

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

MICHAEL COON, JENICA K. WAYMEN AND JOHNSON &
JOHNSON LAND CORPORATION

Applicants

- and -

JOHN BECK, DON BENNETT, FRED PRORYCHN, PETER
MEAKIN AND LAWRENCE BADGER

Respondents

REASONS FOR DECISION
of
M. FUNDUK, Masters in Chambers

- [1] This is a misjoined lawsuit under the Residential Tenancies Act.
- [2] Each Respondent occupies a separate room under a separate lease in one building. The Applicants have served a notice of termination on each Respondent. Each Respondent has refused to vacate, hence this lawsuit.
- [3] The registered owners of the land are the Applicants Coon and Waymen. The evidence is that on October 19, 1998 they sold the land to the Applicant Johnson & Johnson Land Corporation. The sale agreement says that the vendors are to give vacant possession on February 1, 1999 (Clause 2.8) and later that "property to be vacant other than main floor tenant in order to comply with zoning" (clause 6.5).
- [4] It appears that each Respondent occupies his room on a month to month basis.

Applicants have served a notice of termination on each Respondent. Each Respondent has refused to vacate, hence this lawsuit.

[3] The registered owners of the land are the Applicants Coon and Waymen. The evidence is that on October 19, 1998 they sold the land to the Applicant Johnson & Johnson Land Corporation. The sale agreement says that the vendors are to give vacant possession on February 1, 1999 (Clause 2.8) and later that "property to be vacant other than main floor tenant in order to comply with zoning" (clause 6.5).

[4] It appears that each Respondent occupies his room on a month to month basis.

[5] On October 26, 1998 each Respondent was served with a notice of termination by the property manager. Each notice says:

This letter will serve as your 90 Day Notice of Termination of your Tenancy of the premises known as #1 - 10423 - 69 Ave... Edmonton, AB... to be effective, January 31, 1999.

This property has been sold... with the Vendor providing that the property is clear of all tenants, other than the main floor unit...in order to comply with Edmonton Zoning.

[6] Both sides proceed on the basis that the Respondents are tenants, not merely lodgers, and that they are monthly tenants. A monthly tenancy is a periodic tenancy within s. 4.1 of the Residential Tenancies Act. It says:

4.1(1) A notice under this Part from a landlord to a tenant to terminate a periodic tenancy is of no effect unless the termination is for one or more of the prescribed reasons or for the reasons set out in section 9 or 10.

(2) A landlord who gives a notice under this Part to a tenant to terminate a periodic tenancy for one or more of the prescribed reasons or for the reasons set out in section 10 contravenes this Act if the tenant vacates the premises and the landlord does not use the premises for the reasons set out in the notice within a reasonable time after the termination date set out in the notice.

The reasons specified in ss. 9 and 10 are not present here.

[7] The Act lets the Minister set reasons for terminating a periodic tenancy: s. 51.2. It says:

51.2 The Minister may make regulations

(b) respecting the reasons that a landlord may terminate a periodic tenancy under Part 1;

[8] Alta. Reg. 229/92 says this:

2(1) In this section,

(a) "Major renovations" does not include painting, the replacement of a floor covering or routine maintenance;

(b) "relative" includes any relative by affinity.

(2) For the purposes of section 4.1 of the Act, a landlord may terminate the periodic tenancy of a tenant for one or more of the following reasons:

(a) the landlord or a relative of the landlord intends to occupy the residential premises of the tenant;

(b) the landlord has entered into an agreement to sell the residential premises of the tenant in which all conditions precedent in the agreement have been satisfied or waived and

(i) the purchaser or a relative of the purchaser intends to occupy the premises, or

(iii) the agreement is to sell one detached or semidetached dwelling unit or one **condominium** unit,

and the purchaser requests in writing that the landlord give the tenant a notice to terminate the tenancy;

(c) the landlord intends

(i) to demolish the building in which the residential premises of the tenant are located, or

(ii) to make major renovations to the residential premises of the tenant that require the premises to be unoccupied;

(d) the landlord intends to use or rent the residential premises of the tenant for a non-residential purpose;

(e) when the landlord is an educational institution and the tenant is a student of that institution, the periodic tenancy may be terminated if the tenant is no longer a student or is the tenant will no longer be a student when the notice period for terminating the tenancy has passed.

[9] I do not find it necessary to decide if Johnson and Johnson can make out a case under s.-s.(2)(b)(ii).

[10] The problem here is that the "suites" occupied by the Respondents are illegal. On December 1, 1998 the City of Edmonton ordered as follows:

You are hereby ordered to obtain the required Building Permit and carry out construction in accordance with the Albert Building Code 1990 for the use and occupancy of a three suite

apartment house or revert the use back to the approved two family dwelling (duplex).

If you do not comply with this order by January 5, 1999, pursuant to Section 51 of the Safety Codes Act, the City, at your expense, will take all available enforcement action against you to ensure compliance with the Safety Codes Act, the Alberta Building Code 1990 and the Edmonton Building Permit Bylaw No. 8664. This can include charging you with an offence pursuant to the provisions of the Safety Codes Act. A person found guilty of an offence under the Safety Codes Act is liable for a fine of up to \$15,000.

Enclosed are the relevant provisions of the Safety Codes Act, Chapter S-0.5, 1991.

[11] The Respondents suggest that Coon and Waymen have not really sold the land and that the sale is fictitious. That misses the point. These are illegal suites in what is supposed to be a duplex dwelling. The Respondents each have a room and they apparently share kitchens and bathrooms.

[12] Whoever the landlord is, he has no choice. He must renovate or revert. If the landlord intends to renovate he has a case under s.-2.(2)(c)(II). If he does not intend to renovate he must evict the Respondents and use the building solely as a two family (duplex) building.

[13] The Residential Tenancies Act does not override illegal suites.

[14] The Respondents will have to vacate..

Decision

[15] There will be an order for possession requiring each Respondent to vacate by no later than March 31, 1999.

[16] In the circumstances there will be no costs.

[17] Ms. Gowin will submit the order directly to me for signature.

DATED at Edmonton, Alberta this 1st day of March, 1999.

M. FUNDUK

M.C. C.Q.B.A.

APPEARANCES:

Ms. K. D. Gowin

Ritchie Mill Law Office

Counsel for the Applicants

Respondents

in person