

Real Estate Law

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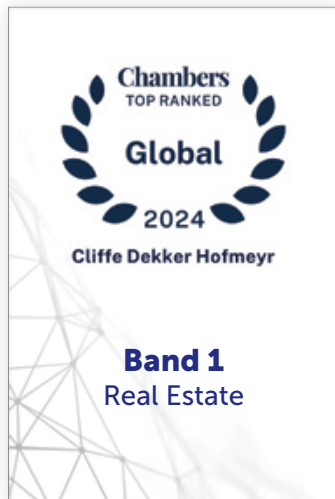
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Fair wear and tear is a tenant's shield, not a landlord's loophole

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REAL ESTATE LAW ALERT

Fair wear and tear is a tenant's shield, not a landlord's loophole



It is neither reasonable nor realistic to expect leased premises to remain in their original, untouched state. Buildings age, materials wear and time inevitably leaves its mark. Recognising this reality, the principle of “*fair wear and tear*” plays a pivotal role in creating a balance in landlord-tenant relations.

Fair wear and tear refers to the normal expected deterioration of property that occurs due to ordinary use over time, such as minor fading of paint, small scuffs on floors from regular foot traffic, gently worn carpets, disintegrated plumbing fixtures, creaking hinges, or small nail holes in walls from hanging pictures – all of which are natural consequences of occupancy. However, it does not excuse significant or preventable damage caused by accidents, abuse or neglect. For example, breaking a window, damaging walls while moving equipment, failing to clean up spills that cause large stains or creating holes in walls through reckless drilling would not be considered fair wear and tear.

As such, the principle of fair wear and tear is a practical tool for managing expectations and responsibilities in tenancies rather than a theoretical concept. It provides a clear framework for what constitutes tenant liability since, ideally, tenants are not required to restore the premises to their original condition if the wear is reasonable and expected over the lease term. From a landlord’s perspective, this principle delineates the boundary between a tenant’s restoration obligations and the landlord’s duty to maintain structural integrity, utilities and common areas. It also limits landlords’ ability to unreasonably deduct costs for repairs or replacements from tenants’ security deposits for damages that are a natural consequence of normal use.

Even though fair wear and tear is a well-established principle in landlord and tenant law, this legal concept has, in some quarters, been co-opted as a loophole to excuse landlords from their fundamental responsibilities. Landlords are generally required to maintain leased premises in a safe and habitable condition. However, there are instances where landlords have attempted to invoke fair wear and tear to evade their responsibilities for major repairs or structural issues. Such an interpretation distorts the purpose of this doctrine and undermines the delicate balance that leases aim to achieve. For example, a landlord cannot refuse to repair a leaking roof citing fair wear and tear, as this pertains to structural integrity – a core landlord obligation that cannot be mitigated by this principle.

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In fact, an attempt to reciprocate the exemption of fair wear and tear to a landlord's obligations, particularly those related to structural integrity or essential repairs, reveals a fundamental misunderstanding of the principle.

Landlords have a non-delegable duty to maintain safety and habitability of their premises. Therefore, allowing landlords to hide behind this principle for structural issues would undermine its intended purpose and create asymmetry in lease agreements. From a legal perspective, fair wear and tear applies most appropriately to obligations tied to tenant-specific usage.

Safeguarding the principle of wear and tear

In drafting or negotiating lease agreements, it is imperative to safeguard the integrity of this principle, ensuring that it continues to foster fairness in landlord-tenant relationships. It is the role of legal practitioners representing tenants to ensure that the principle of fair wear and tear is not weaponised by landlords to excuse neglect or shift the burden of structural responsibility onto tenants. Tenants should not find themselves financing repairs for damage that landlords have an unequivocal obligation to address. Equally, landlords must understand that their stewardship of their property encompasses more than mere ownership; it includes a duty to maintain its integrity, irrespective of wear and tear.

Understanding the nuanced application of "fair wear and tear" for tenants and landlords due to their distinct roles and responsibilities is essential. In addition, in drafting lease agreements, care should be taken to define its scope clearly, ensuring liabilities align with each party's control over the premises and making the lease both fair and enforceable.

The lease agreement is not just a contract; it is a roadmap for a fair and functional tenancy. Therefore, skipping over key clauses during negotiation could lead to oversights such as extending fair wear and tear exemptions to landlords, which may be interpreted as a mutual reflection of the parties' intentions, leading to outcomes that are difficult to reverse.

Lydia Owuor

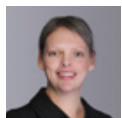


OUR TEAM

For more information about our Real Estate Law practice and services in South Africa and Kenya, please contact:



Muhammad Gattoo
Practice Head & Director:
Real Estate Law
T +27 (0)11 562 1174
E muhammad.gattoo@cdhlegal.com



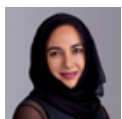
Bronwyn Brown
Director:
Real Estate Law
T +27 (0)11 562 1235
E bronwyn.brown@cdhlegal.com



Mike Collins
Director:
Real Estate Law
T +27 (0)21 481 6401
E mike.collins@cdhlegal.com



Simone Franks
Director:
Real Estate Law
T +27 (0)21 670 7462
E simone.franks@cdhlegal.com



Fatima Gattoo
Director:
Real Estate Law
T +27 (0)11 562 1236
E fatima.gattoo@cdhlegal.com



Simone Immelman
Director:
Real Estate Law
T +27 (0)21 405 6078
E simone.immelman@cdhlegal.com



Lydia Owuor
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E lydia.owuor@cdhlegal.com



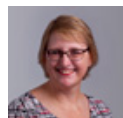
Muriel Serfontein
Director:
Real Estate Law
T +27 (0)11 562 1237
E muriel.serfontein@cdhlegal.com



John Webber
Director:
Real Estate Law
T +27 (0)11 562 1444
E john.webber@cdhlegal.com



Alex de Wet
Director:
Real Estate Law
T +27 (0)11 562 1771
E alex.dewet@cdhlegal.com



Natasha Fletcher
Counsel:
Real Estate Law
T +27 (0)11 562 1263
E natasha.fletcher@cdhlegal.com



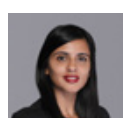
Samantha Kelly
Counsel:
Real Estate Law
T +27 (0)11 562 1160
E samantha.kelly@cdhlegal.com



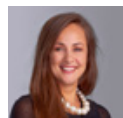
Kirsty de Sousa
Professional Support Lawyer:
Real Estate Law
T +27 (0)11 562 1747
E kirsty.desousa@cdhlegal.com



Bridget Witts-Hewinson
Senior Associate:
Real Estate Law
T +27 (0)21 481 6447
E bridget.witts-hewinson@cdhlegal.com



Lutfiyya Kara
Senior Associate:
Real Estate Law
T +27 (0)11 562 1859
E lutfiyya.kara@cdhlegal.com



Sune Kruger
Senior Associate:
Real Estate Law
T +27 (0)11 562 1540
E sune.kruger@cdhlegal.com



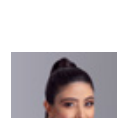
Lulama Lobola
Senior Associate:
Real Estate Law
T +27 (0)21 481 6443
E lulama.lobola@cdhlegal.com



Ceciley Oates
Senior Associate:
Real Estate Law
T +27 (0)11 562 1239
E ceciley.oates@cdhlegal.com



Henry Omukubi
Senior Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E henry.omukubi@cdhlegal.com



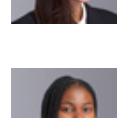
Fatima Essa
Associate:
Real Estate Law
T +27 (0)11 562 1754
E fatima.essa@cdhlegal.com



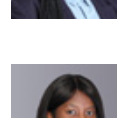
Muneerah Hercules
Associate:
Real Estate Law
T +27 (0)11 562 1579
E muneerah.hercules@cdhlegal.com



Zahra Karolia
Associate:
Real Estate Law
T +27 (0)11 562 1701
E zahra.karolia@cdhlegal.com



Asisipho Kozana
Associate:
Real Estate Law
T +27 (0)21 405 6168
E asisipho.kozana@cdhlegal.com



Eburn Taigbenu
Associate:
Real Estate Law
T +27 (0)11 562 1049
E eburn.taigbenu@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

NAMIBIA

1st Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

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