



TRS NEWS

DETERMINING RESPONSIBILITY

February 2009

Maintaining a property is important to the investment and normally the property owner's responsibility. However, there are times when the tenant could be responsible and sometimes that can be difficult to determine.

Habitability is Essential

Even if landlord and tenant sign an agreement in writing that the tenant is responsible for ALL maintenance, no owner can hold a tenant responsible for all repairs. This evolved from the Uniform Residential Landlord Tenant Act (URLTA), which established that landlord's must provide "habitability" for all tenants. Using this as a basis, courts have passed down many judgments against owners who have tried to use a written rental agreement to avoid their responsibilities.

This act, however, does not mean that a tenant cannot be responsible for any damage that caused "inhabitability." Property owners must prove the tenant caused the damage prior to charging them for the repair. In addition, it is a mistake for owners to withhold a repair until the tenant pays, particularly when it affects habitability. Make the repair in a timely manner, then charge the tenant, seeking legal methods, if necessary, to obtain the damages. Here is an example. Mrs. Wilson placed a frantic call to her Property Manager because the toilet was overflowing and flooding the bathroom, which is located upstairs.

The manager calls for a plumber to go to the property immediately. He resolves the problem and stops the flooding, but discovers that Mrs. Wilson's son, Timmy, dropped a small toy truck in the toilet where it became lodged, causing the blockage and damage. The Property Manager acted responsibly on behalf of the owner by quickly calling the plumber to resolve the problem. However, the Property Manager charged Mrs. Wilson with the plumbing and repair bills, which Mrs. Wilson then paid, reimbursing the owner.

What is a Reasonable Tenant Repair

There is maintenance that landlords can require of residents, such as replacing light bulbs, keeping the residence clean, changing the smoke alarm battery, cleaning the trash receptacle, picking up debris, landscape care as agreed, etc. This falls under "reasonable care of the property." It is the tenant's residence and while living there, they should maintain it in a clean and orderly manner. Tenant-required maintenance needs to comply with landlord/tenant law.

When is a Repair the Tenant's Responsibility?

Simply put, the tenant is responsible for a repair if they were the direct cause of the repair. Mrs. Wilson's son, Timmy, was the cause of the

flooding; therefore, it was a definite tenant responsibility. If large tree roots had caused a sewer blockage, backing up the toilet, it would have been an owner charge. Here is another example - the tenant moves in a large appliance and damages the flooring. This is a clear-cut case of tenant caused damage.

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TRS Staff Serving You

Michael Mengden

MPM[®] RMP[®] GRI[®]

President/Broker
(800) 275-7776 x 305

Jamie Dominy

Property Manager
(800) 275-7776 x 308

Jennifer Steward

Property Manager
(800) 275-7776 x 306

Bridget Mengden

Accounting
(800) 275-7776 x 304

Carolyn Marsh

Assistant Property Manager
(800) 275-7776 x 303

info@terraresidential.com

terraresidential.com



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Certified Residential Management Company

14655 NW Frwy., Suite 124
Houston, TX 77040

(800) 275-7776 - Toll Free

(713) 895-9966 - Office

(713) 895-9320 - Fax

info@terraresidential.com

terraresidential.com



Building Your Real Estate Portfolio

We have helped many of our clients in the last few years to build up their real estate portfolio by buying more properties or selling the property they bought years ago in order to buy newer properties using a 1031 tax deferred exchange. Many clients that bought their homes years ago now have a lot of equity built up in that property and want that equity to be invested buying more properties.

Whether you buy more properties with existing money, or sell the older properties and buy newer properties, *we can help you*. On the other hand, some clients just want to make a change in their portfolio and wish to sell. We can help there also. Just contact us and we will have someone contact you to discuss your real estate needs. There is no obligation.

Looking for Management Elsewhere?

You, or someone you know, may need a property manager in other states. Because of our proud affiliation with NARPM, The National Association of Residential Property Managers, we have contacts throughout the country and may be able to assist you.

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It can also be the tenant's responsibility if they do not report a necessary repair that leads to unnecessary damage, such as continual leaking under the kitchen sink. This is why property owners should encourage tenants to report maintenance. Many times, when residents do not report a problem, it becomes a battle to determine what the owner should pay and what the resident should reimburse to the owner because the initial problem was the owner's but the tenant contributed to the damage.

Educate and Work with the Tenant

Preventative maintenance is always the simplest route. Educating tenants is a key to avoiding unnecessary maintenance and charges to the tenants. As your Property Manager, we outline what is their responsibility and what is not, require them to report maintenance, and define what is "reasonable care of the property."

If a tenant-caused repair occurs, we act first, resolving the problem to protect your investment. Then we determine and document the problem. Last of all, we work with the tenant to achieve a peaceful resolution and reimbursement to the owner if it has been a true tenant-caused repair.