

# THE LAW OFFICE OF JOSEPH HUGHES P.A.

515 E Las Olas Blvd, Ste. 120  
Fort Lauderdale, Florida 33304  
<http://www.JoeHughesLaw.com>

Telephone: (954) 256-512  
Facsimile: (954) 256-5126  
[Jhughes@JoeHughesLaw.com](mailto:Jhughes@JoeHughesLaw.com)

---

## NORMAL/ORDINARY/REASONABLE WEAR AND TEAR: A Quick Guide for Florida Tenants

**Defined:** “Deterioration or depreciation in value by ordinary and reasonable use of the subject-matter.” Black’s Law Dictionary 1593 (6<sup>th</sup> ed. 1990).

**Evidentiary Standards:** To determine damage beyond ordinary wear and tear, the landlord must first present evidence of definite damages caused by the tenant to the premises. *Smith v. Austin Development Co.*, 538 So.2d 128 (Fla. 2d DCA 1989). Proof of damages require personal knowledge that is not based on speculation or guesswork, but must have some reasonable basis in fact. *Florida Outdoor, Inc. v. Stewart*, 318 So.2d 414 (Fla. 2d DCA 1975), cert. denied, 333 So.2d 465 (1976).

After the landlord establishes damages caused by the tenant, the burden then shifts to the tenant to establish that the damage was in fact the result of ordinary wear and tear. *Cumminham Drug Stores v. Pentland*, 243 So.2d 169 (Fla. 4<sup>th</sup> DCA 170). The amount of damages equals the cost of restoration even if the landlord does not use the money to restore the premises. *Pomeranc v. Winn Dixie Stores, Inc.*, 598 So. 2d 103 (Fla. 5<sup>th</sup> DCA 1992).

Uncertainty as to the precise amount of, or difficulty in proving, damages does not preclude recovery if there is some reasonable basis in the evidence for the amount awarded. *Conner v. Atlas Aircraft Corp.*, 310 So.2d 352 (Fla. 3d DCA 1975). Where damages cannot be precisely determined, the trial judge is vested with reasonable discretion in awarding damages. *Clearwater Assoc. v. Hicks Laundry Equipment*, 433 So. 2d 7 (Fla. 2d DCA 1983). Evidence that Landlord paid for repairs is evidence that expenses were reasonable. The Landlord may also do the work him/herself, and may recover reasonable costs for the repairs.

**Ordinary Wear and Tear:** “Deterioration or depreciation in value by ordinary and reasonable use.”

Examples:

- Faded curtains
- Minor tack or nail holes in the wall
- Nicks, small scratches and tiny dents
- Faded paint
- Natural rusting

- Dirty carpets
- General cleaning
- Minor pain touch-ups
- Re-painting after long-term leases
- Insignificant stains
- Rust

*See Burley v. Mateo*, (Broward County 2010) 18 Fla. L. Weekly Supp. 624a. The landlord may not charge for ordinary cleaning or repainting unless specified in the lease.

**Not Ordinary Wear and Tear:** Damage actually caused by tenant and/or tenant’s guests and which is beyond damage caused by normal depreciation, deterioration, and reasonable use: Broken, stolen, or deliberately/negligently damaged items.

Examples:

- Cigarette burns
- Large and/or excessive holes in walls
- Paintjobs for short-term leases where paint was undamaged at commencement of lease
- Pet damage, including smells (unless pet deposit covers this)
- Large rips and/or stains in carpet
- Broken doors, locks, and windows
- Excessive holes in the walls

(For further analysis, *See Smith v. Niederriter*, Broward County 2011, 18 Fla. L. Weekly Supp. 1051a).

**Lease Provisions Limiting Scope of Normal Wear and Tear Damage:**

The lease may specify items to be chargeable. *Bergren v. Wyatt*, Hillsborough County. 2004. Marva L. Crenshaw, Judge. 11 Fla. L. Weekly Supp. 407a. In *Bergren*, the lease provided “The cost of *repairing or replacing* any and all damage to carpet, including, but not limited to stains and spots, shall be deducted from the security deposit.” The court affirmed award of replacement cost of damaged flooring to landlord rather than amount of diminished value. *Id.*

However, the chargeable items must be reasonable, specific, and not against public policy. [P]arties are free to contract around a state law so long as there is nothing void as to public policy . . .” *Franks v. Bowers*, 116 So. 3d 1240, 1247 (Fla. 2013) [38 Fla. L. Weekly S416a]. Additionally, every residential rental agreement and duty under the landlord/tenant act requires good faith, which is defined as “honesty in fact.” Any sort of dishonest or trickery could cause a loss of valuable rights (Fla. Stat. § 83.44).

If a clause is included that is not typically included in a standard lease, it should be pointed out and initialed by the tenant. Otherwise, it may be rendered unenforceable.

See 83.45, Florida Statutes (2015). Additionally, if one party fraudulently misrepresents a material fact concerning the lease, the lease may be unenforceable. *Oceanic Villas v. Godson*, 4 So.2d 689 (Fla. 1942). Any ambiguities in the lease are construed against the landlord. *Homestead v. Johnson*, 760 So.2d 80 (Fla. 2000). Lack of mutuality of remedies between the parties may be a separate reason why a court may refuse to enforce a default provision of a contract. See *Blue Lakes Apartments, Ltd. v. George Gowing, Inc.*, 464 So.2d 705 (Fla. 4th DCA 1985); *Lefemine v. Baron*, 573 So.2d 326, 16 Fla. L. Weekly 27 (Fla., 1991).