



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with two related applications. File L is the landlords' application for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. File T is the tenants' application for a monetary order, including return of double the security deposit. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same on both applications, one decision will be rendered for both.

Issue(s) to be Decided

Is either party entitled to a monetary order and, if so, in what amount?

Background and Evidence

The Tenancy

The parties were friends, who knew each other through work and church, before this tenancy commenced. The landlords had been living in this unit and renovating it when family circumstances meant they had to move away for a while. The landlords' sons were in Vancouver playing soccer for an elite team and the male landlord had moved to Vancouver to be with the boys. In the fall of 2012 they approached the tenants about renting the home until the tenants were able to buy their own home, which they intended to do in the next year.

The tenants agreed that they would rent the landlords' home and gave notice to end tenancy to the landlord. There were of the understanding that the renovations would, at the very least, be substantially complete before they moved in.

By December it became apparent that there was a lot of work still to be done. The tenants volunteered to help the landlords and they did some painting in December.

Over the Christmas period there was some discussion about what the actual terms of their agreement would be. Ultimately the parties signed a tenancy agreement on January 1, 2013 for a six-month fixed term tenancy. The rent of \$1600.00 was due on the first day of the month.

There was an addendum to the tenancy agreement which stated as follows:

1. "In exchange for ½ months' rent of \$800.00, it is agreed between all parties that the following work is to be completed:
2. Installment of kitchen cabinets, installation of all baseboards, painted, pocket door installment.
3. Other maintenance to be discussed and payment arrangement discussed and finalized."

Although the tenants had been surprised when the landlords asked for a security deposit they did pay a security deposit of \$800.00. The tenants also paid \$800.00 for the January rent.

By agreement the tenants moved into the rental unit a couple of days early and there was some overlap between the tenants move-in and the landlords' move-out. The landlord did more cleaning and packing after the tenants moved in. She acknowledged that the unit was not in the same condition as if she had been renting the unit to strangers in an ordinary commercial relationship. A move-in condition inspection report was not completed.

There was an incident on January 27, 2013, which resulted in the temporary separation of the tenants and the permanent end of the friendship between the parties. By agreement, the tenants moved out of the rental unit in mid-February, having paid \$800.00 towards the February rent. A move-out inspection was conducted but a move-out condition inspection report was completed.

The landlords were able to find new tenants through their church by February 21, 2013. The new tenants agreed to pay \$1600.00 a month commencing March 1, 2013. The landlords did not charge the new tenants anything for the balance of February as an incentive for them to take the place.

Before the tenancy ended the tenants did do some work on the rental unit.

Kitchen Cabinets

The male landlord, who is a contractor, testified that he had worked with the male tenant and witness V on previous jobs including a renovation that included the installation of a

full kitchen set of cabinets and pre-cut counter. In these previous jobs he directed the work and responded to questions from the other two men. Before they entered into this agreement he said the male tenant did mention to him that he did not have much experience to which he replied to the tenant that if he didn't think he could do the job, don't take it on.

The male tenant testified that he is a sheet metal worker. He has no carpentry tools and minimal carpentry experience. While they were painting the house in December the female landlord asked him if he would install the kitchen cabinets in return for a reduction in the rent. He said he had no experience but he would try.

He understood that the male landlord would provide him with the necessary tools and with direction and advice. In the end the landlords only provided him with a table saw. He already had a jig saw. Together this comprised all of his carpentry tools. For whatever reason, the male landlord was never at the site for more than a few minutes at a time.

The tenant pulled out the old kitchen and installed the new cabinets. The male tenant testified that he did make some mistakes because this was his first installation. He did not install a kick plate under the pantry unit and then he lined up all the upper cabinets to the pantry. The result was that all the upper cabinets were three inches lower than they should have been.

The male tenant also testified that he did not have the tools to install the crown molding and he did not have the money to buy the proper tools.

Some time after this tenancy ended the landlords had another member of their church, CD, who is a red seal carpenter, repair the kitchen cabinets.

CD testified that the problem in the kitchen was that the pantry had been installed without the kicker so it was too low. He raised the pantry and then had to raise all the upper cabinets so that everything could be lined up and the crown molding could be installed. Nothing had to be done to the lower cabinets except for the one unit beside the stove which had to be adjusted. He did not raise the cabinet over the refrigerator because the adjoining gable had been cut to the lower measurement.

CD testified that he spent five hours adjusting the cabinets and five hours installing the crown molding. He charged the landlords \$40.00/hour for this work. His invoice for the work is dated August 19, 2013.

CD also testified that cabinet installation is not his usual trade. He said that if he had been asked for an estimate for installation of all the kitchen cabinets, he would have guessed that the job would take a day.

In his testimony, CD clearly distinguished cabinet installation from counter installation.

The landlords did not file any evidence as to replacement cost for the gable nor had this work been done by the hearing.

Countertop

Based on the male tenant's suggestion the female landlord purchased two straight pieces of pre-made laminate countertop for \$342.00. As this was an L-shaped kitchen one corner had to be mitered. The male tenant testified that the female landlord said this countertop was just going to be temporary fix as they intended to install granite later. The tenants testified that during their testimony someone did come to the unit to measure the kitchen for a granite countertop.

The male tenant explained that factory mitered corners have a nut and bolt mechanism underneath to pull the two pieces of the countertop together. This mechanism allows for an unmarked surface. The lower corner unit was a closed unit so he could not connect the two pieces of the countertop from below.

The male tenant and V both testified that this was explained to the female landlord before they proceeded to install the countertop. She told them to go ahead because this was just a temporary solution. When asked about this conversation in her rebuttal evidence the female landlord said she did not recall it but she was prepared to accept the male tenant's word.

The male tenant installed two screws on each side of the mitered joint. He countersunk the screws and filled the holes with black silicon. The countertop was a dark grey colour so he thought the end result was neat and not very visible.

The male tenant also testified that the underlying countertop is different depending on whether a granite or laminate countertop is going to be installed. If the countertop is going to be granite the granite sits flush with the top of the drawers. If a laminate countertop is going to be installed the counter is raised so there is a $\frac{3}{4}$ " reveal at the top of the drawers. The countertop that was provided was what is used when granite is going to be installed.

CD testified that when he fixed the cabinets he removed the countertop so he could access one of the lower cabinets. He told the landlord he would not attempt the countertop installation because that requires particular hardware and tools. When asked he said that he knew that granite countertops just sit on the cabinet but if you are installing laminate you usually raise the underlying countertop. He left the countertop unattached because after he had adjusted the cabinet next to the stove, the countertop did not quite fit.

The landlords filed one estimate for installing a new countertop which they said was too high. This quoted a total of \$735.00 to remove the existing countertop, install a new countertop, cut and drill the holes for the sink and faucet installation, and connect the plumbing. The cost of the countertop would be in addition. The landlords did not know what a replacement countertop would cost.

Baseboards, Trim, and Pocket Door

The parties gave conflicting evidence about which baseboards had been removed and for what purpose; certainly some of the baseboards were removed by the time this tenancy commenced.

The tenants testified that there was an agreement that the landlords would provide the materials required. This statement was not contradicted by the landlords. The parties did agree that the salvaged baseboards would be used as much as possible.

The tenants testified that they installed baseboard in the family room and kitchen. They also installed the trim around the sliding doors and windows in the same area. They re-installed the trim around the dining room windows and, after discussion with the landlords, repaired the trim around the living room windows.

CD testified that when the landlords contacted him they wanted all the trim and baseboards on the upper level of the house installed. He testified that baseboards had been installed in the living room and dining room. He did not remove any of the baseboards that had already been installed but he did tighten up and apply some caulking. He took the trim off the dining room windows because he thought he could do a better job.

CD's invoice for installation of all the baseboards, which is dated August 19, 2013, is for \$1000.00. No other detail is provided. In his oral testimony he said he spent about 20 hours on this task and he charged \$1.50 per lineal foot of baseboard and trim for installation. The landlord provided all the materials.

Finally, CD testified that whoever had done the work had some knowledge but was not to his level of expertise.

The tenants testified that the landlords never provided the hardware necessary to install the pocket door. The landlords did not dispute this statement. The landlords did not file any evidence as to the actual cost of repairing this door. They did file an estimate from a different contractor, which they described as too high, which quoted \$85.00 for this item.

Tenants' Forwarding Address

On April 8, 2013, the tenants filed an application for dispute resolution on file 248615 claiming return of double the security deposit. The hearing for that application was on June 14, 2013. At that time the tenants' claim was dismissed with leave to re-apply because the tenants had been too late serving their evidence. On June 14 the landlords filed this application for dispute resolution claiming against the security deposit. Three days later the tenants filed this application. There was no evidence of the tenants having provided their forwarding address in writing except on the first application for dispute resolution.

Analysis

The Claims

The landlords' claim is for \$6500.00. They never submitted a monetary order worksheet with their claim nor did they file any other document that itemized the particulars of their claim. In their oral testimony the female landlord appeared to reduce to their claim to the cost of completing the kitchen counter, the gable, and pocket door, but the male landlord gave evidence about the cost of repairing the kitchen cabinets. They expected the labour cost to be \$40.00 per hour, based on the work the carpenter had done so far, but did not know how much labour would be involved.

The tenants' claim is for \$2100.00. Their application for dispute resolution says that \$1600.00 is for return of double the security deposit only but their statement of particulars at the bottom on the application says they are also claiming \$500.00 is for additional work done by the tenants. No monetary worksheet, invoice, time sheet, or any other documentation setting out how they calculated the sum of \$500.00 was filed by the tenants.

Landlords Claim for Repairs

Whatever work was done before the start of this tenancy was an arrangement between friends. There is no evidence of any agreement that the landlords would pay for this

work. The addendum to the tenancy agreement does not refer to painting or any work done by the tenants before the start of this tenancy. The landlords have no legal obligation to compensate the tenants for this work.

With respect to the cabinet installation CD's evidence is that much of the work that was done was satisfactory. There had been a mistake made in the installation of the pantry and the upper cabinets, which the male tenant acknowledged. The landlords had to pay \$400.00 to rectify this mistake. They also had to pay \$400.00 to have the crown molding installed, which the tenant also admitted he had not been able to do.

I find that the tenants are responsible to the landlords for the cost of remedying the cabinet installation, \$800.00.

Nothing is awarded for the cost of replacing the gable. There was no evidence as the actual cost of this repair, nor had it been done by the date of the hearing.

Although a great deal of evidence was devoted to the countertop, the countertop was not included in the scope of work as set out in the addendum to the tenancy agreement. Both CD's testimony and the estimate received from the other contractor clearly differentiate between installation of kitchen cabinets and installation of a countertop. Legally, the installation of the countertop is in the same category as the painting. Further the evidence is clear that the countertop that was installed was only intended as a temporary measure and that the landlord had agreed in advance that the screws could be installed from the top. Further, there was no evidence that the landlords suffered any loss as a result of this installation. They were able to re-rent the unit within days of this tenancy ending, without any reduction in rent, and they left the existing countertop in place until the carpenter repaired the cabinets in August.

Similarly, the scope of work did not include any reference to trim, only to installation of baseboards. The male landlord's oral description of the agreement between the parties also only referred to baseboards, not to trim. The evidence of CD is that he did remove the baseboards already installed; only tightened them and caulked them. CD's invoice is for a lump sum for the installation of baseboards and trim. There is no breakdown in his invoice, or in any of the evidence filed by the landlords, of the portion of this bill that relates to baseboards and the portion that relates to trim. The onus is on anyone making a claim to prove that claim on a balance of probabilities. I find that the landlords have not met their onus of proof regarding the claim for the installation of the baseboards because it is not possible to determine the actual cost of completing this portion of the contract between the parties.

The claim for repair of the pocket door is dismissed. Part of the agreement was that the landlords would supply the necessary materials, which they never did. Further, as of the date of the hearing, this repair, which according to the landlords' own evidence will cost a maximum of \$85.00, had still not been done.

Security Deposit

The *Residential Tenancy Act* sets out a strict protocol regarding security deposits and pet damage deposits which applies to all tenancies, including tenancies between friends or family members.

Section 23 provides that at the beginning of every tenancy the landlord and tenant must complete a move-in condition inspection report in accordance with the regulation. Section 24 sets out the consequences for both parties if the report is not completed. For landlords the consequence is that a landlords' right to claim against a security deposit or pet damage deposit is extinguished.

Section 35 provides that at the end of every tenancy the landlord and the tenant must complete a move-out condition inspection report in accordance with the regulations and section 36 prescribes the same penalties as section 24 for non-compliance.

Section 38(1) provides that within fifteen days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit, or if the landlord has the legal right to do, file an application for dispute resolution claiming against the security deposit. If the landlord's right to claim against the security deposit has been extinguished by operation of section 24 or 36, the landlord's only option upon receipt of the tenant's forwarding address in writing is to repay the security deposit within fifteen days.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not allow any flexibility on this issue.

In situations where the only time a tenant has provided their forwarding address in writing is in an application for dispute resolution claiming against the security deposit arbitrators do not generally hold that this is sufficient notice to the landlord to start the fifteen day time limit.

However, in this case the tenants served the landlords with an applications for dispute resolution, each containing the tenants' forwarding address in writing, on two separate occasions. The second application was served after the first application by the tenants

had been dismissed with leave to re-apply and after the landlords had filed their own application claiming against the security deposit. I find that service of the second application for dispute resolution by the tenants did constitute the provision of their forwarding address in writing to the landlords. As the landlords' right to claim against the security deposit had already been extinguished by sections 24 and 36, the landlords were obligated to return the security deposit to the tenants within fifteen days of being served with the second application for dispute resolution. They did not and are therefore subject to the section 38(6) penalty. Accordingly I find that the landlords must pay the tenants double the security deposit, \$1600.00.

Balance of Tenants' Claim

There is no evidence that the landlords agreed to pay for any work done prior to the tenants moving in or for work that was not included in the scope of work set out in the addendum.

Although the tenants provided evidence about the condition of the rental unit at the start of the tenancy nothing will be granted for that item because the tenants' application for dispute resolution did not set specify that this was one of the claims being made by the tenants. Further, tenants knew this home and they knew the landlords. When the tenants agreed to rent a place that was being renovated, they accepted an informed risk as to whether the unit would be ready or not. When they entered into the agreement to do certain repairs in return for a rent reduction they accepted the unit in the condition as it was at the start of the tenancy.

Set-Off

I have found that the tenants must pay the landlords \$800.00 and that the landlords must pay the tenants \$1600.00. Setting one amount off against the other, I grant the tenants a monetary order for the difference, \$800.00

Filing Fees

As both parties were at least partially successful on their respective applications both are entitled to recovery of the fee they paid to file their application from the other. As those orders would offset, no order with respect to the filing fees will be made.

Conclusion

A monetary order in favour of the tenants has been made. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court

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: January 13, 2014

Residential Tenancy Branch