

Feature Supplied by Nick Lyons, MD NO LETTING GO

Determining The Fair in 'FAIR WEAR AND TEAR'

There is a very fine line between what can be happily termed 'fair wear and tear' and what constitutes 'damage'. Take a look at the Dispute Service web site which details countless case studies relating to disputes between landlords and tenants on this very subject matter and it is quite evident that there is plenty of scope for landlords and tenants to be treated far from fairly if good practice is not followed. A meticulous and consistent approach to check ins / check outs / inventories and interim visits should be an absolute priority for landlord and letting agents. Correctly undertaken, these will deliver the vital foundation for a successful and uncontested tenancy by providing all the necessary supporting documentation to avoid any dispute between the landlord and tenant in relation to discussions which refer to the condition of the property and its contents.

An independent inventory management company is far better equipped to provide an unbiased and objective assessment of a property and this applies throughout the period of the tenancy. Tenants are likely to respond better to someone that is not linked to the landlord in any way and whose judgment is not clouded by any existing or historic business relationship. Extensive experience of the business which includes an in-depth understanding of the potential pitfalls associated with the 'fair wear and tear' debate will also pay dividends – protecting both the landlord's property investment and reducing the risk of unscrupulous claims affecting the safe return of the tenant's deposit.

Whoever is responsible for determining fair wear and tear, it is essential that the landlord is appreciative of the need to make allowances for depreciation – whilst accepting that he / she cannot use the tenancy as a means of 'betterment' ie seeking out replacement of damaged / missing

items with new ones (unless the items were brand new at the start of the tenancy).

No Letting Go assesses fair wear and tear and depreciation values based on APIP and ARLA guidelines as well as those laid down by the Tenancy Deposit Scheme. Decisions are made taking into consideration a number of key criteria including:

The tenancy agreement

The type of tenant eg family, professional couple, single occupancy, students, will have a huge bearing on the anticipated overall wear and tear on items in a property. For example, a family of four is likely to use a washing machine more often than a professional couple and therefore this needs to be considered and reflected in the decision. Likewise a medium quality carpet with a professional couple living at a property would last for typically 5 years, whereas a family occupancy would reduce the lifespan to typically 3 years.

The length of occupancy will also need to be taken into consideration – the impact of a two-year occupancy may vary enormously to the toll of a 6-month occupancy. Equally, when a tenant has enjoyed a five-year stay in the same property, it becomes very difficult to prove unacceptable wear and tear.

Consent for smokers or pets in the property will have implications on the expected condition of the property at the end of the tenure.

The tenancy agreement may contain specific clauses relating to the required care and attention of particular items / amenities which the tenant has access to during the term of his / her stay. Care of the external living area i.e. the garden represents a classic example of this and is so often the cause of heated debate between landlord and tenant. In the majority of cases the

garden will be treated as an 'outdoor room' and as such, should be returned to the landlord in the same condition / state of maintenance as when the tenancy agreement / inventory is first signed. This is an accepted requirement regardless as to whether or not the tenants have chosen to take advantage of the garden facilities.

Inventory & Schedule of Condition reports / Check Ins

As many as 70% of letting agents don't have a formal check-in procedure in place which can have disastrous repercussions for the landlord. When a tenant moves into a property he / she should accompany the inventory clerk on a tour of the property to agree the content of the inventory report – and where necessary, the clerk will record any agreed amendments on the inventory (such as items listed but not found to be present in the property, a difference in opinion re cleanliness or damage). Any outstanding issues should be noted on the check in report eg missing manuals, further cleaning required, missing keys, any other concerns. The inventory and check in report should be signed by both parties ideally on the day the tenant moves in. Problems often occur where letting agents fail to chase up receipt of these signed documents when a formal check in has not taken place, since the tenant can potentially make changes to the property during that period which will then not be listed on the original inventory / check in reports.

Interim Property Visit reports

Visits to check on the condition of the property should be undertaken every 3-4 months. Not only is this often not undertaken within the agreed time frames, all too often property visit reports fail to document key changes which will have an impact on the acceptable level of wear and tear of the property. Photographic evidence / receipts / estimates which will provide evidence of problems that have been identified / rectified by the tenant should all be included in the interim property visit report. Equally, if a landlord is required to replace an item which has broken down during the tenancy eg a washing machine, this must be noted on the interim property

report and added to the inventory as an addendum – failure to do this could result in the original damaged item being re-instated and the tenant having access to a brand new washing machine!

Disputes relating to fair wear and tear often centre around common themes which include:

Cleanliness

What one person deems to be acceptable may be considered to be sub-standard by another. The important point to remember when it comes to assessing cleanliness is that agreement is reached at the check in stage. For instance, if a property was noted as dirty at the check in and either the agent or landlord arranged for professional cleaning to be carried out after the check in, then the tenant is required to ensure that the property is vacated in a professionally clean condition. The landlord or agent need to ensure the receipt for the professional clean at the check in is provided although the tenant must be given the opportunity to clean the property to a professional standard themselves at the end of the tenancy should they wish to do so. A good rule of thumb is to advise landlords to invest in a professional clean before the tenancy begins, which extends to the overall cleaning of the property (walls / sinks / toilets etc) as well as to carpets and ovens.

Fixtures and fittings

Tenants need to be made aware of the fact that if they choose to introduce new items, which need to be fixed to the walls, agreement must be received from the landlord in advance. Failure to do this will result in the landlord asking for these items to be removed and making a claim to restore the wall back to its former state.

Brand appeal

Most items in the property will have a pre-determined life span but this will also be influenced by the quality of the product, accepting that certain brands have an enhanced reputation for withstanding wear and tear, which is usually evidenced by an extended warranty. If a landlord chooses to furnish the property with cheaper, non-branded goods, it is only fair to accept that these may not last the duration of the tenancy.

Failure to observe the above guidance may result in the break down of what should be a harmonious relationship between landlord and tenant – and most importantly, will also activate the inconvenience and enormous distraction of a potential dispute case.

No Letting Go is the UK's premium national inventory management company. For further information on our professional inventory management service across the UK, please contact No Letting Go on 0845 659 9980 or visit our website at www.nolettinggo.co.uk