

SECURITY DEPOSIT FINAL ACCOUNTINGS ➡ DEMYSTIFIED

By Jim Straub, Acorn Property Management

Security deposit final accountings can be tricky, and questions about how to complete them correctly are one of the most frequent questions we hear on our Helpline. I believe this is because that, while there are some firm do-and-don'ts and good rules of thumb to follow, much of the time the answers to final accounting questions are frankly, "it depends." Much of how you compile a tenant's final accounting can be highly case specific and depends entirely on the facts at hand. That's why you should always be thoughtful and methodical about how you complete your tenant's final accounting.

As a quick review, you have 31 days to place your tenant's final accounting in the mail once you receive possession of your property. The final accounting must be sent regular, first-class mail, and not registered or certified mail. You should always mail the final accounting to the forwarding address provided to you by your vacating tenant. If you don't have a forwarding address, mail it to the tenant's last known address which, in this case, is your rental address. One would hope your tenant has placed a forwarding order on the address, but, if the final accounting is returned to you, leave it in the envelope showing it was returned and hold onto it with your tenant file. (That's your proof that you mailed it timely.) Chances are, the tenant will be contacting you shortly wondering where their deposit accounting is.

The first question I am often asked is what is an acceptable cost for repair and can a landlord do the work himself and charge for it. In terms of the cost of repair, the amount that a professional would charge to make the repair is really the gold standard. You can never really go wrong by hiring a competent professional to make a repair with like kind and quality materials and then passing that expense along to the tenants. What if you want to do the repair yourself, though? The basic rule of thumb is that you should never charge more for either your time or your materials than a professional would charge to do the job. In other words, if a professional would charge \$20 per hour and take five hours to do the job, then the most you should charge for your time is \$100. This applies whether you can get the job done in the same five hours that a professional would take or it takes you three hours a day for 2 weeks to do the job. This is because a judge is going to say that it's established that the job can be reasonably done for \$100 in 5 hours. If you the landlord chose not to hire a professional, that's certainly your choice. However, if it takes you more time to do the same job, the tenant shouldn't have to pay the difference because you, the landlord, made the choice to do the job yourself. So in these situations, it's often to your benefit to think carefully about whether it's really worth your time and effort to do the job yourself.

Now, let's say you've completed the repairs but the condition of your rental has not been returned to same condition it was in before the repairs were made. I can think of two obvious examples here: holes to doors or walls, and lawns and landscaping. You can repair a hole in the wall but unless you have a professional work on the plaster or drywall, you are always going to be able to tell there is a patch. It's really the same with lawns and landscaping. You can

mow waist-high grass and dig out the weeds your tenant has let grow, but chances are your lawn or landscaping is never going to look quite the same. Can you be compensated for this? Absolutely. Let's take the hole in the wall example: it's been patched, sealed, primed, painted, but you can still clearly see this wall has been repaired. It doesn't have the same smooth surface area of an undamaged wall. You can absolutely charge your tenant for the diminished value of the wall. The crux, of course, is determining what that diminished value is. The best way to determine this (and the most defensible should your tenant dispute it in court) is to consult a professional contractor about the value of the wall, before and after the damage. You can consult contractors for this information, even if you did the work yourself, and there are many good contractors that are members of your local ROA organization. A note to the wise, though. If you're going to use a contractor for this purpose, be clear about what you are doing and expect that they will probably charge you a fee associated with the consultation. Please do not ask the contractor for a repair bid (if you have no intention of asking any contractor to do the work) in hopes that you can get this information at no charge. Contractors are highly trained professionals, and they deserve to be compensated for their expertise. And, as always, get their recommendations in writing and make this part of your tenant's file. Finally, one more caution. I've said that you should charge no more for your work than a professional would charge for the same job. If you choose to do a job yourself and charge what a contractor would, consider carefully whether you should also charge for diminished value if the work you do doesn't bring the condition back to the condition it was in prior to the tenant's damage. If having a contractor do the work *would* have brought it back to a good condition, without the need to charge a diminished value, carefully consider whether it's fair under those circumstances to charge your tenant for the decision you made to do the work yourself.

I always get many questions about depreciation as well. This is another "it depends" category. Remember that, if you must replace something because damage cannot be repaired, you must always deduct depreciation from the amount you bill to your tenant. If your tenant damages a five year old carpet, they don't owe you the full amount of installing brand new carpet to replace it. Determining depreciation can be tricky and contacting a contractor or perhaps even your insurance company for help determining depreciation can be beneficial. There are fairly standard schedules of depreciation on which you can rely. Let's talk about the one that comes up most often, carpet replacement.

Generally accepted schedules of depreciation show a rate of carpet depreciation of 8 - 12 years, depending on the product and quality. (If you're thinking now that carpet lasts longer in your home, remember that carpet in a rental is considered a commercial use that usually wears much more quickly than in an owner-occupied property.) Some sturdier types of carpet (say wool or berber carpet, for instance) are generally expected to last closer to 12 years. Your entry-level basic carpet can reasonably expect closer to eight years. If you have a specialty brand carpet or questions, you should contact a carpet seller to view the carpet and give you an opinion about how much more time you should have been able to expect the carpet to last had it not been damaged. Once you've arrived at a figure, you can easily determine what to charge your tenant. Let's take some round numbers in our example. Let's say the carpet was five years old at the time it was damaged, it was expected (based on the depreciation schedule) to

last 10 years, and the cost to replace the damaged carpet was \$1,000. In this case, the tenants only owe 50% of the cost to replace the carpet (5 years old and expected to last 10 years) or \$500. (There is one big exception to the carpet depreciation rules I just gave you above, and that is urine damage to underlayment. If you are dealing with urine damage to underlayment, there is no depreciation at all. You may charge 100% of the cost of replacing urine-damaged underlayment.) Be sure you are doing your depreciation homework when completing your final accountings. Judges don't take kindly to landlords charging tenants more than they legally owe.

What happens, though, if your rental is damaged and its value is diminished, but you have no intent of making a repair? You are still owed for the diminished value caused by the damage, right? Again, the answer is yes if you calculate the amount owed correctly. My favorite example of this situation is holes kicked in doors. I hate to replace doors. It's incredibly work intensive compared to the cost you can actually recover from the tenant. You have to match and buy a new door. Then, you have to stain, lacquer and rehang the door. By the time I depreciate the cost of the new door (knowing I really can't recover much for the staining and lacquering, little less the time involved and rehang), I'm not much inclined to replace the door. More often, if the hole is made in the central portion of the door, I simply hang a door mirror over the hole and call it good. I've saved myself some work, and the next tenants get a bonus mirror. But, of course, the hole is still there, and my door is still damaged. First, like any depreciation, you should determine the diminished value of the damaged property. Then, when as you complete your final accounting, I don't recommend using the word 'repair'. If you use the word repair in your final accounting, I believe tenants have the right to expect that repairs were made. Instead I recommend using the word 'damage', such as "damage to door due to hole in center of door" or "damage to landscaping due to lack of maintenance."

Lost rent is another oft-repeated question. If I can't rent my property because I'm taking time to make damage repairs, may I charge lost rent to my tenant? First, you want to always be sure to differentiate between lost rent due to tenant-caused damage and lost rent due to wear-and-tear. Lost rent should never be charged for wear-and-tear. So, let's say you were preparing your rental to be placed back on the market. It took seven days total, three for the things you would normally do between tenancies and four days for damages. Generally, then, it's reasonable to charge your tenant lost rent for those four extra days. There are a couple caveats, though. Remember our discussion about the time it would take a professional to complete the repair work versus the time it might take a landlord? In our example, let's assume the landlord did the three days of wear-and-tear cleanup and repair, then hired a professional to do the other four days of repairs. Clearly, the landlord could charge for the four days of contractor repairs. But what happens if the landlord does the first three days of wear-and-tear cleanup and repairs, and then decides to do the other four days of damage repairs themselves too. Once they started the work, though, it actually took the landlord eight days to do the damage repairs instead of the four in which it could have been completed by a professional. Again, the landlord should charge only for the time in which the repairs could have been done by the professional. If the landlord chose to do the work himself and he took longer, it's going to be at his own expense. Finally, I always recommend giving the tenant the benefit of the doubt if it's clear they've made a real effort to leave everything clean and

undamaged for you. If you've just got an hour or two of touchups from an otherwise good tenant, charging lost rent (even if it was a quick, small tenant-caused repair) might not be your best business strategy. Better to keep that excellent relationship with your good tenant who will spread the word about your business through good word of mouth.

Nothing makes me happier than giving my tenants entire security deposit back. It means there was little or no work for you to do in order to turnover your rental. It means you screened your tenants well, chose the right tenant in the first place, and maintained good relationships. It means your tenants will tell their friends what a great person you are to rent from and send their friends (hopefully also great tenants) your way. In the age of technology, it might also mean a good online reference. On the other hand, if your tenants trashed your rental, what does this mean? I may very well mean you didn't screen well. You didn't choose your tenants well. You didn't inspect the rental during the tenancy. You let things slide when you suspected there might be a problem. Enforcing your rental rules means ensuring your properties are in good condition or, with the proper inspections or notices, is brought back into good condition. I can be tempting to just "be nice" to your tenant, hoping it will all work out. More often, being nice means letting things slide and after you see the damages at the end of the tenancy, you quickly realize this doesn't help you in the long run. This is a business – treat it as such. Be friendly, but not friends with your tenants.

It is my hope this article provides some clarity on some security deposit final accounting issues that can be challenging. Do your homework and always keep good written records.