Make sure clients aren't

caught off guard

by the *Rental Fairness Act*

On April 27, 2017 the Province of Ontario amended the *Residential Tenancies Act, 2006 (RTA)* with the introduction of the *Rental Fairness Act*. Some of the changes to the *RTA* are already fully in force, others will come into play in 2018. The amendments to the *RTA* affect every residential tenancy in Ontario to different degrees. Landlords of "small" rental properties (1 – 4 units, including house or condo rentals) are particularly vulnerable to the *RTA* amendments, and can find themselves subject to large fines if they don't comply with the *RTA* provisions with respect to obtaining vacant possession.

If you provide legal services to clients who engage in transactions involving residential rental property, you need to know how your clients are, or will be, affected. You don't want to have a client facing a fine and alleging you didn't tell them they were not in compliance with the new provisions of the *RTA*. There are a number of distinct issues for existing landlords and new purchasers of rental properties.

Here are the key changes to the *RTA* which may expose your landlord clients – and you if there is a malpractice claim – to significant liability:

- If a landlord wishes to obtain vacant possession for the purpose of residential occupancy by the landlord or member of the landlord's family, or a caregiver, the landlord must now pay one months' rent to the tenant or offer another rental unit acceptable to the tenant as compensation for exercising the right of termination (s. 48.1 *RTA*). Sixty days' written notice prior to the end of a rental term or period is still required.
- If a rental unit is sold to a purchaser who requires vacant possession for the purpose of residential occupancy, then the best practice is to have the vendor serve the 60 days' written notice on behalf of the purchaser, in which case the old rules (which do not require payment of compensation) continue to apply (s. 49 *RTA*); however, new liability arises for the purchaser as described below.
- A corporation cannot give a notice of termination for the purpose of residential occupancy by the landlord or member of the landlord's family, even if the landlord is a sole shareholder of the corporation and the rental unit is the only asset of the corporation (s. 48 (5) *RTA*).
- Regardless of whether the Notice of Termination is given for landlord's own use under s. 48 or on behalf of a purchaser under s. 49, if the person who claimed to require possession under those sections fails to occupy the rental unit "within a reasonable time after the former tenant vacated the rental unit" (s. 57 (1) *RTA*), the landlord will be liable under the *RTA* for failing to give a "good faith" notice of termination and will be liable to significant financial penalties payable to a former tenant and to the Landlord and Tenant Board under s. 57 (3) *RTA*.
- Compounding the risk for landlords under s. 57 is that if, within one year after the tenant vacates the rental unit, the designated person fails to occupy the rental unit within a reasonable period of time and the landlord lists the rental unit for rent; or enters into a tenancy agreement with another person; or advertises the rental unit or the building that contains the rental unit for sale; or demolishes the rental unit or the building containing the rental unit; or "takes any step to covert the rental unit or the

building containing the rental unit" to a use other than residential premises; then, the landlord is "presumed, unless the contrary is proven on a balance of probabilities", to have acted in bad faith in giving the notice and is therefore liable to the penalties provided for in s. 57 (3).

- Section 12.1 of the *RTA* makes it mandatory for landlords to use a "prescribed form" of lease for "prescribed" classes of tenancies; however, as of the date of this article, the form of mandatory leases are not yet prescribed. It is expected that in early 2018, the prescribed lease that will be required for most rental units (multi-residential apartments, rented condos, single family homes, duplexes, etc.) will be in force. A failure by a landlord to use the prescribed form of lease for all new tenancies after the prescribed lease becomes law will expose the landlord to financial and legal liability under s. 12.1 *RTA*. There is likely to be an education period and forewarning of the date on which use of the prescribed form of lease will be mandatory, so for now legal advisors should just be aware that the requirement is imminent and continue to monitor the status of the form.
- Rental units in a building first occupied on or after November 1, 1991 were previously exempt from most rent controls (s. 6 (2) (c) *RTA*) but that exemption is repealed.
- Landlords can no longer apply for an "Above Guideline Rent Increase" based on an "extraordinary" increase in the cost of utilities (heat, hydro, water) for the residential complex.

Legal advisors should pay particular attention to the "landlord's own use" amendments because those sections of the *RTA* were improperly used by some "small" landlords or purchasers to secure vacant possession of a rental unit, following which the landlord would renovate the unit and then re-rent the unit at a much higher "market" rent or sell the building for a substantial profit based on its increased income potential. While there is no need for sympathy for persons "gaming" the system, there may well be circumstances where a notice for personal use is given in good faith but the person for whom the notice was given later decides not to occupy the rental unit. Employment transfers, spousal separations, unforeseeable life decisions (including death), may well result in the rental unit being listed for rent, or the building listed for sale, within one year of the date the former tenant vacates the rental unit. In such cases there is a presumption of bad faith, regardless of the circumstances, that the landlord who gave the notice must overcome.

Legal advisors should ensure their "small landlord" clients, in particular, are made aware of the changes and the potential exposure, particularly if the client's business model is acquisition of small rental properties followed by securing vacant possession, renovations and increasing property value through re-rental or sale. If the full model is deployed through a notice given under s. 48 or 49 *RTA* and there is a "step" taken toward completion within a year of a tenant vacating, the client is exposed to significant liability because of the presumption of bad faith under s. 57 *RTA*. ■

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Roop Grewal

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