

TO CHARGE OR NOT TO CHARGE? THAT IS THE QUESTION! SHOULD YOUR DAMAGE CHARGES BE PRO-RATED

Written By: Desirae Adams, Paralegal, Tschetter Hamrick Sulzer

Your tenant of three years has turned in their keys, and now it's time to do the walk thru. You unlock the door, enter the property, and stare in shocked horror at all the damage left behind. Scratched up walls, severely stained carpet from both pets and who knows what else, broken and scratched kitchen cupboards, cracked stove top, gauged vinyl flooring, scratched kitchen and bathroom counter tops. Not to mention the missing bedroom closet doors, cracked bedroom window, and torn screen. Holy smokes, the security deposit is not going to cover all this damage!

You try to fix the items that can be fixed, but unfortunately most of the items have to be replaced. You gather all your receipts, itemize the list of replacements with their costs based on the receipts or standardized cost sheet you typically use (full painting \$450, carpet replacement \$1600, vinyl replacement \$600, resurface counter tops, \$500, replace stove \$375, closet door \$80, replace window \$250, replace screen \$75, replace kitchen cupboard \$2800), and transfer all the information to the security deposit disposition. The damages total \$6730, final utilities total \$63, and then after the application of the \$800 security deposit the tenants now owe \$5993.00. You mail out the security deposit disposition, no response from the tenant, so you send the account over to collections.

After a few months, you receive a call or e-mail from the collection agency stating the tenants are disputing the charges and claiming they are too high. The collection agency tells you they are needing copies of the receipts to respond to the tenant's dispute. If the collection agency has a legal department, they may ask you if the replacement amounts are pro-rated. Why would they be pro-rated? The tenant caused damages that required replacement of items, they are responsible for paying for those damages, right?

The answer is not a cut and dried yes. The security deposit statute, C.R.S. 38-12-103 (1), states "...No security deposit shall be retained to cover normal wear and tear." In the scenario above, the damage is obviously more than normal wear and tear. Everyone has a different idea of what they consider normal wear and tear. While there are also many parts of normal wear and tear to consider when preparing a Security Deposit Dispo, for this article we want to focus on how to figure out what to charge when you have to replace an item.

Keep in mind, the Courts will typically not award you full replacement costs, just as Courts do not award a tenant full replacement costs to them for replacement of their items if you have to replace them due to an issue at the property. Many tenants assume they will be able to collect money for replacement costs, when in fact the Court will apply depreciation to those items and award the tenant what the remaining value of the item would be. The same will apply to items a landlord may have to replace. The Courts will only award charges for the remaining value, or lifespan, of the item.

The most common item we see and receive questions on is for carpet. Obviously, the lifespan for carpet varies based on the quality of carpet, however most Courts figure the life span of carpet in a rental is about five years. The biggest reasons for replacement we see are due to pet damage or from stains not able to be removed when the carpet is cleaned at move out. When preparing the move out statement, before adding the carpet replacement charge, you need to determine how old the carpet was when it was replaced. If the carpet was replaced five or more years before now, you cannot charge the tenants for the replacement. If it was brand new when the tenants moved in, you can only charge for the remaining two years of useful life remaining. If the carpet had been replaced the year before the tenants moved in, you would only be able to charge for the one year remaining. You may be thinking, "But the damage is beyond normal wear and tear." The thing you have to remember is the time the tenant resides in the unit and "uses" the carpet has to be counted as normal wear and tear. The remaining time that is not able to be used is what is considered beyond normal wear and tear, and is what you are able to charge for. This concept applies to all fixtures of a property, appliances, toilets, sinks, vanities, cupboards, doors, etc. Any fixture needing to be replaced has to have the charge amount pro-rated. Recently, our office came across a lease with a Standard Charge Addendum stating normal wear and tear does not apply until a tenant has resided in the unit for twenty-four months. This clause is not enforceable. Wear and tear starts, and is applied, the moment a tenant moves in.

Another common charge our office sees is for paint. The industry standard for paint is one coat per year is considered normal wear and tear. Additionally, part of the make ready process requires painting of the property for a new tenant. This means if a tenant has lived in a unit for one or more years, painting will typically not be awarded by the Courts. Now, if the tenant paints the unit on their own, especially in colors that may be harder to cover, or adds stencils that requires extra paint or primer to cover them, and they have resided in the unit for a year or more, you can charge for the extra paint or primer that would be needed. So if they lived in a unit for a year, and you needed three coats of paint to cover the hot pink paint they used to change the accent wall, you would only be able to charge them for two coats of paint. If you had to use two coats of primer to change the wall back, you can charge them for the two coats of primer and two coats of paint.

There are many websites you can use to find what the life expectancy of household items and rentals are. These tools are very helpful in determining what you are able to charge a tenant for if you are having to replace an item. The main thing to remember is accounting for normal wear and tear, and how long a tenant resides in a unit needs to be considered in the time that determination. Also, you will have to be able to prove the amount you are charging is the correct amount. If you are having to replace a six-year-old stove, and you charge the tenant who resided there one year for the full replacement costs, the Court will likely start scrutinizing all of the charges you are assessing to the tenant. If there is any question as to whether you can charge something back to a tenant, and you aren't positive on the answer, ***you can always call 'THS' for help***