



RENT CONTROL BULLETIN

Cohen Highley^{LLP}

L A W Y E R S

STOCKING-STUFFERS... AND A LUMP OF COAL FROM THE COURTS!

LMR IS FORFEITED IF "TENANT" REFUSES TO TAKE POSSESSION

We successfully argued in Divisional Court that the LTB had no jurisdiction to order reimbursement of LMR in circumstances where a tenant repudiates a lease prior to its commencement.

In this case the Landlord accepted the rental application in July, resulting in a transfer of the "contract deposit" to an LMR deposit. The term of the lease was to start in September, but in mid-July the tenant said she would not take possession and demanded her deposit back. The landlord re-rented the unit for Sept. 1, but refused to return the deposit. The LTB held she was a "prospective" tenant entitled to a return of the deposit because the Landlord had not "given vacant possession". The Landlord appealed on the grounds that she was a tenant once the rental application was accepted and the LMR was deposited.

The court agreed that the person was a "tenant" and that the Landlord did not breach the RTA by retaining the LMR deposit. If the tenant wants the deposit back, she will have to sue in Small Claims Court and the Landlord will then be entitled to show that it is entitled to keep the money to offset its costs arising from the tenant's breach of contract.

The case is binding on the LTB and applies to the standard rental application and lease provided through LPMA; GTAA; WRAMA and FRPO.
See "Custidio" (www.cohenhighley.com/articles/rrb36custidio.pdf).

USE OF LANDS FOR RESIDENTIAL INFILLING DOES NOT CONSTITUTE A "WITHDRAWAL OF A SERVICE OR FACILITY"

We successfully argued in Divisional Court that tenants of a residential complex in the heart of Toronto were not entitled to a rent reduction when a portion of the lands for the complex were severed and used by the same owners for residential infilling.

The LTB stated that the removal of the lands was a "withdrawal of a facility" and awarded a 2.5% rent decrease because tenants could no longer run and frolic on the infill lands. On appeal the court held that the LTB made an error of law in its interpretation of "services and facilities" as defined in the RTA, set aside the LTB Order, and dismissed the tenants' application.

The court's decision is significant for landlords seeking development rights on existing lands, particularly as there is a renewed emphasis on infilling in urban areas with excellent access to public transit. Had the rent decrease remained, it would have meant a loss of hundreds of thousands of dollars of income (and much more in value) for the owners of the large high-rise complex in this case and would have discouraged infilling by owners of other similar properties. See "Deng" (www.cohenhighley.com/articles/rrb36deng.PDF).

THE "LUMP OF COAL": TENANT TRUMPS LANDLORD'S RIGHT OF PERSONAL OCCUPANCY OF RENTAL UNIT

We were not involved in this court case but became aware of it recently. A landlord sought termination of a tenancy in a small building so that it could be occupied for personal use. The LTB found that the landlord's notice of termination was "bona fide" and that the landlord truly intended to occupy the premises.

The tenant argued, however, that the LTB should exercise its overriding discretion to refuse the eviction because the tenant suffered from financial, physical and mental health challenges. The Board found that "...eviction of the tenant seems more unfair than denying the landlord his application to evict", and refused the eviction. The Divisional Court held that the RTA gives a broad discretion to the LTB to refuse an eviction even where the landlord has proved the entitlement to an eviction order. The court held that as long as the LTB considers relevant circumstances, the court will not interfere with the Board's overriding discretion to refuse an eviction.

While the case is particularly bad for "small landlords" seeking possession of their own rental units for their own use, the general principles regarding the overriding discretion of the Board applies to any application for an eviction order.

See "Caputo" (www.cohenhighley.com/articles/rrb36caputo.pdf).

For questions about this Bulletin or these cases, contact Joe Hoffer at hoffer@cohenhighley.com . If you want to review the cases referred to above, please click on each link provided.

LAST...BUT NOT LEAST!!!

FROM ALL OF US IN THE RESIDENTIAL TENANCIES GROUP AT COHEN HIGHLEY^{LLP}, WE HOPE YOU HAVE A HAPPY HOLIDAY SEASON AND A SAFE AND PROSPEROUS 2010!



Joe Hoffer



Lindsay Lake



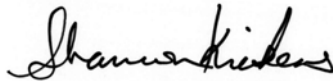
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