WHAT'S NOT ORDINARY WEAR AND TEAR

A landlord can make a tenant pay for damages if the tenant helped the aging process along of didn't use the apartment in a normal way. A carpet worn from people walking on it is something you have to expect. But a tenant who cuts a hole in the carpet or spills paint on it may be held responsible for the damage.

How can you tell what is and isn't ordinary wear and tear? There are three basic types of damages caused by a tenant that aren't considered ordinary wear and tear. They are:

1. Negligence. If a tenant does something carelessly that the tenant should have known would cause damage, or if the tenant failed to do something that the tenant reasonably should have done to prevent damage, thats negligence. In short, did the tenant act prudently to preserve the property?

- Failure to warn. Another form of negligence is where the tenant fails to take steps that could prevent damage to the apartment. Even the reasonable wear and tear exception shouldn't insulate a tenant from responsibility if the tenant fails to let the management know when something goes wrong in the apartment that might later result in worse damage.

For example, if a window pane cracked because of a faulty foundation, that's not the tenant's fault. But if the tenant doesn't tell the management that the crack is letting in water and the carpet below the window gets water damaged, the management may be able to argue that this extra damage was caused by the tenant's failure to inform the management of the problem.

2. Abuse/misuse. If the tenant knowingly or deliberately mistreats the property, or uses it for the wrong purposes, the damage the tenant causes isn't ordinary wear and tear - it's abuse or misuse.

For example, did the tenant slide furniture over an unprotected floor, causing gouges? Or did the tenant discolor the bathtub by using it to dye fabrics? Was the tenant an artist who failed to cover the floor as the tenant painted, leaving permanent stains on the carpet? Did the tenant paint the walls of the apartment black?

One court decision said a tenant had to pay for leaving an apartment carpet mutilated in an area around a wet bar, damaged by rust and mildew stains from the plant containers, and covered with cigarette burns - some clear through the pad.

3. Accident. Sometimes damage occurs by mistake. The tenant party guest drops a drink on the new carpet, staining it. The tenant drops a heavy planter and cracks the tile floor. Or the tenant's cleaning the light and the fixture falls and breaks . Or the tenant accidentally leaves the bathtub faucet on, flooding part of the apartment and staining wood floors and carpeting. Even though the tenant didn't purposely damage your property, the management will be able to withhold the cost of the repair from the security deposit.

OTHER FACTORS

In evaluating whether apartment damage exceeds ordinary wear and tear, there are some other factors to keep in mind. They include:

Extent of damage. The exact type of damage may be as important as the extent of the damage when evaluating whether it's ordinary wear and tear or not. For example, two or three nail holes in a wall may be considered ordinary wear and tear. But dozens of nail holes may be considered abuse. A few scratches on a wood floor are unavoidable. But a missing wood plank is negligence or abuse.

Length of residence. Certain things wear out over time. But over how long? The ordinary wear and tear on an apartment from a tenant who's lived there only a short time should be considerably less than that of a tenant who's lived there a long time. Say you installed new carpet before renting an apartment. It may be reasonable to expect that if a tenant moves out after only three months and the carpet is ripped and stained, that's unreasonable, and the management can probably charge the tenant for the damage.

EXAMPLES OF NORMAL WEAR AND TEAR VS. EXCESSIVE DAMAGES

NORMAL WEAR & TEAR   VS.   ## EXCESSIVE DAMAGES

NORMAL WEAR & TEAR	EXCESSIVE DAMAGES
1. Faded or cracked peeling paint	1. Markings, wallpaper torn, unapproved paint
2. Small nail holes, smudges, chips, scrapes or cracks on walls	2. Large nail holes needing patching
3. Cracked window pane due to faulty foundation and settling of building	3. Broken window caused by resident slamming window shut
4. Carpet worn thin by people walking on it / worn or cracked linoleum in place where appliances had been	4. Holes in carpet from cigarette burns on carpet damaged by rust and mildew stains from tenant's plant containers
5. Small piece of wall plaster chipped	5. Large chunk of plaster ripped out of wall
6. Faded tile or lampshade	6. Painted-over kitchen or bathroom tile
7. Rusty shower rod	7. Missing fixtures; hole in ceiling where fixture had been removed
8. Sink drainage slow because of old pipe system	8. Toilet backed up because tenant flushed cardboard down it
9. Floors need new coat of varnish	9. Gouged, chipped or excessive scratches on flooring
10. Corner piece of wallpaper coming lose because the glue has aged	10. Wallpaper missing where tenant tore it off wall
11. Doors / Sliding closet doors sticking	11. Broken doors, holes, hinges falling, missing hardware / sliding closet doors off track because track bent
12. Paint faded on kitchen walls	12. Walls burned in kitchen from burner turned too high when pot on stove
13. Shower rod somewhat rusted	13. Shower rod missing or broken
14. Grouting in bathroom tile loose	14. Tiles missing or cracked
15. Dirty or faded window	15. Torn window shade
16. Dusty mini blinds	16. Broken blinds, caked in dirt / grease
17. Worn enamel in bathtub	17. Chipped enamel in bathtub