

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

BETWEEN:

BRADEN EQUITIES INC.

Applicant (landlord)

- and -

ERROL NORMAN

Respondent (tenant)

MEMORANDUM OF DECISION
of
M. FUNDUK, Master in Chambers

APPEARANCES:

A.S. Attia
Attia Reeves
Counsel for the landlord

E. Norman
in person

[1] This is a dispute between a landlord and its tenant.

[2] The landlord had started an earlier lawsuit against the tenant: Q.B. 0203-05589. On March 22, 2002 a Master gave an order terminating the tenancy and requiring the tenant to deliver possession. On April 5, 2002 the Clerk issued a writ of possession.

[3] The landlord started the present lawsuit on January 31, 2003. The landlord's witness is its witness in the earlier lawsuit. He refers to the earlier lawsuit and says that after the April 2 order was given the parties entered into a "Cinderella agreement". The tenant was to pay the rent on time plus \$100 a month towards the Court costs. If he did that the tenancy would continue. The tenant signed an agreement to pay those amounts.

[4] The evidence of the landlord's witness is that, notwithstanding the Cinderella agreement, the tenant has not lived up to it. The evidence is that the tenant never caught up. The landlord was given \$800 costs all inclusive in the first lawsuit. On November 28, 2002 the landlord wrote to the tenant telling it that unless he paid \$825 on December 1, 2002 it would exercise the order for possession. The tenant paid only \$525.00. On January 2, 2003 the landlord gave the tenant notice to vacate. Why it did that instead of exercising the writ of possession escapes me.

[5] The tenant has filed an affidavit.

[6] First, he raises what allegedly happened in November 2001 when he entered into a written monthly tenancy agreement. But that precedes the March 22, 2002 order so everything prior to that date is res judicata.

[7] Second, the tenant says that he paid the landlord \$1,550 total in April, but the landlord's evidence is that he paid \$1,100 in April.

[8] The tenant says that he is not in arrears. But that cannot be. He says that he has paid the legal costs in full. That is not the case.

[9] The tenant also says that he works out of town and when he returns he always pays up his "rent and arrears". That is not good enough.

[10] I do not know why the landlord started the present lawsuit. It should have exercised the order for possession and writ of possession it already had. In its November 28, 2002 letter to the tenant the landlord says that it would exercise the order and the writ.

[11] The tenancy was terminated in April, 2002. There is no new tenancy. The landlord's waiver of the April 2 order was conditional upon the tenant paying as agreed to.

[12] This lawsuit is not necessary. If the landlord's position is that the tenant has not lived up to the Cinderella agreement it should exercise the order and the writ it got. One writ of possession is enough. Piling writs on writs achieves nothing.

[13] I decline to grant an order for possession.

[14] I give the tenant \$200 in costs.

HEARD on the 24th day of February, 2003.

DATED at Edmonton, Alberta this 3rd day of March, 2003.

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