

The Laws about Painting Your NYC Apartment

Best practices for tenants to get the paint job they want or to prevent the paint job they don't want.

First Edition



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TABLE OF CONTENTS

I. INTRODUCTION AND HOW TO USE THIS BOOK..... 4

 A. Welcome to the Tenant Learning Platform..... 4

 B. The Problem and the Solution 4

 C. What the Tenant Learning Platform Is Not 6

 D. Meet Your Instructor..... 6

 E. Introduction to This Booklet..... 7

II. WHAT NYC TENANTS ARE LEGALLY ENTITLED TO REGARDING PAINT JOBS IN THEIR APARTMENTS..... 8

 A. In NYC, your rights as a residential tenant and your responsibilities as a residential tenant are often affected by the type of apartment you live in.
 8

 B. The Housing Maintenance Code Requirement to Paint NYC Apartments 9

 C. Different Painting Requirements for Different Types of Apartments... 9

 1. Painting Requirements in a One- or Two- Family Dwelling 9

 2. Painting Requirements in a Multiple Dwelling 10

 3. Extra Protections With Respect to Painting Rent Stabilized Apartments..... 11

 4. Painting Requirements for Co-op Shareholders 12

 5. Painting Requirements When Tenant is Renting an Apartment from a Co-op Shareholder or Renting from a Condo Owner 12

III. THE STANDARD OF THE PAINT JOB..... 13

IV. THE WARRANTY OF HABITABILITY AND HOW IT RELATES TO PAINT JOBS 14

A.	What Is the Warranty of Habitability and How Does it Apply to Painting Apartments	14
1.	Real Property Law § 235-b.....	14
2.	Park West Management Case	15
B.	What Rent Abatement is a Tenant Entitled to If Landlord Does Not Paint As Required?.....	16
C.	TLP Does Not Recommend that You Withhold Rent Without the Assistance of Legal Aid or Other Counsel	18
V.	WHAT TO DO IF YOU DON'T GET YOUR PAINT JOB	20
A.	First Steps for Tenant if Landlord is Refusing to Paint as Required by Law 20	
1.	Pictures, Complaints, and Letters	20
2.	Complaints to HPD.....	20
3.	The Painting Matrix	22
B.	Do An "HP Proceeding"	24
C.	Rent Stabilized Tenants Can File a DHCR "Application for a Rent Reduction Based Upon Decreased Services in an Individual Apartment" .	25
D.	Which Method Should a Rent Stabilized Tenant Choose – an HP Proceeding or a DHCR Decreased Services Proceeding?.....	28
E.	Tips to Keep In Mind When Filing an HP Proceeding or a DHCR Decreased Services Complaint.....	28
F.	Granting Access for the Paint Job After it is Ordered by a Court or DHCR	30
VI.	TENANT IS RESPONSIBLE FOR MOVING HER OWN FURNITURE BEFORE AND AFTER A PAINT JOB.....	31
VII.	WHAT IF YOU DO NOT WANT THE LANDLORD TO PAINT?.....	31
A.	Informal Resolution	31
B.	The Painting Law and an Agreement for No Paint Job	32
VIII.	YOU CANNOT PAINT YOUR OWN APARTMENT AND CHARGE LANDLORD WITHOUT PERMISSION AND AN AGREEMENT ABOUT THE COLOR	
	33	
A.	The no-alterations clause of most leases usually prohibits you from painting the apartment yourself.....	33
B.	What if you want a color other than off-white?	33
C.	How Changing the Color on Your Own Might Affect Return of Your Security Deposit.....	34
D.	Your landlord may, however, agree to let you paint the apartment yourself; Sample Agreement.....	36

I. INTRODUCTION AND HOW TO USE THIS BOOK

A. Welcome to the Tenant Learning Platform.

- The Tenant Learning Platform delivers on-demand, online classes for all kinds of residential tenants in NYC on specific and important legal topics, to help them prevent and solve problems concerning their apartments.
- The Tenant Learning Platform is for:
 - Rent Stabilized tenants
 - Free-market tenants
 - Luxury apartment tenants
 - Co-op shareholders
 - Subtenants
 - Roommates
 - Co-livers
 - If you're just sleeping on your cousin Xander's couch in Bushwick, TLP is for you.
- At TLP you will get ACCURATE and ACTIONABLE information on your legal rights as a tenant. We are developing classes like:
 - How to Do Airbnb Legally in Your NYC Apartment
 - The Laws About Painting Your NYC Apartment
 - How to Protect Your NYC Apartment from a Non-Primary Residence Claim
 - How to Get an Emotional Support Animal in a No-Pets Building
 - Best Practices for Breaking Your NYC Lease Early
 - Generation Z, Welcome to Your First NYC Apartment!

B. The Problem and the Solution

The Problem:

- You have a landlord and tenant problem. For example, maybe you are having a tough time getting your landlord to paint your apartment.
- You have looked around for information. You have read a few articles and websites. But the information you are finding isn't very comprehensive and doesn't answer your questions.

- NYC landlord and tenant law is complicated. It just is.
- Your landlord probably has better information than you do because she does housing all day.
- YOU ARE BUSY! You have a job, a business, a project, a family, friends, you are involved in your community...You have a life. You don't have unlimited time to figure this out yourself.
- You make too much money to qualify for a Legal Aid attorney.
- But you can't afford a tenant lawyer you are comfortable with.
- And the last thing you want is a big legal battle.
- You just wish you knew what your rights and responsibilities are.
- You just wish you knew where to start and what, *exactly*, to do.

Here's how you take this class:

- Read this booklet. This booklet is a comprehensive guide on the topic. It will explain, in clear language, WHAT the law is and WHERE to find it. The booklet contains plenty of helpful examples and best practices.
- Watch the video lessons, which are voiced-over slides.
- Take the online quiz. Taking the multiple-choice quiz will be (we hope) fun and it will help make sure that you have learned what we think is most important.
- Complete the online survey that comes at the end. We want your feedback.
- This class will be about three to six hours of work, depending on how fast you read, etc. **Taking this class is NOT a quick fix.** The TLP is teaching you the law and best practices. Those things are not short stories.

C. What the Tenant Learning Platform Is Not

The Tenant Learning Platform is **NOT**:

- A legal referral service. You will never be referred to a lawyer by TLP.
- A marketplace for online legal forms.
- A tenant advocacy group. Buying the class does not mean you are joining or supporting anything. You are just taking a class.

D. Meet Your Instructor

So, whose voice are you hearing when you read this booklet, watch the voiced-over slides, etc.? I am Michelle Itkowitz and I have been a landlord and tenant litigator in NYC for over twenty years. I represent tenants AND landlords in residential and commercial landlord and tenant disputes.

I have always marketed my law practice via *Content Marketing* – I never advertise. I write articles about landlord and tenant law in the City of New York and get them out there any way I can – booklets, blogs, email blasts. In 2018, I was invited to speak to groups on landlord and tenant law 21 times; 14 of those lectures were for-credit Continuing Legal Education classes where I taught other lawyers about landlord and tenant law in New York City.

Because I have so much content out there, hundreds of residential tenants started finding me and I realized how desperately tenants need practical information about their legal rights. I, however, have a very small firm and I am very expensive at this juncture in my career journey. I cannot be everyone's *lawyer*.

But maybe I can be many people's *teacher*. Maybe I can teach tenants, just as I teach lawyers and real estate professionals.

Students and potential students of the Tenant Learning Platform - please do *NOT* contact me. I am not saying that to be mean. I need to prove (or disprove) the hypothesis that I can teach people to solve the specific problems I present classes on WITHOUT any direct communication between the students and me.

Nevertheless, I am ethically obligated to remind you that, just because you read this booklet or took this course, doesn't mean that we have a lawyer and client relationship. I am not your lawyer. The whole point is that I do not wish to be your lawyer. This is not legal advice about your particular situation. We at TLP make no representation or guaranty about the outcome of your particular matter.

The law in this area is evolving. Therefore, this course will be periodically updated.

Whew...now that all that's out of the way...

The law belongs to you! But your ownership of the law is only as great as your understanding of it.

OK, now let's *learn...to live* better!

E. Introduction to This Booklet

This booklet and the class it comes with covers what NYC tenants are legally entitled to regarding paint jobs in their apartments. We break it down by the different painting requirements for: one- and two-family dwellings; Multiple Dwellings; Rent Stabilized Apartments; and co-ops and condos. We are also going to cover the standard that a paint job is held to. We are going to talk about the Warranty of Habitability and how it relates to painting apartments.

The majority of this course is about what to do if you do not get the paint job to which you are entitled. We are going to talk about the first steps you should take and the creation of your "painting matrix". If first steps do not work, we are going to examine, in depth, what an HP Proceeding is and what a DHCR "Application for a Rent Reduction Based Upon Decreased Services" is. We are going to explain how to bring those proceedings and examine the pros and cons of each. We are going to explain why it is *not* a good idea to withhold rent and get sued by your landlord over a paint job.

Then there is also a portion of this course that deals with how to *prevent* your landlord from coming in to paint, at least temporarily. We are going to explain why you can't do your own paint job without your landlord's permission.

Finally, we are going to talk about getting a custom color paint job and how all of this relates to the return of your security deposit when you move.

II. **WHAT NYC TENANTS ARE LEGALLY ENTITLED TO REGARDING PAINT JOBS IN THEIR APARTMENTS**

A. **In NYC, your rights as a residential tenant and your responsibilities as a residential tenant are often affected by the type of apartment you live in.**

In, NYC, your rights as a residential tenant and your responsibilities as a residential tenant are often affected by the type of apartment you live in.

For our purposes here at the TLP, your apartment might be classified as one or more of the following types:

1. An apartment located in a two-family building or a whole-house rental
2. An apartment located in a building with three or more units, i.e. a Multiple Dwelling
3. An apartment subject to Rent Stabilization
4. A co-op apartment¹

Your apartment might be simultaneously classified as more than one of the above types. For example, your apartment might be both located in a Multiple Dwelling and it may be Rent Stabilized. Although, not every apartment in a Multiple Dwelling is Rent Stabilized and not every Rent Stabilized apartment is located in a large building.

The laws regarding a landlord's requirement to paint a NYC apartment and tenant's rights regarding that apartment painting depend on what type of apartment tenant resides in. In this class, we cover all the different laws and standards for painting the above four different types of apartments.² Therefore, a bit of the material in the class might not apply to your type of apartment. We *strongly* encourage you, however, to read the whole book, watch all of the lessons, and take the full quiz. If you understand the different rules for the different types of housing, that can help you to make a decision about whether to remain in your current unit, and if you are moving, it might help you decide what type of apartment you would like to move into.

¹ There are other types of residential units that are less frequently encountered, such as SRO units (single room occupancy), condo apartment, rent control apartments.

² We do it the same way in TLP's *How to Do Airbnb Legally in Your NYC Apartment* class. There are different rules for short-term subletting in different types of apartments. We cover them all in one class. This is intended to help you make a decision about where you want to live.

B. The Housing Maintenance Code Requirement to Paint NYC Apartments

A landlord's requirement to paint a New York City apartment is governed by the New York City Housing Maintenance Code ("HMC") § 27-2013 (Painting of public parts and within dwellings). I am going to refer to that law throughout this book as "the Painting Law".³

C. Different Painting Requirements for Different Types of Apartments

1. Painting Requirements in a One- or Two- Family Dwelling

In New York City, there are many rules that apply to "Multiple Dwellings" (buildings with three or more apartment units),⁴ which do not apply to one-family homes or apartments in two-family homes. The Painting Statute, for example, is geared more towards tenants in Multiple Dwellings. If you are renting a one-family home or an apartment in a two-family home then the Painting Law does not offer you a lot of protection.

The Painting Law states that, in a tenant-occupied dwelling unit **in a one- or two-family dwelling**, the owner shall:

- (2) Repaint or re-cover the walls and ceilings with wallpaper or other acceptable wall covering whenever necessary ... to keep such surfaces sanitary...⁵

The bad news is that tenants in one-family homes or in apartments in two-family homes have fewer rights to a paint job than do tenants in Multiple Dwellings. The good news is that tenants in one-family homes or in apartments in two-family homes have a greater ability to prevent a landlord from coming in to paint, if that is their desire.

³ The HMC is a set of New York City regulations that applies to all dwellings. N.Y. ADC. LAW § 27-2003.

⁴ Multiple Dwelling Law § 4(7).

⁵ HMC § 27-2013(a).

A tenant-occupied dwelling unit in a one- or two-family dwelling is also subject to the Warranty of Habitability.⁶ The Warranty of Habitability is a part of every lease and imposes on landlords a duty to maintain an apartment in a habitable condition. We have a detailed section on the Warranty of Habitability below.

As a practical matter, however, market forces will typically put more pressure on a landlord of a one- or two-family home than the Painting Law or the Warranty of Habitability will.

Example: Kayla and Shelby have lived in the first-floor apartment in a two-family home in Cobble Hill, Brooklyn, for two years. Their landlord, Nick, asks them if they want to renew the lease. Kayla and Shelby ask Nick if he will agree to paint the apartment for them. Nick doesn't really want to paint an occupied apartment, he hates moving his tenants' possessions around. Nick suggests that he will give Kayla and Shelby a half-month rent break if they paint the apartment themselves. Kayla and Shelby agree. They write up their agreement in a one-page rider to their lease renewal, using the TLP form Rider to Lease Regarding Painting (see "Sample Agreement" section within).

2. Painting Requirements in a Multiple Dwelling

Tenants in Multiple Dwellings (3 or more units),⁷ must get paint jobs every three years. According to the Painting Law, in occupied dwelling units **in a multiple dwelling**, the **owner** shall:

- (1) Paint or cover the walls and ceilings with wallpaper or other acceptable wall covering; and
- (2) Repaint or re-cover the walls and ceilings with wallpaper or other acceptable wall covering **every three years**, and more often when required by contract or other provisions of law.⁸

⁶ RPL § 235(b).

⁷ Multiple Dwelling Law § 4(7).

⁸ HMC § 27-2013(b).

Landlord can be required to paint an apartment in a Multiple Dwelling sooner than three years from the last paint job if the walls and ceilings become unsanitary through no fault of tenant.⁹

The good news is that tenants in Multiple Dwellings have a clearly defined and enforceable entitlement to painting every three years.

The bad news is that tenants in Multiple Dwellings cannot prevent landlord from coming in and painting, even if they prefer not to have their apartments painted. Tenants may ask for and landlord may agree to delaying the three-year paint job for an additional two years, so that there can be five years in between paint jobs.¹⁰ There is a detailed section below on what to do if you do not want landlord to paint.

As a practical matter, however, we seldom see landlords fighting with tenants about getting in to their apartments to foist upon them unwanted paint jobs. The tension in this part of the Painting Law usually arises because landlords are not painting as often as they should. We will explore a tenant's remedies for that below.

3. Extra Protections With Respect to Painting Rent Stabilized Apartments

Rent Stabilized apartments are almost always located in Multiple Dwellings. Therefore, the "Painting Requirements in a Multiple Dwelling" (see above) apply.

Tenants in Rent Stabilized units may never be required to pay a painting deposit or to contribute to the cost of the painting except to the extent landlord agrees to provide services in connection with the painting which are not required, and tenant consents in writing to pay therefor.¹¹

Please note, as was made very clear in the advertisements for this class material, these materials do NOT cover the laws regarding painting with respect to Rent Control apartments.¹²

⁹ HMC § 27-2013(c).

¹⁰ HMC § 27-2013(d).

¹¹ Rent Stabilization Code § 2520.6(r)(5).

¹² Rent Stabilization and Rent Control are completely different things. This book is inapplicable to Rent Controlled apartments.

4. Painting Requirements for Co-op Shareholders

Co-op shareholders are a type of tenant. When you purchase “a co-op”, you are buying stock in a cooperatively owned housing corporation, and you are issued a “proprietary lease” for your specific apartment. There is an entire section of the New York City Civil Court Housing Parts dedicated to co-op cases. In other words, co-ops are not that different from regular apartments when it comes to landlord and tenant legal issues.

Co-op shareholders, however, are generally NOT entitled to have their landlords paint their apartments. The co-op shareholder would typically be responsible for all repairs and maintenance required in the interior of the apartment, including interior walls, while the lessor (the corporation that owns the building as represented by the co-op board and the managing agent) would be responsible for maintenance and repair of the balance of the building and land (if any).¹³

5. Painting Requirements When Tenant is Renting an Apartment from a Co-op Shareholder or Renting from a Condo Owner

But what if you are a tenant who sublets an apartment within a co-op or a condominium in New York City and you are renting from a co-op shareholder or a condominium unit owner?

The answer is that then we go right back to the rules above for a Multiple Dwelling (3 or more units), assuming that the building is a Multiple Dwelling and most co-ops and condos are, in order to determine your rights to a paint job. Thus, a sub-tenant of a co-op shareholder or a condo unit owner has a right to have her “landlord” paint her apartment every three years.

Please be *clear* that **the co-op shareholder or condo unit owner is the “landlord”** in these sublet cases and it is shareholder (not the managing agent or the board) that is responsible for the paint job.¹⁴

¹³ Proprietary lease, N.Y. Condo. & Coop. Law § 3:13; see also *Franklin Apartment Associates, Inc. v. Westbrook Tenants Corp.*, 43 A.D.3d 860 (1st Dep’t 2007).

¹⁴ *Gazdo Properties Corp. v. Lava*, 149 Misc2d 828 (NYC Civ. Ct. Kings Cty. 1991); *Kandell v. Saunders*, 224 AD2d 185 (1st Dep’t 1996).

III. THE STANDARD OF THE PAINT JOB

Unfortunately, there is not much legal authority on the required quality of a landlord's paint job.

As we saw above, the Painting Law states that the standard of the paint job for a tenant in a one- or two-family dwelling is "sanitary".¹⁵

If a paint job is required in a Multiple Dwelling, the standard imposed by the Housing Maintenance Code is that, "[t]he owner of a multiple dwelling shall keep the premises in good repair."¹⁶ Furthermore, the Multiple Dwelling Law says that:

The interior surfaces of walls throughout every part of every multiple dwelling, whether in public or in tenant-occupied parts, shall be painted ... and the ceilings kalsomined [white-washed] or painted by the owner. The walls and ceilings shall be re-kalsomined ... or repainted by the owner whenever necessary to keep the said surfaces in a sanitary condition.

The following is an example of the required standard for a paint job in a Rent Stabilized apartment:

EXAMPLE: In the Division of Housing and Community Renewal ("DHCR") decision of *Sid Jon Properties Assoc. LLC*,¹⁷ a tenant complained of a reduction in services, claiming that his landlord painted the foyer and living room in his apartment in an unworkmanlike manner. The DHCR District Rent Administrator ruled for the tenant and reduced his rent. Landlord appealed, claiming that this was a minor condition that didn't warrant a rent reduction. On appeal, the DHCR again ruled against landlord. The painting was done improperly because white paint could still be seen through the beige paint that was applied over it. **Improperly performed painting isn't a minor condition in a Rent Stabilized apartment.** It is a decrease in required services, and tenant's rent was properly reduced.

¹⁵ HMC § 27-2013(a).

¹⁶ HMC § 27-2005.

¹⁷ DHCR Adm. Rev. Dckt. No. RD610065RO (12/5/03) LVT No. 171000.

Thus, the quality of paint job to which a tenant in a one- or two-family dwelling is entitled is "sanitary". The quality of paint job to which a tenant in a Multiple Dwelling is entitled is "sanitary" and "good". If you are Rent Stabilized, the standard is further refined and you are entitled to a "workman-like" paint job.

IV. THE WARRANTY OF HABITABILITY AND HOW IT RELATES TO PAINT JOBS

What happens if a landlord does not paint as required? To answer that question, we have to start by educating a tenant about the "Warranty of Habitability", which comes with every lease, whether oral or written. Every tenant in New York City should understand exactly what the Warranty of Habitability is.

A. What Is the Warranty of Habitability and How Does it Apply to Painting Apartments

1. Real Property Law § 235-b

Every residential lease implicitly carries with it a "Warranty of Habitability" as articulated in New York Real Property Law §235-b which states:

1. In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety. When any such condition has been caused by the misconduct of the tenant or lessee or persons under his direction or control, it shall not constitute a breach of such covenants and warranties.

2. Any agreement by a lessee or tenant of a dwelling waiving or modifying his rights as set forth in this section shall be void as contrary to public policy.

2. Park West Management Case

The leading case in this area is *Park West Management Corp. v. Mitchell*, 47 NY2d 316 (1979), which explains the evolution of the Warranty of Habitability in residential tenancies. We learn the following lessons from *Park West*:

- ❖ Landlord has a duty to maintain an apartment in a habitable condition.
- ❖ The obligation of tenant to pay rent *is dependent upon* landlord's satisfactory maintenance of the apartment in habitable condition.
- ❖ A residential lease is effectively deemed a sale of shelter and services by landlord who impliedly warrants:
 - first, that the apartment is fit for human habitation;
 - second, that the condition of the apartment is in accord with the uses reasonably intended by the parties; and,
 - third, that the tenants are not subjected to any conditions endangering or detrimental to their life, health or safety.
- ❖ Landlord is not a guarantor of every amenity customarily rendered in the landlord-tenant relationship. The Warranty of Habitability was not legislatively engrafted into residential leases for the purpose of rendering landlords absolute insurers of services which do not affect habitability.
- ❖ As the statute places an unqualified obligation on landlord to keep the apartment habitable, conditions occasioned by ordinary deterioration, work stoppages by employees, acts of third parties or natural disaster are within the scope of the Warranty as well.
- ❖ The Warranty of Habitability is nondelegable and nonwaivable. In other words, even if your lease says that there is no Warranty of Habitability – there still is! Any section of a lease that suggests that the landlord does not have to maintain an apartment in habitable condition is void.
- ❖ Violation of a housing, building or sanitation code constitutes preliminary evidence that the apartment is not in habitable condition, but does not necessarily constitute automatic breach of the Warranty. In some instances, it may be that the code violation

is *de minimis* [very small and not important] or has no impact upon habitability. Thus, once a code violation has been shown, the parties must come forward with evidence concerning the extensiveness of the breach, the manner in which it impacted upon the health, safety or welfare of tenant and the measures taken by landlord to alleviate the violation.

- ❖ The proper measure of damages for breach of the Warranty is the difference between the fair market value of the apartment if they had been as warranted, as measured by the rent reserved under the lease, and the value of the apartment during the period of the breach.
- ❖ The award may take the form of a sum of money awarded the tenant in a lawsuit or a percentage reduction of the contracted-for rent as a setoff in summary nonpayment proceeding in which the tenant counterclaims or pleads as a defense breach by the landlord of his duty to maintain the apartment in habitable condition.

B. What Rent Abatement is a Tenant Entitled to If Landlord Does Not Paint As Required?

Unfortunately, there is no precise formula that indicates, before a judge makes a decision, how much of a rent abatement a tenant is entitled to if a landlord violates the Warranty of Habitability by failing to paint part or all of an apartment.

The following are three **EXAMPLES** of real cases in which residential tenants were awarded rent abatements due to a violation of the Warranty of Habitability, part of which involved the failure to paint.

- ❖ ***200-230 W 99 Realty LLC v. Wilson*, 46 Misc.3d 1220(A), (N.Y.C. Civ. Ct. NY Cty.; 2/23/15).**

Condition: Landlord sued to evict a Rent Stabilized tenant for nonpayment of rent. Tenant asserted the defense of a breach of the Warranty of Habitability and sought a rent abatement. Conditions included: **needed painting and plastering**, unsafe wiring due to exposed electrical wires at the roof bulkhead, missing coping of all parapet walls on the roof, an uncapped inactive gas outlet in the kitchen ceiling, defective smoke/carbon monoxide detector, and a

defect in the fire escape. **At trial, tenant credibly testified that there were leaks in the apartment ceiling and stains from water intrusion since 2012 and that landlord was on notice since Spring 2013. Ceiling repairs were made in Spring 2013 but stains and leaks recurred. The damage spread from one room to several rooms.** The roof was replaced in September 2014, apartment repairs were completed in November 2014, and all violations from the court-ordered inspection were cleared. Notably, HPD records showed complaints from other building tenants about roof leaks.

Abatement: 15% rent abatement from April 2013 through December 2013, and 20% from January 2014 through November 2014. The total abatement was \$6,573, applied to outstanding rent of \$13,284.

Notice in the *Wilson* case that, in addition to painting, the apartment in question had a bunch of other problems. When painting is an issue, it is often not an isolated issue.

❖ ***Kiss v. Castellanos*, 43 Misc. 3d 1227(A) (NYC Civ. Ct. NY Cty.; 2014).**

Condition: On July 21, 2011, there were reported violations at the apartment for the toilet that was not securely fastened, a defective intercom, for defective windows, defective wood floors, failure of the toilet to flush properly, **painting and plastering**, and a defective sink in the bathroom. On September 12, 2011 violations were again issued for the sink in the bathroom, the windows, **painting and plastering**, and missing CO2 detector and smoke detector. Additionally, tenant offered evidence that a 15 square foot portion of her ceiling collapsed and was repaired by HPD as an emergency condition in late fall/early winter of 2011. Finally, a new violation for 36 square feet of mold was issued for the bathroom wall of the apartment on April 28, 2014.

Rent Abatement: 80% for 3 years

Notice in the *Castellanos* and *Wilson* cases that, when painting is an issue, it often comes along with issues having to do with persistent leaks and mold.

❖ ***Ernest & Maryanna Jeremias Family Partnership, LP v Matas, 39 Misc. 3d 1206(A) (NYC Civ. Ct. Kings Cty.; 2013).***

Condition: Tenant testified credibly that the following conditions existed at the apartment and produced photographs in support: defective stove; broken bathroom doorknob; rusted kitchen cabinets; **peeling paint** and hole in bathroom doorframe; **peeling paint and missing plaster in kitchen window**; knob missing in the hallway closet; side of bathroom sink shows gap in cabinet and wall where mice and rodents enter the apartment with mice feces visible under the cabinet; bathtub stain from continuing hot water leak from faucet; base kitchen cabinets all rusted, and the doors do not close; bathroom sink clogged and leaking; holes in the corner of the hallway between the bathroom and bedroom doors holes where roaches came through; **chipping paint on the radiator cover** with the radiator cover detached; hole in bedroom floor next to radiator; overflowing garbage in the common area.

Rent Abatement: 17% for 26 months

Thus, we see that the failure to paint can constitute a breach of the Warranty of Habitability and may entitle a tenant to a partial rent abatement. In the next section, however, we discuss what how a tenant can attempt to be awarded a rent abatement by the Housing Court and why TLP does not recommend that a tenant seek a rent abatement as a remedy for the lack of a paint job.

C. TLP Does Not Recommend that You Withhold Rent Without the Assistance of Legal Aid or Other Counsel

When complaints to the landlord and to the City do not get the paint job done, the following tactic is sometimes employed by or on behalf of a tenant, **and TLP does not recommend this tactic.** That tactic is that tenant withholds rent in order to prompt landlord to perform the paint job or

other repairs. This causes landlord to sue tenant for nonpayment of rent in Housing Court, where tenant raises the repair issues as a counterclaim and a defense. In this way, the painting and other repair issues are dealt with in the context of the nonpayment proceeding.

TLP does not recommend this method for the following three reasons.

First, if you are sued by your landlord, even if you win, your name may be findable in the Housing Court's public records. If this is the case, it may hurt your ability to rent apartments in the future. This tactic puts a tenant of defense, rather than on offense, which is not logical because the tenant started out as the injured party when he or she did not get the paint job.

***Second*, a Nonpayment Proceeding in Housing Court is not a place that a tenant should be without a lawyer, if she or he can help it. If you do get sued by your landlord, immediately check into whether you qualify for free legal services. The Tenant Learning Platform is NOT a substitute for a Legal Aid attorney, if you are lucky enough to be able to get one. The Legal Aid attorneys working in the area of Housing in New York City are some of the best attorneys anyone can ever be represented by. If you qualify for their help, do not decline it.**

Third, this tactic of withholding rent and prompting your landlord to sue you is simply an inefficient pathway to getting the paint job or other repairs. Housing Court, *even if you win*, is expensive, time-consuming, and stressful. Additionally, as you can see from the earlier section on "What Rent Abatement is a Tenant Entitled to...", the abatements are seldom for the entire amount of the rent, and sometimes they are not very large at all.



V. WHAT TO DO IF YOU DON'T GET YOUR PAINT JOB

A. First Steps for Tenant if Landlord is Refusing to Paint as Required by Law

Here are the first steps that a tenant should take if her landlord is refusing to paint as required by law.

1. Pictures, Complaints, and Letters

Tenants should thoroughly document landlord's failure to paint.

A picture is worth a thousand words. Pictures (and videos) of peeling paint and stained walls should be taken with your phone and saved to a safe location.

Complaints to landlord should be made through the building's formal complaint process, if there is one, and copies of such complaints should be saved.


If there is no formal complaint process or if the formal complaint process is getting tenant and unsatisfactory response, then tenant should write a letter to management and/or landlord, and send the letter by email and overnight mail. Keep a copy of the letter, the email, and the mail receipts. By using overnight mail, you can track the letter's delivery progress online and you also get online evidence of its date and time of the letter's receipt.

2. Complaints to HPD

If your attempts at communication with landlord do not work and landlord does not paint, then tenant should report landlord to the New York City Department of Housing Preservation and Development, the City agency that is responsible for enforcing the New York State Multiple Dwelling Law and the New York City Housing Maintenance Code at:

<https://www1.nyc.gov/site/hpd/renters/complaints-and-inspections.page>

Make note of the following about granting access to NYC agencies for inspections in response to your complaints.



GRANTING ACCESS

- <https://www1.nyc.gov/assets/hpd/downloads/pdf/renter-resources/code-guide-what-to-expect-en.pdf>

HPD sends an the inspector. If she cannot access the unit, they leave a card for the tenant to call and make an appointment within 10 days.

- **You must be home!**
- **You must be listening for the inspector's arrival!**

If the inspector cannot gain access to your apartment...

- no violations will be issued, which
- will make your case harder.

Violations issued by these agencies appear online at:

<https://www1.nyc.gov/site/hpd/index.page>

Violations issued by HPD look like this:

Apt Story	Reported Date, nov ISSUED Date	Hzrd Class	Order no.	Violation ID, NOV ID, NOV Type	Violation Description	Status Date	Certify By Date Actual Cert. Date
2R 1	2018/01/24 B 2018/01/26	B	508	[REDACTED]	§ 27-2005 adm code repair the broken or defective plastered surfaces and paint in a uniform color walls and ceiling in the 1st room from east at south located at apt 2r, 1st story, 1st apartment from south at west	NOV SENT 2018/01/26	2018/03/16
2R 1	2018/01/24 A 2018/01/26	A	508	[REDACTED]	§ 27-2005 adm code repair the broken or defective plastered surfaces and paint in a uniform color the south wall in the kitchen located at apt 2r, 1st story, 1st apartment from south at west	NOV SENT 2018/01/26	2018/05/15
2R 1	2018/01/24 B 2018/01/26	B	702	[REDACTED]	§ 27-2045 adm code repair or replace the smoke detector missing located at apt 2r, 1st story, 1st apartment from south at west	NOV SENT 2018/01/26	2018/03/16
	2017/06/16 A 2017/06/19	A	1506	[REDACTED]	§ 27-2005 hmc: post, in a form approved by the commissioner, and maintain a notice in a common area of the building regarding the procedures that should be followed when a gas leak is suspected	NOV SENT 2017/06/19	2017/10/06

3. The Painting Matrix

You should pull together and save records of all of your efforts to get your pain job. Create a simple spreadsheet called "the Painting Maxtrix". I find when I give things fancy titles, people take them more seriously, but really the Painting Matrix is just a chart with three columns:

- ❖ Date
- ❖ Item
- ❖ Proof

If you keep everything together from the beginning, it will: (a) make the project of getting the paint job somewhat easier; and (b) it will create a quick visual record of your efforts that may be handy if you do end up in court.



Here is a sample of what I am talking about:

PAINTING MATRIX		
DATE	ITEM	PROOF
8/12/2018	pictures	I took 12 pictures with my phone showing the leak that is coming into my bathroom ceiling and how it is damaging the walls. I emailed them to myself and saved them in a secure folder in the cloud (my "Evidence File").
8/12/2018	video	I took a 4 minute video with my phone showing the leak that is coming into my bathroom ceiling and how it is damaging the walls. I emailed it to myself and saved it in the Evidence File.
8/12/2018	text to Nick the Landlord	at 10:30 a.m. I texted Nick the Landlord the pictures and video of the leak and the damage. He wrote back and said he would be there to fix it. I took a screen shot of our texts and emailed them to myself and saved these to my Evidence File.
8/12/2018	Jane the super came to inspect.	4:35 p.m. Jane the super came and inspected the bathroom. I mentioned to her that the apartment had not been painted in 7 years. She acted like the landlord had no obligation to paint.
8/19/2018	call; left message for Nick	I called Nick the Landlord on his cell and left a message, since nothing has happened.
8/26/2018	pictures	I took 12 more pictures with my phone showing the leak that is coming into my bathroom ceiling and how it is damaging the walls. I emailed them to myself and saved to my Evidence File.
8/26/2018	video	I took another 4 minute video with my phone showing the leak that is coming into my bathroom ceiling and how it is damaging the walls. I emailed it to myself and saved it to my Evidence File.
8/26/2018	letter	I wrote a letter to Nick the Landlord at his business address. I enclosed all my pictures of the bathroom and some of the rest of the apartment. I reminded him that the apartment has not been painted in 7 years. I told him I told this to Jane the super. I sent the letter to Nick at his email address and by overnight mail and saved a copy of the letter, the email, and proof of mailing to my Evidence File.
8/28/2018	call	Nick called me and promised he would fix the bathroom.
8/29/2018	Jane the super came to work.	Jane came at 11:01 am and was there for 45 minutes. All she did was plaster, she didn't paint anything in the bathroom. She had no response when I asked her about painting the apartment. No indication when she will return.
8/30/2018	311	I reported the conditions at 311 online and my reference # was 1234567. I got an email confirmation and saved it to a secure folder on my computer.
9/6/2018	HPD inspector came	I showed the inspector around and pointed out the problems with the paint.
9/8/2018	Violations	The landlord received 6 violations for conditions in my apartment. They are online. I saved a screen shot of them to my Evidence File.

B. Do An "HP Proceeding"

If complaints to the landlord and to the City do not get the paint job done, then the tenant can do an "HP Proceeding" in the New York City Civil Court located in the county in which the apartment is located.

HP Proceedings are governed by New York City Civil Court Act § 110, which sets up the mechanism for tenants to seek enforcement of state and local laws for the maintenance of housing standards, including, but not limited to, the Multiple Dwelling Law and the Housing Maintenance Code, Building Code, and Health Code of the Administrative Code of the City of New York.

The "HP Part", as it is known, is where tenants can bring actions for the imposition and collection of civil penalties for the violation of such laws. It can also issue injunctions and restraining orders or other orders for the enforcement of housing standards under such laws. The housing judges who sit in the HP part have the power to punish for contempt.

The HP Part is set up to work with tenants who do NOT have a lawyer. Above we said that Housing Court is not a place that a tenant should be without a lawyer, if she or he can help it. This caution, however, does *not*, apply to a tenant filing an HP proceeding against a landlord. The HP Part is set up to work with tenants who do NOT have lawyers, and you should consider filing an HP Proceeding as a viable option if housing standards of any kind are not being maintained with respect to your apartment and if the first steps explored above are not yielding results.

The downside of initiating a case against your landlord without a lawyer in the HP Part is that the process takes up a lot of time. On days that you are scheduled to be in the HP Part, you should allocate the entire morning to the process and you should bring something to read and/or have your phone fully charged. The courts are very busy and there is a lot of waiting around involved.

When tenants go to the Housing Court, they will be assisted by court clerks in filling out forms, which produce what is known as an Order to Show Cause. At that time, you will be assigned a court date, which is usually about ten days later. Make sure that nothing on your schedule conflicts with your ability to attend the court date.

Tenant is also given instructions about how to obtain an inspection. Make sure you are proactive about granting access to NYC agencies for inspections in response to your complaints, as we describe below.

Tenant is also given instructions about how to serve the Order to Show Cause by mail on both the owner and HPD.

There is a fee to file and HP Proceeding, which will be waived if you cannot afford it.

Copies of a tenant's correspondence with the owner can be important in the HP Part – do not forget your Painting Matrix and the documents referred to therein.

When the proceeding appears on the court's calendar the landlord (often represented by counsel), the tenant (often without a lawyer), and an attorney for HPD enter into a stipulation whereby the tenant will provide access by a certain date for inspection and repairs and the landlord will correct violations by a certain date.

The matter appears again on the court's calendar to monitor compliance. If tenant provides access and the landlord fails to make the repairs on time, the landlord is subject to fines. The fines go to the City, not to the tenant.

C. Rent Stabilized Tenants Can File a DHCR "Application for a Rent Reduction Based Upon Decreased Services in an Individual Apartment"

If complaints to the landlord and to the City do not get the paint job done, then, in addition to the option of initiating an HP Proceeding, Rent Stabilized tenants may also file with the New York State Division of Housing and Community Renewal ("DHCR") an "Application for a Rent Reduction Based Upon Decreased Services in an Individual Apartment" ("a Decreased Services Proceeding").

The DHCR is set up to work with tenants who do NOT have a lawyer. Above we said that Housing Court is not a place that a tenant should be without a lawyer, if she or he can help it. This caution, however, does *not*, apply to a tenant filing a Decreased Services Proceeding at DHCR against a landlord. The DHCR is set up to work with tenants who do NOT have lawyers, and you should consider filing a Decreased Services Proceeding at DHCR as a viable option if housing standards of any kind are not being maintained with respect to your apartment and if the first steps explored above are not yielding results.

As of this writing, you can learn more about a Decreased Services Proceeding by reading DHCR Fact Sheet #14, located at:

<http://www.nyshcr.org/Rent/FactSheets/orafac14.pdf>

As of this writing, a Decreased Services Proceeding can be filed by using DHCR Form RA-81:

<http://www.nyshcr.org/Forms/Rent/ra81.pdf>

Attach a copy of everything from your "Painting Matrix" (see above) that indicates that you have been asking landlord for painting services in writing and not getting them. You can attach an addendum to the DHCR form.

DHCR will send you an acknowledgement of your Decreased Services Complaint. The acknowledgment will contain a docket number. After that time, any communications you have with DHCR should have DHCR's docket number printed clearly on it. The docket numbers are how DHCR keeps track of thousands of cases.

DHCR can hold hearings but seldom does, so, unlike an HP Proceeding in NYC Civil Court, a DHCR Rent Reduction Proceeding does not require you to go anywhere.

DHCR will transmit your Decreased Services Complaint to the landlord and give landlord an opportunity to respond. DHCR may (or may not) send a copy of the landlord's response to you, so that you can further respond to what the landlord's response.

DHCR will probably schedule an inspection of your apartment. Make sure you are proactive about granting access to NYC agencies for inspections in response to your complaints, as we describe below.

If the evidence indicates that the landlord failed to maintain required services, the DHCR can issue a written order that directs the landlord to restore services and reduces the rent for the apartment, a "Rent Reduction Order". The Rent Reduction Order will stay in effect until the landlord applies to DHCR and receives a "Rent Restoration Order" that finds that services have been restored.

As of this writing, you can check on the status of your DHCR Complaint at this portal.

<https://apps.hcr.ny.gov/casestatus/>

Case Status Inquiry
New York State Division of Housing and Community Renewal

Home Page > Forms & Applications > Case Status

To search for a case, enter the docket number in the textbox and select the Search button. The information for that case, along with all related docket numbers, will be displayed.

Case Status Search

Docket Number:

Search Cancel

Use of this system for purposes other than those authorized by the New York State Division of Housing and Community Renewal (DHCR) is prohibited. System usage may be monitored and/or audited.
Privacy Policy | Disclaimer | DHCR Home

If a landlord has failed to restore services and/or correct the conditions specified within 30 days after the issuance date of the Rent Reduction Order, the tenant may file a "Tenant Affirmation of Non-Compliance" (DHCR Form RA-22.1), to request that a compliance proceeding be initiated.

The tenant is also authorized to reduce their rent in accordance with the Rent Reduction Order. The Rent Reduction Order generally bars further rent increases for Rent Stabilized tenants until DHCR issues a Rent Restoration Order. The Rent Stabilization Code further prohibits the collection of vacancy lease rent increases and the collection of the portion of a major capital improvement rent increase that becomes collectible after the Rent Reduction Order is issued. Such increases will become collectible, prospectively only, from the effective date of the DHCR Rent Restoration Order.



D. Which Method Should a Rent Stabilized Tenant Choose – an HP Proceeding or a DHCR Decreased Services Proceeding?

Which method should a Rent Stabilized tenant choose – an HP Proceeding or a DHCR Decreased Services Proceeding? The following chart may help you decide.

	WITHHOLD RENT; NONPAYMENT PROCEEDING; WARRANTY OF HABITABILITY COUNTERCLAIM AND DEFENSE	HP PROCEEDING IN NYC CIVIL COURT	RENT REDUCTION PROCEEDING AT DHCR (for Rent Stabilized tenants only)
WHO STARTS THE PROCEEDING?	landlord sues tenant	tenant sues landlord	tenant files against landlord
PENALTY FOR LANDLORD IF TENANT PREVAILS	landlord ordered to paint; rent abatement; maybe tenant's legal fees	landlord ordered to paint; fines (which go to the City) if landlord fails to paint	landlord ordered to paint; rent may be temporarily rolled back to the level of the previous registration
TENANT DOWNSIDES	tenant blacklist; abatement not likely to be huge; Housing Court is time consuming, expensive if you have a lawyer and dangerous and stressful if you do not; if tenant loses it could be held responsible for landlord's legal fees	time consuming; you need to attend court	slow
TENANT UPSIDES	rent abatement	typically faster than DHCR	may get you some rent relief during roll back; you do not need to go anywhere multiple times
TLP RECOMMENDS	NO	YES	YES

There is nothing to stop a tenant from doing both an HP Proceeding and a DHCR Decreased Service Proceeding simultaneously.

E. Tips to Keep In Mind When Filing an HP Proceeding or a DHCR Decreased Services Complaint

Whether you decide to prosecute an HP proceeding or a DHCR Decreased Services Proceeding or both, here are some tips to make the experience go smoothly.

Remember “TLP’s 3 P’s”:

- Proactive
- Prepared
- Patience-Power

The definition of insanity is doing the same thing over and over and expecting a different result. If you have taken all the preliminary steps described in the earlier chapters of this book and you don't have your paint job, and the landlord either keeps promising to paint and does not, keeps avoiding you, or downright refuses to paint, then you have to get **proactive**. You have to take affirmative steps to enforce your rights because no one is going to do that for you but you.

*And being proactive is being **prepared**.* What do we mean by prepared? We mean doing everything we talked about doing in the Painting Matrix – methodically and thoroughly documenting and gathering all the information. Also, we mean that when you prosecute a proceeding against your landlord, that you do it in the following way:

1. Read the whole document given or sent to you by the court or agency.
 - Read the front and the back on the document.
 - Even read the fine print in the document, sometimes that's the most important.
 - Read the document twice.
2. Follow directions exactly.
 - Never leave blanks on a form you are filing out.
 - Comply with all deadlines.

FOR EXAMPLE: If DHCR asks you to respond to something in 20 days, then do so way before that.

- Send things to the correct addresses.

FOR EXAMPLE: If the court instructs you on how to mail your HP Proceeding order to show cause to the landlord, comply with that method of mailing.

3. Make sure you are on time for your court date and have all your documents with you (Paint Matrix!)
4. Be sure to grant access to inspectors or the landlord or her contractors when you are scheduled to; or document carefully that

you were home when they were supposed to show up. See the next section for more information on why this is so vitally important.

5. Keep copies of everything (Paint Matrix!)

Preparation allows you to have the third P (it's a double P) – **patience-power**. This process is somewhat of a hassle and it takes some time. But as long as you know you have done everything right, every step you take brings you one step closer to a (hopefully) good result. So you just have to have patience so you do not get discouraged or anxious and end up quitting and living in bad conditions or moving when you didn't want or plan to. *Patience is power*. Many people do recognize this, but it is. Most landlords are good, law abiding people. But some are not. Bad landlords count on you giving up. Show them your patience-power!

F. Granting Access for the Paint Job After it is Ordered by a Court or DHCR

If a judge or a DHCR official orders landlord to give tenant a paint job, then the tenant is required to provide access for the paint job. This is an area that landlords and tenants argue about frequently. The landlord will say that it tried to paint tenant's apartment, but it could not because tenant refused access.

EXAMPLE: In the DHCR decision of *790 Riverside Dr. Owners*¹⁸, Tenant complained of a reduction in services. An inspection showed that tenant's apartment needed painting. The District Rent Administrator ruled for tenant and reduced her rent. Landlord appealed, arguing that it wasn't able to do all the necessary painting because tenant refused access. The DHCR ruled for landlord and revoked the rent reduction. **Tenant admitted that she gave access to landlord only sporadically and wanted the painting work done on a piecemeal basis.** Landlord therefore wasn't responsible for not completing the paint job.

¹⁸ DHCR Adm. Rev. Dckt. No. HD510135RO (4/24/96); LVT Number: 10636.

VI. TENANT IS RESPONSIBLE FOR MOVING HER OWN FURNITURE BEFORE AND AFTER A PAINT JOB.

A tenant is responsible for moving her own furniture before and after a paint job.

EXAMPLE: The District Rent Administer reduced a tenant's rent based on a reduction in services, including failure to paint as legally required. Landlord later applied for a rent restoration. Landlord stated that it had restored most of the services, but that landlord could not paint the apartment because tenant refused access to paint unless landlord agreed to move tenant's furniture. Tenant argued that landlord's director of management had promised to help move the furniture because tenant is incapacitated and can't do it himself. The DHCR ruled for landlord because landlord hadn't provided tenant with moving services in the past, therefore landlord did not legally have to provide moving services now. Moving tenant's furniture around was never part of the lease agreement between landlord and tenant. The fact that landlord's employee may have promised to help tenant to move furniture doesn't make this a service that landlord must provide.

Davidson, DHCR Adm. Rev. LVT Number: 9066; Dckt. No. DL 520103-RT (7/19/94).

VII. WHAT IF YOU DO NOT WANT THE LANDLORD TO PAINT?

I occasionally encounter landlords who want to paint and tenants who do not want paint jobs for various reasons.

A. Informal Resolution

If landlord wants to paint and a tenant does not want the paint job at that time, the best place to start is by directly, courteously, and in writing asking the landlord to hold off.

EXAMPLE: I recently represented a man who was a Rent Stabilized tenant in a building that was very well run. This was a large building, but if you looked it up on HPD, you would not find one violation. The landlord obviously took its obligations to keep the building violation free very seriously.

The landlord contacted my client, the tenant, about scheduling a paint job. My client did not, however, want a paint job at that time. He kept postponing the date for the landlord to access his apartment and paint. Landlord sent tenant a notice to cure lease default for failure to provide access.

I wrote landlord a letter in response to the Notice to Cure. I reminded the management team that tenant was a single gentleman who was a busy, self-employed New Yorker. His last living parent, his father, was at the end of a battle with Alzheimer's, and tenant was very occupied with his care. Moreover, tenant recently had a serious knee surgery. It was a tough time for tenant. I also reminded the management team that my client had been an excellent and long-term tenant. He got along with the staff and with his neighbors. There had been no complaint about tenant in his two decades in the building. I also informed the management team that the apartment was in perfect shape, and not in need of a paint job due to cracking paint or mold. I ended by telling the management team that my client respected the landlord and the building. He was completely committed to cooperating with the painting, he just need a break on the scheduling for about six months.

The letter did the trick and the landlord withdrew the Notice to Cure and backed off.

You can send a letter like this one on your own behalf if you are in a similar situation. The two most important things to stress are that: (a) the delay is only temporary; and (b) the apartment is not suffering from a mold condition and is otherwise in a good shape.

B. The Painting Law and an Agreement for No Paint Job

Above I suggested an informal way to resolve the situation when a landlord wants to paint and a tenant does not want the paint job at that time. There is, however, a more formal mechanism for this situation built into the Painting Law. Landlord can get out of the three-year-paint-job if, ONE MONTH prior to the expiration of the three year cycle, the landlord and tenant agree that the painting requirement can be extended. In that case, the extension can be for up to two years. This needs to be in a separate agreement, however, not part of a lease.

VIII. YOU CANNOT PAINT YOUR OWN APARTMENT AND CHARGE LANDLORD WITHOUT PERMISSION AND AN AGREEMENT ABOUT THE COLOR

A. The no-alterations clause of most leases usually prohibits you from painting the apartment yourself.

Absent the landlord agreeing to the arrangement ahead of time, tenant cannot do his or her own painting and charge the landlord. The authority for this comes from the contract between the landlord and the tenant – the lease. Most leases will say that tenant cannot build in, add to, change or alter the apartment in any way.

Here is a typical “no-alterations” clause in a typical NYC residential lease:

Tenant cannot build in, add to, change or alter the Premises in any way, including, but not limited to: wallpapering, **painting**, installing any paneling, flooring, “built in” decorations, partitions, or railings.

The above rule might not hold true, however, if landlord refuses to do required work in the apartment. A leading case here is *Mengoni v. Passy*, 254 AD2d 203 [1st Dept 1998]. In this case, the landlord brought an action seeking to evict a rent regulated tenant, based on tenant’s replacement of kitchen and bathroom appliances and fixtures without landlord’s prior consent. The Civil Court, New York County, dismissed the petition and awarded tenant punitive damages. The landlord appealed. The appellate court held that tenant’s actions did not constitute substantial breach of no-alterations clause of lease because landlord failed to respond to tenant’s repeated complaints and demands to have items fixed, warranting tenant’s actions.

B. What if you want a color other than off-white?

The Painting Law does not say anything about what color the walls have to be.

Neither does the Rent Stabilization Code say anything about what color the walls have to be. The only DHCR authority we found on the topic was a 2003 DHCR Opinion Letter, which states that, “[t]he owner is only obligated to paint the apartment off-white.”¹⁹

¹⁹ DHCR Opin. Ltr. by Charles Goldstein (10/9/03) LVT Number: 17049.

EXAMPLE: *Allendale Assocs.*: DHCR Adm. Rev. Dckt. No. PC110010RO (7/11/01) LVT Number: 15230. Tenant complained of a reduction in services based on landlord's failure to paint the apartment. Landlord claimed that tenant wanted the apartment painted in custom colors and refused to schedule the painting with landlord's contractor. The DHCR ruled against landlord. Landlord was still required to paint in an "off-white color", even if tenant didn't make the appointment for custom painting.

The same 2003 Opinion Letter, however, also states that a landlord and a tenant can agree that landlord will paint an apartment in a different color for an additional fee. Thereafter, apparently, this arrangement becomes a required service and every three years the owner must paint the apartment in a custom color if tenant pays for it. As a practical matter, this might be a hard thing for a Rent Stabilized tenant to enforce, depending on the case. It seems like it would raise many questions that could only be answered on a case-by-case basis. What if the tenant chooses a custom color that is different from the last custom color? What if the custom paint is very expensive and the landlord wants a higher fee? If we see answers in the future, we will update these materials.

In any event, it is unlikely these days that you are going to find a Rent Stabilized apartment where the landlord is giving you a custom paint job, even and especially in the new construction Rent Stabilized units.

C. How Changing the Color on Your Own Might Affect Return of Your Security Deposit

If, without the landlord's permission, you paint any portion of your apartment a color different than was there when you moved in and if, upon moving out, you do not return the apartment to the color that was there when you moved in, then the landlord may be justified in keep a portion of your security deposit.

Normally, when a tenant vacates the premises upon lease termination, the landlord is obligated to return the full amount of the security deposit, plus interest accrued thereon, provided that the tenant has fully complied with all of the terms and conditions of the lease, including delivery of possession of the premises to the landlord, ordinary "wear and tear" excepted.²⁰

²⁰ *Farago v. Burke*, 262 N.Y. 229 (1933).

In certain situations, however, the landlord may be entitled to offsets against a security deposit.²¹ Generally, when there is a written lease, the document will outline specific conditions under which the landlord is entitled to retain all or part of the security funds. For instance, the lease may permit the landlord to apply such monies against any claim of damage to the premises.²² Here is an example of a typical residential lease clause for a security deposit:

SECURITY DEPOSIT

(A) Upon signing this Lease, Tenant has agreed to give Landlord a Security Deposit ("Security") in the amount set forth in Section 1 of this Lease.

(B) The Security is not prepaid rent, but, rather a good faith deposit for Tenant's fulfillment of Tenant's Lease obligations, as well as a contingency against damages to the Premises. ...

(C) After Tenant moves out, Landlord will inspect the condition of the Premises, and charge Tenant, against Tenant's Security, for any damages beyond ordinary wear and tear, excessive cleaning or trash removal charges, as well as any outstanding balances Tenant owes Landlord. If any balance remains after applying all such charges, Landlord will refund it to Tenant.

A security deposit may be retained "only to the extent of damages sustained" by the landlord. The balance, if any, "must be returned" to the tenant.²³

²¹ *Finnerty v. Freeman*, 176 Misc. 2d 220 (App. Term 2nd D'pt 1998) (Landlord was entitled to an offset against the security deposit for damages beyond normal wear and tear.);

²² *Glass v. Janbach Properties, Inc.*, 73 A.D.2d 106 (2d Dep't 1980) (The landlord has the right to apply a security deposit "whenever necessary to insure fulfillment of the lessee's contractual obligations.").

²³ *Prudential Westchester Corp. v. Tomasino*, 5 A.D.2d 489 (1st Dep't 1958), order aff'd, 6 N.Y.2d 824 (1959).

D. Your landlord may, however, agree to let you paint the apartment yourself; Sample Agreement.

Your landlord may, however, agree to let you paint the apartment yourself.

If landlord does agree to let you paint the apartment *yourself but you, however, fail to do so*, it does not relieve landlord of its statutory obligation to do the painting.

EXAMPLE: *Fraley Realty Corp. v Stocker*, 115 Misc.2d 52 (Appellate Term 1st Dep't, 1982) "Admittedly tenant agreed, as a condition to securing her tenancy, to paint and renovate the apartment at her own expense. Tenant not only failed to honor that agreement but predicated her cause of action for breach of Warranty of Habitability largely upon the poor physical condition of the apartment. Landlord contends that the tenant's refusal to undertake the repair of the apartment, as promised, constitutes tenant "misconduct" under section 235-b of the Real Property Law, which precludes tenant from protection otherwise afforded by the Warranty of Habitability. The word "misconduct" is subject to judicial interpretation [citation omitted]. Section 235-b of the Real Property Law provides that "[w]hen any condition [impairing habitability] has been caused by the misconduct of the tenant or persons under his direction or control, it shall not constitute a breach of such warranties." Section 235-b, however, further provides that "[a]ny agreement by a tenant of a dwelling waiving or modifying his rights as set forth in this section shall be void as contrary to public policy." Since the agreement by tenant to paint or renovate -- aside from being unduly vague -- is void as an attempt to circumvent warranties of habitability by section 235-b, the tenant's failure to honor that agreement cannot be said to constitute "misconduct" depriving her of rights guaranteed by that section.

What does relieve the landlord of its statutory obligation to do the painting is if tenant paints herself.

EXAMPLE: *Edmonds*: DHCR Adm. Rev. Dckt. No. JI110073RT (2/26/97) LVT Number: 11586. Tenant complained of a reduction in services based on landlord's failure to paint his apartment. Tenant had painted the apartment himself. The DHCR ruled against tenant. Since tenant had already painted the apartment himself, there was no longer any reduced service or

reason for a rent reduction. Tenant could sue landlord to recover the cost of painting, but this wasn't an issue the DHCR was authorized to rule on.²⁴

And as seen above in the *Edmonds* case, if a Rent Stabilized tenant is looking for actual reimbursement by the landlord for the cost of tenant doing his or her own painting, then tenant needs to sue landlord in a regular lawsuit. This is not relief that DHCR can provide.

EXAMPLE: *Pistilli*: DHCR Adm. Rev. Dckt. No. CF 120232-RO (11/22/93) LVT Number: 8443. Tenants complained of a decrease in required apartment services. They claimed that landlord wouldn't paint their apartment. Landlord pointed out that tenants had requested in writing that they be allowed to paint the apartment themselves. Landlord had given tenants a \$100 rent credit to do so. In their complaint, tenants didn't ask that landlord paint the apartment. They wanted further reimbursement for the painting job they'd already done themselves. The DHCR ruled for landlord, but cautioned that in general landlord shouldn't require or encourage tenants to paint their apartments; this service was part of landlord's duty to provide services.



²⁴ See also *Rosedale Mgmt.*: DHCR Adm. Rev. Dckt. No. JA220332RO (2/5/97) LVT Number: 11512.

If landlord does agree to let you paint the apartment yourself, you should codify the agreement in a short rider to your lease. TLP has drafted a form lease rider for this purpose:

RIDER TO LEASE REGARDING PAINTING

LANDLORD: _____
TENANTS: _____
BUILDING: _____, New York, New York
PREMISES: Apartment _____
DATE: _____

This is a rider to a _____ [DATE] lease between the above-referenced Landlord and Tenants for the above-referenced Apartment ("the Lease").

- (1) If there is a conflict between this rider and the Lease, then this rider prevails.
- (2) Landlord grants permission to Tenants to paint the Apartment themselves.
- (3) Tenants will finish the paint job in a workmanlike manner on or before December 31, 2018.
- (4) Tenants will paint the Apartment in the following colors:
 - Bedroom = Acme Paint No. 1234 Pretty in Pink
 - Livingroom = Acme Paint No. 5678 Maize
- (5) If Tenants complete the paint job in accordance with this rider, then Tenants may deduct \$1,500 from rent for the Apartment due for January 2019.

Dated: _____	Dated: _____
LLC Landlord	_____ , Tenant
By: _____	_____
Name: Title:	, Tenant

