

CHAPTER 5 SPECIAL CLAIMS FOR UNPAID RENT, TENANT DAMAGES, AND OTHER CHARGES

Section 5-1 CONCEPT

A special claim for unpaid rent, tenant damages and other charges due under the lease is reimbursement to a property owner for a former tenant's failure to pay the monthly rent, other charges due under the lease, or for damages caused by the negligence or abuse of the former tenant.

Section 5-2 ELIGIBILITY REQUIREMENTS

A. Project/Contract types:

Section 8, Section 202/8, Section 202 PAC, Section 202 PRAC or Section 811 PRAC.

B. The owner is eligible to submit a special claim for unpaid rent, other charges due under the lease and damages if:

The former tenant was receiving rental assistance at move-out; or if the rental assistance had been terminated prior to move-out, the assistance was terminated based upon the tenant's failure to comply with his/her responsibilities to fulfill program requirements, such as:

- Failure to provide the needed information relating to family composition and income.
- Failure to provide social security numbers.
- Failure to sign consent forms and or verification forms.
- Failure to sign the form HUD-50059.
- Failure or inability to establish citizenship or eligible immigration status.
- Failure to move to a different-sized unit within 30 days after the owner notifies him/her that the unit of the required size is available.

Note: Owners cannot submit a special claim for the unit when termination of rental assistance was based on the tenant's income increasing to where he/she no longer qualifies for assistance.

C. In projects that are partially assisted, if a tenant's assistance is terminated or a tenant moves out of a unit and the assistance is given to a tenant in another unit effective the day after the termination or move out, the owner is not entitled to a special claim for unpaid rent, tenant damages, or other charges.

For example, in a partially assisted Section 236 project the tenant in Unit 26 who is receiving Section 8 assistance moves-out on July 26. The owner gives the Section 8 assistance to the tenant in Unit 30 effective July 27. The owner is not entitled to receive a special claim for unpaid rent, tenant damages, or other charges for Unit 26.

D. Other requirements for unpaid rent and other charges due under the lease:

1. The owner/agent collected the appropriate security deposit from the tenant. If the owner/agent did not collect the appropriate security deposit from the tenant, the claim will be reduced by the amount of the security deposit the owner should have collected from the tenant.

Note: If the security deposit held by the owner met the rules in effect at the time the deposit was collected, or if the owner was not previously required to collect a security deposit under program requirements, the special claim will not be reduced because a security deposit wasn't collected or where the deposit does not match the current rules.

2. By signing form HUD-52671-A, the owner/agent certifies they have billed the tenants for unpaid rent and have taken all reasonable steps to collect the debt:
 - a. A certified letter has been sent to the tenant detailing the unpaid rent and other charges, the disposition of the security deposit, demanding payment, and advising the tenant that failure to pay the sums due will result in the owner/agent hiring a collection agency to collect the debt. The letter must include a notice to the tenant that they have a right to discuss the charges with the owner/agent.
 - b. If the tenant did not make payment on the monies owed, other efforts were attempted to collect the monies (i.e., engaging a collection agency).
3. State and local law must permit such amounts to be deducted from the tenant's security deposit.
4. "Other charges" due under the lease are to be included with unpaid rent.
 - a. Allowable "other charges" due under the lease include:
 - (1) Failure to return keys.

- (2) Late fees, if allowable under the lease and state or local law, or
 - (3) Any charges for damages during tenancy that the tenant was previously billed for and that were still unpaid at move-out.
- b. Not allowable “other charges” due under the lease include:
- (1) Legal fees.
 - (2) Collection agency fees.
 - (3) Unpaid utility bills left by the tenant.
 - (4) Cost of photographing unit to prove tenant damage.
- c. Section 202/8, Section 202 PAC, Section 202 and Section 811 PRAC leases do not allow for charges for late fees, returned checks or unreturned keys therefore these charges are not allowable as special claims.

E. Other requirements for tenant damages:

1. By signing form HUD-52671A the owner/agent certifies they have determined the damage claim was due to the tenant’s negligence or abuse.
2. Only extraordinary repairs and/or replacements should be claimed. See Appendix 5C, “Tenant Damages versus Normal Wear and Tear.”
3. The owner/agent cannot request reimbursement on the damage claim for items where reimbursement was made from the Reserve for Replacements or Residual Receipts accounts or by insurance coverage. An owner/agent should be encouraged to apply for insurance reimbursement prior to submitting a claim to HUD. However, it is important to note, if an owner receives special claims reimbursement for damage covered by the owners insurance after HUD has already paid, the owner is required to repay HUD.
4. Any damages, other than those billed during tenancy, found and billed at move-out are claimed as damages on the claim form.
5. Failure to provide the tenant with an itemized listing of damages will result in the denial of the claim.

Section 5-3 OWNER/AGENT CLAIM SUBMISSION REQUIREMENTS

The owner/agent must submit the following:

A. Claim forms:

HUD-52670-A Part 2, Schedule of Special Claims
HUD-52671-A, Special Claims for Unpaid Rent/Damages

B. Submit forms to:

HUD or CA

C. Supporting documentation for unpaid rents and other charges due under the lease:

1. Refer to Section 1-5 for the general requirements that are part of the claim process.
2. Evidence that the owner/agent took all reasonable steps to collect the debt. Such information must include:
 - a. A copy of the signed form HUD-50059 completed at move-in which shows the amount of security deposit that was required.
 - b. Documentation that the appropriate security deposit was collected from the tenant: for example, a copy of the original lease, a copy of the tenant's rent ledger card, a copy of the receipt(s) for security deposit.
 - c. Copy of the certified letter sent to the tenant detailing the unpaid rent and other charges due under the lease, the disposition of the security deposit, demanding payment, and advising the tenant that failure to pay the sums due will result in the owner/agent hiring a collection agency to collect the debt. The letter must include a notice to the tenant that they have a right to discuss the charges with the owner/agent. (See Security Deposit Disposition Notice 3-3.C 4).
 - d. Documentation that the matter was turned over to a collection agency for collection and that the collection agency has attempted to collect the debt (i.e., copy of the agency's first demand letter).

- e. Documentation for other charges that were due under the lease that demonstrates the charges were approved by HUD.

D. Supporting documentation for a damage claim:

1. Evidence that the owner/agent took all reasonable steps to collect the debt (see item C.2 above for documentation requirements).
2. The owner/agent must certify the submitted claim is not the result of normal wear and tear or routine maintenance. See Appendix 5C, Examples of “Tenant Damage versus Normal Wear and Tear”.
3. Copies of the move-in and move-out inspection reports.
4. A copy of the security deposit disposition notice provided to the tenant which indicates the move-out date, amount of security deposit collected, amount of security deposit returned and any charges withheld from the deposit for unpaid rent, tenant damages or other charges due under the lease.
5. A repair cost breakdown that must include at least one of the following:
 - (1) Invoices
 - (2) Receipts
 - (3) Owner/agent certification
 - (4) Other documentation acceptable to HUD or the CA

The owner/agent must determine the useful life expectancy of replaceable items that have been damaged by the tenant. Refer to Appendix 5D for a sample “Life Expectancy Chart” to determine the predicted life expectancy of replaceable items.

Example: In 2000 new carpeting was installed in a unit. The owner/agent determines that the carpet had a life expectancy of five years and would not have expected to replace the carpet until 2005. In 2001, a family moved into the unit and then moved out in 2003. At move-out, the entire carpet had to be replaced two years earlier than expected. The family should not be charged more than 2/5 of the cost of the new carpeting. If the carpeting had been in service for five or more years at the time the family moved-out,

none of the cost of replacing the carpet would have been charged to the family.

E. If a claim is also being made for unpaid rent and other charges due under the lease for the same unit and tenant, the claim for tenant damages must be calculated on the same form HUD-52671-A and filed as one claim.

F. Checklist:

A checklist of required documentation must be used and submitted with the claim forms. See Appendix 5B for a sample “Checklist- Special Claims for Unpaid Rent/Damages.

B. TRACS requirements:

The move-out or unit transfer for the tenant who owes the unpaid rent or who was responsible for the damages must be viewable in TRACS.

C. Claim Amount:

1. The total claim for unpaid rent and damages for any Section 8 units may not exceed the monthly contract rent in effect when the tenant vacated the unit (or at the time the tenant’s rental assistance was terminated), minus the security deposit, plus interest earned and amounts collected from the tenant or other sources to cover the unpaid rent and damages.

Example: \$65.00 is held by the owner, which includes the security deposit and interest earned. The tenant left the unit owing \$300.00 in unpaid rent and \$200.00 in damages. The owner/agent is unable to collect payment from the tenant for the unpaid rent or damages. The contract rent at the time the tenant moved-out is \$400.00. HUD will pay up to \$335.00 (contract rent minus the security deposit and interest).

2. For the LMSA program the total claim limit is the security deposit and the remainder of one month’s contract rent.
3. For the PD program the limit is two month’s rent less the security deposit collected or potentially collected.

Section 5-4 OWNER/AGENT CLAIM TIMELINES

A. Submission deadline:

The claim forms must be received by HUD or the CA within 180 calendar days from the date the vacated unit is available for occupancy.

- B. Start Date: N/A
- C. Ending date: N/A
- D. Length of claim period: N/A

Section 5-5 HUD OR CA CLAIM REVIEW PROCESS

In addition to the general review requirements in Section 1-6, the reviewer must:

- A. Review all calculations on HUD-52671-A for accuracy.
- B. Confirm that the appropriate security deposit was collected from the tenant. If the owner/agent did not collect the appropriate security deposit from the tenant, the claim will be reduced by the amount of the security deposit the owner/agent did not collect.
- C. Confirm that any other charges due under the lease are allowed under the lease for the project.
- D. If the tenant did not make payment, confirm that the owner/agent pursued the debt through a collection agency and the collection agency attempted to collect the debt.
- E. Review the owner/agent breakdown of costs to repair the damages and confirm that the costs are reasonable for the work described.
- F. Confirm that the damage charges were not due to normal wear and tear but were for extraordinary repairs and/or replacements. Appendix 5C provides guidance on the distinction between allowable claims for tenant damages and normal wear and tear on a unit and may be provided to an owner/agent for clarification on this matter.
- G. Verify that the owner/agent used the life expectancy for replaceable items to calculate how much, if any, of the replacement cost should be charged to the tenant.

Section 5-6 REIMBURSEMENT OF SPECIAL CLAIMS PAYMENTS

- A. Any reimbursement from HUD received by the owner must be applied first toward any unpaid rent due under the lease.
1. No reimbursement may be claimed for unpaid rent for the period after termination of tenancy.
 2. If the tenant reimburses the owner/agent for the monies owed after a claim has been paid for unpaid rent, other charges due under the lease, or tenant damages, the owner/agent must refund the tenant's payment to HUD.