

WG Inventories has put together this short guide to assist landlords, agents and tenants understand what is meant by the term 'Fair Wear and Tear'.

DEFINING FAIR WEAR AND TEAR

The law defines fair wear and tear as "reasonable use of the premises by the tenant and the ordinary operation of natural forces." This refers to the twin forces of time and normal daily habits. Walking across a carpet from door to dining table, for example, will exert a wearing effect during the length of a year, which is perfectly natural.

A landlord cannot ask the tenant to pay for repairs or replacement at the end of the tenancy for changes caused by such fair wear and tear.

NO ENTITLEMENT TO BETTERMENT

It is a legal tenet that a landlord cannot expect to have old replaced with new at a tenant's expense. An allowance for fair wear and tear must be made when considering compensation for damage.

The law also prevents a landlord from replacing old items with new and charging the tenant for the privilege. This is called betterment.

ASSESSING FAIR WEAR AND TEAR

A professional inventory clerk uses experience and common sense to assess the many factors present before deciding what is attributable to fair wear and tear. Some of the things a clerk will consider:

- The quality of the supplied item (and that varies greatly)
- The age of the item
- The condition at the start of the tenancy
- The condition at the end of the tenancy
- The usual life expectancy of the item
- The number of tenants - and how many are adults and how many are children, when appropriate
- The length of the tenancy
- Any extenuating circumstances

A tenant has a duty of care to leave the property at the end of a tenancy in the same condition recorded on the inventory, with fair wear and tear taken into account.

To avoid the appearance of betterment, the allocation of costs or compensation must take into account these three elements:

1. Fair wear and tear (as described above)
2. The most appropriate remedy for repair or replacement (see below)
3. That the landlord is neither financially nor materially better off at the end of the tenancy, having taken into account (1) and exercised (2)

Decoration

Landlords are expected to redecorate a property on a regular basis. How often will depend on a number of factors, but usually approximately every 3 to 5 years.

Expert advice should be sought when specialist wall covering, such as silk panels or linen/silk finished wallpaper are involved. These will need expert treatment to clean and repair any damage.

The life expectancy of decorations will depend on:

- The quality of paint/paper and preparation of surfaces.
- The location: heavy traffic areas will require more frequent redecoration.
- Whether the tenant has young children, pets, or there have been many persons occupying the property.
- Whether the lease allowed smoking in the property. Permitted smoking will usually be considered a cleaning issue to remove the greasy residue left by nicotine.
- If the property is prone to condensation or damp.

Normally, excessive wear and tear will require compensation, e.g. numerous nail or screw holes, torn wallpaper, gouges in woodwork, soiling, etc.

However, it must be accepted that there is likely to be some degree of marking to walls at the end of a tenancy.

Carpets

It should be accepted that carpet tread will flatten over time resulting in darkened areas where there has been foot traffic/wear. There is also the possibility of heavy discolouration resulting from dust being blown up through the floor or from under skirting boards. Stains or soiling caused during the tenancy will require a cleaning charge. However, because of the rules of "Betterment" if the carpets were not freshly cleaned at the start of the tenancy the tenant will only be liable for a proportion of the charge, subject to the degree of staining/soiling.

Damage to a carpet, eg cigarette burns, animal damage, heavy staining, excessive wear, will require compensation. However, this will not necessarily be the full cost of replacing the carpet.

The level of compensation will be determined by:

- The Manufacturers recommended life expectancy.
- The quality of the carpet and the underlay or sub flooring.
- The age of the carpet prior to the tenancy.
- The condition the carpet was in at the start of the tenancy.
- The expected traffic during the tenancy.
- The location and number of occupants.
- Any extenuating circumstances.

When an animal has been allowed during the tenancy the carpets should always be professionally cleaned. Domestic cleaning is normally not sufficient to de-odourise or prevent infestations.

Laminate/Wood/Vinyl Flooring

The quality of laminate/wood flooring varies considerably, which reflects on its life expectancy. However, regardless of quality it should be accepted that there will be minor marks and scuffs, that joints may open or crack with movement, or small pieces may lift.

Good quality hardwood engineered laminate will have a high life expectancy and, therefore, will require higher compensation should there be excessive marking or damage.

Inexpensive laminate is often soft wood, or not wood at all. This has a much lower life expectancy, and will also be prone to the "stiletto heel syndrome". This would normally be considered to be fair wear and tear, but account would be taken of location and degree of marking.

Laminate flooring is not suitable for use in bathrooms or kitchens, unless a specialist waterproof version has been used. If water penetrates the joints it tends to swell and the top surface blister and lift. This would be considered wear and tear.

Vinyl flooring has similar problems to inexpensive laminate as regards indents, small nicks, scuffs etc. It is also prone to tearing around machines that vibrate when used. However, there are also issues with the sub floor affecting the life expectancy. There may also be an issue with damp or water getting under the flooring and not being able to dry off. Whether this would be considered fair wear and tear would depend on location.

Fabrics – Curtains, blinds and upholstery

An independent inventory clerk will usually recommend that carpets and curtains be cleaned - at the tenant's expense, after a 12 month, or longer, tenancy - if professional cleaning was carried out at the start of the tenancy. If these were not cleaned at the start of the tenancy only a proportion of the charge will be recommended, depending on the degree of soiling.

However, most fabrics, regardless of quality, will age prematurely if cleaned too frequently. Therefore, we recommend that professional cleaning be carried out at the owner's discretion.

When an animal has been allowed to reside in the property during the tenancy it is strongly recommended that professional cleaning, and sometimes fumigating, of all curtains and soft furnishings be carried out in addition to cleaning carpets.

Appliances and Small electrical goods

The life expectancy is that recommended by the manufacturers. Tenants would not be responsible for charges to service or maintain the appliance. If the appliance fails because of normal usage this would be considered fair wear and tear.

However, damage caused by misuse, storing elsewhere, or soiling is not considered to be fair wear and tear.

Gardens and regular maintenance

It is usual for the landlord to be responsible for the control of trees and shrubs, as pruning or maintenance of these items may need specialist knowledge. If the tenant is to be responsible for shrubs and hedges it should be made clear on the agreement, and it is strongly recommended that a gardener be instructed.

This was the condition of a garden at check in. The tenants were only obligated to leave it in the same condition the end of the tenancy - which they did. The landlord could not expect betterment in these circumstances.

The tenant is expected to mow the lawn on a regular basis, and to maintain flower beds and to keep them weed free, consistent with the season.

A tenant is not normally responsible for the death of living plants, and would not be expected to replace bedding plants. However, if their specific action has caused the damage, this may be considered excessive wear and tear, e.g. dead areas of lawn caused by sheds, damage caused by play equipment and trampolines.

Normal weather soiling to paths, patios etc is considered fair wear and tear, including marks left by planters on paving - unless the landlord has evidence that these areas were professionally jet washed prior to the tenancy. The tenant should ensure, however, that paths and patios are swept, and furniture cleaned.

Damage by Natural Forces

There are numerous factors that need to be considered. Examples of what would be considered fair wear and tear include:

The effect of sunlight(UV) on curtains and carpets causing fading, discolouration, and in some instances, resulting in fibres disintegrating. On furniture there could be fading, especially if smaller items, such as mats, are left on surfaces.

Net curtains and conservatory blinds discolour and rot as they are often subjected to intense uv light.

Storm damage to structures would not normally be considered the tenants responsibility. However, the ingress of water will cause significant problems. Tenants are expected to report such damage to enable it to be dealt with swiftly.

Weathering of external surfaces:- Garden furniture, especially wooden, and fencing rot. However, this is considered fair wear and tear, and a maintenance issue for the owner.

Condensation and Damp

This is a very problematic area, and a number of factors need to be considered before assessing whether mould staining caused by condensation is fair wear and tear or not.

In normal circumstances if the landlord has provided working extractor fans, air vents and adequate clothes drying facilities the tenant would be expected to use them. If there is evidence that they have not been used mould damage would be considered to be excessive wear and tear.

A landlord cannot expect a tenant to ventilate a property if he has not provided adequate means of ventilation. It is unreasonable to expect tenants to keep windows open all the time to ventilate a property. This can raise insurance, safety and security, and energy conservation issues.

However, live mould is considered to be a cleaning issue and therefore chargeable to the tenant. They are expected to clean mouldy surfaces, but residual staining would be considered fair wear and tear.

If a working fan is fitted, then staining would be considered chargeable to the tenant. If there is no fan fitted it would be fair wear and tear. However, the tenant would be expected to clean any live mould off.

APPROPRIATE COMPENSATION

Some of the most common methods available to landlords for dealing with damage or decrease in value are:

- Replacement of an item damaged beyond use or economic repair
- Repair
- Cleaning
- Compensation when the value of an item had decreased more rapidly than would be normal

It is important to note that the landlord or agent has a duty to adopt the most reasonable and practical remedy.

This document has been formulated as a guide only and in accordance with AIIIC guidelines.

