

Claiming Undue Damage Liability Against a Tenant

Requires An Understanding of Due Damage Including What Is Just Normal Wear and Tear

Who Pays For the Damage From Everyday Living?

Normal Wear and Tear Is Reasonably Expected and Beyond the Responsibility of a Tenant.



Over time, regular daily life activities result in normal wear and tear which is an expected occurrence and is beyond the responsibility of tenants. Accordingly, the cost of repairing normal wear and tear is an obligation of the landlord and without liability upon the tenant. Simply said, if damage occurs which is regular to damage normal to daily living, then the tenant is without blame. The landlord bears the duty and cost to repair what is normal such as worn carpet, holes from nails used to hang pictures, paint scuffs and minor chips here and there.

What constitutes as "due damage" may vary depending on the period of time of a tenancy whereby the level of 'normal wear and tear' over ten years may be viewed as 'excessive wear and tear' if such occurs in one year; however, it is commonly understood and expected by the law that worn carpet, nails in walls for hanging pictures, minor dings and dents requiring touch-ups, among other 'daily living' damage is normal and is beyond consideration as 'undue damage' which may be the responsibility of the tenant. This principle was stated clearly in the case of *Doucette-Grasby v. Lacey*, [2013 CanLII 95661](#) where it was stated:

43. Despite any provisions in a lease such as are contained in Exhibit 1, the original lease in this case, a residential tenant is responsible for the repair of undue damage to the rental unit caused by the willful or negligent conduct of the tenant or persons she permits in the premises. (*Residential Tenancies Act, 2006*, [S.O. 2006, c. 17, s. 34](#)) A tenant is not required to return the premises to the state they were in at the beginning of the tenancy. A tenant is not liable for anything beyond ordinary wear and tear. A tenant is responsible for undue damage.



44. The use of the term undue damage implies that there exists a concept of due damage. Due damage in my view includes ordinary wear and tear, and other things that any reasonable tenant would do while living in the house: hang a few pictures, rub up against the walls at times.

45. Moreover, paint jobs do not last forever. Paint gets worn off by traffic, it gets marred by the ordinary activities of daily living, it gets dirty and darkens from smoke or kitchen fumes, or it fades in sunlight. The need to paint a house after at least 2.5 years of tenancy, as in this case, 1.5 years by the defendant and at least 1 year by the previous tenant, does not itself prove undue damage. Indeed, it is in my opinion rather high-handed of the plaintiffs to demand a full interior paint job of the defendant when they didn't even touch the place up before she moved in. I appreciate that they have tried to exclude from the claim problems that existed before she moved in. But they didn't in their evidence exclude them all. It is obvious to me that the two emails sent by Magnum before and after the defendant moved out were sent without regard to the documented condition of the house when she moved in. Just about every room needed to be patched and painted when the defendant moved in, but she didn't insist on that and it wasn't done. And the plaintiffs should hardly be surprised if they find that they need to paint the place after every two tenants.

Summary Comment

A landlord must expect that reasonable wear and tear will occur within a residential living space; and accordingly, the obligations upon a tenant to refrain from causing undue damage involve a meaning as something other than returning the rental premises to the state and condition as existed at the onset of the tenancy. Damage that would be expected in the course of daily living fails to qualify as the 'undue damage' for which a tenant may be liable.

**Do You Need to Address a Legal Matter? Get Help Now:
Contact Ranger Paralegal Service.
Don't Delay, Start Today!**

