Eastern Ontario Landlord Organization

The 2017 Rent Increase Guideline is 1.5%

NEWSLETTER

September 29, 2016 **www.EOLO.ca**

Big Win for Landlords at the Court of Appeal

The law on rent abatements has been changed by the Ontario Court of Appeal in a case argued by EOLO Vice President David Lyman. The case is *Onyskiw v CJM Property Management Ltd.*, 2016 ONCA 477. It may well be the most significant legal victory for landlords in the last 20 years.

When the sole elevator broke down in a six storey apartment building in Kingston, CJM Property Management ("CJM") decided to replace the elevator. Aware that many of its elderly or disabled tenants could not use the stairs, CJM spent more than $50,000 to effect a temporary elevator repair, and to mitigate the effect on the tenants by making "runners" available to help the tenants on the stairs. Between the initial breakdown and the replacement project, the elevator was out of service for a total of 96 days over one year.

Based on the parties' agreed statement of facts, the LTB found that:

- CJM performed satisfactory preventive maintenance prior to the breakdown,
- CJM had acted reasonably to mitigate the problem throughout the repair and the elevator replacement, and
- the breakdown was caused by a hidden defect.

However, the tenants believed they were entitled to an abatement under s. 20 of the *Residential Tenancies Act*. Jack Fleming explains the previous understanding of the law in his textbook, *Residential Tenancies in Ontario*, 2nd Ed., 2011: "The landlord's repair and maintenance obligations are not met, even if the landlord has acted reasonably and has not been negligent. … When something goes wrong,

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Inside this issue:

New Rules Requiring Landlord Confidentiality

The Ontario legislature has enacted Bill 132, The *Sexual Violence and Harassment Action Plan Act,* which is aimed at helping victims of domestic abuse. This new legislation amends the *Residential Tenancies Act* ("RTA") to allow people who state that they are victims of sexual violence or domestic abuse to terminate their tenancies early, on 28 days notice, regardless of a lease. The new rules came into force on September 8, 2016.

As a landlord, you may receive a new Landlord Tenant Board notice, *Form N15: Tenant's Notice to End my Tenancy Because of Fear of Sexual or Domestic Violence or Abuse.* An N15 form is submitted by a tenant who has been abused by, or fears abuse from, another person.

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Big Win for Landlords at the Court of Appeal (cont'd)

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someone has to bear the cost (financial or otherwise), either the landlord or the tenant; as the landlord has contracted to provide the rental unit [and all the services that go with it], it is the landlord who must bear the cost." (p.719)

"If a rental [complex] is in disrepair despite the best efforts of the landlord, … there is breach of contract." (p. 721) "[Even] if a landlord expeditiously takes all reasonable steps to meet its obligations, the tenant is nonetheless entitled to abatement of rent for loss of services or other inconveniences while repairs are carried out; the tenant is not getting the full value of the contract and is entitled to compensation for that." (p. 722) That strict contractual liability was supported by one interpretation of a case known as *Offredi v. 751768 Ontario Ltd.*

Section 20 requires the landlord to provide and maintain the complex in a good state of repair. Based on the law summarized by Fleming, the tenants interpreted s. 20 to mean that, as soon as the elevator broke down, CJM was in breach of its obligation to provide a functional elevator, thus entitling them to rent abatements.

Ottawa lawyer David Lyman acted for CJM throughout the case. He saw things differently. The crux of his argument was simple: the law cannot be interpreted to require that landlords provide uninterrupted access to services when those services have to be shut down for maintenance, for repairs or for replacement.

As a result of the facts, CJM's care for the tenants and David Lyman's legal argument, the Landlord and Tenant board ("LTB") dismissed the tenants' application.

The tenants appealed the LTB's decision to the Divisional Court, lost, and then appealed that decision to the Ontario Court of Appeal.

At the Court of Appeal, David pointed out that interpreting s. 20 the tenants' way was unnecessary because the RTA already offered mechanisms through which tenants could seek rent abatements when landlords unreasonably interfered with the tenants' enjoyment of the rental premises (s. 22) or discontinued services (s. 130). David argued that the tenants brought their application under s. 20 in order to circumvent the LTB's duty to consider the reasonableness of the landlord's conduct, which exists under sections 22 and 130.

The court unanimously dismissed the tenants' appeal, adopting many of David's arguments. The court agreed that the tenants' interpretation of s. 20 would offend the legal principle that the legislature does not intend to enact requirements that are, in a practical sense, impossible to fulfill.

The court held that it should not adopt an interpretation of s. 20 that would be inconsistent with sections 22 and 130 in order to exclude consideration of the landlord's conduct from the LTB's determination of whether the landlord has breached its repair obligation.

The court stated that adopting the tenants' interpretation of s. 20 would create disharmony within the RTA. Section 20 would require landlords to provide uninterrupted access to non-vital services, but s. 21 would allow landlords to interrupt access to vital services when reasonably warranted by circumstances.

The CJM decision has brought common sense to Ontario's law on landlords' maintenance and repair duties. Now landlords will not owe rent abatements if they:

- perform proper preventive maintenance before breakdowns,
- mitigate the disruption, and
- act properly to effect repairs or replacement with reasonable speed, even if the work necessarily takes months.

Note: Backed by Legal Aid, the tenants are seeking leave to appeal to the Supreme Court of Canada. Stay tuned for whether they succeed in obtaining leave.

Rent increase guideline for 2017

For rent increases that take place between January 1, 2017, and December 31, 2017, the rent increase guideline has been set at 1.5%.

Ninety days notice must be given using the approved form.

Spring 2016 EOLO Networking Event

Our previous Networking Event, held in March 2016, was a great success for EOLO's landlord and associate members.

EOLO would like to thank all of the landlords and suppliers who were in attendance. If you are interested in joining EOLO in order to attend future events, please contact the Membership Services Coordinator at (613) 235-9792 or by email at admin@eolo.ca.

March 2016 Networking Event Sponsors:

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New Rules Requiring Landlord Confidentiality (cont'd)

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The Act lays out very strict confidentiality provisions to protect the identity of the victim from everyone, and to protect against disclosure of the fact that an N15 has been submitted.

If you receive an N15 from a tenant, you must keep it strictly confidential. Do not mention the N15 to anyone, or in front of anyone, including:

- employees or colleagues
- other tenants in the building, or
- other tenants of the rental unit.

Do not say anything about the Form 15 to (or in front of) any other tenant.

Do not give any notices that refer to or reveal the existence of the notice.

Do not give a notice of pre-termination inspection.

A landlord is allowed to:

- get legal advice about the notice from a lawyer or paralegal.
- inform "a superintendent, property manager or any other person who acts on behalf of the landlord with respect to the rental unit, **if the person needs to know that fact or requires the notice or accompanying documentation or the information for the purposes of performing the person's duties** on behalf of the landlord with respect to the rental unit."
- inform certain LTB, Ministry of Housing or police officials about the notice.
- disclose information with the consent of the victim (but get that consent in writing!)
- inform a remaining joint tenant of the N15 Notice and the termination date, but only after the victim has vacated AND after the termination date.

Other than that, you must keep the notice confidential.

If you think the notice has been given to you improperly (when there is in fact no domestic abuse), you can report the situation to the Rental Housing Enforcement Unit of the Ministry of Housing --- not to the police. You can find out more at http://www.mah.gov.on.ca/Page142.aspx.

However, if the notice has been delivered with the required statement or with a court restraining order, it will generally be effective to end the tenancy, regardless of whether the statement is true. (The exception is that if a tenant gives a notice to end their part of a joint tenancy, and does not actually move out, then the notice is void.)

Tenants who are prosecuted and convicted of giving a false notice face fines of up to $25,000. Individual landlords face a similar fine for breaching the confidentiality rules. Corporate landlords could be fined up to $100,000.

EOLO members were sent a warning about these new rules shortly before September 8, along with template memos members could use to inform their team members. If you want a copy of those memos, email admin@eolo.ca.

National Housing Strategy

The federal government is consulting about a new national housing strategy. So far CMHC has organized a vision for housing, a website to receive public input, 18 expert Roundtables and a key stakeholder consultation in Ottawa, which John Dickie attended on behalf of the Canadian Federation of Apartment Associations (CFAA).

Housing consultations often include a debate

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National Housing Strategy

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between those who think that social housing is the best solution to the housing needs of low-income people, and those who think that portable housing benefits are a better approach. This set of consultation was no exception. However, what is new is that there is increasing support for portable housing benefits, as an economical way to address affordability, while leaving low-income renters with choice.

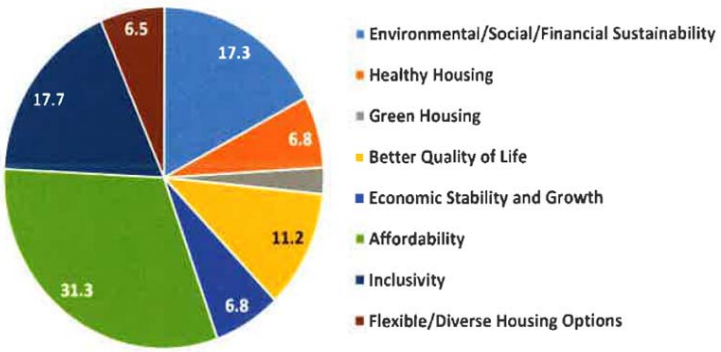
The new level of support for addressing affordability directly was reflected in the key themes which emerged from the expert roundtables. See chart 1.

Chart 1: Key themes from the expert roundtables

Theme	%	Sub-total %
Affordable rentals	10.0	59
Financing/Affordable rent	9.0	
Cost in large cities	11.1	
Low-income /distinct groups	27.9	
Social housing	15.3	29.9
Stronger affordable housing sector	14.6	
Laws & regulations	7.0	
Climate change goals	5.1	

From the public input to the website, LetsTalkHousing.ca, a similar result emerged. See chart 2.

Chart 2



From that input, CMHC noted the following as the key outcomes:

1. Housing that is affordable
2. Inclusivity
3. Environmental/Social/Financial Stability

However, CMHC has set up federal/provincial working groups on the six pillars set out in chart 3, which do not include affordability.

Chart 3

To help move CMHC in the right direction, CFAA and EOLO invite you to go to *LetsTalkHousing.ca* to make your views known. Marking affordability as your main (or only) priority should help turn the government's mind (and CMHC's mind) to the most cost-effective way to achieve affordability, which is portable housing benefits.

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If you have any questions about the issues raised in this bulletin, please contact John Dickie (Chair) or David Lyman (Vice-President) at 613.235.9792, or Luigi Caparelli (President) at 613.723.6169.

If you are interested in membership or advertising opportunities, please contact the EOLO Membership Services Coordinator at 613.235.9792