

# Orlando Investment Properties

Who IS Responsible for That Repair?

Summer 2006

Maintenance on a rental property is important to the investment and normally is the property owner's responsibility. There are times when the tenant could be responsible and sometimes that can be difficult to determine.

**Habitability is essential.** Even when landlords and residents 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 landlords 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 agreement to avoid their responsibilities.

This act, however, does not mean that a tenant cannot be held 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 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 called a plumber to go to the property immediately. He resolved the problem and stopped the flooding, but discovered 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 correctly on behalf of the owner by quickly calling the plumber to resolve the problem. Then, the manager charged Mrs. Wilson with the plumbing and repair bills, which Mrs. Wilson paid, reimbursing the owner.

#### **What is tenant responsibility?**

There is normal 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," and is normally contained in any rental agreement. It is the tenant's residence and while living there, they should maintain it in a clean and orderly manner.

If the property does have a washer, dryer, or refrigerator in a single-

family residence, there can be an option to require the tenant to maintain the units if they wish to use them but that the owner will not repair or replace them. This does need to have clear-cut terms because this can often lead to strained landlord/tenant relations. In most instances, this is an owner responsibility to maintain these appliances and the tenant charge is to use them with reasonable care.

#### **When is a repair the tenant's responsibility?**

Essentially, tenants are responsible for a repair if they were the direct cause of the repair. By dropping a toy truck in the toilet, Timmy's action was the basis of the flooding; therefore, it was definite tenant responsibility. If

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large tree roots had caused a sewer blockage and backed up the toilet, it would have been an owner charge.

It can also be tenant responsibility if they do not report a necessary repair that leads to damage, such as continual leaking under the kitchen sink, which leads to dry rot. This is why landlords 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 simpler route. Educating residents is a key to avoiding unnecessary maintenance and having to charge the tenant. 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 cost if it has been a true tenant-caused repair. 🏠