



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX FIRST REALTY PROPERTY MANAGEMENT
GROUP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT MNDCT RP

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3800 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both tenants attended the hearing. The landlord was represented by its property manager ("**DL**"). All were each a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and DL confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. DL testified, and the tenants confirmed, that the landlord served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Are the tenants entitled to:

- 1) a monetary order for \$3,800;
- 2) an order that the landlord make repairs to the rental unit; and
- 3) recover their filing fees?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting June 14, 2019. Monthly rent is \$1,900 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$950. The landlord retains this deposit.

Prior to taking possession of the rental unit, the parties conducted a move-in inspection (the "**Inspection**") and completed a condition inspection report (the "**Report**"), which was signed by the tenants.

The tenants testified that, at the time of the Inspection, the rental unit was "messy" as the previous tenant had yet to vacate and was doing last minute cleaning. They testified that, when they took possession of the rental unit, it was not as clean as they expected it to be. They testified that unclean areas included the blinds, base boards, and chandelier and that these need professional cleaning. The tenants testified that they have yet to be cleaned. At the hearing, DL agreed that these require cleaning, and agreed to send cleaners to the rental unit.

The tenants testified that the interior walls of the rental unit need to be repainted, and that there are holes and dents in the walls throughout the unit. They testified that they sought permission (which was granted) to paint one of the unit's bathroom, but that the landlord did not reimburse them for this cost.

In the Report, in relation to the kitchen, living room, third bedroom, hallways, and laundry room, DL wrote:

many marks and penetrations needs painting [sic]

The tenants testified that DL represented to them that this painting would be done by the landlord, and that DL inaccurately filled out the report. DL denies he represented that the landlord would paint the rental unit. Rather he testified that he merely pointed out that these areas needed painting so as to accurately capture the condition of the rental unit for the purposes of the Report. He argued that the Report does not function

as a list for repairs to be done, but rather as a record of the condition of the rental unit at the start of the tenancy.

The tenants testified that are willing to patch the dents in the walls, to prepare them for the landlord to paint them.

On July 15, 2019, the tenants email DL a list issues they had with the condition of the rental unit. These included:

- 1) unclean kitchen;
- 2) interior doors being difficult to close;
- 3) smell of cigarette smoke;
- 4) nicotine stains on bathroom walls;
- 5) painting and patching needed on interior walls;
- 6) items left on property by prior tenant;
- 7) missing doorknob and doorstops;
- 8) one-inch gap in screen between window and window frame;
- 9) need for a WETT inspection report.

At hearing, the tenants testified that the WETT inspection has been completed and that the prior tenant has retrieved her property from the rental unit. They also testified that they spent six hours cleaning the kitchen. The tenants testified that they incurred additional costs in repairing some of these issues themselves. The tenants submitted a monetary order worksheet which listed two of expenses they incurred as:

- 1) Paint, primer and forstener – \$110.77
- 2) Door Stoppers (4) – \$20.15

The tenants submitted a receipt showing a pre-tax charge of \$17.60 for door stoppers. No receipt was submitted in support of their claim for “paint, primer and forstener”.

At the hearing, the tenants testified that the outstanding issues needing to be addressed are the painting of the interior walls of the rental unit and the cleaning of the baseboards, blinds, and chandeliers. They seek an order compelling the landlord to address these issues.

The landlord submitted photos of the kitchen cupboards and drawers, refrigerator (interior and exterior), microwave (interior and exterior), stove, and over (interior), dishwasher (exterior) into evidence. Except those of the oven, these photos depict a reasonably clean kitchen. The interior of the oven appears not to have been cleaned.

The Report lists the condition of the kitchen as “clear or okay”, with the exception of the walls/trim (many marks and penetration needs painting), floors (some scratches), and cupboards (door missing). The tenants did not testify as to what specifically in the kitchen they spent six hours cleaning, and they did not submit any photos of the condition of the kitchen.

The tenants testified that they have yet to repaint and patch the interior walls themselves (aside from one of the unit's bathrooms). They testified that they have not yet hung anything on the walls, in anticipation of their being painted. They testified they as a result of this, they have not yet really been able to feel at home in the rental unit.

The tenants claim damages in the amount of \$3,800, which, at the hearing, they said represented a 50% reduction in rent for each month that they have lived in the rental unit. The tenants argued that they had a right to move into the rental unit and be able to hang items on the walls and have the rental unit be clean. They take the position that by being deprived of this right a reduction of monthly rent is warranted.

The tenants notice of application does not contain an independent claim for compensation for their time for cleaning, or for recovery of their costs as set out above. However, based on their application for dispute resolution, the \$3,800 claimed appears to include compensation for these costs.

The landlord takes the position that it is not obligated to repaint the rental unit at the start of the tenancy, and as such, no reduction in rent is warranted. It likewise takes the position that it is not responsible for reimbursing the tenants for their cleaning time or costs for repairing or repainting the rental unit.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule of Procedure 6.6 states

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the tenants must prove that it is more likely than not that by failing to clean and paint the rental unit as described above, the landlord either breached the tenancy agreement or the Act. They must also prove that they suffered quantifiable damage as the result of this breach, and that they reasonably minimized their loss.

1. Painting

The tenants allege that, during the Inspection, DL agreed that the landlord would repaint the interior walls of the rental unit. DL denies this. DL argues that the Report functions to capture the state of the rental unit at the start of the tenancy and does not act as a checklist for work to be done.

The Report does not contain any agreement that the landlord repaint the interior of the rental unit. Rather it states that the walls “need painting”.

In the absence of explicit language, I find that the Report does not create an obligation that the landlord to paint the interior of the rental unit. In cases where parties disagree as to the terms of an agreement, the contents of the written document will be presumptively determinative as to what was agreed. The tenants have not provided any basis to go against this presumption. As such, I find that the tenants have not discharged their onus to prove that the landlord breached the tenancy agreement by failing to paint the interior of the rental unit.

However, just because the landlord did not breach the tenancy agreement by failing to repaint the interior walls does not mean that the tenants are not entitled to damages. Damages can be awarded if the landlord breaches the Act itself.

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

[emphasis added]

Policy Guideline 1 states:

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

The report states that many of the interior walls require repainting. DL confirmed this in his testimony. I understand this to mean that the condition of the walls is not in a state of decoration suitable for occupation. If they were, they would not need to be repainted.

As such, I find that the landlord is obligated to repaint the interiors walls of the kitchen, living room, third bedroom, hallways, and laundry room in order to comply with section 32 of the Act.

As such, pursuant to sections 32 and 65, I order that the landlord do everything that is reasonably necessary to repaint the interior walls of these rooms, including patching holes, filling dents, priming, and painting. I order that the tenants do everything that is reasonably necessary to allow the landlord to complete this painting.

2. Cleaning

At the hearing DL agreed to send cleaners to the rental unit to clean the baseboards, blinds, and chandeliers. As such, I order that the landlord do this.

3. Compensation for Cleaning Kitchen

The tenants testified that they spent six hours cleaning the kitchen at the start of the tenancy. However, based on the evidence before me I am uncertain what work was actually done. The Report indicates that the bulk of the kitchen was in “clear or okay” condition. The only deficiencies with the kitchen listed on the report relate to damage to various items (walls, floor, cabinet) and not cleanliness. As such I find that the tenants have not discharged their evidentiary burden to prove that the landlord breached the Act by failing to provide the rental property in a state of repair suitable for habitation.

I therefore decline to award any compensation to the tenants for time spent cleaning the kitchen.

4. Painting the Bathroom

As discussed above, the landlord had an obligation to paint the rental unit prior to the start of the tenancy. This obligation extended to the bathroom. The tenants claim \$110.77 for the reimbursement of “paint, primer, and forstener.” However, the tenants have not provided any receipt, invoice or other document confirming this amount. Additionally, they have not provided any breakdown of the cost of each of the components they are claiming.

The tenants did not provide evidence as to what a “forstener” is, but I understand it to be a type of drill bit. It is not clear to me why the purchase of a drill bit would be a necessary cost of repainting the bathroom. As I do not have an itemized receipt showing the cost of each item, I cannot deduct the cost of the “forstener” from the amount claimed.

As such, I find that the tenants have failed to quantify the costs they have reasonably incurred in repainting the bathroom. Accordingly, I decline to award them any amount for the purchase of “paint, primer, and forstener”.

5. Door Stoppers

The tenants did not refer to any particular section of the Act or tenancy agreement that the landlord breached by failing to furnish the rental unit with door stoppers. I find that

door stoppers are not a required to make a rental unit suitable for habitation, per section 32. As such, I find that the tenants are not entitled to compensation to the purchase of the door stoppers.

6. Reimbursement of Rent

The tenants seek a reimbursement of 50% of the rent for the four months they resided in the rental unit with unpainted walls and with the unclean baseboards, blinds, and chandelier. They testified that this caused them not to feel at home in the rental unit as they could not decorate or finish unpacking. As discussed above, the lack of painting of the walls constitute a breach of the Act.

Per Policy Guideline 14 (set out above), the tenants must show that they suffered quantifiable damage as a result of this breach, and that they acted reasonably to minimize the damage.

I accept that the tenants suffered damage in the form of loss of enjoyment of the rental property by the walls not being painted. However, the tenants have not provided any basis as to why such damage should be quantified as a reimbursement of 50% of the monthly rent. During the entire tenancy, the tenants obtained the substantial benefit of the tenancy (namely shelter). The landlord's breach of the Act was not so severe as to require them to move out, or not use parts of the rental unit.

As such, I find that the damages suffered by the tenants amounted to an inconvenience. I find that the tenants have failed to demonstrate that their loss was significant. As such, I find that nominal damages are appropriate. Policy Guideline 16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find that the tenants are entitled to \$400 (\$100 per month) as compensation for damages suffered as the result of the landlord's failure to paint the rental unit prior to the start of the tenancy.

Pursuant to section 72 of the Act, as the tenants have been substantially successful in their application, I order that the landlord reimburse them their filing fee.

In summary, I order the landlord to pay the tenants \$500, representing the following:

Nominal Damages	\$400
Filing Fee	\$100
Total	\$500

Conclusion

I order that the landlord to:

- 1) pay the tenants \$500;
- 2) clean the baseboards, blinds, and chandelier; and
- 3) do everything that is reasonably necessary to repaint the interior walls of the kitchen, living room, third bedroom, hallways, and laundry room, including patching holes, filling dents, priming, and painting.

I order that the tenants do everything that is reasonably necessary to allow the landlord to compete this patching, painting and cleaning.

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: October 24, 2019

Residential Tenancy Branch