

Klass Construction Ltd. v. Brown, 2000 ABQB 488

Date: 20000719
Action No. 0003-12811

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

BETWEEN:

KLASS CONSTRUCTION LTD.

Applicant

- and -

IRENE BROWN

Respondent

MEMORANDUM OF DECISION
of M. FUNDUK, Master in Chambers

APPEARANCES:

Ms. T. Mulligan
for the Applicant

Ms. V. Campbell
Ackroyd Piasta & Co.
for the Respondent

[1] The issue in this landlord and tenant lawsuit comes down to which should prevail, form or substance.

[2] For five months the Respondent was a tenant on a month to month basis, under a written lease, of suite 204 including one parking stall. In October 1998 the Respondent moved

into suite 409 as a month to month tenant. That lease includes what the Respondent calls a "tandem parking stall", so the lease then includes two parking stalls.

[3] The current lease is a printed form lease and it is the Applicant's form. It has a rent clause and later down the page the following provision:

PARKING SPACE VII (A) The Owner also leases to the Tenant, for the same term of this Lease as set out in Article II, parking space number _____ at an additional rent of (\$____) _____ Dollars per month, due and payable in advance on the first day of each month, and in the manner prescribed by the Owner.

[4] In the two blank spots someone has written in the stall number and "n/c" in the second blank spot.

[5] On March 30, 2000 the Applicant served a rent increase notice on the Respondent. It says:

This is a 90 day notice of rental increase effective as of July 1, 2000 as per The Residential Tenancy Act.

Present Rent:	\$ 850.00
Increase:	\$ 125.00
Sub Total:	\$ 975.00
Extra car:	\$ 40.00
Total:	\$1,015.00

[6] The Act provides that a landlord can increase the rent by giving three months notice: s. 13(1)(b). The section goes on to provide:

(3) A tenant under a periodic tenancy who receives a notice under this section and who fails to give to the landlord notice of termination effective on or before the date the rent increase is to be effective is deemed to have agreed to the increase of rent.

The Respondent did not give a notice of termination. Her position on the rent increase is this:

15. On March 30, 2000 I received from the Applicant, a Notice of Rental Increase from \$850.00 to \$975.00, plus \$40.00 for an extra car, for total of \$1,015.00 per month, effective July 1, 2000. Attached as Exhibit 'J' is

a copy of the Notice. As stated above it was an express term of my Rental Agreement that a tandem parking stall was included free of charge.

16. On July 1, 2000, I paid the Applicant rent in the amount of \$925.00, determined as follows:

Base rent pursuant to Rental Agreement dated October 1, 1998	\$800.00
Increase pursuant to Notice	\$125.00
Total:	\$925.00

[7] I do not expect lay people to appreciate the laws distinction between form and substance.

[8] The reality is that the Respondent was renting an apartment with two parking stalls. Regardless how the Applicant chose to structure its rent increase notice the fact is that the rent was increased from \$850 a month to \$1,015 a month. The stalls go with the apartment. Whatever rent is charged by a landlord takes parking stalls into account regardless how it is treated for bookkeeping purposes. The saying that it is six of one and half a dozen of the same is appropriate here.

[9] In any event, the Respondent's shallow position is that if rent is zero for a monthly stall rent can never be charged in the future even with a three month notice. Why not? If the parties had said in the lease that the Respondent would pay one cent a month for the second stall would the Respondent argue that the Applicant could never increase the charge? Does "n/c" for a stall mean that the Respondent is entitled to the use of the stall as long as she is a tenant or until the world comes to an end, whichever first happens?

[10] This is an extremely artificial position by the Respondent. One might wonder why there is this dispute at all? The answer is likely found in the evidence. The Respondent was the residence manager in the building until her employment was terminated by the Applicant at the end of February, 2000. I have no doubt that the parties will grind each other as long as the Respondent remains in the building.

[11] Residential tenancy disputes should be dealt with inexpensively and expeditiously: Lamer C.J.C. in *Nova Scotia (Attorney General) v. Thompson*, 131 D.L.R. (4th) 609 (S.C.C.).

[12] Ms. Milligan, the Applicant's representative, testifies that on July 5, 2000 the Respondent was in arrears for \$931.93. The Respondent disputes that. But it is clear that she has not paid all the rent for July, 2000.

[13] Ms. Milligan says that the respondent has also changed the locks on the suite. There is no evidence of that but if it was done by the Respondent it is improper.

[14] There will be continuing ill will between the parties. The Respondent was an employee and her employment was terminated. The Respondent went to Employment Standards.

[15] This relationship should not continue.

[16] I grant an order for possession, with the Respondent to vacate no later than midnight July 31, 2000.

[17] If the Applicant wants to continue with a debt claim it is free to pursue that, for what it is worth.

[18] The Applicant will have costs limited to the \$200.00 disbursement.

[19] It is unfortunate that the Respondent's counsel was not able to convince her client that this is all economically foolish.

[20] I put this matter onto the July 20, 2000 morning chambers list before me to settle the formal order merely because the Respondent has counsel and this lawsuit should not be dragged out.

HEARD on the 14th day of July, 2000.

DATED at Edmonton, Alberta this 19th day of July, 2000.

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