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Vindication of a Residential Tenant's Rights – At Least Temporarily

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Cases Considered:

Lautner v. Searle, 2011 ABQB 263

This very short decision by Master Walter H. Breitkreuz, Q.C., is about an unjustified and unsuccessful attempt by a landlord to quickly evict an elderly and ill tenant from rental premises that had been his home for more than 10 years. Memorandums of Decision — even 8 paragraph ones — are not often written about residential tenancy matters. But this is a victory by a tenant that deserves publicizing, even if the only apparent result of the victory is to extend the time that the tenant has to vacate the premises from 14 days to 3 months. Without publicity, there is no possibility of discouraging other landlords from acting in an equally heavy-handed manner.

The landlord sued for possession of the premises that had been occupied by the tenant, Gerald Frank Searle, as a month-to-month periodic tenant since 2000. The landlord had sold the property and wanted possession of Mr. Searle's premises. Bernhard Lautner, Ursula Lautner and Manfred Lautner are all named as the applicants but Master Breitkreuz writes about the landlord using singular, masculine pronouns so it is difficult to know if all three Lautners are the landlord or if one or two of them are the landlord and the other one or two of them the purchasers. In any event, on the last day of February this year, the landlord served Mr. Searle with the 3 months' notice to vacate required by section 8 of the *Residential Tenancies Act*, S.A. 2004, c. R-17.1. It appeared, however, that 3 months was too long for the landlord to wait. He inspected Mr. Searle's premises and found them to be, in his opinion, "in a very uninhabitable state." As a result, the landlord served the tenant with a 14 day notice to vacate.

The landlord's allegation must have been that Mr. Searle had breached his obligation under section 21(e) of the *Residential Tenancies Act* to "not do or permit significant damage to the premises" and/or his obligation under section 21(f) to "maintain the premises . . . in a reasonably clean condition." A breach by a tenant of one of the obligations in section 21 is a "substantial breach" under section 1(p)(i) of the *Act*. And if a tenant commits a "substantial breach," then a landlord may terminate the tenancy by serving the tenant with 14 days' notice to vacate under section 29(1) of the *Act*.

Fortunately, Mr. Searle had the good sense to get out his camera and take some timely and informative photographs. According to Master Breitkreuz (at para. 5), the photographs that Mr. Searle took indicated that the premises were quite habitable. Mr. Searle acknowledged that they were fairly rundown; for example, the carpet had been there at least as long as he had. However, the landlord had been quite content with the condition of the premises until he sold the property.

Master Brietkreuz — who has been hearing Chambers matters since 1984 — concluded (at para. 7) that the landlord's complaints about the alleged condition of the premises were a "subterfuge": the landlord was trying to get around the mandatory 3 month notice period in order to get possession of the rental premises earlier than he was entitled to.

The premises, even if "fairly rundown," have been Mr. Searle's home since 2000. And according to Master Brietkreuz, Mr. Searle is elderly and undergoing treatment for both cancer and diabetes. In addition, his mobility is severely and permanently restricted. Nevertheless, it appears from the Master's decision that Mr. Searle served the landlord with the notice in writing objecting to the termination that is required by section 29(4)(b) of the *Act*, represented himself before Master Brietkreuz, proved he had honoured his obligations under the *Residential Tenancies Act* and vindicated his right to the 3 months' notice to which the Act says he is entitled.

Unfortunately, despite his victory, Mr. Searle still has to vacate his home of more than 10 years by the end of May. The sale of rental premises is one of the reasons that allow a landlord to terminate a tenancy even when the tenant has done nothing wrong. Under section 6(1) of the *Act*, a landlord's notice to terminate a periodic tenancy is of no effect unless the termination is for one or more of the "prescribed reasons." Those "prescribed reasons" are found in the unhelpfully named *Residential Tenancies Ministerial Regulation*, Alta. Reg. 211/2004. Under section 2(2)(b) of that *Regulation*, a landlord is allowed to terminate a periodic tenancy "if the landlord has entered into an agreement to sell the residential premises of the tenant . . . and . . . the purchaser or a relative of the purchaser intends to occupy the premises. . .".

Three months' notice to vacate one's home of 10 years does not seem like much, especially if one's ability to get around is severely restricted. It is not much security of tenure, but it is coupled with a fairly short list of prescribed reasons that allow landlords to require periodic tenants to vacate the rented premises. Without one of those reasons, a landlord cannot give a periodic tenant any amount of notice to vacate; the tenant is secure in his possession of the rental premises. In the *Residential Tenancies Act*, the government has tried to strike a balance between a tenant's right to possess another's person's property so long as rent is paid and other obligations attended to and an owner's right to do what he wants with his land. The *Act* is intended to correct, to some degree, the power imbalances that typically exist between property owners and tenants; those who rent tend to be students, the elderly and others with little income and few assets. The *Act* cannot achieve even its limited goals, however, unless tenants insist on the rights they are granted in the *Act*.