

# *Can a Residential Lease Require the Tenant to Make Repairs to the Property?*

**By Seth G. Weissman**

The short answer is “No.” Georgia law requires a landlord of residential property to keep the premises in repair. This is an absolute duty of the landlord and cannot be waived, delegated or transferred in the lease. So, a landlord cannot legally require a residential tenant to assume any repair duties in the lease.


Typically though, the discussion does not end here. Creative landlords have distinguished the duty to maintain the premises from the duty to repair. In Georgia, a tenant is required to preserve a property in as good a condition as when it was received. As a result, tenants must keep the property maintained during the term of the lease. The repair duty of the landlord refers to the upkeep or replacement of a component part of the property that is necessary to preserve the property in the same condition as it was at the time of the lease. Repair would include returning a structure, system or appliance to its original condition before damage or performing needed capital improvements to the property.

While a landlord can legally require a residential tenant to perform maintenance in the lease, the tenant cannot be bound to make repairs even if the lease states otherwise. Any requirements of upkeep or replacement arguably beyond maintenance activities are the landlord’s responsibility. Therefore, landlords often obligate tenants

to perform certain duties in the lease that are described as maintenance obligations, not repairs. Permissible maintenance could include replacing light bulbs, replacing smoke alarm batteries, changing HVAC filters,

carpet cleaning or cutting the grass. On the other hand, the landlord’s duties of repair would include repairing a broken smoke alarm, roof repair, or HVAC repair. Although some duties are more easily categorized as maintenance or as repair, other duties may fall into an arguable gray area. For example, some leases may require tenants to pay a separate maintenance “trip charge” for service visits, or may charge a maintenance “deductible” which obligates the tenant to pay up to a set amount for service done on the property. These types of provisions are likely to be unenforceable as an attempt by the landlord to shift the absolute duty of repair to the tenant.

If the lease does not address maintenance or repair obligations at all, the landlord must repair as well as maintain the property. In addition, the landlord can charge back to the tenant any repairs or expenses that result from the tenant’s abuse or neglect of the property beyond normal wear and tear.

Agents, tenants and landlords alike -- if your next residential lease places any questionable maintenance duties or costs on the tenant, ask your WNCW attorney for advice! 



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