



Landlord Letter

July 2023

Proving Reasonable Wear and Tear

Many of the landlord tenant disputes that we see deal with determining “reasonable wear and tear.” As you’re likely aware, landlords are responsible to pay for reasonable wear and tear, while tenants are responsible for damage that goes beyond reasonable wear and tear. But there can often be a grey area when determining what is damage and what is reasonable wear and tear. Let’s first try to define reasonable wear and tear and then talk about how to prove damage beyond reasonable wear and tear.

The Utah statutes do not define reasonable wear and tear. But as we teach classes and train landlords on this issue, I think we can get pretty close. After conducting research and looking at how other states handle this issue, here is our own definition of reasonable wear and tear: “Damage based on ordinary use and exposure over time resulting from the expected deterioration that occurs naturally or organi-

cally.” The main point here is that certain items (carpet, paint, etc.) wear out over time through normal use.

With that definition in mind, how would we define damage (or waste)? “Waste is damage that exceeds reasonable wear and tear through negligence, carelessness, accident, misuse or abuse.” Basically any action (or inaction) of the tenant that sped up the reasonable and expected deterioration should be considered waste and the tenant is responsible for the cost of that damage. Again, these definitions aren’t laid out in Utah statutes, but we believe they are generally accepted principles that help landlords and tenants determine what is reasonable.

Now that we have an idea of this difference, you need to be prepared to show which one you’re deal-

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Know Your Notice • Three Day Pay or Quit •

Purpose: Assists the landlord in re-taking possession when a tenant has “rent or other amounts due”.

A landlord is NOT required to accept a partial payment, but if partial payment is accepted, the pay or quit is cancelled. The landlord must serve a new notice showing the new balance.

*The three days stated in the notice are **business** days – not counting weekends and holidays. Do not count the day it was served. Day #1 begins the following day (For example—if served on Wednesday, the 3 days are Thursday, Friday & Monday).*

A landlord cannot modify the pay or quit to become a “pay AND quit” or a “notice to quit”. It MUST allow the tenant to either pay OR quit in order to comply with the eviction notice statutes.

A Pay or Quit requires the tenant to do just that: (1) pay entire balance owed, or (2) vacate within three days. Those are the only two ways for a tenant to comply with this notice and avoid an eviction.

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ing with. If you believe that the tenant is responsible for some or all of the damage in your unit, you typically need to (1) clearly show you have invoices explaining the work that was done, and (2) clearly show that the damage caused is not reasonable wear and tear.

The two best ways to accomplish this are to (1) have the tenant fill out a property condition sheet upon move in, and (2) before and after pictures. The property condition sheet is the tenant's opportunity to list any flaws or damage to the property at the time they move in. If they list a hole or damage to the carpet when they move in, the damage would not be charged for the carpet as they move out. But if the property condition sheet shows that the carpet is in good shape, it helps to justify a charge against the deposit when they move out.

Finally, if a picture is worth a thousand words, that means a thousand pictures is worth a million words. Taking clear before and after pictures avoids a dispute or battle when it comes to the condition of the property. We've had some property condition sheets that report damage, but the pictures that were taken clearly show there was no damage when the tenant moved in.

Anything you can do to help document your file will greatly assist you in avoiding disputes, or winning a case if it goes all the way to court. Take the time to document each situation because you never know which case will end up in front of a judge.

-Attorney Jeremy Shorts



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Dear Attorney,

Q *The constable just changed the locks to complete our eviction, but the tenant left a lot of personal items behind. How much access do we need to give the tenant to get their stuff out?*

A: *Let's first talk about both (1) what the statute requires and (2) some practical solutions that may save you some time, effort and money.*

Under the statute, after the lockout occurs anything that is left behind is considered abandoned property. The items should be stored in a safe and secure place (often the rental unit) to give the tenant an opportunity to retrieve their items. The landlord (or the constable) should serve a 15-day abandonment notice that triggers the storage period. Landlords should provide reasonable access to the property for the tenant to retrieve their items, and

the tenant is responsible to pay for actual removal and storage fees incurred by the landlord.

The landlord is not required to store certain items (garbage, chemicals, etc.). The tenant is also entitled to free access within 5 business days to retrieve emergency items (clothing, IDs, important documents, medications and medical equipment, etc.).

As a matter of practical advice, it may be best to give access to the tenants to have them remove their own items. Having the tenant move their own items saves you time, effort, money, and reduces your liability.

DO's & DON'Ts of Rent, Ledgers & Cash



DO

- Document each payment (tracking the date, amount, cash/check, and description for each payment).
- Communicate clearly with your tenant about payments and balances.



DON'T

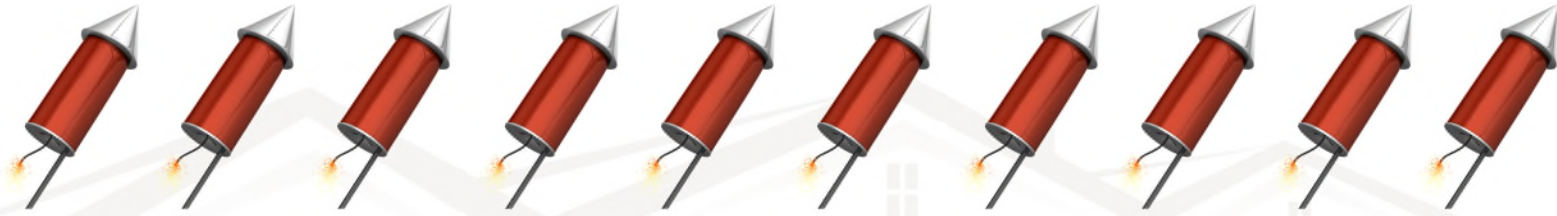
- Accept cash without providing a receipt (documenting EVERY payment is critical).
- Rely on your memory for payments (memory fades and is easily challenged in court).

Courtroom Chronicles – The BBQ

It is critical that landlords serve eviction notices properly and in accordance with Utah law. If an eviction notice isn't served properly, the entire eviction case could be dismissed.

In one of our recent cases, the tenant was behind on rent and stopped communicating with the landlord. Our client went to his rental to serve the eviction notice. As he approached the house, he could see a warm BBQ grill filled with a selection of meats in the front yard. After knocking, the landlord could hear voices inside but the tenant refused to come to the door.

The landlord waited patiently for one of two things to happen. Either (1) the tenant would appear so the notice could be served, or (2) the food on the grill was going to burn. When the tenant noticed the same dilemma, they opened the side window and said "You can leave now, I'm not coming out as long as you're here". The landlord stuck around to get the job done, and the tenant's BBQ was ruined.



**Evictions in
Weeks, Not
Months!**

Calendar of Events

Parting Thoughts

- We're working to build our readership, tell your friends to subscribe to this FREE newsletter. Send us an email at info@utahevictionlaw.com.
- Have an eviction question? Email us for a future newsletter!
- Help us build our online presence! You can "Like" our Facebook page (www.facebook.com/utahevictionlaw).
- You can also give us a Five Star Google Review (search "Utah Eviction Law Google Reviews" and click on our Google Plus link).

- July 4 – Independence Day
- July 24 – Pioneer Day

