

Hoarding and the Law



Presented by
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Today's presenter



Douglas H. Levitt was admitted to the Law Society of Upper Canada in 2000. He received his LL.B. from Osgoode Hall Law School in 1998. He is a founding partner at Horlick Levitt Di Lella LLP, practicing civil litigation with an emphasis on landlord and tenant disputes. His practice includes representing landlords before a variety of courts and administrative tribunals, including the Landlord and Tenant Board, the Human Rights Tribunal of Ontario, the Ontario Superior Court of Justice, the Divisional Court of Ontario, and the Court of Appeal for Ontario.



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Hoarding Defined

- Hoarding involves:
 - the acquisition of and failure to discard a large number of possessions that appear to be useless or of limited value;
 - living spaces sufficiently cluttered so as to preclude activities for which those spaces were designed;
 - significant distress or impairment in functioning caused by the hoarding; and
 - reluctance to return borrowed items &/or stealing.



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Hoarding Consequences

- Compulsive hoarding can:
 - cause fires;
 - complicate the putting out of fires;
 - create unclean conditions;
 - result in foul odors;
 - cause and/or exacerbate pest infestations;
 - create health and safety hazards, such as trip hazards; and
 - make it impossible to inspect and/or repair a unit.



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Hoarding is a Mental Health Condition

- No clear definition of compulsive hoarding in accepted diagnostic criteria - such as would be found in the current Diagnostic and Statistical Manual of Mental Disorders (DSM), the guideline for psychiatrists.
- That said, hoarding has become so widespread (and/or is now known) that a section on hoarding may be included in the 2013 printing of the DSM.
- Hoarding is usually considered to be a manifestation of obsessive-compulsive disorder. It can occur alone or in the context of other disorders.

What the Residential Tenancies Act, 2006 Says

SUMMARY OF LEGISLATIVE PROVISIONS **Re: The Landlord's Obligation to Maintain**

- Pursuant to Section 20 of the Residential Tenancies Act, 2006 (the “**RTA**”), a landlord is responsible for maintaining the rented premises in a good state of repair and fit for habitation during the tenancy and must comply with health, safety and housing standards.
- The landlord's obligation is not merely to keep a tenant's unit in a good state of repair. Rather, the duty extends to the entire residential complex, which includes common areas and facilities.



What the Residential Tenancies Act, 2006 Says

SUMMARY OF LEGISLATIVE PROVISIONS Re: Obligation to Provide Quiet Enjoyment



- Pursuant to Section 22 of the RTA, a landlord can not substantially interfere with the reasonable enjoyment of the rental unit or the residential complex for all usual purposes by a tenant or members of the tenant's household.
- When one tenant is disturbing another, the complaining tenant can bring an application against the landlord under the RTA asserting that the landlord has not taken action against the other tenant and therefore has substantially interfered with the reasonable enjoyment of the rental unit by the complaining tenant.



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What the Residential Tenancies Act, 2006 Says

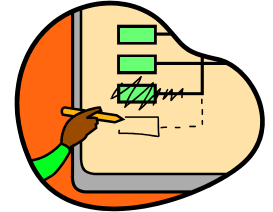
SUMMARY OF LEGISLATIVE PROVISIONS **Re: Tenant Applications**

- Pursuant to Section 29 of the RTA, a tenant can apply to the Landlord and Tenant Board (the “**LTB**”) for an order determining that the landlord:
 - has breached an obligation under Subsection 20 (1); and/or
 - has substantially interfered with the reasonable enjoyment of the rental unit or residential complex for all usual purposes by the tenant or a member of his or her household.



What the Residential Tenancies Act, 2006 Says

SUMMARY OF LEGISLATIVE PROVISIONS Re: Tenant Remedies



- Pursuant to Sections 30 & 31 of the RTA, if the LTB determines that a landlord has breached its Sections 20 & 22 obligations, the LTB can:
 - terminate the tenancy;
 - order an abatement of rent;
 - authorize a repair that has been or is to be made by the tenant and order the cost of the repair to be paid by the landlord;
 - order the landlord to do specified repairs; and/or
 - order the landlord to pay the tenant for the reasonable costs that the tenant has incurred or will incur in replacing property that was damaged or disposed of as a result of the landlord's breach or for other out-of-pocket expenses that the tenant has incurred or will incur.

What the Residential Tenancies Act, 2006 Says

SUMMARY OF LEGISLATIVE PROVISIONS

Re: Limitations on Liability

- There are limitations on the liability of the landlord to maintain the residential complex in a good state of repair. These limitations include:
 - a landlord will usually not be penalized for failing to fix a problem that was never brought to its attention;
 - the landlord's obligation to maintain the unit in a good state of repair does not mean that the landlord must cater to a hypersensitive tenant;
 - tenants must take reasonable steps to minimize their losses; and
 - tenants must file an application within 1 year of discovering the problem.



What the Residential Tenancies Act, 2006 Says

SUMMARY OF LEGISLATIVE PROVISIONS

Re: Case Law

- The cases indicate that the requirement that the landlord maintain the residential complex in a good state of repair will require a landlord to:
 - have a regular maintenance regime in place;
 - perform repairs when necessary;
 - respond promptly to requests from tenants regarding routine maintenance concerns; and
 - respond even faster in emergency situations.



If a landlord meets the above-noted requirements they will have an excellent defence against tenant applications

What the Residential Tenancies Act, 2006 Says

SUMMARY OF LEGISLATIVE PROVISIONS Re: Case Law

- In cases involving disturbances caused by other tenants, a landlord will not be held liable if it takes prompt and reasonable steps to deal with the problem.
- This differs from cases involving repair issues because, even where a landlord is acting reasonably and promptly, if the repairs substantially interfere with the tenant's reasonable enjoyment, the tenant may still be entitled to a remedy.



If a landlord meets the above-noted requirements they will have an excellent defence against tenant applications

Other Legal Considerations Re: Landlord Obligations

- In addition to breaching the RTA obligations, landlords may also be found to be negligent and/or to have breached its contractual obligations by failing to take corrective action against a tenant that hoards where such failure results in personal injury or property damage.
- Also, as a result of the *Occupier's Liability Act*, an “occupier”(which includes landlords and tenants) has an affirmative duty to inspect and to take whatever reasonable steps as are necessary to ensure that premises are safe.



Blair v. Toronto Community Housing Corp. (2011) (SCJ)

- The Plaintiff of a proposed class action moves for certification of her action against landlord and property manager.
- The Plaintiff used to be a tenant in an apartment building at 200 Wellesley Street East.
- She alleges that while she was a tenant, she noticed that her neighbor was hoarding paper.
- The Plaintiff states that she warned the Defendants about the fire hazard, but they ignored her and her warnings.



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Blair v. Toronto Community Housing Corp. (2011) (SCJ)

- The Plaintiff claims that, in 2010, she witnessed officials of the Toronto Department of Public Health alerting the property manager about the fire hazard.
- On September 24, 2010, a fire occurred, which fire caused property damage and emotional distress to the tenants.
- On November 5, 2010, the Plaintiff commenced her proposed class action.
- She pleads that the landlord breached its contract with the tenants and that the landlord and the property manager were negligent in permitting another tenant to create a fire hazard by hoarding huge quantities of paper in his apartment.



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Blair v. Toronto Community Housing Corp. (2011) (SCJ)

- Pursuant to s. 5(1) of the *Class Proceedings Act, 1992*, the court must certify a proceeding as a class proceeding if, among other things, the pleadings disclose a cause of action.
- In this case, the court noted that that the Plaintiff had satisfied this requirement by pleading causes of action in negligence and breach of contract.
- Court also noted that the pleadings should have included claims re. breach of statutory obligations contained in the *Occupiers' Liability Act*, the *Residential Tenancies Act, 2006* and the *Social Housing Reform Act, 2000*.



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What the Residential Tenancies Act, 2006 Says

SUMMARY OF LEGISLATIVE PROVISIONS Re: Tenant Obligations



- Pursuant to Sections 33 and 34 of the RTA, a tenant is responsible for:
 - the ordinary cleanliness of the rental unit; and
 - the repair of undue damage to the rental unit or the residential complex caused by his or her wilful or negligent conduct.
- Section 36 of the RTA provides that a tenant is prohibited from, among other things, interfering with a landlord.



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What the Residential Tenancies Act, 2006 Says

SUMMARY OF LEGISLATIVE PROVISIONS Re: Landlord Remedies

- Pursuant to Sections 61 – 64 and 66 of the RTA, a landlord can give a tenant **notice of termination** of the tenancy if:
 - the tenant willfully or negligently causes undue damage;
 - the conduct of the tenant substantially interferes with the reasonable enjoyment of the residential complex by the landlord or another tenant;
 - the conduct of the tenant substantially interferes with a lawful right, privilege or interest of the landlord or another tenant;
 - the tenant commits an illegal act in the rental unit or the residential complex; and
 - the tenant's acts or omissions seriously impairs the safety of any person.

What the Residential Tenancies Act, 2006 Says



SUMMARY OF LEGISLATIVE PROVISIONS Re: Landlord Remedies

- Pursuant to Sections 69 and 89 of the RTA, a landlord may apply to the LTB for an order:
 - terminating a tenancy and evicting the tenant if the landlord has given notice to terminate the tenancy under the RTA; and/or
 - requiring a tenant to pay the reasonable costs that the landlord has incurred or will incur for the repair or replacement of damaged property, if the tenant willfully or negligently causes undue damage to the rental unit or the residential complex.
- Even if you prove your case for eviction, pursuant to Section 83 of the RTA, the LTB has the responsibility to consider all of the circumstances before evicting.

What the Human Rights Code Says

SUMMARY OF LEGISLATIVE PROVISIONS The Code Rules



- Section 47(2) of the *Human Rights Code* (the “**Code**”) overrides the provisions of any other statute including the RTA.
- The RTA recognizes primacy of the Code in Section 3(4).
- Pursuant to the Code, landlords have the duty to assess each tenant and consider whether the tenant requires accommodation before imposing measures that may affect a tenant negatively, such as threatening eviction, evicting a tenant, etc.
- The LTB must also comply with the Code when making findings of fact, exercising discretion and rendering decisions.

What the Human Rights Code Says

SUMMARY OF LEGISLATIVE PROVISIONS Re: Human Rights Protections

- Section 2 (1) provides that everyone has a right to equal treatment with respect to housing without discrimination because of a Code protected ground such as disability or age.
- Discrimination means any form of unequal treatment based on a Code ground (e.g. by imposing extra burdens or denying benefits).
- Discrimination includes direct actions that are discriminatory on their face and/or rules, practices or procedures that appear neutral, but that have the effect of disadvantaging certain groups of people.
- Discrimination also includes the failure to accommodate.

What the Human Rights Code Says

SUMMARY OF LEGISLATIVE PROVISIONS Re: Human Right Protections



- Section 9 prohibits direct or indirect infringement on the right to equal treatment with respect to housing.
- Sections 11 & 17 allows for infringement if the landlord accommodates a tenant up to the point of undue hardship (creates obligation to accommodate).

What the Human Rights Code Says



An Example: The Human Rights Shield

- The landlord initiates eviction proceedings against a tenant who hoards as a result of the hoarding and/or because of the consequences of same (i.e. pest infestation, foul smell, etc.).
- The tenant hoards because of a mental health disability.
- Therefore the decision to evict is based on disability (= discrimination).
- The landlord failed to accommodate up to point of undue hardship (also discrimination).
- LTB should exercise discretion under Section 83 of the RTA to deny eviction.

What the Human Rights Code Says

The Duty to Accommodate

- Accommodation is a multi-party process.
- Everyone in the accommodation process should work together cooperatively and respectfully to develop and implement appropriate accommodation solutions.



What the Human Rights Code Says

Tenant Responsibilities Include:

- Advising of the need for accommodation.
- Making their accommodation needs known.
- Answering questions and providing information.
- Discussing possible accommodation solutions.
- Cooperating with experts.
- Fulfilling agreed upon responsibilities.
- Following medical/professional advice to improve condition.
- Working with the landlord to manage the accommodation process.



What the Human Rights Code Says

Landlord Responsibilities Include:

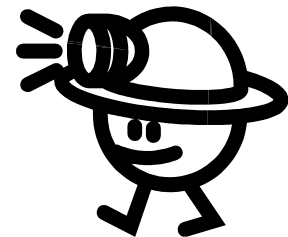
- Accepting request for accommodation in good faith.
- Investigating alternative approaches and solutions.
- Getting expert opinion or advice.
- Respecting a tenant's right to privacy and confidentiality.
- Dealing with accommodation requests in a timely way.
- Developing or revising policies, etc. inclusively.
- Paying all costs.
- Recording the request and action taken.



What the Human Rights Code Says

Undue Hardship

- The Code prescribes three considerations when assessing whether an accommodation would cause undue hardship:
 - 1) Costs;
 - 2) Outside sources of funding, if any; and
 - 3) Health and safety requirements, if any.



Case Study: Morguard Residential v. Lili Peters (2010)(Divisional Court)

- Unit cluttered and unclean to the point that the landlord was unable to do any work in the unit.
- Landlord applied for eviction on basis that tenant:
 - (a) substantially interfered with the other tenants' reasonable enjoyment of the residential complex;
 - (b) substantially interfered with the lawful interests of the landlord (i.e. section 20 obligations); and
 - (c) willfully and/or negligently caused undue damage to the rental unit.

Case Study: Morguard Residential v. Lili Peters (2010)(Divisional Court)

- With respect to relief from eviction, and specifically the human rights shield, LTB found that (and the Divisional Court agreed):
 - (a) the tenant, because of her delusions, was incapable of maintaining the unit in a condition of ordinary cleanliness;
 - (b) Landlord made efforts to accommodate, which efforts included contacting:
 - the local Community Care Access Centre;
 - the tenant's emergency contacts; and
 - social agencies that provide cleanup services.

Case Study: Morguard Residential v. Lili Peters (2010)(Divisional Court)

- With respect to the landlord's damage claim, tenant argued that the willful and negligent standard should be relaxed in the case of a disabled person.
- Divisional Court disagreed and held that the Code does not negate a disabled person's responsibility to pay for damage.
- Divisional Court also held that it was appropriate to award the landlord the costs that it will incur to clean the unit because the unit **needed to be** cleaned in order to repair same.

Canadian Mental Health Association and Ann Warren (2004) (ORHT)

- Tenant has mental health condition that causes the tenant to, among other things, hoard.
- As a result, the landlord must accommodate before evicting.
- ORHT held that the landlord fulfilled its obligation by, among other things:
 - (a) consenting to a mediated settlement that allowed the tenant relief from eviction;
 - (b) taking part in a "transition team", which was formed to assist the tenant; and
 - (c) assigning caseworkers to deal with the needs of the tenant.

Canadian Mental Health Association and Ann Warren (2004) (ORHT)

- ORHT also notes that there was undue hardship on health and safety grounds.
- Specifically, as a result of the combustible materials littered in the unit, the ORHT found that a hazardous situation existed, which situation could result in a fire.

Best Practices (Part 1)

- 1) Conduct regular inspection of units;
- 2) Identify tenants that hoard;
- 3) Communicate in writing and orally to tenant in an effort to:
 - a) Have unit cleaned-out and/or organized; and
 - b) Arrange for necessary supports that address underlying issue.



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Best Practices (Part 2)

- 4) Mobilize tenant support team, for example contact:
 - a) Engaged family members or support workers;
 - b) Public health organizations;
 - c) Local community care access centers; and
 - d) Local organizations that will clean-up units (i.e. Extreme Clean).

- 5) Initiate eviction proceedings:
 - a) Draft Notice of Termination;
 - b) Where possible, mediate; and
 - c) If necessary, evict.



Questions

