

ASK DOCTOR LANDLORD: LANDLORD TENANT QUESTIONS

(Disclaimer – Dr Landlord is not an attorney. You should always seek legal advice from a qualified attorney!)

Question: Dr L, one of my tenants claimed they needed to repair some water damage in their apartment and deducted the price from their rent payment. Can they do this? Or do I have legal recourse against them?

Answer: Although this may sound like a straight forward question, there are a couple different possible answers. First, you have to determine who was responsible for the repair and whether the repair was necessary to maintain the livability of the property. Many written leases contain a clause that spells out who is responsible for different kinds of repairs. Check your lease first. A typical lease may have the landlord responsible for major repairs and a tenant responsible for minor repairs up to a certain dollar amount (say \$100).

If the lease does not specifically state who is responsible for repairs, then the general rule we follow is that the landlord is responsible for any major repairs, and any repairs that are required due to normal wear and tear. The tenant, on the other hand, is responsible for any damage caused by the tenant. If the tenant has a party, and friends break the light fixtures or windows, the tenant is responsible for the damage. An additional caveat is that many townships and cities have a housing code that requires the landlord to be responsible for certain repairs. You can check with the municipality that governs your particular rental unit.

Regarding the tenant paying for the repair, and deducting it from the rent, there's a relatively recent law called the "implied warranty of habitability" and as we understand it at Real Estate Investment Digest, it gives the tenant the right to stop paying some or all of the rent if the landlord doesn't make repairs that are necessary. The landlord is supposed to make the property safe, sanitary and fit.

In your case, if you as the landlord fail to keep the property in reasonably fit condition, the tenant may be able to withhold paying the rent, or a portion of the rent until the condition is corrected. However, the landlord must be given notice about the defect in the property or the repair that is required, and the landlord has to be given a reasonable period of time in which to correct the problem or repair the damage.

Incidentally, it is our understanding that if a tenant refuses to pay rent because of some perceived deficiency in the property, the tenant must put that money aside in a bank account or some form of savings in case the court requires the back rent to be paid to the landlord. In your case, much of the answer depends on whether or not you were notified of the problem, and given the opportunity to correct it before the tenant did the repair and deducted the bill. I would suggest seeking legal counsel if you want to pursue the matter.

Question: I was told by another landlord that I didn't return the security deposit within 30 days of the tenant moving, that I would have to pay the tenant double the security deposit. What are the laws regarding repaying security deposits?

When a tenant moves from an apartment or home that they are renting, they must provide the landlord with a forwarding address in writing at, or before, the time the tenant moves. The landlord then has the obligation, within 30 days of the move, to do one of two things. The landlord may either return the security deposit, or can send the tenant a complete list of damages to the rental that occurred during the period of occupancy, the breakdown of the repair cost, and a check for the difference, if any.

If you, as the landlord, do not either return the deposit, or provide a written explanation of repairs within that 30 days period, the tenant can sue you for the deposit. Under law 68 P.S. Section 250.512, the tenant has 2 methods by which they can sue a landlord who has exceeded the 30 day period.

First, they can sue for the exact amount of the security deposit. Under this scenario, the landlord may NOT argue any repair bill. The landlord is determined to have given up that right to argue by not returning the security deposit or preparing a list of damages. As your friend suggested, the second remedy is for the tenant to sue for double the amount of the security deposit at the local District Justice's office. As I understand it, if the tenant follows this course of action, the landlord MAY counterclaim for damages, up to the amount of the security deposit.

Here's the tricky part: Let's say that you're holding a \$500 Security Deposit, and the tenant sues for double the amount, or \$1000. You show up in court with a list of repair bills that total \$600. First, you can only deduct a maximum of \$500 from the suit. Secondly, the court may rule that only \$200 of the repairs are truly tenant involved, and award the tenant \$800, which is \$300 more than the security deposit.

The safest route to take is to make sure you, as the landlord, either return the deposit or provide written evidence of what the deposit was used to repair, within the 30 days so that you never have to argue the matter in court. It's a loser for a landlord!