



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OLC RP FF O

Introduction

This hearing dealt with an application by the tenant for repair orders and an order that the landlord comply with the Act, Regulation or tenancy agreement. During the hearing, the tenant indicated that they had reached an agreement with the landlord regarding repairs, and on that basis the tenant withdrew the portion of their application regarding an order for repairs.

At the outset of the hearing, counsel for the tenant indicated that the application for dispute resolution named the occupants as the tenants, and the tenant sought to amend the application to properly name as the applicant in this matter the corporation which was identified as the tenant on the tenancy agreement. The landlord agreed with this amendment, and the application is so amended. The occupants are employees of the corporate tenant.

Issue(s) to be Decided

1. Should the landlord be required to remove their personal property from the locked storage area and provide the tenant with access to that area for the tenant's use?
2. Should the landlord be required to return to the rental unit all of the furnishings that the tenant claims were included in the tenancy agreement?

Background and Evidence

In July 2007, an agent for the landlord showed the occupants the furnished rental unit and property, including storage areas. The occupants took photographs of the premises. A representative of the corporate tenant and the landlord's agent negotiated the terms of the tenancy agreement. The parties signed the tenancy agreement and addendum on July 24, 2007. The tenancy agreement set out that the tenancy would begin on January 1, 2008, with monthly rent in the amount of \$11,000, for a furnished house. The clause in the tenancy agreement that identifies the premises to be rented sets out as follows: "No furnishings, equipment, facility, services or utilities shall be provided by the landlord and included in the rent EXCEPT those checked below..." Two of the checked items are "Piano" and "Furniture (see attached inventory)." No inventory list was attached at the time that the parties signed the tenancy agreement and addendum.

In November 2007 the landlord forwarded the occupants an inventory list. The occupants told the landlord that they would not be able to verify the inventory list until they moved into the rental unit. When the occupants moved into the rental unit in January 2008 they noticed that several items of furniture they saw and took pictures of in July 2007 were no longer present in the rental unit. These items included vases, artwork, rugs, lamps, stools and a flower stand/arrangement. There was also a lock on the storage area on the first floor. The occupants brought these issues to the attention of the landlord, and the landlord informed the occupants that the owner had removed some of her personal belongings and stored others in the locked storage area. The landlord's position was that the items in question and the storage area were not promised to the occupants and were not included in the tenancy agreement. Nevertheless, the landlord offered to work out an arrangement to share storage space with the occupants. The occupants ultimately refused to share storage space with the landlord, and the position of the tenant in the hearing was that the items in question and the storage area are included in the tenancy agreement.

In April 2008 the occupants indicated to the landlord that they were concerned about damage to the piano, and asked that the piano be removed. The occupants also expressed concern about potential damage to the dining room table. On April 23, 2008 a representative of the corporate landlord consented to the landlord's request to remove the dining room table and buffet. The understanding of the tenant was that the landlord agreed to replace these items with items of a similar form and quality. On April 26, 2008 the landlord removed the original 8-person dining room suite and replaced it with a 6-person suite. The landlord also removed the buffet and the piano. The position of the tenant in the hearing was that the replacement dining room suite was of inferior quality, that the tenant never consented to the removal of the buffet, and the tenant only wanted the piano moved to a different location in the house, not removed altogether.

In this application, the tenant sought orders that the landlord comply with the Act, regulation or tenancy agreement as follows: (1) the landlord return to the rental unit all of the items that the occupants viewed and photographed on their initial inspection of the premises; (2) the landlord return to the rental unit the original dining room suite, the buffet and the piano; and (3) the landlord remove all of her personal items from the locked storage room and provide that room as storage for the tenant.

The response of the landlord was as follows. The items that the tenant sought to have returned, as well as the storage area, were never part of the tenancy agreement, either implicitly or explicitly. Further, the landlord has not contravened the Act by terminating or restricting a service or facility that is essential to the tenant's use of the rental unit as living accommodation. Therefore, the tenant's claim ought to be dismissed.

Analysis

I find that the items removed from the rental unit not listed on the landlord's inventory list are not part of the tenancy agreement, and the tenant is not entitled to claim those items from the landlord. In regard to the storage area, it is neither included in the tenancy agreement nor a facility essential to the tenant's use of the rental unit as living

accommodation. The tenant did request in writing that the piano be removed, and the tenant provided little or no evidence in the hearing that the piano is a material term of the tenancy agreement. The tenant agreed to the removal and replacement of the dining suite. The tenant provided little or no evidence that the original dining suite and buffet were material terms of the tenancy agreement.

Conclusion

The tenant's application is dismissed. The tenant is not entitled to recovery of the filing fee.

Dated October 29, 2008.