



**1. Obligation to Pay Rent.** A tenant must generally pay all of the rent when it is due or risk eviction for non-payment of rent. If a landlord refuses to accept a partial payment, a late payment, or a payment offered after the start of an eviction, the tenant may still owe rent for the time he or she remains in the property or the duration of the lease. When a tenant moves out he or she must typically return the keys to the landlord to let the landlord know that the tenant no longer has possession of the property. A tenant who keeps the keys may owe rent even if he or she has left the property and removed all belongings. See, e.g. *Peter v. Durroh*, 28 Ohio App. 2d 245, 250, 277 N..2d 69 *Griffin v. Currie*, Trumbull App. No 4065, 1988 WL 126385 at \*2. Depending on the terms of the lease agreement, a tenant may owe rent even after leaving the property and returning the keys.

**2. Rent Deposit.** While Ohio law requires landlords to keep rental units in habitable condition, a tenant who withholds rent because a property needs repairs risks eviction for non-payment. The law does provide a safe harbor for tenants through the rent deposit process. After giving the landlord notice in writing and a reasonable amount of time (30 days or less

considering the severity of the condition and the time necessary to remedy it) to fix the problems, the tenant can deposit the rent with the Clerk of Courts. R.C. 5321.07.

**3. Ordinary Wear and Tear.** A tenant may be responsible for damage or alterations to the property, but is not responsible for the costs of addressing ordinary wear and tear. R.C.5321.05(A); *Ohio Environmental Development Ltd. Partnership v. Envirotest Systems Corp.* (N.D. Ohio, 03-14-2007), 478 F. Supp.2d 963. A landlord may use some or all of a security deposit to repair damage, but not to address ordinary wear and tear. R.C. 5321.15(B).

Ordinary wear and tear happens with normal use and the passage of time, even if the tenant cleans regularly and takes care of the premises. For example, paint may fade, electrical switches may wear out, pull strings on blinds may fray or break, and carpet and tile may wear down.

Damage may be the result of unreasonable use, accidents, or alterations to the property. Damage can include such things as excessive dirt or mold, stained carpets, broken windows or doors, or holes in walls from hanging pictures or shelving. Because alterations, including paint, may be considered damage, tenants must usually get the landlord's written permission before making changes that will remain after the tenant's departure.



**4. Property Damage and Depreciation.** If a landlord can prove property damage, for certain items, like carpet, blinds, appliances, the amount awarded will reflect the depreciated value of the property, not the cost of a new replacement. *Sokolovic v. Hamilton*, 195 Ohio App.3d 406, 2011-Ohio-4638, ¶15 (8<sup>th</sup> Dist). For example, if a landlord proves that the tenant caused damage to a carpet that was 5 years old, but the carpets life expectancy was 10 years, the landlord can recover the value of the remaining useful life, i.e. 5 years, not the amount for brand new carpet.

**5. Duty to Mitigate Damages by Re-renting.** If a tenant breaches a lease by leaving before the lease is up, the landlord may recover for the remaining months, even if the tenant no longer lives in the property. For example, if a tenant signs a lease for one year, stops paying rent after five months, and is evicted, the tenant may still be responsible for the rent for the remaining seven months left on the lease. But the landlord must show a reasonable effort to find a new tenant for the unit. Such effort may include posting signs, advertising, and/or showing the property. *Dennis v. Morgan*, 89 Ohio St.3d 417, 418, 732 N.E.2d 391 (2000)

## Important Facts About Ohio Landlord-Tenant Law

6. **Estimates.** The amount claimed in the complaint for property damage may be an estimate. Parties sometimes estimate damages because the complaint is filed before they have had a chance to fully inspect the property. *Dennis v. Morgan*, 89 Ohio St.3d 417, 418, 732 N.E.2d 391 (2000). Before receiving a judgment from the Court, a party must prove the actual amount of damages.

7. **Burdens of proof.** As a landlord or tenant you must prove your case to win. The burden of proof in landlord-tenant cases is proof by “a preponderance of the evidence.” *Yelanosky v. White*, Eighth Dist. App. No 67479, 1995 WL 32869, at \*2. This means that the landlord must show that it is more likely than not that he or she is entitled to a judgment.

For example, for a money claim in an eviction case, the landlord must typically prove (1) damages (unpaid rent or property damage), (2) the cost of that damage, and (3) that the tenant was responsible. The tenant may defend against these claims, with evidence, but is not required to do so. The same standards apply to a tenant’s counterclaims against a landlord.

8. **Limitations on Late Fees.** The court will not enforce a late fee charged as a penalty. A landlord in the City of Cleveland can only charge \$25 or 5% of the monthly rent, whichever is higher, as a late fee in a residential lease agreement. This means that the maximum late fee where the rent is \$400.00 a month would

be \$25.00, the maximum late fee where rent is \$500.00 per month would be \$25.00, but the maximum late fee where the rent is \$700 per month would be \$35.00. There may be different rules for tenancies under the Housing Choice Voucher Program (“Section 8”) or any other subsidized housing. See Cleveland Codified Ordinance §375.02© for more information.



9. **Refusal of Rent.** A landlord’s refusal to accept late rent or a partial payment does not automatically mean that the tenant no longer owes the landlord that rent money. A landlord can accept back rent and continue with the eviction proceeding. However, if a landlord accepts rent for the period the Notice to Vacate cites as the cause for eviction, the case can be dismissed. *Dennis v. Morgan*, 89 Ohio St.3d419, 418, 732 N.E.2d 391 (2000).

***\*\*\*This information is meant to be for educational purposes only; it is not intended to be legal advice. If you have questions about how this information applies, please consult an attorney.\*\*\****

**If you have questions, please contact a Housing Court Specialist at (216) 664-4295.**



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