

# Maintenance standards landlords are required to adhere to and tenants' responsibilities

Little problems can become big problems when landlords don't keep up with maintenance and can work out far more costly if left unattended. According to the Rental Housing Act "a landlord must provide a tenant with a dwelling that is in a habitable condition, as well as maintain the existing structure of the dwelling and where possible facilitate the provision of basic services to the dwelling".



Paul Stevens, CEO, Just Property

In other words, the owner has to maintain the property in its proper condition and ensure that normal running repairs to the property are carried out, says Just Property CEO Paul Stevens. For example, interior and exterior walls need to be regularly painted, pool pumps need to be serviced, and roofs need to be waterproofed.

## Risks of damages claims

Some structural problems, such as inadequate waterproofing, can cause more severe issues, like damp, which can lead to potentially severe health risks. "Failure to attend to these kinds of maintenance obligations can lead to the property not being objectively habitable, leaving the landlord exposed to the risk of damages claims by the tenant," cautions property law expert and SSLR managing director Cilna Steyn.

Although the tenant uses utilities, most municipalities require these utility bills to be held in the property owner's name (landlord). Unpaid electricity or water bills can lead to these services being cut off, and the downstream effect can be detrimental to the maintenance and upkeep of a property. For example, gardens may go unwatered, or security systems may be rendered inoperable.

Landlords need to take ownership of utility bills and ensure that they are paid.

## Tenants' responsibilities

Tenants have responsibilities too, Stevens notes. If tenants are unsure whether an issue is for them to fix or for the landlord, the best course is to be open with the landlord or their agent. Take a drain blockage. If a tenant's negligence caused the blockage, then they would be responsible. Examples of this might include flushing non-biological substances down a French drain or into a septic tank or flushing nappies or non-flushable wet wipes. In such cases, the plumber's bill would be for the tenant's account. If the blockage is due to poor construction, it would be for the landlord's bill. The local municipality would usually handle blockages in municipal lines beyond the boundaries of the property.

Debating such issues can sour the important relationship between landlords and tenants. This is one of the many reasons it's best to work through an intermediary, like a rental agent or property management agency. They should have a wealth of experience in such matters and quickly advise who is responsible for what and send out trusted professionals to deal with the problem.

In terms of a tenant's general responsibilities, common law dictates that a tenant must take good care of the property and not use it for other purposes than for which it was let. And on termination of the lease, restore it to the condition that s/he received it in, allowing for "fair wear and tear".

## What constitutes fair wear and tear

This is a grey area that is often at the centre of landlord and tenant disputes. “Fair wear and tear would be the expected damage to a property due to people simply living in it without causing [accidental or malicious] damage to the property,” says Steyn. “It can be defined as the natural deterioration of a building over time without any accidental or malicious damage.”

Repainting a building’s interior and exterior is normally required every five to seven years. This would be for the landlord’s account. Drawings on walls by children or damage from items being stuck to walls would require the tenant to repaint at their own cost. Similarly, normal damage to a carpet due to walking on it can’t be held against a tenant, but they would need to replace a carpet that they have burnt or stained during occupation.

Tenant negligence (whether intentional or not) can cause problems. Leaving furniture outside to get damp overnight or wet in the rain could cause damage beyond fair wear and tear. However, the landlord may have difficulty proving the cause if s/he does not have visibility of the tenant’s behaviours and the state of the property and its contents. “With regular inspections during the term of the lease, problematic behaviour and associated damage can be identified early and mitigated before extensive damage is caused,” says Stevens.



Olina Steyn, MD, SSLR

If a landlord is slow to facilitate maintenance and repairs, then damage may be caused or exacerbated, which is not the tenant’s fault. The tenant is responsible for promptly alerting the landlord or their agents regarding any faults before they become costly problems.



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## Saving on maintenance

“Landlords can save money by doing maintenance themselves,” says Stevens. “But where there are high risks or technical skills required, one should never compromise. This applies particularly to electricity, water and security.”

Steyn adds: “Remember, failing to attend to the maintenance of the property will leave the landlord in breach of the terms of the lease agreement (even in a case where these terms are only implied terms of the lease agreement and not written in the lease agreement). When you are in breach of the lease agreement, your tenant will have the right to place you on terms and allow you a specific period of time to remedy the breach. Should you then fail to remedy the breach as demanded, the tenant will be allowed to either force specific performance of the lease agreement or cancel the lease agreement and claim damages.”

To end with another old saying, you have to “spend a penny to save a pound”, Stevens concludes. “See to the small jobs before they become large, costly projects.”