

**Lansdowne Equity Ventures Ltd. v. Folland, 2000 ABQB 809**

Date: 20001109  
Action No. 0001-15825

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

BETWEEN:

LANSDOWNE EQUITY VENTURES LTD.

Applicant

- and -

SANDRA FOLLAND AND MIKE DAVIS

Respondents

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REASONS FOR JUDGMENT  
of the  
K. R. LAYCOCK, Master in Chambers

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APPEARANCES:

Richard I. John  
(Delta Law Office)  
for the Applicant

Todd E. Herter  
(Sihvon Carter Fisher & Berger)  
For the Respondents

[1] This is an application by Lansdowne Equity for an Order for the removal and sale of a motor vehicle seized by the applicant's civil enforcement agent in Medicine Hat, Alberta. The respondents are tenants who signed a residential tenancy agreement and agreed to pay to the applicant monthly rent of \$525.00 from April 1<sup>st</sup>, 2000 until March 31<sup>st</sup>, 2001. On or about July

applicant monthly rent of \$525.00 from April 1<sup>st</sup>, 2000 until March 31<sup>st</sup>, 2001. On or about July 5<sup>th</sup>, 2000, the respondents were given a notice of termination for non-payment of rent requiring them to deliver up possession on or before July 20<sup>th</sup>, 2000. On July 12<sup>th</sup>, 2000, the applicant's civil enforcement agent seized and removed from the leased property the respondents' 1989 Dodge Shadow. On July 13<sup>th</sup>, 2000, the respondents filed an objection to seizure.

[2] Distress may only be levied by a landlord where there exists a relationship of landlord and tenant. The respondents argue that the service of the notice on July 5<sup>th</sup>, 2000 terminated the tenancy and therefore the seizure was invalid. The applicant argues that the lease terminated July 20<sup>th</sup>, 2000 and therefore the distress was valid.

[3] At common law a landlord had a right to re-enter the leased premises which had the effect of terminating a landlord/tenant relationship. Master Collins in *Serjeant v. Nash, Field and Company* [1903] 2 K.B. 304 at page 311 noted that an unequivocal act that asserts their right of possession created a forfeiture of the lease. In that decision, he determined that the issuance of a Writ in an action to recover possession was a conclusive election by the landlord to determine the lease. He stated:

It is true that the rights of parties were not determined by the issue by the writ, and could not be determined until the result of the action was known; but that consideration does not affect the fact of the election of the lessor to treat the lease as at an end, subject to proof that there had been a breach of covenant which entitled her to do so.

[4] In the case of a written lease agreement, if the lease allows for the landlord to re-enter on a breach of covenant, it is the re-entry by the landlord that is unequivocal act that terminates the tenancy arrangement. If the lease requires a notice of termination it is the service of the notice of termination that is unequivocal act that terminates the lease relationship.

[5] Legislation may change these common law and contractual rights of termination or forfeiture of the lease. Williams & Rhodes Canadian Law of Landlord & Tenant Volume I Sixth Edition at page 4-41 suggests that a landlord can not enforce a lease term which is contrary to legislative protection offered to a tenant.

[6] The Residential Tenancies Act R.S.A. 1980 Ch. R-15.3 restricts the landlord's right to re-enter property for breach of a residential tenancy agreement. Section 2.1 renders void any waiver or release by the tenant of rights and benefits provided by the act. Section ~~2.1~~<sup>2.6</sup> deals with the landlord's rights to terminate a tenancy for substantial breach. The notice served by the applicant is a notice authorized by section ~~2.1~~<sup>2.6</sup> for termination for a substantial breach. The substantial breach is failure to pay rent when due. The applicant may have elected to bring an application to the court to terminate the tenancy or 'may terminate the tenancy by serving the

tenant with a notice at least 14 days before the day the tenancy is to terminate'. Based on the *Serjeant* decision, service of an originating notice of motion requesting that the courts terminate the tenancy would be an unequivocal act of forfeiture. If the acts of forfeiture are subsequently proven to be true, filing of the originating notice would be the unequivocal act and any attempt to distrain thereafter would be improper.

[7] <sup>26(2)</sup> If the landlord elects to serve a notice of termination, the form must comply with section ~~23(2)~~. The act allows the landlord to effect a termination of the tenancy 14 days after the date of service of the notice. Service of notice does not terminate the tenancy because the act does not allow for termination until 14 days after service. Any notice that provides for an earlier termination would not be a proper notice under the act. The Lansdowne notice complies with the act by fixing the termination date as of July 20<sup>th</sup>, 2000. The legislative purpose in requiring a 14 day period before termination can be found in section ~~23(3)~~, which provides a statutory relief from forfeiture if the tenant pays all of the rental arrears within the 14 day period. <sub>26(3)</sub>

[8] If the tenant does not remedy the default in payment within 14 days of the date of service of the notice the tenancy is terminated. If the tenant fails to vacate as required the landlord must bring an application for an Order for Possession, he does not bring an application for termination because that has already been effected. The court may reaffirm the termination date but it does not have to order the tenancy terminated. (*Phillips v. Bridge* L.R. 9 C.P. 48)

[9] *Winbaum v. Gineau* et al [1947] 2 D.L.R. 619 sets out the general principals guiding the courts in forfeiture issues and recognizes the distinction between the delivery of a unequivocal notice for the immediate termination of a lease as opposed to a notice which terminates the tenancy at a future date.

[10] Having concluded that the earliest that a landlord can terminate a tenancy by notice is 14 days after the delivery of notice, the landlords distress constitutes a valid seizure of goods. The respondents' notice of objection to seizure does not provide valid grounds to oppose sale and therefore the applicant is entitled to an order for the sale of the seized motor vehicle. If the parties can not agree on a method of sale the parties may re-apply for further directions.

[11] The applicant shall be entitled to the costs of this application to be taxed.

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HEARD on the 13<sup>th</sup> day of October, 2000.

DATED at Calgary, Alberta this 9<sup>th</sup> day of November, 2000.

K. Pappas  
M.C.Q.B.A.

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