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PUBLICATION

Residential Tenants Have 1 Year to Sue Their Landlords For Want of Repair?

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On September 30, 2016, in the decision of *Letestu v Ritlyn Investments*, 2016 ONSC 6540 (CanLII), Justice Sloan of the Ontario Superior Court of Justice ruled that the estate of a deceased tenant had 1 year to sue the landlord of the deceased. The estate had claimed that the deceased had tripped on a "worn, torn and unsecured carpet" in his living room and fell, resulting in personal injury (prior to his death). As will be explained below, this is a significant decision for residential tenants and landlords, and should apply regardless of whether the tenant brings his or her claim personally, or through his or her estate.

Note that the decision is under appeal.

Basic Rights and Responsibilities Landlords Should Be Aware Of:

The Residential Tenancies Act, 2006 (the "RTA")

According to the *RTA*, the Landlord and Tenant Board (the "Board") is the entity that **must** hear landlord / tenant disputes, such as want of repair claims. This legal concept is known as exclusive jurisdiction. It means that a tenant looking to pursue a landlord for want of repair must start his or her claim before the Board by default.

There is a caveat. If the amount of the claim by the tenant is greater than $25,000, the tenant may bring their claim before the Ontario Superior Court of Justice. This is because the Board cannot award an amount greater than $25,000. However, the *RTA* still governs the claim, which is an important point as will be explained below.

The *RTA* provides a 1 year limitation period for a tenant to bring a claim before the Board for want of repair. This means that the claim must be brought within 1 year after the day the problem arose.

The Occupiers' Liability Act (the "OLA")

The *OLA* requires that a premises be kept reasonably safe. Under the *OLA*, a landlord should only be responsible for keeping the rented premises as safe for others as it would be for the tenant. In other words, if a tenant could not bring a claim against a landlord for want of repair of the rented premises, then no one else should be able to either.

The *OLA* is subject to the *Limitations Act*, *2002*. The *Limitations Act, 2002* contains a 2 year limitation period from the date a person making a claim discovered the problem. For example, this means that a person who is injured as a result of a trip and fall has 2 years from the date of the trip and fall (presumably the date that the person discovered his or her injury) to bring their claim. Claims made under the *OLA* should be brought before the Ontario Superior Court of Justice.

Note that the *Limitations Act, 2002* should not apply to the Board, because it is an administrative tribunal.

What is significant about the *Letestu* Decision?

Mr. Letestu's estate brought his claim more than 1 year after the alleged trip and fall incident. The Court found that the claim was time barred, meaning that it could not proceed.

What is significant about the decision is that the tenant's estate based the claim on both want of repair under the *RTA* and the landlord's obligations under the *OLA*. In other words, this claim could have been characterized as a landlord / tenant dispute or a personal injury claim.

The question is: was this a landlord / tenant dispute or a personal injury claim?

Justice Sloan found that the claim was a landlord / tenant dispute at heart. Because of this, he found that the rules of the *RTA* had to be followed. That is, even though the claim could be brought before the Court, the tenant had to follow the rules of the *RTA*, such as the 1 year limitation period for bringing the claim, when doing so.

One way to think about this is that when the dispute is a landlord / tenant dispute, it is the Board's case to hear by default. Where the tenant is looking for compensation above and beyond $25,000, he or she may start a lawsuit in the Ontario Superior Court of Justice to seek that compensation. However, the Court is essentially stepping into the Board's shoes, in terms of which rules it has to follow when considering the rights and obligations of the landlord and tenant. This is because the *RTA* has given the Board the exclusive jurisdiction to hear the dispute. In other words, even though the venue may be different (the Board versus the Court), the *RTA* provides that the rules governing the rights and obligations of landlords and tenants should be the same when the dispute is for want of repair.

The problem with this case is that there is no clear guidance as to when a claim by a tenant is for want of repair versus for a personal injury. In fact, Justice Sloan could have just as easily ruled the other way.

As noted above, we understand that this case is being appealed. Perhaps the Ontario Court of Appeal will provide landlords and tenants with some guidance on this point. For now, this case is potentially helpful for landlords looking to have a tenant`s case dismissed by the Court where brought after one year of the problem, provided that the landlord can successfully characterize the claim as a want of repair case at heart.