Citation: *Humphrey* v. *Faulds & Schramek*, 2011 YKTC 60 Date: 20110826
Docket: 11-T0030
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Judge Livingstone

IN THE MATTER OF THE *LANDLORD AND TENANT ACT*
R.S.Y. 2002, c. 131, and amendments thereto

BETWEEN:

ADAM HUMPHREY

Landlord

AND:

RYAN FAULDS and NONA SCHRAMEK

Tenants

Appearances:

Adam Humphrey	Appearing on his own behalf
Ryan Faulds and Nona Schramek	Appearing on their own behalf

REASONS FOR JUDGMENT

[1] LIVINGSTONE T.C.J (Oral): The applicant herein, Adam Humphrey, is the landlord of 48 - 12th Avenue, Porter Creek, Whitehorse, Yukon Territory. On August 24, 2009, the applicant entered into a Contract of Purchase and Sale concerning the property and home at 48 - 12th Avenue. The proposed purchasers of this property are Ryan Faulds and Nona Schramek. They are tenants in this application. None of the parties was represented by counsel for the purposes of this application.

[2] The Contract of Purchase and Sale is Exhibit A to the affidavit of Mr. Humphrey filed on this matter. The Contract of Purchase and Sale sets out that Mr. Faulds and

Ms. Schramek, who just recently became husband and wife, I am told, will lease the property until the purchase date of September 2012. Since on or about September of 2009, Mr. Faulds and Ms. Schramek have been in possession of the property, paying rent as set out in the Contract of Purchase and Sale. Paragraphs 15 to 20 of the contract relate specifically to the Tenancy Agreement part of the contract.

[3] The issues on this application: The applicant, Mr. Humphrey, alleges that the tenants are in breach of paragraph 19 of the Tenancy Agreement which sets out, among other things, that the purchaser/tenants shall not make any renovations to the property nor the home upon the property without the permission of the vendor/landlord. Mr. Humphrey further alleges that the tenants did not seek proper approval or inspections for such renovations and therefore did not comply with territorial and municipal law in conducting such renovations. This too, the applicant alleges, is a breach of paragraph 19 of the Tenancy Agreement.

[4] Mr. Humphrey also alleges that by subletting the basement, which the tenants acknowledge that they did, without obtaining the prior written permission from the landlord, Mr. Faulds and Ms. Schramek have contravened paragraph 9 of Schedule A of the agreement of purchase and sale.

[5] Mr. Humphrey alleges that these alleged breaches have placed his property in danger of waste or ruin, and that such breaches of the Tenancy Agreement allow him, as landlord, to terminate the tenancy as if the term of the tenancy were month to month.

[6] Paragraph 15 of the Contract of Purchase and Sale sets out that the term of the lease will be considered, for the purposes of the agreement, as a month to month

tenancy. This Court, therefore, is satisfied that the relevant sections of the *Landlord and Tenant Act,* R.S.Y. 2002, c. 131, are those which deal with notice of termination of a month to month tenancy.

[7] I will deal firstly with the issue of the sublease of the apartment. It is clear from the evidence, and the tenants do not deny, that they sublet the basement of the property without obtaining Mr. Humphrey's written consent. Mr. Faulds submitted into evidence as Exhibit B a copy of the rental agreement and condition of premises checklist which confirms that the sub-tenancy commenced April 1, 2011, and concluded on or before July 3, 2011. Although there is correspondence in the evidence between Mr. Humphrey and Mr. Faulds, filed as Exhibits D1, D2 and D3 in the tenants' evidence, which refers to tenants residing in the basement of the property, I am satisfied from Mr. Humphrey's evidence that he was introduced for the first time to the tenants in the basement when he and Mr. Jacobsen attended for an inspection of the property on April 10, 2011. In fact, from the evidence, it was Mr. Faulds who introduced the tenants to Mr. Humphrey, and it was Mr. Faulds who pointed out that they had caused damage to a window. Mr. Jacobsen confirmed that fact in his testimony on this application. The window to the apartment was repaired by Mr. Faulds on April 14, 2011, and an invoice confirming that repair was filed as Exhibit C in the tenants' evidence.

[8] Subsequent to this date, Mr. Humphrey provided notice to Mr. Faulds and Ms. Schramek of their breach of paragraph 8 of Schedule A for entering into a sub-tenancy without his permission in advance. It is clear that the sub-tenancy has now been terminated. The evidence is that since June-July 2011 there have been no sub-tenants or a sub-lease in effect. On this issue, therefore, I am satisfied that even though there

was an admitted breach of paragraph 8, Schedule A in the contract, not to sublet without the written permission of the landlord, that breach was rectified very shortly after notice was given.

[9] It is relevant to note that there had been a sub-tenant in the property before Mr. Humphrey transferred possession of the home to Mr. Faulds and Ms. Schramek. I also note that paragraph 8, Schedule A of the contract states, and I paraphrase, that the purchasers may not sublet the property without written permission from the vendor, "such permission which may be unreasonably withheld." Without benefit of evidence or legal argument I am assuming the phrase, "such permission which may be unreasonably withheld," is a typographically error in the Contract of Purchase and Sale. I am also assuming it should read, as most leases do, "such permission may not be unreasonably withheld," which would signify that subleases are not unexpected. On this issue I conclude, therefore, that there presently is no breach of the tenancy agreement with respect to subleasing and any previous breach has been rectified.

[10] I turn now, then, to the alleged breaches for renovating the property and not seeking proper approvals and inspections. The alleged renovations which Mr. Humphrey describes as breaching paragraph 19 of the Tenancy Agreement, as I understand his evidence, are as follows:

1. Relocating the fuel lines;
2. Changes to the electricity relating to the garage;
3. Repair of the damages to the roof and awning over the deck caused after wind felled a tree onto the property; and

4. Damage to a basement window.

Filed on this application is a series of letters and e-mails between the applicant and the tenants in relation to these alleged renovations, culminating with correspondence dated July 11, 2011, requesting that the tenants vacate the property within 45 days.

[11] In addition to the material filed and the submissions made by Mr. Humphrey, and Mr. Faulds and Ms. Schramek, I heard *viva voce* evidence from Mr. Keith Jacobsen. Mr. Jacobsen testified that he attended with Mr. Humphrey at the property on April 10, 2011, for a home inspection. Mr. Humphrey's evidence, in his affidavit, was that he had driven by the property on or about April 7th and noticed some branches on the front yard trees had been sawed off. On April 8th he gave notice of his intention to conduct a home inspection, and on April 10th he and Mr. Jacobsen attended for that purpose.

[12] Mr. Jacobsen's evidence was most helpful to the Court in understanding the dynamics of the landlord and tenant relationship between Mr. Humphrey and Mr. Faulds at that time. Mr. Jacobsen described how Mr. Faulds "volunteered" information about rerouting or relocating the fuel lines for the fuel tanks outside the home on the property. Mr. Jacobsen described that Mr. Faulds showed him and Mr. Humphrey the work that had been done, that Mr. Faulds pointed out the damaged window caused by the tenants, who Mr. Faulds introduced to them, and that Mr. Faulds offered to show them the electrical repairs he had done in the shed-garage area. Mr. Jacobsen's evidence was that Mr. Humphrey declined to look at the electrical work after Mr. Faulds described it to them. Mr. Jacobsen also described how Mr. Faulds was cooperative with them during this inspection.

[13] From Mr. Jacobsen's evidence, I can only conclude that nothing about alleged breaches of the tenancy agreement or serious questions about the changes to wiring and fuel lines was raised by Mr. Humphrey to Mr. Faulds when they met in person on April 10th. The confrontational documentation, as I have described it, started in earnest when Mr. Humphrey dropped off a letter the day after the home inspection, a letter dated April 11, 2011, which is filed as Exhibit B to the affidavit of Mr. Humphrey. The formal written response to Mr. Humphrey from Mr. Faulds about the electrical work and the relocation of the fuel lines, as well as about the damage from the fallen tree, is dated May 21, 2011. It is Exhibit D in the applicant's affidavit. Mr. Faulds apparently sent photographs with this letter. The photographs became exhibits in his evidence yesterday, Thursday, August 24 [sic], 2011.

[14] In that letter of May 21st, Mr. Faulds described what was done in relation to the fuel lines. The description concords with what Mr. Jacobsen, in evidence, says he saw in the inspection on April 10, 2011, and with photographs E, F and G in the tenants' exhibits. As Mr. Humphrey declined to look at the electrical work on April 10th when the opportunity was offered, the only evidence this Court has as to exactly what was done in that regard is contained in Mr. Faulds' aforementioned letter of May 21st and in the photograph, Exhibit H of the tenants' evidence.

[15] Mr. Faulds refused, in his letter of May 21, 2011, to disclose to Mr. Humphrey the name of his electrical contractor. The letter sets out why. In hindsight, Mr. Faulds has told the Court he now regrets not being more forthcoming with information requested by his landlord and the person who holds title to the property he has contracted to purchase. Be that as it may, according to paragraphs 21 to 30 in the applicant's

affidavit, Mr. Humphrey responded to Mr. Faulds' May 21st letter in immediate and concrete ways; for example, pulling the permits from the proper authorities (paragraph 22 of his affidavit), and conducting research into the proper permitting of work such as was conducted by the tenants (paragraph 24 of his affidavit). It is on the basis of Mr. Humphrey's own research, according to his evidence (paragraph 24), that he discovered that the electrical and fuel work done by and/or for Mr. Faulds is considered hazardous and requires proper permits, certified tradespersons and inspections.

[16] From the Court's perspective, it is curious that Mr. Humphrey would take this somewhat adversarial position when he had not even accepted the opportunity to inspect the electrical work himself, nor had he made any complaint or expressed any concern to Mr. Faulds when he observed the fuel lines on April 10th. As a response to the issue about seeking proper approvals or inspections Mr. Faulds attended Court yesterday and provided a work order filed as Exhibit A in the tenants' evidence from Flush Gordon Plumbing & Heating. It purports to relate to an inspection conducted on August 22nd. It sets out, among other things:

- found all oil piping and connection up to hydronic heating code;
- low voltage wiring done to code;
- no issues on existing system;
- all safety devices operable;
- no major changes done to system.

[17] Neither Mr. Faulds nor Mr. Humphrey has offered any evidence from witnesses qualified to either explain the potential risk or hazard which Mr. Humphrey alleges Mr.

Faulds' repairs could have created, or, in fact, to describe in any detail the work performed or the nature of any inspections which would be required thereafter. As Mr. Humphrey stated in his argument today, he is not an electrician. It would appear neither is Mr. Faulds.

[18] The Court would require more than these two gentlemen's opinions about what work was done and about what legislation is required to inspect such repairs to approve them. Consequently, the Court is unable to conclude whether the work completed by Mr. Faulds to the fuel lines and wiring required inspection and/or approval, or whether the work order of August 22nd is, in fact, a viable inspection or viable approval of anything being done up to code. Therefore, I am not satisfied that a breach of the tenancy agreement for not seeking proper approvals or inspections has been proven to the standard required on this application.

[19] That leaves the most significant issue. Did Mr. Faulds make renovations to the property or home without the written permission of the vendor/landlord? The term "renovation" is not defined in the *Landlord and Tenant Act*, nor is it defined in the Contract of Purchase and Sale between these parties. The *Concise Oxford Dictionary* defines to renovate as, "To restore in good condition, to repair." Mr. Faulds' and Ms. Schramek's position, now that the matter has come to court, is that all the work done to the roof after the tree fell on it, to the fuel lines, to the electrical wiring, and to the basement window, were "repairs." The Contract of Purchase and Sale sets out at paragraph 19, which is described as "Purchasers' Responsibilities," that the purchasers shall maintain the property in good repair, act in accordance with all Federal, Territorial and Municipal laws, and pay for minor repairs, those associated with normal wear and

tear. Mr. Faulds' and Ms. Schramek's position is that at the relevant time he paid for these repairs. He did not believe or appreciate any need to obtain permission of Mr. Humphrey to complete the repairs, was not renovating the property and is, therefore, not in breach of the tenancy aspect of the Contract of Purchase and Sale, but, in fact, was acknowledging and complying with paragraph 19, the Purchasers' Responsibilities.

[20] Mr. Humphrey, in fact, stated in his letter to Mr. Faulds of May 23, 2011, Exhibit E to his affidavit, that it was his position at that time that Mr. Faulds was required to pay for "any minor repairs," in particular, the damage from the fallen tree. It is relevant to note that when Mr. Humphrey penned that letter of May 23rd he had already been at the property for the April 10th inspection with Mr. Jacobsen. He had looked, not only at the tree damage, but also at the alleged renovations to the fuel lines and had declined to look at the electrical repairs.

[21] With great respect to Mr. Humphrey, it seems surprising to me that he would now take the position that he has advanced in this application, namely, that the relocation work done to the fuel lines, which he saw, and the work done to the electricity, which he did not bother to inspect when Mr. Faulds described it to him and Mr. Jacobsen, are in law renovations as opposed to minor repairs and are significant enough to be associated with the structural integrity or the safety of the property. If these repairs or renovations were of such significance, in fact, Mr. Humphrey would have been obligated to pay for them himself in accordance with paragraph 18 of the contract under the heading of "Vendor's Responsibilities."

[22] Mr. Humphrey did not raise the issue of the alleged renovations in his letter of

May 23, 2011. He did not raise the issue when he spoke with Mr. Faulds on April 10th at the inspection. He drops off a letter on April 11th demanding details of the changes made, and then complains, in his evidence, that he did not receive an immediate response. From Mr. Humphrey's follow-up e-mail of Friday, May 20th, Exhibit C, once again, the request for information relates not to breaches of the Contract of Purchase and Sale but to who is to pay for repairs. The e-mail of May 20th to Ms. Schramek states in part as follows:

> You and Ryan need to maintain open communication with me so that we can deal with issues such as damage to the house and how it will be repaired, who will be paying, is my insurance to be involved etc.

[23] On the basis of this documentary evidence, in combination with all of the other evidence presented on the application, I do not accept that Mr. Humphrey has proven that the work done on the fuel lines and electrical work were renovations such that there was a breach of the Tenancy Agreement when Mr. Faulds provided without Mr. Humphrey's permission. As I read through the series of exchanges of correspondence from April to July 2011, it appears to me as if Mr. Humphrey was looking for an excuse to get Mr. Faulds and Ms. Schramek out of his property. Today he states, "The time for compromise is over." With great respect to Mr. Humphrey, the relationship between him and Mr. Faulds and his wife is contractual. It would obviously be preferable if there was no animosity between these people in their contact with each other, but it is not a matter of whether Mr. Humphrey, as he stated in his argument, thinks he can continue with this relationship. The contract, not his personal feelings or lack thereof for Mr. Faulds, is what governs in this legal context.

[24] Mr. Faulds, in my view, is not blameless either. As I stated earlier, and as Mr. Humphrey stated in his e-mail of May 20th, open communication with the person with whom you have a contract to buy a home is a responsible way to do business. This is a valuable property. Mr. Faulds and Ms. Schramek have already made a substantial financial investment towards their purchase of the property, as Mr. Faulds reiterated today. If it was their view that changes needed to be made to the property which ultimately is to be theirs, advising Mr. Humphrey what they were planning to do makes sense, particularly when they were prepared to pay for these changes, as they have done in this matter. Hopefully, in hindsight, both Mr. Faulds and Ms. Schramek understand this. They have arranged to have the tree removed promptly after it fell; they promptly repaired the damaged window; they readily showed the damaged window to their landlord when he visited; they have, therefore, in my view, shown good judgment in the past. It is to be hoped that they will do so in the future. Mr. Faulds has stated to the Court today that he intends to act that way.

[25] As I told all three parties from the outset, this Court has jurisdiction only in relation to the tenancy aspect of the Contract of Purchase and Sale. In that regard, this Court finds no breach of the month to month tenancy. The application, therefore, is denied. Based on my findings, in my view, neither party is entitled to costs of the application.

[26] As I stated earlier, since both of the parties are unrepresented, it would be important in my view for them to have an opportunity to read what they have just heard me state to them orally. So I will order a transcript be prepared for all of them of my

reasons today, and that will be presented to them, I gather, in the passage of time.

[27] Thank you very much. This matter is now concluded.

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LIVINGSTONE T.C.J.