

1945 CarswellAlta 60  
Alberta Supreme Court

Andreason and Andreason v. Clarke

1945 CarswellAlta 60, [1945] 2 W.W.R. 574

**Andreason and Andreason v. Clarke**

Clinton J. Ford, J.

Judgment: June 1, 1945

Counsel: *J. J. Petrie, K.C.*, for applicants.

*J. C. Brokovski, K.C.*, for respondent.

Subject: Property

**Headnote**

Landlord and Tenant — Notice to Quit — Validity of — Notice Signed by Only One of Two Landlords — S. 15B. of O. 294 of Wartime Rentals Regulations.

Where there are two landlords (in the present case a husband and wife) and they are joint tenants of the property a notice to quit signed by only one of them is good even though it is not expressed to be on behalf of both: *Burrows v. Mickelson* (1904) 14 Man. R. 739, 25 Can. Abr. 681, 679; *Doe d. Aslin. v. Summersett* (1830) 1 B. & Ad. 135, 109 E.R. 738.

There is nothing in sec. 15B. of Order 294 of the Wartime Prices and Trade Board which alters the common law as to who must sign a notice to quit.

Other objections to the notice in question herein were overruled on the evidence.

***Clinton J. Ford, J.:***

1 This is an application on originating notice of motion for an order for possession of a dwelling house at 222 - 3rd Avenue East, Calgary. The notice to vacate, dated October 25, 1944, required the tenant to vacate and deliver up vacant possession on April 30, 1945.

2 Certain objections were taken on behalf of the respondent. The first was that the notice was signed by one only of the owners. The two owners are described as joint tenants in the agreement by them to purchase the property.

3 The notice is signed by the husband, Verner Andreason, and the application is made by the husband and wife jointly. I think it is a fair and proper inference that the notice was given by the husband on behalf of the wife as well as himself.

4 However that may be, *Doe d. Aslin v. Summersett* (1830) 1 B. & Ad. 135, 109 E.R. 738, is authority that a notice to quit by one of two joint tenants puts an end to the tenancy as to both. Succinct reasons for this are given in that decision by Lord Tenterden, C.J. who delivered the judgment of the Court.

5 This is followed in *Burrows v. Mickelson* (1904) 14 Man. R. 739, in which the learned Judge says at p. 742:

Where one of two joint tenants, who are landlords of premises, gives a notice to quit, this has the effect of determining the tenancy, and it has this effect even where the notice is not expressed to be on behalf of any one except the persons giving it.

6 See *Foa's Law of Landlord and Tenant*, 6th ed., p. 669.

7 In my opinion there is nothing in sec. 15B. of Order 294 of the Wartime Prices and Trade Board, pursuant to which this notice was given, that alters the common law as to who must sign a notice to quit.

8 The validity of the notice was also objected to as it required the tenant to go out on April 30, 1945. This is based on the contention that the lease commenced on the last day of the month instead of on the first day of each month. The receipts filed, four of them, from December 1944, to March, 1945, show that the lease commenced on the first day of each month. This objection cannot be maintained. There are decisions also to the effect the notice would be good even if the tenancy commenced on the last day of the month, but it is unnecessary to refer to these.

9 The remaining objection was that the notice was not served so as to give a full six months to vacate. The affidavit of the respondent in par. 6 states:

I cannot say positively as to the day or date I received Exhibits 'C' and 'D.' To the best of my recollection it was on either Tuesday or Wednesday, October 31st or November 1st, 1944, and not on Saturday, the 28th day of October, 1944.

10 This is very uncertain and cannot prevail against the evidence by affidavit of the applicant, Verner Andreason, that the notice was served on October 28, 1944.

11 The application must be allowed with costs. The date for possession will be fixed by me in Chambers, if the solicitors will arrange for a further hearing.