Cohen Highley LLP
LAWYERS

RENT CONTROL BULLETIN

DIVISIONAL COURT CLARIFIES APARTMENT INFILLING RULES

A recent decision by the Divisional Court helps clarify the rights and liabilities of landlords who are redeveloping existing properties through municipally approved infilling. The Court granted a landlord's appeal of an LTB decision which awarded tenants a rent abatement due to construction activity on infill lands and a rent reduction based on "loss of view": the court determined the Board Member's rulings against the landlord were "unreasonable". The Court also dismissed appeals by tenants who were seeking substantial rent abatements for the loss of use of infill lands and for noise and inconvenience resulting from construction activity. Decisions of the Court are binding on the LTB.

The case, *First Ontario Realty Corporation v Appelrouth et al,* involved a fairly common infilling situation at a residential complex near Spadina and St. Clair, with ample vacant land suitable for municipally approved infill development. The infill lands had been severed years earlier and transferred to a "related" company. After construction, dozens of tenants filed a multi-tenant application seeking abatements of rent for a litany of complaints relating to the "landlord's" infilling activity. Most of the initial application was dismissed by the Board because the landlord had met its statutory obligations with respect to giving notices and ensuring inconvenience to tenants was minimized.

LTB Member Carey decided, however, that First Ontario was culpable and in breach of its statutory obligation to tenants by making a decision to sever and permit development by a "related" company of the infill lands. The Member also decided that some tenants who found their view of the new building to be disagreeable were entitled to a rent reduction. The Div. Ct. agreed with the landlord that the Member's determinations were unreasonable and unprecedented and therefore set aside the Board's order.

The Court ruled that lawful construction by a related company on lands adjacent to the "residential complex" did not make the landlord liable for inconvenience and disruption to existing tenants. The Court corrected the Board's failure to take into account the context in which the activity occurred, stating: "in determining whether there has been substantial interference with use, the courts have considered many factors, including the character of the neighbourhood" and the municipal approval of the development. In an urban setting, one can expect that construction activity may occur, whether it be new construction or rehabilitation of existing housing stock. On the question of loss of view, the Court noted: "No provision of the Act requires a landlord to guarantee that a tenant's view from a rental unit will never change or to compensate the tenant if the view changes in a manner that the tenant finds disagreeable".

A footnote to the case involves the Court's analysis and agreement with the Landlord that the Board cannot use s. 202 of the RTA to effectively re-write the legislation. The Court affirmed that s. 202 is a procedural, fact finding section and it does not give the Board the power to "read in" statutory rights that the legislature has not specifically given. The Court's ruling in this regard is significant because there is a tendency by some Board Members to use s. 202 as a way of giving tenants benefits and penalizing landlords even though there is no legal basis in the RTA for doing so.

The Court's ruling does not mean that landlords engaged in redevelopment of multi-res property won't be liable to existing tenants if there is a reduction of land at the residential complex or if they are inconvenienced by nearby construction activity by the same company. What the case does do is help articulate a legal roadmap for landlords engaged in redevelopment activity, such as infilling or development of a multi-phase apartment development, so that they may implement a strategy that does not attract liability to existing tenants.

If you have questions, contact Joe Hoffer at hoffer@cohenhighley.com or Kristin Ley at ley@cohenhighley.com or by telephone at 519-672-9330.

RENT INCREASE GUIDELINE FOR 2013…. 2.5%

The Rent Increase Guideline set by the Province is 2.5% for 2013. A Notice of Rent Increase (N1) must be served on tenants 90 days before the increase is to take effect.

Remember that buildings first occupied for residential purposes AFTER November 1, 1991 are NOT subject to the statutory guideline and you can increase the rents in those buildings by any amount but you must use the correct NORI form (N2) and still give 90 days written notice on that form.

If you have any questions about the rent increase, please contact Paul Cappa at cappa@cohenhighley.com, or Rachel Henderson at Henderson@cohenhighley.com, or Lindsay Mills at mills@cohenhighley.com or by telephone at 519-672-9330.