

“I didn’t do it!” – How to avoid endangering the return of your rental security deposit.

by Joerg Modellmog

In the last issue of the Kaiserslautern Legal Informer, I discussed the correlation between your rental security deposit and final utility bills. In this issue, we address how to avoid having your security deposit eaten up by your landlord’s claims for damages.

There are only two defenses for a tenant against a landlord’s claim for damages: pre-existing damage (*i.e.*, damage already listed on the moving-in protocol) or damage consistent with normal wear and tear.

Normal wear and tear means deterioration that results from the intended use of a dwelling but does not include deterioration that results from negligence, carelessness, accidents, or abuse of the tenant’s household by residents, pets, or guests.

There is a rebuttable presumption that damages to an apartment were caused by the tenant. The tenant is responsible for any damages exceeding normal wear and tear. The standards for what constitutes normal tear and wear are, however, often in dispute; *e.g.*, stains on walls, cigarette burns on the carpet,

or damage done to floors caused by pointed heels would not be considered normal wear and tear under German law.

The best way to document preexisting damages is by doing a “moving-in protocol.” Every crack, dent, chip, and scratch needs to be identified on that list. It is the only way to make certain that the defect, which will surely be listed on the moving-out protocol, can be identified as pre-existing. Have the landlord or the landlord’s representative cosign the moving-in protocol and return a copy to the Housing Office for filing purposes.

If the landlord or his/her representative refuses to sign the moving-in protocol (or later on the moving-out protocol), you can meet your burden of proof by having a representative from the Housing Office inspect the premises and put his/her statement in a memorandum for record. If you forgot to do a detailed moving-in protocol, you may want to consider writing to your landlord informing him/her about your concerns with respect to noted pre-existing damage. In such a case, be sure

to keep proof that you sent such a letter (send it by special registered mail/*Einwurf-Einschreiben*).

Even if the landlord’s claim for damages is basically justified, the amount of compensation often remains an issue. The landlord is not to be put in a better position than he/she was before. An old carpet may be replaced with a new one but you only owe the landlord the price of an old one. Like in a car sale transaction, the bluebook value of the damaged item needs to be determined. The landlord cannot simply renovate the house at your expense using your security deposit.

Finally, if the landlord sets off or subtracts his/her claim for damages against your rental security deposit, don’t forget to remind him about the interest that accrued on your rental security deposit. Too often landlords conveniently forget to provide proper proof of the accrued interest.

If you have further questions, you can pick up a detailed handout at your Legal Assistance Office or make an appointment by calling DSN 483-8848 or civilian 0631-411-8848.



Brigadier General Scott G. West, Commander, 21st TSC, presents claims examiner Martina Berndt with an award for 25 years of service with the United States Army. Martina and five other awardees from the OSJA represented 105 years of combined government service. Receiving awards were:

Donald Davis-5 years

Joerg Modellmog-10 years

Jim Wiley-15 years

Karl-Heinz Oberlaender-20 years

Martina Berndt-25 years

Marion Themann-30 years



The Office of the Staff Judge Advocate is proud to announce that Specialist Samantha Ortiz has been promoted to the rank of Sergeant. She was promoted by her husband, SGT Yasir Ortiz, and CPT Desirée Helmick.