

D17 LEGAL BULLETIN

Advice for Guardians of the Last Frontier



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Living on the Economy Series Number 2: Usage Credit

Normal Wear and Tear Defined—Sort Of: Protecting Your Deposit

You are moving out of an apartment after your three-year tour. Upon inspection of the unit, the landlord determines the carpet to be damaged beyond repair. He thinks you should pay to replace it. You know tenants sometimes damage carpet beyond normal wear and tear, but you also know this carpet was not in perfect condition when you moved in. You don't want to pay to replace the carpet just because you happened to be the tenant who was lucky enough to live there when the landlord finally decided it was time to replace it. That's when you recalled the legal assistance office's legal readiness training, warning members to beware of landlords who try to charge the member for the entire cost of replacement of carpet, without deducting any credit for the period of usage. Aren't you entitled to some break for the period of usage?

Absolutely. At the end of a tenancy, a landlord may collect from the tenant, usually through the tenant's deposit, for damages to the premises. Alaska law defines damages as "deterioration of the premises and, if applicable, of the contents of the premises." AS 34.03.070(b)(1). However, the law specifically excludes from damages deterioration "that is the result of normal wear and tear." AS 34.03.070(b)(2)(A). "Normal wear and tear" is "deterioration that occurs from the intended use of the rental unit and without negligence, carelessness, accident, misuse, or abuse of the premises or contents by the tenant, members of the household of the tenant, or the invitees or guests of the tenant." AS 34.03.070(i).

Simply, things wear out, and the law recognizes that. In the landlord-tenant relationship, the normal breakdown of property over time is called "normal wear and tear." It means the landlord may not collect from the tenant the full cost of replacement of an item after a normal tenancy, even if the action of the tenant or the tenant's guests shortened the item's useful life. The landlord's assessment of damages must account for the breakdown of property during the normal period of usage.

But how is the credit for usage determined? What damages properly are attributable to normal wear and tear? Unfortunately, the statutory definition of normal wear and tear is not much help. The Alaska Landlord-Tenant Act Handbook published by the Alaska Court System provides some examples, but not many. For example, Alaska law is clear that "[d]ry cleaning draperies and washing walls are major cleaning tasks that cannot be charged against a tenant's security deposit if the tenant fails to perform these tasks at the termination of the tenancy." Alaska Court System PUB-30, "Alaska Landlord and Tenant Act," (June 2017), p. 22. Beyond that brief guidance, though, too often the definition is found in the (subjective) eye of the landlord. Does the expectation that the landlord will wash the walls also extend to painting them? It makes sense that normal wear and tear would necessitate painting walls after every tenancy, but the law does not give clear guidance.

Ahhh, but wait! The landlord-tenant law does not provide clear guidance, but the federal tax code does. It is called depreciation. Depreciation in the tax code is the same thing as wear and tear in landlord-tenant law: It is the recognition that things wear out over time. In landlord-tenant law it is called normal wear and tear; the federal tax code calls it depreciation. The two concepts are, essentially, the same thing.

For purposes of determining the landlord's depreciation expense, the IRS provides tables establishing the useful life expectancies of various assets, including carpets, blinds, and appliances used in rental property. Those tables provide the most objective resource for determining the credit that should be applied for those assets. For example, the depreciation tables show carpet in a rental property to be a five-year asset. That means that for each year of the carpet's age, the carpet loses one-fifth of its value. After a three-year tenancy, the landlord would only be able to charge the tenant for 40% of the cost for replacing the carpet, assuming it was new when the tenant moved in. If the carpet is at least five years old when the tenant moves out, its value would have depreciated to zero. All of its replacement costs would be attributable to normal wear and tear. Even if the landlord intended to stretch a few more years out of the carpet, he would not be able to charge the tenant anything for its replacement, regardless of whether the tenant caused excessive damage to the carpet.

Having said that, there is one catch: This argument assumes the landlord does not otherwise have an objective, ascertainable standard for determining the tenant's credit for normal usage. The landlord's primary obligation is to account for normal wear and tear based on some objective, ascertainable standard, so that the tenant does not bear the entire cost of replacement of the asset. Since the landlord-tenant law provides no guidance, the Internal Revenue Code provides the only objective standard. However, notwithstanding the classification of carpet as "five-year" property, the Internal Revenue Code further defines a five-year asset for depreciation purposes as property with an anticipated life expectancy of four to nine years. The landlord could not reasonably declare the expected life-span of a carpet to be 25 years; however, if the landlord applies a seven-year life-span, it probably would fall well within the reasonably ascertainable standard for the assessment of damages. Accordingly, the catch is that the depreciation discussion only works if the landlord has not provided any credit for depreciation or has not based the credit on an objective, reasonably ascertainable standard.

Unfortunately, while legal assistance is very helpful in pointing the landlord to the Internal Revenue Code's depreciation tables to alleviate damages assessed for depreciable items such as carpet, blinds, and appliances, its benefit is limited when it comes to subjective damages such as cleaning charges. Fighting those claims is a notoriously difficult proposition, but a legal assistance attorney can help you if you have done your part. It cannot be emphasized enough the importance of taking pictures—even videos—of the property both before you take possession and after your household goods have been removed. Make notes in writing of any damage you find, and make a note of damage the landlord promised to fix during the tenancy. The bottom line is that all pre-existing damage must be documented, or you can expect that it will be taken from your deposit.

Legal Assistance is a free benefit available to active duty service members and their dependents and retirees and their dependents. It frequently is useful in obtaining the return of security deposits and resolving other landlord-tenant disputes. Call the Legal Assistance office at (907) 487-5474 for an intake to start the process.

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