tenant’s expense. It follows that the landlord/agent may be entitled to have something replaced if the damage is considerable but the cost of replacement will not be down to the tenant in full. Whatever amount is proposed as a deduction must be reasonable and proportionate to the damage attributable to the tenant which is in ‘excess of fair wear and tear’.

Has the carpet just been well used over a number of years or irretrievably and unreasonably stained during the tenancy? What about picture hooks left in the sitting room wall? Or the new cooker that looks as if it has produced a good three meals a day, every day and has never been cleaned?

All of these questions can only be answered by looking at the criteria in each individual situation.

Key considerations for fair wear and tear

Age

Was the carpet new or the walls painted at the start of the tenancy or how long is it since they were new? If you have this information, and even better, the invoices to show their age, you can work with these to make an accurate judgement on how much wear the item has had up to the end of the tenancy.

Quality and expected lifespan of decor, fixtures and fittings

It is important to take into account the lifespan of items and decor or fixtures and fittings. The quality of the carpet or an appliance can affect the expected lifespan. A landlord is not entitled to claim 100% of replacement costs when there has been even a small amount of wear (the tenancy alone may have been 6 or 12 months). For example a carpet newly fitted at the start of a two year tenancy may reasonably have another three years life left in it. If the tenant has damaged the carpet to the extent that it needs replacing a landlord would only be entitled to approximately 60% of the cost of replacement.

Number and type of occupiers

The more rooms 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. Think of the difference between a property occupied by a single professional (or couple), a family of four with two young children or a student house. All of this will need to be considered when it’s time for the tenants to check out and will also influence the lifespan of the property’s contents.

Length of tenancy

The longer the tenancy, the more natural wear to the property. 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 into account all these factors.

By addressing the above criteria in this way it should be clear for everyone to see what is fair in the particular circumstance and avoid any potential dispute.

On a positive note there are a number of ways in which wear and tear might be kept to a minimum and all parties aware of the likely outcomes.

Prevention

Maintaining good relations with your tenant from the start and giving them good guidance on how to look after the property can be beneficial. Conducting mid-term inspections (i.e. every three or six months) can help you spot any issues as and when they arise allowing you to carry out remedial works promptly or give appropriate advice on such problems as condensation without waiting until the end of the tenancy when problems may have got worse.

Photo and video evidence

Photographs and video inventories are a helpful means of recording the condition of the property pre and post tenancy by providing a clear record of the property prior to its occupation and after the tenant has moved out with all belongings. If a tenant, landlord or agent has this evidence, clearly dated and/or signed by the tenant to verify the detail shown, this will serve as a good negotiating tool at the end of the tenancy. Photographs and video footage of damage such as burn marks, carpet stains, scratches or damage to woodwork and flooring or tears and rips in furniture can be very useful. Bear in mind the importance of digitally dating photographs to verify when they were taken or providing an inventory where photographs are embedded.

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 them. You cannot challenge an adjudication decision unless there has been an error in fact or law and it is highlighted within a reasonable time. The only other option is to take it to court. The better quality your evidence the higher your chance of success if a dispute is brought against you.

Conclusion

Wear and tear is a topic that is open to interpretation. Ultimately, your aim is firstly to minimise the level of wear and tear in the property throughout the tenancy 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.

A working example:



Carpet is found to be damaged at the end of the tenancy and the landlord wishes to replace it.

- Q How old is that carpet? Do you have the receipt to assess the original cost per sq m.?
- Q What is the quality of the carpet? £7.99 or £25.00 per sq.m.?
- Q Who are the tenants? Should the landlord expect more or less fair wear and tear depending on the type and number of tenants?
- Q What is the lifespan of the carpet? This will depend on the quality and type of occupants in the property (NB – the general 'rule of thumb' is that an item in a tenanted property will have an average lifespan of five years)
- Q How long was the tenancy and how many years left are there in the carpet?



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