

TALES FROM THE TRENCHES™

BY BARRY C. MCGUIRE

GET THE DETAILS

A client of mine found a four-plex in Alberta with a motivated seller, but soon discovered that he would have to deal with problems caused by the seller's inexperience. The location was good, with a tenant profile that fit the type of people that my client liked to rent to. And, the price was very good. Read on to learn about documents you can use to protect your interests when buying from sellers like this who haven't been very good landlords.

As I said, the seller was motivated. He was the classic kind of seller that we all look for. The seller thought getting into real estate would be a great investment, part of his retirement plan. Obviously many of us think that investment real estate is a good idea, but this seller didn't get past the good idea stage before he bought. He did no research, took no training, didn't read any books and didn't ask any questions. He just bought. He made all the classic mistakes that any rookie investor makes, and then he made more because he was an untrained rookie investor who did no diligence before he bought.

One of the seller's classic mistakes was to take any tenant who came along. If the proposed tenant could pay the first month's rent and the security deposit, then the seller would rent to him. He didn't even have an application form. That lack of training and lack of paper led to my client's issue.

During the negotiations, my client and his realtor asked the seller to review copies of the leases and in/out reports. The seller said he didn't have any. My client then asked for a written statement detailing the rents and security deposits for each of the four units. The seller said, "the rent was \$650 per unit so the security deposit should be the same, right?" My client responded, "well, are the security deposits for each unit \$650 or some other number?"

Seriously, the seller did not know, but thought it didn't matter because all the tenants were leaving anyway. That was fine with my client because the current tenants did not fit his tenant profile and he would be renting to a completely different tenant group at higher rents. As it turned out, two of the tenants had not given notice and said they weren't leaving.

When I got the paperwork from the seller's lawyer there was no credit to my buyer for any of the security deposits. It was a bit of a dogfight with the other lawyer but he wouldn't give in, and we closed without \$1300 of security deposit credits for the two ongoing tenants. What if the tenants ended up claiming \$1000 each? What could my client have done differently?

During negotiations, when it turned out there were no leases and no in/out reports, my client could have added a clause that required the seller to provide a 'Tenant Estoppel Certificate' or a 'Rental Confirmation.' These are forms filled out and signed by the tenant. The Tenant Estoppel Certificate is a lengthier form that asks for a whole bunch of tenant details. The Rental Confirmation is a much simpler form that basically asks for the tenant's name, contact details, whether s/he has a written lease, rental amount, security deposit amount, and whether or not s/he has any side deals with the landlord or any prepaid rent.

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LESSONS LEARNED:

1. Great deal or not, always ask for copies of leases and in/out reports.
2. If you can't get leases and in/out reports you could add a term or condition ('subject to ') clause. A condition is probably better because it protects you more. That clause should say: "On or before (insert a date that matches up with your other conditions), Seller will have each tenant complete and sign buyer's form of Rental Confirmation containing rental and security deposit information satisfactory to the buyer."
3. With signed Rental Confirmations, you will be able to get the appropriate adjustments for security deposits and for rent if your deal is closing on a day other than on the first of the month.

**FOR ALL YOUR ALBERTA REAL ESTATE LEGAL NEEDS,
CONTACT BARRY MCGUIRE TODAY!**

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