



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes RP, MNDC, OLC, FF, O

Introduction

This matter dealt with an application by the Tenant for an order that the Landlord make repairs to the rental unit, for a monetary order for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are repairs required?
2. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This tenancy started on November 15, 2004. On November 4, 2004, the Tenant signed a document which stated in part, the Landlord “gives you the permission to re-decorate your unit on the following conditions: We will not be responsible for repainting your unit, which includes the ceilings and minor wall repairs as long (as) you have changed the paint colour. We will repair major wall damage, provided that it is not a result of the tenant damage, but will not be responsible for repainting after the repair has been completed.”

The Tenant claimed that in February 2009, the Landlord made some repairs to the structure of the building which involved some interior wall patching where window sills had been raised. Those repaired areas have not been repainted to date. The Tenant claimed that repairs of this magnitude were not contemplated when she signed the above-noted agreement and argued that she would not have signed it if she had known that this would be the case. The Tenant also argued that when the Landlord painted the unit at the beginning of the tenancy it was not done properly. The Tenant further argued that the Landlord should have to paint the whole rental unit because she has lived there for almost 5 years.

The Landlord sent the Tenant an e-mail dated May 22, 2009 in which the Landlord offered to repaint the repaired walls in the Tenant’s custom colors provided the Tenant paid for the materials. Alternatively, the Landlord offered to paint the repaired walls in a neutral color at his expense. The Landlord said that for budgetary reasons, rental units

are repainted approximately every 7 years. The Landlord also said he had not inspected the Tenant's un-repaired walls to determine if they required repainting.

Analysis

RTB Policy Guideline #1 says that a Landlord is responsible for painting the interior of a rental unit at reasonable intervals. It also says that if a Tenant makes changes to the paint colour during the tenancy, she is responsible for restoring the original paint color at the end of the tenancy.

In this case I find that the Landlord gave his consent to the Tenant to paint the rental unit in custom colors **conditional** on her agreeing that the Landlord would not have to incur additional expenses for repainting those same colours if and when repairs were made. I find that this agreement is clear and unambiguous and does not contravene the Act. The Tenant should reasonably have understood that the agreement would apply to all repairs regardless of the extent.

In support of her application that the Landlord paint the whole rental unit, the Tenant claimed that the original paint job had not been done properly (such that a seam or patch could be seen under the paint) and that she has resided in the rental unit for almost 5 years. However, the Tenant provided no evidence to suggest that the whole rental unit needs to be repainted due to wear and tear, for example. For all of these reasons, the Tenant's application to require the Landlord to pay for the cost of materials to repaint the repaired walls in the rental unit in the Tenant's custom colours is dismissed. The Tenant's application (in the alternative) that the Landlord repaint the whole rental unit in a neutral color at his expense is also dismissed.

As it has been 4 months since the repairs were completed, however, **I order as follows:**

1. The Tenant will advise the Landlord in writing if she intends to retain her custom paint colours or not within 14 days of the date of this decision. If the Tenant chooses to retain the custom colours, she will provide the Landlord with sufficient paint or payment for the paint for the repaired walls no later than 21 days after the date of this decision.
2. Unless the Parties mutually agree in writing to a different date, the Landlord will paint the repaired walls in the rental unit within 30 days of the date of this decision.



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As the Tenant has been partially successful in this application, she is entitled to recover one-half of the filing fee for this proceeding (\$25.00) and pursuant to s. 72 of the Act she may deduct that amount from her next rent payment when it is due and payable to the Landlord.

Conclusion

The Tenant's application is allowed in part. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 22, 2009.

Dispute Resolution Officer