

Maintenance Deductibles

By Robert Locke, MPM

The first seminar I ever attended concerning property management was “Effective Land lording” by John Schaub in 1979. John had been buying houses for twenty years and taught a hands-off management program that really made sense. One of the elements I liked the most was the idea of giving the tenant a “discount on the rent for handling their own maintenance problems ... or a deductible on every maintenance issue to encourage them to take care of their own maintenance”. Over the last 20 years I have played with the idea of incorporating this “maintenance deductible” into my own management program in Georgia. Four things keep me from doing it.

My first problem was Section 44-7-2 of the Georgia Landlord Tenant Act which reads, “in any lease for the use of rental property as a dwelling place, a Landlord or Tenant may not waive, assign, transfer, or otherwise avoid any of the rights, duties, or remedies contained in the following provision of Law The Landlord must keep the premises in good repair. He shall be liable for all substantial improvements placed upon the property by his consent...The Landlord is responsible for damages arising from the failure to keep the premises in repair”.

This law makes me very nervous about trying to transfer maintenance to the tenant either through a maintenance deductible or a discounted rent. The law in Georgia, unlike other states, is strict, and places squarely on the landlord “the responsibility to keep the house in good repair”. In addition, trying to “transfer that duty to the tenant exposes landlords to serious penalties” under Georgia law. If I find myself before a judge arguing this “maintenance deductible” language of the lease, I suspect I would hear him quote the law and penalize me for trying to duck my statutory duty to the tenant concerning repairs.

Section 44-7-14 makes this worse by actually “placing tort liability on the landlord for any damages and injuries the tenant may experience arising from the failure to keep the premises in repair”. This is a serious statutory constraint on Georgia landlords and severely penalizes them if they get caught talking their tenant into doing their own maintenance. Ignoring this law is not a prudent thing to do as a Georgia landlord.

The next concern I have is closely connected to the first. Judges don’t like tricky landlords and feel that the landlord, a real estate professional, ought to know the law and abide by it. They look dimly on “experts taking advantage of naïve tenants in legal matters”. In Georgia, judges come down hard on shrewd landlords who try to take advantage of a tenant’s lack of knowledge of the laws that govern the landlord/tenant relationship. The landlord is held to the higher standard of “knowing better”. If you do the “maintenance deductible” thing, don’t ever get before a judge over it.... you’ll regret it.

My next problem is with my attorney. My law firm strongly advises that if I try to negotiate with the tenant to “handle their own repairs”, or maybe “repairs under \$75.00”, they may get hurt fixing something that I am responsible to fix, and expose me to serious tort liability. Again I imagine myself responding to a lawsuit with a tenant showing a judge his mangled hand, which

he burned while fixing a defective electrical socket or garbage disposal because it was under the \$75.00 maintenance limit. They are convinced that trying to pass the maintenance responsibility over to the tenant is one risk I should try to avoid.

The last reason for not using this strategy is confirmed by a group of full-time investors I have met with each month for 15 years. These folks buy, rehab, manage and sell homes for a living and do it very well. When the subject of the maintenance deductible comes up, those who do it admit that it is not enforceable and basically they use it as a strategy to get the tenant to commit to doing some of the maintenance. Generally they get away with it and never press the issue far enough to get before a judge. Their belief is “if the tenant will agree to do repairs, and you purpose to stay out of court, then you have succeeded in passing some of the maintenance over to the tenant”. Many in the group have tried the maintenance deductible and have found that it really didn't work as well as they expected it to. Too often the tenant just lets things go and leaves the house in disrepair, turning it back over to the landlord to fix it anyway. Too often the tenant fails to fix or report a small problem that ultimately develops into a more serious problem and causes real damage.

All in all it seems tenuous at best, and maybe even reckless, to try to push maintenance responsibilities on to the tenant. We decided long ago to keep our houses in good repair and stay away from the risks associated with this law. We believe it is safer for everyone. We don't fix everything the tenant complains about, but any repair that could cause damage to the property, or risks to the tenant, we go ahead and fix.

No matter where I make this argument some landlords still use the maintenance deductible. Some landlords are bent on squeezing all they can get out of their tenants, even at the risk of personal liability to themselves. I wish them well but would encourage them to look carefully at the risks of the maintenance deductible under Georgia Law.