



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

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

- an order that the landlord comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$6,371.71 pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord 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.

Issues to be Decided

Are the tenants entitled to:

- 1) a monetary order of \$6,371.71;
- 2) an order that the landlord comply with the Act; and
- 3) recover the filing fee?

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 November 1, 2018. Monthly rent is \$1,400 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$750. The landlord still retains this deposit.

Parties have appeared before arbitrators of the Residential Tenancy Branch on at least four separate occasions. In addition to this, they have another hearing scheduled in October 2021 relating to a One Month Notice to End Tenancy For Cause. The relationship between the parties is strained.

On February 18, 2021, an arbitrator issued a decision following a hearing that took place on January 21, 2021 between the parties. That application was made by the tenants for, among other things, an order that “the landlord complete the repairs to the roof and gable, and finish painting the house by April 30, 2021.”

Presiding arbitrator wrote:

I find it undisputed that the painting and roof and gable repairs remain outstanding, and given the weather this work cannot be completed until the spring. Accordingly, I allowed the tenants application reporter did the landlord complete this work by April 30, 2021.

In addition to making an order relating to the painting, the presiding arbitrator also made an order relating to window repairs:

I order that the landlord complete the repairs to the damage caused during the window replacement by March 15, 2021. If the landlord fails to do so by the state, I allowed the tenants application for a rent reduction in the amount of \$46.77 per day beginning on March 16, 2021 until the work has been completed.

In the present application, the tenants alleged that the landlord failed to complete the painting work as ordered, and they seek compensation in the amount of \$46.77 per day from April 30, 2021 until the date of the hearing ($\$6,360.72 = 136 \text{ days} \times \46.77).

In addition to this, the tenants seek in order that the landlord finish painting the rental unit as ordered.

Furthermore, they seek in order that the landlord compensate them the cost of several small vinyl decals (\$10.99) that were fixed 2 one of the repaired windows that the landlord removed. The tenants attribute this removal to malice. The landlord does not deny having removed the decals. He stated that in the process of painting the rental unit they became paint-stained, and he removed and discarded them. He does not object to compensating the tenants the \$10.99.

In support of their claim that the landlord has not painted the rental unit as ordered, the tenant submitted a photograph one exterior side of the rental unit which contains a short staircase leading to the rental unit's basement. The side of the rental unit is stucco. There is a dividing line roughly one third of the way up from the ground. Above this line, the rental unit is painted beige, below this line the stucco is (mostly) unpainted and grey. The basement door is entirely beneath the dividing line. The area below the dividing line

around the basement door is painted a grey-blue colour which is significantly distinct from the colour of the unfinished stucco. The painting is uneven, stretching partially onto the staircase walls, and also beyond the perimeter of the doorway in an uneven fashion.

The tenants argued that this paint job represents a breach of the order made on February 18, 2021, as it is plainly unfinished.

The landlord testified that the dividing line represents the top portion of the rental unit's foundations. He testified that it is not standard practice in the building community to paint this part of the exterior of the rental unit, as the earth along the bottom of the building rises and falls with the curvature of the land, making consistent painting of this part difficult. He testified that it is preferable to leave it unpainted so as to have a consistent aesthetic around the entire structure. He did not tender any documentary evidence supporting this assertion. However, the tenants did not dispute this.

The tenants argue that they should be compensated in a similar fashion to how they were to have been compensated if the landlord failed to repair the windows. They do not argue that the February 18, 2021 decision mandates that they be compensated in this fashion, rather they submit that it serves as a useful precedent to apply to the current situation. The February 18, 2021 decision was silent as to how the tenants should be compensated in the event the landlord fails to comply with the order to complete the painting.

The tenants also seek in order that the landlord comply with the February 18, 2021 decision and finish painting the rental unit, specifically the portion of the rental unit below the dividing line. The tenants also stated that they would be content if the landlord either removed the blue-gray paint and repainted the area had previously covered with a paint that matches the colour of the unpainted stucco.

The landlord argued that the February 18, 2021 decision did not require him to paint below the dividing line. The landlord testified that the dispute relating to the painting of the rental unit was do to the fact that at the start of the tenancy, the stucco area around the kitchen side door (different from the basement door mentioned above) have been painted beige, whereas the rest of the stucco above the dividing line on the rental unit was white. The landlord conceded that at the start of the tenancy he indicated to the tenants that the beige colour would be extended to the rest of the rental unit. He testified that this representation only related to the stucco above the dividing line. As such, he understood the tenants' January 2021 application that he finished painting the rental unit to relate to painting the rental unit in accordance to the representation made at the start of the tenancy.

The tenants did not assert that the landlord agreed to repaint the stucco below the dividing line at the start of the tenancy, or that the February 18, 2021 obligated him to paint the stucco below the dividing line. Rather, they argued that, once he decided to repaint the stucco below the dividing line, the landlord became obligated to finishing

painting all the stucco beneath the dividing line, or, at the very least, ensure that the painting that was undertaken blend seamlessly with the unpainted stucco.

The tenants demanded that the landlord hire a professional to paint the stucco beneath the dividing line in a consistent fashion, or that the landlord do the work himself, but only on a limited schedule (between 5pm and 7pm, on Mondays, Wednesdays, and Fridays) due to their concerns that he would damage their property maliciously, as they alleged he had done in the past.

The tenants did not submit any documentary evidence supporting their assertion that the landlord had maliciously damaged their property. They made references to the landlord moving their trailer, throwing out bird feeders, houses, and damaging their canoe. The landlord denied that he acted maliciously or improperly. He stated that he has had trouble with the tenants since the beginning of the tenancy, and that they think they can do whatever they want.

I will not provide further details of the parties' allegation about the conduct of the others as I do not find it relevant to this application. I will note that the parties offered scant corroborating evidence supporting their allegations.

The landlord argued that he painted below the dividing line not because he was obligated to pursue it too the February 18, 2021 decision, but rather because the prior owners of the rental unit had made some alterations to the foundation and then painted over that alteration using white paint. He testified that this area white paint predated the tenancy, and that there is no agreement between the tenants and the landlord at any point that he would repaint the white area.

The landlord did not testify as to why he decided to paint the white area, if it were not a requirement, but he did testify that his selection of paint colour to use to paint over it was incorrect and acknowledged that the paint used was visually unappealing, as it did not blend with the unpainted stucco.

The landlord testified that he would be willing to repaint the painted area with a different colour paint that matched the colour of the unpainted stucco. He did not believe that the paint could be power washed off.

Analysis

1. Monetary Claims

a. Decals

The landlord agreed to compensate the tenants the value of the discarded decals. The tenants testified that the replacement cost of these decals was \$10.99. With the consent of the landlord, I order that he pay the tenants this amount.

b. Compensation for Painting Around Door

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.

Section 32(2) 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.

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.

As this is the tenants' application, the tenants bear the onus to prove it is more likely than not that the landlord breached the Act, that this caused them a quantifiable loss, and that they acted reasonably to minimize their damage.

The February 18, 2021 decision does not specify what part of the rental unit the landlord must paint. Based on the submissions of the landlord, I conclude that the painting at issue in that application relating to painting the stucco above the dividing line to match the paint around the kitchen side door. As such, I do not find that the February 18, 2021 decision obligated the landlord to paint the stucco below the dividing line.

Prior to being painted by the landlord, the basement door had a large white patch running along the top third of its height immediately to its right and a smaller white patch to its left. These patches are the result of a repair to the foundation that predated the tenancy. They are quite unsightly. However, I do not find that the presence of these patches caused the rental unit to be unsuitable for occupation by the tenants.

I find that the painting done to the area around the basement door to also be unsightly. The painting extends above the door and onto the stairwell walls, which causes the unsightliness to be slightly more pronounced. However, in light of the state of this area at the start of the tenancy, I do not find that the painting caused the rental unit to be in a stated of decoration unsuitable for occupation (as required for there to be a breach of section 32(1) of the Act). As such, I do not find that the landlord breached section 32 of the Act by painting around the doorway.

Neither party made submissions about section 28(c) of the Act during the hearing, which states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

[...]

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

Despite neither side making submissions on this point, I find that this section is more applicable than section 32(1) of Act.

I understand that exclusive possession encompasses the right to have exclusive control over the aesthetics of the rental unit. I find that, just as a landlord could not enter a rental unit and paint its walls without the consent of a tenant, a landlord cannot paint the exterior of a rental unit without the tenant's consent. The tenants did not consent to the landlord painting around their doorway. As such, I find the landlord breached section 28 (c) of the Act.

I do not find that the landlord was ill-intentioned when he undertook this painting. Rather, I find that he identified an area of the rental unit that was unsightly, and he (unsuccessfully) attempted to make it look better.

In light of the previous unsightly condition of the area around the door, I do not find that the tenants suffered any monetary damage as a result of the landlord's breach. The tenants' suggestion that they should be entitled to \$44.67 per day since the painting was done is, frankly, absurd. This would amount to a near-total indemnification of rent for a breach of the Act which is both minor and cosmetic.

The tenants argued that the February 18, 2021 decision set a precedent as to the amount they should be entitled to for a breach of the Act. I disagree. I note that, in that decision, the presiding arbitrator does not calculate the tenants' damages as \$44.67 per day but instead adopted that figure as an incentive for the landlord to comply with one of the orders made by a certain date. Essentially, the presiding arbitrator said, "make the repairs by a certain date or the tenants get to live in the rental unit for free." Such an order is not a determination as to the actual loss suffered by the tenants but is rather a tool that arbitrators use to ensure that their orders are complied with.

Furthermore, even if this amount was an assessment of the tenants' loss due to the ordered repairs not being made, I would find it has little application to the present case. The February 18, 2021 decision addressed repairs to windows which were needed so as to prevent a "significant draft" in the rental unit during the winter. This type of repair goes to the very heart of a tenancy as it relates to the fitness of the rental unit as shelter from the elements. As stated above, the breach in this case is both minor and cosmetic. It does not go to the heart of the tenancy. The rental unit still functions as intended.

In this circumstance, I find that nominal damages of \$39.01 are appropriate. Policy Guideline 16 discusses such damages:

"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.

2. Order for the landlord to comply with the Act

As stated above, I find that the landlord breached the Act by painting around the basement door. He must put the tenants back in the position they were prior to this breach. At the hearing, he consented to repaint the area around the door and the stairwell, so it matches the stucco below the dividing line. I find that this would

The landlord must give them at least 24-hours' written notice before he starts the work. The tenants must make all reasonable accommodations to allow the landlord to complete this work.

I decline to make any order requiring the landlord to engage a contractor to undertake this work or requiring the landlord to undertake the work according to a specific schedule, as requested by the tenants. They have not provided any evidence

corroborating their testimony as to the landlord's past conduct which would warrant the making of such an order.

Neither party made submissions as to when this work could or should be completed by. In the circumstances, I find that December 31, 2021 is reasonable deadline before this work must be completed. If the landlord does not complete this work by that date, the tenants may deduct \$50 from their January 2022 rent. If the work is not complete they may deduct an additional \$50 (\$100 total) from their February 2022 rent, and so on for each month the work is not done, to a maximum of a \$600 monthly deduction (if the work is not done by December 31, 2022).

3. Filing Fee

As at the hearing the landlord agreed to repaint the area around the door, and as he consented to compensate the tenants the cost of the decals, and as I have dismissed the bulk of the tenants' monetary claim, I find that the landlord has been largely successful in defending against the tenant's application. As such, I decline to order that he reimburse the tenants the filing fee.

Conclusion

Pursuant to sections 67 of the Act, I order that the landlord pay the tenants \$50, representing the following:

Description	Amount
Nominal damages	\$39.01
Decal replacement	\$10.99
Total	\$50.00

I order that the landlord repaint the area around the basement door by December 31, 2021, as specified above.

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 4, 2021

Residential Tenancy Branch