

Decision of the Commissioner for Consumer Protection

Section 11J(2) *Residential Tenancies Act 1987*

Application Number:	[redacted]
Application Type:	Tenant challenging landlord condition on minor modification request.
Premises:	[redacted]
Bond held:	\$2,480
Tenants:	[redacted] and [redacted]
Landlords:	[redacted] and [redacted]

Decision

The Commissioner orders:

1. The tenant is permitted to make the requested minor modification to the premises.
2. The condition imposed by the landlord is unreasonable and does not apply.

Request

On 29 July 2024, the tenant requested to install a total of eight (8) picture hooks in four (4) rooms in the premises (the requested minor modification), at the premises, following the process established in the *Residential Tenancies Act 1987* (RTA).

On 14 August 2024, the landlord approved the tenant's request, subject to a condition.

The landlord's condition is:

- Repaint the entire wall when the hook is removed.

Application

On 18 August 2024, the tenant applied to Consumer Protection to challenge the landlord's condition.

The tenant's challenge was on the basis that a picture hook can be removed, and a repair job done without the necessity of painting the entire wall.

Evidence

The landlords and tenants were invited to provide evidence to support their views about the application.

The landlords provided the following evidence:

- Written submissions to Consumer Protection.
- Copies of emails between themselves and the property manager.

The tenants provided the following evidence:

- Written submissions to Consumer Protection.

- Form 26 – Minor modification Request Form.
- Copy of email from property manager to tenant.

Law

Under the RTA, tenants have the right to make a minor modification at their rental premises with the landlord's approval.¹

Unless otherwise agreed in writing, the tenant is responsible for the cost of:

- making the modification; and
- removing the modification; and
- restoring the premises to the original condition.²

When a tenant vacates the premises, they are required to either:

- remove the picture hooks and restore the premises to their original condition; or
- compensate the lessor for the reasonable cost incurred by the lessor to remove the picture hooks or restore the premises.³

Tenants have the right to apply to Consumer Protection to challenge the conditions set by the landlord.⁴

The tenant is responsible for demonstrating that the conditions are unreasonable.

When an application is received, the Commissioner is required to either:

- approve the tenant's application and order that the landlord's condition is unreasonable; or
- refuse the tenant's application and order that the landlord's condition is reasonable; or
- order that the landlord's condition be changed and state the new condition.⁵

Reasons for Decision

As a delegate of the Commissioner, I have reviewed all evidence. Only the evidence relevant to deciding this application is mentioned in these reasons for decision.

Painting the entire wall after removing hooks

The tenants submit that repainting an entire wall is unreasonable, because:

- the picture hooks are small (2-3mm in diameter); and
- Repainting an entire wall is excessive.

The landlord submits that repainting an entire wall is reasonable because:

- It will ensure there is consistent paint colour throughout all walls in the premises; and
- Repainting the walls ensures there are no visible holes from where the picture hooks were inserted.

At the end of the tenancy, the tenant has an obligation to ensure that the premises are left in as close as possible to the same condition compared to when they moved in, less any fair wear and tear.⁶ This obligation does not necessarily require the tenant to repaint the entire wall; it requires the tenants to return the walls to their original state. This may require spot patching and retouching, or a full wall repaint – this cannot be determined until the end of the tenancy.

I am satisfied that the proposed condition is unreasonable, as it presupposes what the tenant will need to do to comply with their obligations under section 50ZD of the Act.

¹ Section 50N *Residential Tenancies Act 1987* (WA).

² Section 50ZB *Residential Tenancies Act 1987* (WA).

³ Section 50ZD *Residential Tenancies Act 1987* (WA).

⁴ Section 50V(1) *Residential Tenancies Act 1987* (WA).

⁵ Section 50V(2) *Residential Tenancies Act 1987* (WA).

⁶ Clause 45.2, Form 1AA Residential Tenancy Agreement.

Appeal

A tenant or landlord who is dissatisfied with this decision can appeal to the Magistrates Court of Western Australia. Appeals must be lodged within seven days after receiving this decision, or a later date if leave is granted by the Court.

The appeal can be started by lodging both a [Form 1B – Appeal Against Registrar’s Decision](#) and a copy of this notice with the Magistrates Court online at ecourts.justice.wa.gov.au/eCourtsPortal.

For information about appealing the decision see <http://www.commerce.wa.gov.au/consumer-protection/commissioner-determinations>.

Signed

[redacted]

Delegate of the Commissioner for Consumer Protection

DATE OF ORDER AND WRITTEN REASONS

[redacted] October 2024