



Landlord – Tenant Issues: A: Legal Opinion Improvement by Tenant

By Chris Benis, RHA Legal Counsel

Q We had a tenant in a single family home who wanted to rent the home, but also for permission to make some improvements (at his cost). Some of these were pretty extensive upgrades. We have permission for them to :) install hard wood floors 2) replace the carpeting; and 3) to paint the interior using custom colors. The estimated cost of these upgrades was \$7,500.

Except for permission to do this work, the lease was in our standard form and was for a one year term. We recently notified the tenant that we will not be renewing the lease when it expires, as we plan to sell the home. In response we just received a letter from an attorney, threatening to sue us, because he says we promised to sell the house to the tenant. We never discussed selling them the house. This is crazy! What should we do?

A I'll reply to your questions in two ways. I'll look at the general business issue first, and then the legal issue. You say that you never mentioned to the tenant that they had the right to buy the house. Yet, there must have been some reason that the tenant was willing to substantially upgrade your home, and in exchange only receive a standard 12 month lease. What was that reason? I can imagine perhaps the home was in poor repair (at least cosmetically) and that you were charging a low rent in consideration of that condition. Consistent with that, I can see a tenant who would not mind making their own upgrades to the property, where the total housing cost (after amortizing the improvements over 12 months) was still a reasonable rental rate. While I can, as I said "imagine" that scenario, I question how likely it in fact would be. In fact, I would challenge you that something must have been said about your plans to sell the home and perhaps their interest in buying it. Moreover, I sure hope that you didn't exploit their interests in purchasing the home to get some free upgrades "on the tenant's dime." Since I wasn't there, I can only speculate, but I hope that you questioned why the tenants were willing to spend thousands of dollars to upgrade your home. In summary, I believe you are at least partly to blame for the tenants' expectations.

Turning to the legalities of the situation, there is a law in Washington called the Statue of Frauds, and this law requires that agreement to purchase or sell property be in writing and include certain minimal information. The purpose of the law is to make folks recognize that contracts to sell real estate are different than many other types of contracts. In your case, your position would be that the claim that you orally agreed to sell them the home is prohibited by the Statue of Frauds.

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However, there are exceptions to the Statue of Frauds, essentially lessening or eliminating the formal requirements for real estate purchase and sale agreements, where it would be "equitable" to do so. One of the more common exceptions to the Statue of Frauds is "the doctrine if part performance." This exception governs the commonsensical situation where there are sufficient surrounding circumstances that an agreement existed to provide a legal substitute for the ordinarily required written Agreement. That seems to be exactly what the tenant's attorney is arguing. In this case, that there must have been something more that was agreed to (than a mere 12 month lease) for a tenant to improve your property. You will want to retain an attorney to fully analyze the facts of this case and respond to the tenant's attorney on your behalf.

You would have been much better off making the improvement to the home yourself, and adjusting the rental rate accordingly.

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