

DECISION

Dispute Codes O, FF

Introduction

This matter dealt with an application by the Landlords for an Order requiring the Tenants to return personal property belonging to the Landlords or in the alternative for compensation for the value of those items and to recover the filing fee for this proceeding.

At the beginning of the hearing the Landlords claimed that they were unable to serve the Tenants with part of their evidence package that was submitted as evidence at the hearing. The Tenants were given an opportunity to adjourn the hearing so that they could be served with and respond to this evidence, however, they waived service of those documents and chose to continue with the hearing as scheduled.

Issues(s) to be Decided

1. Are the Landlords entitled to the return of personal property taken by the Tenants?
2. Are the Landlords entitled to compensation for the value of personal property taken by the Tenants and if so, how much?

Background and Evidence

This tenancy started on February 1, 2009 and ended on February 28, 2010 when the Tenants moved out. Rent was \$1,500.00 plus utilities.

Prior to the tenancy, the Landlords resided in the rental unit. The Landlords decided to move to a smaller residence and could not take all of their furnishings and other personal belongings with them. Consequently, the Landlords claim that they intended to put these items in storage but when the Tenants said they did not have many belongings, they agreed they would leave whatever items the Tenants wanted to use in the rental unit. The Landlords also claim that they gave the Tenants a television, a television stand and a barbeque and sold them a sofa and bed (with a frame) for \$1,000.00. The Landlords said they agreed that the Tenants could make payments of \$200.00 per month for these items.

In support of their position, the Landlords provided an e-mail from one of the Tenants dated January 14, 2009 in which she asked if the Landlords would take payments for the couch and bed. In an e-mail from one of the Tenants dated February 25, 2009, she stated that she would start paying for the couches and bed once she got a job. In an e-mail from the Tenants dated April 1, 2009, she stated that she would start making payments for the furniture and bed at the beginning of May 2009. In an e-mail from one of the Tenants dated July 27, 2009, she asked the Landlords how much remained

owing for the furniture and asked them to clarify if the amount included a chair. In response, the Landlords advised the Tenants that they had paid \$400.00 and that \$600.00 was still remaining to be paid. The Landlords also advised the Tenants that their agreement was \$800.00 for a sectional sofa and \$200.00 for a bed and frame.

The Tenants argued that at the beginning of the tenancy, the Landlords gave them a television, a television stand, a barbeque, a computer desk and a desk chair. The Tenants said the Landlords asked them which other items they wanted from the rental unit and asked them to make an offer. The Tenants said they agreed to pay \$1,200.00 for the items that the Landlords left in the rental unit including a sofa and bed. Consequently, the Tenants said they had a "clear impression" that the all of the items left behind (except for a patio table and chairs) were theirs.

In support of their position, the Tenants provided a copy of a newspaper advertisement and the tenancy agreement that showed that the rental unit was not advertised as a furnished suite and that rent was not for a furnished suite (which the Landlords do not dispute). The Tenants admitted that they took most of the items claimed by the Landlords in this matter from the rental unit at the end of the tenancy.

Analysis

I find on a balance of probabilities that the agreement between the Tenants and the Landlords was that the Tenants would pay \$1,000.00 for a sofa and a bed in 5 instalments of \$200.00. I make this finding having regard to the e-mail correspondence from the Tenants in which they make no reference to paying for any other items than a couch and bed. If there was any confusion about what was the Parties agreement, I find that it was expressly clarified by the Landlords in their e-mail of July 27, 2009 when they advised the Tenants that the amount they would be paying was only for a couch and sofa. Despite this e-mail, the Tenants continued to make payments on the outstanding balance of \$600.00.

I also find on a balance of probabilities that there was an agreement that the Tenants could keep a television, a television stand and a barbeque. I find that there is insufficient evidence to support the Tenants' position that the Landlords also gave them a computer desk and an office chair. The Tenants claimed that they did not have in their possession a camp stove, a portable barbeque or a hummingbird picture as alleged by the Landlords.

In the circumstances, ***I Order the Tenants pursuant to s. 62(3) of the Act to return at their expense the following items in good condition to the Landlords no later than March 31, 2010:***

- Deacon's bench;
- CD Stand;
- Antique table and mirror;
- Kitchen table, 3 chairs and cushions;

- 4 pieces of framed artwork;
- Hanging tapestry with rod;
- Hallway mirror;
- 3 handmade rustic barn board pictures and frames;
- Wood letter holder;
- Elephant key holder;
- Shower curtain and 2 bath mats;
- Computer desk;
- Chair for computer;
- Hanging solid silver coffee spoon;
- 3 burlap area carpets and underlay; and
- Beaded wall art;

If the items are not returned or not returned in substantially the same condition they were in at the end of the tenancy as ordered, the Landlords will be entitled to recover reasonable compensation for them at a reconvened hearing scheduled for April 26, 2010 at 9:00 a.m. The Landlords may also apply at that time to recover the cost of a humming bird picture, a camp stove and a portable barbeque upon providing sufficient evidence that those items were also removed by the Tenants.

Conclusion

The Tenants are ordered to return the above-noted items to the Landlords no later than March 31, 2010. The Landlords' application for compensation for the value of the items is adjourned for hearing on April 26, 2010 at 9:00 a.m. 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: March 10, 2010.

Dispute Resolution Officer