

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

BETWEEN:

K. HANSEN MASONRY LTD.

Applicant

- and -

LINDA TRAUTMAN

Respondent

MEMORANDUM OF DECISION
of
M. FUNDUK, Master in Chambers

APPEARANCES:

R. Max Gold
for the Applicant

Respondent in person

- [1] This is a residential landlord and tenant lawsuit.
- [2] The Applicant started the usual lawsuit based on the Respondent's failure to pay rent when due.
- [3] The Respondent appeared. She said that she withheld the rent because of problems with the building and her suite.

[4] I ordered the Respondent to pay \$625 into Court by no later than January 28, 2002, to deliver an affidavit detailing the problems and that I would hear the matter on February 5th, and treat the Respondent's complaints as a claim under s. 34 Residential Tenancies Act. Section 43 requires an affidavit by the Respondent.

[5] The Respondent made the payment into Court and delivered an affidavit.

[6] Section 44 provides for a summary disposition of application under the Act. In *Nova Scotia (Attorney General) v. Thompson*, 131 D.L.R. (4th) 609 (S.C.C.) Lamer C.J.C. comments on the need for residential tenancy disputes to be dealt with inexpensively and expeditiously: para. 53. Section 44(b) does let the Court direct a trial of an issue, but that is usually not workable when possession is the major issue. It may take some time to get to a trial. Directing this kind of dispute to go to trial will not promote peace and tranquillity between now and then. The parties will continue to engage in combat.

[7] The Respondent has been a tenant since March 1998. Her current rent is \$425 a month which, based on the Court's experience from other landlord - tenant lawsuits, indicates the suite is modest. She says that it is a basement suite. The suite is obviously not in an upper class apartment building.

[8] I will not detail the Respondent's complaints. She says that she likes the neighborhood but cannot move because of the low vacancy rate and the rent rate in other buildings. She says that she wants to stay "until such time that a mutual agreement of termination of lease should occur". But that simply will not happen. The Applicant wants the Respondent out of possession and the Respondent wants to stay in possession. A standoff is not an acceptable solution.

[9] The reasonableness of residential premises and the building it is in must to some extent be measured by the rent being paid. No one should expect to get an automobile for the price of a bicycle. This is not a case where the suite or the building are unfit for human occupancy.

[10] The solution, and the order I give, is this:

1. The Respondent will vacate the premises no later than March 31, 2002.
2. There will be an abatement of one month's rent in recognition of the Respondent's complaints.
3. As each party is partly successful there will be no costs.
4. The money presently in Court will be paid to Mr. Gold.
5. Mr. Gold will present the order directly to me for signature without the Respondent's approval as to form.

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HEARD on the 5th day of February, 2002.

DATED at Edmonton, Alberta this 12th day of February, 2002.

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