

A little more than five years ago, a builder completed construction of a single-family home located on a lot that the builder owned. Five years ago, the builder and a barista entered into a valid five-year written lease of the home that included the following language: "This house is rented as is, without certain necessary or useful items. The parties agree that the barista may acquire and install such items as she wishes at her expense, and that she may remove them if she wishes at the termination of this lease."

The barista decided that the house needed, and she paid cash to have installed, standard-sized combination screen/storm windows, a freestanding refrigerator to fit a kitchen alcove built for that purpose, a built-in electric stove and oven to fit a kitchen counter opening left for that purpose, and carpeting to cover the plywood living room floor.

Last month, by legal description of the land, the builder conveyed the home to a salesman for \$100,000 subject to the barista's lease. The salesman knew of the barista's soon-expiring tenancy but did not examine the written lease. As the lease expiration date approached, the salesman learned that the barista planned to vacate on schedule and learned for the first time that the barista claimed and planned to remove all of the above-listed items that she had installed. The salesman promptly brought an appropriate action to enjoin the barista from removing those items.

Which items should the court allow the barista to remove?

- A. None of the items.
- B. Only the refrigerator.
- C. All items except the carpet.
- D. All of the items.

Explanation:

When a tenant **attaches** tangible personal property (ie, a **chattel**) to the leased premises, the tenant **can remove** the chattel before, or within a reasonable time after, the lease expires if the chattel is not a fixture—ie, if:

the attachment of the chattel was **not intended to be permanent** *or*

the chattel is not being used for some larger component (eg, lighting, water drainage) or function (eg, plumbing, septic) of the land.

And when a landlord conveys leased premises subject to an existing lease, the terms of the lease govern the new landlord-tenant relationship.

Here, the lease agreement between the builder and the barista expressly allowed the barista to install certain items in the home and remove them at the end of her tenancy (no intent to permanently attach chattel). And since the builder conveyed the leased premises to the salesman subject to the barista's lease, the terms of the lease govern. Therefore, the court should allow the barista to remove *all* of the items she installed.

(Choices A & B) An easily movable appliance like a freestanding refrigerator is usually not a fixture and can be removed by a tenant. But here, the barista could remove all of the items based on the lease agreement. As a result, none of the items are fixtures and the court should allow her to remove them.

(Choice C) Carpet may be a fixture if it is particularly adapted to the premises (eg, cut to fit a specific room) since that shows intent to permanently attach it. But since the lease permits removal, the court should allow the barista to remove the carpet—even if it would otherwise be an irremovable fixture.

Educational objective:

A tenant can generally remove a chattel attached to the leased premises if (1) the attachment was not intended to be permanent or (2) the chattel is not being used for some larger component or function of the land. And when a landlord conveys land subject to an existing lease, the lease terms govern the new landlord-tenant relationship.

References

Restatement (Second) of Prop.: Landlord & Tenant § 12.2 (Am. Law Inst. 1997) (tenant's rights and obligations as to changes in the physical condition of the leased property).

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Fixture v. Chattel

