Ontario Real Estate Law Developments

September 2020
Number 541

Recent Cases

RESIDENTIAL EVICTIONS IN ONTARIO: WHAT LANDLORDS AND TENANTS NEED TO KNOW ABOUT BILL 184 AND THE END OF THE EVICTION MORATORIUM

By: Ismail Ibrahim and Joseph Jamil, Robins Appleby LLP.

As Ontario begins to re-open with Phase 3, there is a renewed focus on the plight of residential renters who are in arrears. To date, these renters have been shielded from evictions through an evictions moratorium, but the moratorium is about to end. There is uncertainty about what happens next. There is also an additional source of anxiety—Ontario passed Bill 184, *Protecting Tenants and Strengthening Community Housing Act, 2020* (the "***Act***") and there are a lot of differing opinions on the impact this Bill will have on evictions.

A recent Toronto Foundation report suggested that around 8-13% of residential tenants were in arrears in April and May 2020; this is significantly up from usual 1% rate and all due to COVID-19. In Ontario, that equates to more than 50,000 households, or ballpark 130,000 people.

This article attempts to provide some clarity for landlords and tenants on the current state of the law and provides commentary on the impact of Bill 184 on residential evictions.

Ontario's Eviction Moratorium Ends

Beginning on August 1, 2020, residential evictions in Ontario will no longer be suspended.[1] Back on March 19, 2020, the Ontario Superior Court issued an Order suspending the eviction of residents from their homes until the end of the calendar month in which the provincial State of Emergency is terminated (the "**Eviction Moratorium**").

In addition to the Court's Order, the Landlord and Tenant Board (the "**LTB**") announced the suspension of eviction orders and all hearings related to eviction applications *unless* the matter relates to an urgent issue such as an illegal act or a serious impairment of safety. This meant that the LTB suspended all in-person hearings until further notice as a result of COVID-19. Notwithstanding the Eviction Moratorium, landlords were still able to serve eviction notices for non-payment of rent and subsequently file an eviction application if the tenant did not remedy the issue.

[1] https://www.ontariocourts.ca/scj/chief-justice-court-order-susp-resid-evict/.

On July 24, 2020, the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* became law. Section 17 of this statute terminates the state of emergency, although many "Emergency Orders" will remain in effect. As a result, starting on August 1, 2020, residential evictions will no longer be suspended.

The LTB is the tribunal responsible for resolving disputes between residential landlords and tenants in Ontario. Despite the incoming end to the Eviction Moratorium in Ontario, the LTB has not indicated whether it will hear eviction applications or issue eviction orders, unless the matter relates to an urgent issue such as an illegal act or a serious impairment of safety. According to the LTB's website in respect of COVID-19 Updates on LTB Operations.

Until further notice, the LTB is not hearing eviction applications and is not issuing eviction orders unless the matter is urgent because there is a serious and ongoing health or safety issue at the residential complex or a serious illegal act that occurred at the residential complex.

If the LTB were to issue an eviction order, the Court Enforcement Office (Sheriff's Office) will not enforce it unless the landlord brings an urgent motion to the Ontario Superior Court of Justice seeking permission to enforce the order.[2]

If the LTB is not scheduling any eviction hearings, subject to the urgent exception, then what are the practical implications of the end of the Eviction Moratorium? Theoretically, eviction orders issued by the LTB prior to March 19, 2020, could be enforced on or after August 1, 2020, but there is still uncertainty.

Will landlords get their time before the LTB to evict a non-paying tenant now that the Eviction Moratorium is lifted? With no statement or procedure from the LTB in this respect, it is difficult to assume how it will proceed with eviction hearings, if at all.

Bill 184, Protecting Tenants and Strengthening Community Housing Act, 2020

On July 21, 2020, the *Act* received Royal Assent, which amended, among other things, parts of the *Residential Tenancies Act, 2006*.[3] The *Act* has recently received mass public attention and province-wide protests as critics state that the *Act* would lead to mass evictions in Ontario. On July 29, 2020, Toronto's City Council also voted in favour of a motion to commence a legal challenge to the *Act*. Below are three provisions of the *Act* that have received the most attention.

Ex Parte Evictions

A major criticism of the *Act* is that landlords would be permitted, without notice to the tenant, to apply to the LTB for an eviction order if the tenant did not comply with the terms of an agreement made between a landlord and tenant for issues in an eviction application (i.e. non-payment of rent).

An application without notice is referred to as an *ex parte* application. Prior to the enactment of the *Act*, landlords were permitted to bring an *ex parte* application to the LTB for an order terminating a tenancy or evicting the tenant if the tenant failed to comply with the terms of a mediated agreement, facilitated by a Dispute Resolution Officer ("**DRO**") at the LTB.[4] The *Act* now provides that a landlord and tenant can also agree to a repayment agreement on their own (i.e. without the assistance of a DRO). Moreover, the *Act* now allows the landlord to also bring an *ex parte* application for an eviction order where there was an agreement without the assistance of a DRO.[5]

Some potential issues arising out of these amendments involve power imbalances and sophistication between landlords and tenants in respect of any settlement or agreement between the parties. For example, the tenant may not have fully appreciated the consequences of non-compliance when they entered into a repayment of rent agreement with the landlord. Notwithstanding these concerns, there are existing safeguards to protect the tenant.

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[2] As at the date of this article, the LTB's webpage was last updated on July 9, 2020.

[3] For a summary of the impact of changes to the *Residential Tenancies Act, 2006*, see: https:/www.robinsappleby.com/resources/publications/details/impact-of-changes-to-residential-tenancies-act-2006-under-bill-184.

[4] *Residential Tenancies Act, 2006*, s. 78(1).

[5] *Act*, s. 30 repeals and substitutes s. 194 of the *Residential Tenancies Act, 2006*.

Firstly, the *ex parte* application must include an affidavit from the landlord that specifies the provisions of the repayment agreement that were breached. Lying on an affidavit is perjury, thus a criminal offence. Secondly, the *Act* does not repeal a tenant's rights to set aside or stay eviction orders.[6] Upon receiving the eviction order, the tenant can still go to the LTB to set aside the original *ex parte* order.

Raising New Issues at LTB

Previously, if a tenant is being evicted for arrears at the LTB, the tenant could raise any pertinent issues at the hearing as to why the tenant did not pay the rent.[7] The *Act* now requires tenants to inform the landlord ahead of time that they are raising the issue or provide the LTB with a satisfactory explanation of why the issue was not raised ahead of time.[8]

The risk with this change is that unsophisticated or uninformed tenants may not raise issues ahead of time, and thus will be shut out of raising legitimate issues at the hearing.

This amendment is still subject to changes to the LTB's Rules, which have not yet been amended. At a minimum, LTB notices and forms would have to be revised to ensure that all tenants are well informed of the requirement to raise issues within the prescribed timelines.

Forced ADR

The *Act* allows the LTB to attempt to mediate any matter through mediation or another dispute resolution process.[9] The criticism is that this attempt can presumably be made without the consent of the parties.

At this time it is unclear what new manner of dispute resolution process the LTB may try and what the potential benefits of a different process may be. Practically speaking, aside from mediation and adjudication, there are not that many other options available to resolve issues in a timely manner. Nevertheless, if a new process is employed, the process must ensure that the procedural rights of landlords and tenants are respected.

This article originally appeared on the Robins Appleby LLP Bridge Beats Blog.

RECENT CASES

Landlord Entitled to Make Unsecured Claim for Unrecovered Accelerated Rent

Court of Appeal for Ontario, April 27, 2020

The landlord and tenant entered into a lease respecting commercial premises in May 2017 for a term ending in December 2027. In March 2018, the tenant made an assignment in bankruptcy and the respondent was appointed as the trustee. The trustee occupied the leased premises and paid occupation rent of $25,698 to the landlord. In April 2018, the landlord filed a proof of claim in the bankruptcy. It claimed $100,558 as a preferred claim for three months' accelerated rent, pursuant to the priority of claims prescribed under section 136(1)(*f*) of the *Bankruptcy and Insolvency Act* (the "BIA"). As the realization of property on the leased premises yielded $24,571, an amount that was less than the preferred claim, the landlord asserted its right to claim the balance of the unrecovered preferred claim, being $75,987, as an unsecured creditor. The landlord also advanced an unsecured claim for $4 million, which represented a claim for rent payable for the balance of the lease and amounts for tenant inducements. In section 16.1, the lease provided that in the event of default, including bankruptcy, the landlord may claim the value of all tenant inducements, including the value of any leasehold

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[6] See *Residential Tenancies Act, 2006*, ss. 78(9) and (10).

[7] *Residential Tenancies Act, 2006*, s. 82(1).

[8] *Residential Tenancies Act, 2006*, s. 82(2).

[9] *Residential Tenancies Act, 2006*, s. 194(1).

improvement allowance, tenant inducement payment, and rent-free periods. The trustee issued a notice of disclaimer of the lease, following which the landlord found a new tenant. In September 2018, the trustee issued a notice of partial disallowance of claim, allowing the landlord's preferred claim of $24,571 but disallowing the unsecured claims. The decision was affirmed by the Superior Court of Justice.

The landlord's agent appealed the disallowance of the unsecured claim to the Court of Appeal, confining its appeal to claims under section 16.1 of the lease for tenant inducements of $203,442 and the balance of three months' accelerated rent, for a total of $253,731.

The appeal was allowed in part. *Re Mussens Ltd*., [1933] OWN 459 (HC), sets out the longstanding rule that the disclaimer of a commercial lease by the tenant's trustee in bankruptcy in Ontario ends any future or ongoing obligations of the tenant under the lease. Other than its preferred claim for up to three months' accelerated rent under section 136(3) of the BIA, the landlord has no right of compensation or claim as an unsecured creditor for damages in respect of the unexpired term of the lease in relation to the loss of the tenancy as a result of the disclaimer. The Court rejected the landlord's argument that recent case law, including *Crystalline Investments Ltd. v. Domgroup Ltd.*, 2004 SCC 3, ("*Crystalline Investments*") overruled the *Re Mussens Ltd*. line of cases. *Crystalline Investments* did not address whether a landlord can claim unsecured damages in the bankruptcy proceedings upon the trustee's disclaimer of a lease. The Court further dismissed the landlord's argument that its claim was supported by *Highway Properties Ltd. v. Kelly, Douglas & Co. Ltd.*, [1971] SCR 562, (*Highway Properties Ltd.*). *Highway Properties Ltd*. dealt with remedies available to a landlord after the tenant's abandonment of the leased premises, not after a lease had been disclaimed by the tenant's trustee.

The Court rejected the argument that the landlord's claim for tenant inducements could be considered an existing or accrued claim. The landlord's claims were for the value of inducements calculated for the post-bankruptcy period. Under the lease, the landlord had no right to recover such amounts pre-bankruptcy, and the trustee's disclaimer brought an end to the right and remedies of the landlord with respect to the unexpired term of the lease. The Court also dismissed the landlord's argument that the relevant legislative provisions should be interpreted harmoniously with those that apply to a reorganization under the *Companies' Creditors Arrangements Act* (the "CCAA"), which specifically provide for a landlord's claims for damages following disclaimer. Parliament made the policy choice to provide for different remedies under different insolvency regimes, and there was no scope for applying the "harmonization" principle or reading the different provisions as providing for the same remedy.

Section 136(3) of the BIA expressly authorizes a landlord to claim the unrecovered balance of its preferred claim as an unsecured creditor in the bankruptcy of its tenant. Accordingly, the trustee ought to have permitted the landlord to claim the balance of its preferred claim for three months' accelerated rent, being $50,289, as an unsecured creditor.

Curriculum Services Canada/Services Des Programmes D'Études Canada (Re), 2020 OREG ¶ 59,414

Bridge Financing Costs Were Foreseeable Expectation Damages

Ontario Superior Court of Justice, April 15, 2020

In June 2017, the defendant purchasers and plaintiff vendors entered into an agreement of purchase and sale ("APS") with respect to a residential property in Stouffville at a price of $1.16 million. The closing date was September 14, 2017 and the parties agreed that "time was of the essence." The purchasers paid a deposit of $30,000. The transaction was conditional on the purchasers obtaining financing and the condition was waived shortly after the APS was executed. In early October, the parties agreed to extend the closing date to October 30, 2017. On closing day, the purchasers' real estate counsel wrote to the vendors' counsel stating that the purchasers were unable to close the sale of their existing property and needed the proceeds of that sale to fund the purchase. The purchasers failed to complete the transaction. The vendors relisted the property on November 2, 2017 and entered into an APS on March 9, 2018 for $900,000, closing in June 2018.

The vendors brought an action against the purchasers claiming expectation damages on account of the breach of the APS. They sought the difference between the purchase prices, being $262,5000, the costs associated with their bridge financing, being $36,249, and other costs, for a total of $310,709. The purchasers counterclaimed for the return of their deposit and sought a declaration that the APS was void *ab initio* based on the plea of *non est factum* and that the APS became null and void as a result of the vendors' failure to tender on closing day. The purchasers also issued a third party

claim against their realtor, counsel, and the party that had agreed to purchase their property. The vendors brought a motion for summary judgment. The purchasers argued that the vendors were seeking partial summary judgment, which the Court of Appeal had signalled a general disapproval of.

The motion was allowed. A plea of *non est factum* required the purchasers to establish that they were mistaken as to the nature or character of the instrument. The Court found that the purchasers clearly understood the nature of the documents they had signed. The only assertion that the purchasers made was that they believed that the sole downside to failing to close would be the loss of their deposit. The Court found that this was not a mistake as to the "nature or character" of the APS, and the plea of *non est factum* was not established. The Court further did not find that the vendors were required to tender. While tendering is generally considered to be the best evidence that a party is ready, willing, and able to close, the case law established that an innocent party need not go through the "meaningless exercise of tendering" where there was anticipatory breach. Once the purchasers communicated an intention to not complete the transaction on October 30, the vendors were released from any obligation to tender. There was no issue requiring a trial with respect to the purchasers' defences.

The Court found that the issues in the main action were clearly severable from the issues in the third-party claim. Accordingly, the summary judgment procedure, even if it was partial summary judgment, was still a proportionate, more expeditious, and less expensive means of justly resolving the vendors' claims against the purchasers than a full trial. The Court found that the purchasers did not establish that the vendors failed to mitigate. Based on the purchasers' evidence, the vendors relisted the property at a price close to what the purchasers had agreed to pay. The property sold at 95 per cent of what the purchasers submitted was its fair market value. The Court also dismissed the claim that the vendors' bridge financing costs were not recoverable, as they were not foreseeable. The Court found that the experience of selling one home and buying another at the same time and using the equity from the sale for the purchase was very common and was entirely foreseeable to a reasonable person. Accordingly, it was foreseeable that the vendors would require bridge financing. The purchasers failed to show that there was a genuine issue requiring a trial with respect to damages.

The Court found that the vendors were entitled to $262,500 for the difference in the purchase prices, $25,245 for the costs of bridge financing, and also costs of realty taxes, utilities, insurance, and legal fees, for a total of $298,847. Having regard to the closure of courts due to COVID-19 and not having the evidence to determine relative prejudice, the Court ordered a six-month stay of the enforcement of the summary judgment, with the exception of the deposit, which was to be paid to the vendors forthwith.

Spiridakis v. Li, 2020 OREG ¶ 59,415

Injunction to Prevent Power of Sale Not Granted

Ontario Superior Court of Justice, April 14, 2020

The defendant was the owner of a five-acre property in Caledon, purchased in 2003. The plaintiffs were companies that provided financing services. They held a second mortgage on the property for a principal amount of $320,000. The defendant ceased making mortgage payments in February 2019. The plaintiffs commenced an action in March 2019. In July 2019, a notice of sale ("NOS") showing an amount of $433,436 as outstanding was served on the defendant. The defendant did not plead in the action and was noted in default in August 2019, but a default judgment was not issued. In February 2020, the plaintiffs completed two appraisals of the property, which valued it at $780,000 and $785,000. The plaintiffs entered into an agreement of purchase and sale ("APS") with a developer to sell the property for $875,000 with a closing date of March 31, 2020. The plaintiffs claimed that there was over $100,000 in unpaid property taxes. The plaintiffs also incurred expenses, including additional interest, clean-up costs, and legal fees.

On March 30, 2020, the defendant sought to bring an urgent motion for an injunction to prevent the sale. He argued that the property was a unique property and that the NOS was deficient. At the time the motion was brought, a practice direction had been issued providing that due to the COVID-19 health crisis, the Court was only to hear "urgent and time sensitive motions and applications in civil and commercial list matters, where immediate and significant financial repercussions may result if there is no judicial hearing."

The motion was dismissed. The Court considered the threshold question of whether the matter was urgent. It stated that the test for urgency could be met if a party was going to forever lose a substantive right if the Court did not hear the

motion when brought. The parties did not provide arguments on the question of urgency and had argued the merits of the case. The Court determined to decide the matter on its merits rather than dismiss it on a preliminary basis.

Pursuant to case law, the power of an injunction to stop the sale of a property in a power of sale should only be used in extreme cases. The Court applied the test for an injunction, as set out in *R.J.R. MacDonald v. Canada (Attorney General)*, [1994] 1 SCR 311. The question of whether there would be irreparable harm if the injunction were not granted turned on whether the defendant could show that the property was unique, making a damages award insufficient. The Court stated that it was difficult to see how the property was unique. There was no indication of any specific feature of the property that would not be available on another property. The fact that the defendant intended to retire there, that he used space for business storage, or its proximity to a main highway did not make it unique.

Turning to the question of balance of convenience, the Court found no evidence to support the defendant's claim that the property was undervalued. The defendant also failed to provide evidence to support his argument that the NOS was in an improper form. Pursuant to case law, minor irregularities in the amounts in a NOS may be excused, as long as the NOS enables the mortgagor and/or subsequent encumbrancers to intelligently assess their position with respect to the mortgage redemption. The Court did not find that the lack of a writ of possession was evidence of high-handed conduct by the plaintiffs. Under the mortgage, once the NOS was served and 35 days passed, the mortgagee could enter onto and sell the land. The APS would allow all debts on the property to be cleared and had a purchase price of almost $100,000 more than the appraised value of the property. The plaintiffs had the right to protect their investment, there was a likelihood that they would be unable to receive another offer, and it was likely they would incur additional carrying costs if they waited for another offer. The Court concluded that the balance of convenience clearly favoured the plaintiffs. Accordingly, the test for granting an injunction was not met. The Court did not need to consider the third factor of whether there was a serious issue to be tried.

Sibyl Investment Holding Inc. v. Vlachich, 2020 OREG ¶ 59,416

Unjust Enrichment Established Where Encroachments Were Trespassing on Plaintiffs' Laneway

Ontario Superior Court of Justice, April 20, 2020

The plaintiffs owned a building located on Spadina Avenue in Toronto. The plaintiffs' mother had transferred her interest in the property to them in 2012. The defendants owned a building on King Street West. A historic laneway ran between the two buildings, with the plaintiffs having registered title over the laneway. The south wall of the defendants' building was the northern boundary of the laneway. The lot containing all the properties was granted by the Crown to Clarke Gamble in 1845, and he transferred lot 7 and 8 to Mary Elizabeth Jones in 1845, with the laneway being part of this grant. The lot was subdivided and sold in parts, but the laneway was never sold or transferred. The plaintiffs' parents had purchased the Spadina Avenue building in the late 1970s. Through correspondence in 1986 and 1993, the city confirmed the status of the laneway as being a private lane. In 1993, the plaintiffs' parents purported to transfer the laneway to the plaintiffs' mother individually. The transfer was filed with the Land Registry Office. In 2008, the owners of the King Street building and the plaintiffs' mother entered into a time-limited "laneway agreement" stating that the mother was the registered owner of the property and that she recognized the King Street building owners' right of way over the laneway and agreed to all existing encroachments, with the defendants paying an annual encroachment fee. The agreement was renewed once and expired in December 2012.

The plaintiffs contested the presence of three encroachments on the laneway: a hydraulic loading ramp protruding 18 inches at its highest point and 26 inches when retracted, added in 2001; a HVAC upgrade protruding 18 inches, added in 2012; and a sign box, encroaching four inches with sign lighting encroaching 42 inches, added in 1994. The plaintiffs brought an action taking the position that the encroachments constituted trespass and claiming damages for unjust enrichment. The defendants took the position that the laneway was not the plaintiffs' property and remained the property of the last party with deeded title, or was public property in the alternative.

The action was allowed. To establish a trespass, the plaintiffs had to show that they had sufficient possessory title over the property in question. The Court found that the unchallenged 1993 and 2012 transfers of the laneway constituted sufficient evidence of title for the purposes of trespass. As the defendants did not have an ownership interest over the

laneway, the doctrine of *jus tertii* also applied to preclude them from challenging the plaintiffs' title over the laneway by asserting that a third party, being Mary Elizabeth Jones, had a better claim than the plaintiffs.

The Court found that the three encroachments each constituted a trespass against the plaintiffs. As the laneway agreements had factored in the sign box and the loading ramp in the encroachment fee, the Court found that this fee represented an appropriate benchmark for the damages caused by the sign box's and ramp's encroachment over the relevant period. There was no need to alter the flat fee approach the parties had previously agreed to. The Court found that, as the fee increased from $6,000 to $7,000 between the 2008 and 2011 agreements, it would increase to $8,000 for a January 2013 to December 2014 agreement. The Court attributed $4,000 to the sign box and $4,000 to the ramp. Given the addition of a new and significant encroachment, being the HVAC system, the Court added a further $4,000. Considering further incremental increases for agreements from January 2015 to December 2020, the amount of damages was approximately $93,000, not reflecting any portion of the damages for 2020 in the fee or cumulative interest.

The plaintiffs made out a claim for unjust enrichment. After the expiry of the laneway agreement, the defendants gained the benefit of no longer paying an encroachment fee while continuing to encroach. The plaintiffs' corresponding detriment was that they no longer received the revenue from the encroachment fee. The Court found there was no juristic reason for the enrichment. It was reasonable to conclude that the defendants expected to pay encroachment fees in the future and expected that the fees would rise. The quantum of damages for the unjust enrichment, however, would be the same as the amount already determined for trespass damages. Accordingly, the Court found no basis for awarding a separate remedy for the unjust enrichment.

An order for the removal of the encroachments was premature, the Court found. It remained open for the defendants to make changes to the encroaching structures so that they no longer encroached, or to attempt to renew the laneway agreement. If no reasonable alternative would be found, the plaintiffs were free to seek an order compelling the removal of the encroachments.

Matar v. 1201553 Ontario Ltd. et al., 2020 OREG ¶ 59,417

Inability to Close Sale of Unit Did Not Warrant Eviction of Tenant During COVID-19 Eviction Moratorium

Ontario Superior Court of Justice, Divisional Court, April 25, 2020

In August 2019, the landlord, moving party, entered into an agreement of purchase and sale ("APS") as the vendor for the sale of his residential condominium unit, with a closing date of October 31, 2019, later extended to April 30, 2020 on account of Landlord and Tenant Board ("LTB") proceedings. The unit was occupied by the respondent tenant and under the APS, the landlord was to provide vacant possession. The tenant challenged the landlord's attempt to evict him at the LTB. In November 2019, the LTB terminated the tenant's tenancy. On review, the LTB affirmed the decision. The tenant appealed to the Divisional Court under section 210(1) of the *Residential Tenancies Act, 2006*, and the eviction order was stayed pending the appeal. The tenant arranged to move and entered into a new lease, to start May 2020. The tenant and landlord entered into a consent order, issued on March 18, 2020, dismissing the appeal, vacating the stay, and ordering that the LTB's eviction order could be enforced. The following day, the provincial eviction moratorium on account of the COVID-19 pandemic was imposed. The tenant's new landlord informed him that the new unit would not be available until June 1, 2020, as the current tenant could not move out and the new landlord could not evict the tenant on account of the moratorium.

The landlord was granted leave to bring an urgent motion before the Divisional Court seeking an order directing the Sheriff to enforce the LTB's eviction order. He argued that the closing under the APS might not proceed if the eviction order was not enforced.

The motion was dismissed. The Divisional Court has jurisdiction to hear statutory appeals from the LTB under the *Residential Tenancies Act, 2006*. Once an appeal is dismissed, the Divisional Court does not retain jurisdiction to enforce eviction orders except in rare circumstances. Pursuant to *Morguard Corporation v. Corredor*, 2020 ONSC 2166, for enforcement of evictions during the COVID-19 eviction moratorium, the order for leave to evict a tenant is properly a motion for directions under rule 60.17 of the *Rules of Civil Procedure*, made to a justice of the Superior Court of Justice.

Accordingly, the Divisional Court did not have jurisdiction to hear the motion. Due to the logistical difficulties faced by the parties during the pandemic, however, the Court decided to hear the motion as a motion for directions under rule 60.17.

The Court dismissed the landlord's argument that the eviction moratorium should only apply to tenants who would otherwise be evicted for non-payment of rent. The Court noted that there were no limiting terms in the moratorium and it applied to all evictions. The clear intent of the moratorium was to prevent evictions even if this caused significant economic disruption and adverse financial effects.

The landlord did not meet the burden of establishing that the situation was urgent, such that eviction of the tenant during the pandemic was warranted. The landlord identified no illegal acts or threats to health committed by the tenant. The Court found that the landlord's evidence as to the loss of the APS closing was speculative. The landlord had consistently obtained extensions of the closing date since October 2019. He had chosen to sign an APS delivering vacant possession when the unit was occupied by a tenant. The tenant had the right to challenge the eviction before the LTB and the Court. There was no evidence that the landlord had asked the purchaser for a further extension of the closing date that was refused. There was no evidence that the sale would not close or that damages could not be asserted against the tenant, and no evidence regarding what legal defences such as *force majeure* could be raised against the purchaser. The landlord was not entitled to the order sought.

The Court ordered that the tenant write to the new landlord to seek confirmation of whether the new unit would be ready for June 1, 2020 and if not, to continue his search for a new apartment. The landlord was free to bring a further motion for directions if the new landlord failed to confirm vacant possession by May 15.

Chalich v. Alhatam, 2020 OREG ¶ 59,418

ONTARIO REAL ESTATE LAW DEVELOPMENTS

Published monthly as the newsletter complement to the *Ontario Real Estate Law Guide* by LexisNexis Canada Inc. For subscription information, contact your Account Manager or call 1-800-387-0899.

For LexisNexis Canada Inc.

Jeffrey Nguyen, JD,
Content Development Lawyer
905-415-5863
email: jeffrey.nguyen@lexisnexis.ca

Customer Support
Phone: 1-800-387-0899
Email: service@lexisnexis.ca
Customer Service is available from 7 a.m. to 11 p.m. (ET) Monday to Friday, and from 9 a.m. to 11 p.m. (ET) on Weekends.

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111 Gordon Baker Road
Suite 900
Toronto, Ontario
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