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August 10, 2016

WHAT'S NEW? Bill 132

Bill 132 (An Act to Amend Various Statutes with respect to sexual violence, sexual harassment, domestic violence and related matters) is an omnibus bill introduced in the Ontario legislature in March 2015 and was subsequently passed. It is an act that amends several existing pieces of provincial legislation, including the *Residential Tenancies Act, 2006* (the "RTA"). It is divided into sections titled "schedules" and it is Schedule 6 which amended some provisions of the *Residential Tenancies Act, 2001* which therefore impacts residential landlords. These sections will come into effect in September, 2016.

The overall goal of Bill 132 is laudable. Its aim is to address all forms of sexual violence, sexual harassment, domestic violence and other forms of abuse. Residential landlords of victims of these forms of abuse will be expected to play a part in assisting such victims. Their legal duties as landlord will be changed with respect to these individuals as set out below.

There are two main areas of concern: the termination provisions and the restrictions on showing the unit once the notice has been received. These provisions will have a particularly onerous impact on small-scale landlords who rely on their monthly rent to carry their rental properties and cannot support extended periods of non-payment of rent.

Termination of the Tenancy

A tenant who is the victim of domestic violence would be entitled to a much more flexible system of terminating his/her tenancy. The termination notice itself need be only 28 days prior to termination, the termination date can be any day of the month even in the middle of a fixed term/unexpired term tenancy and can be given by only one tenant in situations where there are two or more tenants residing in a rental unit thereby severing a joint tenancy, and the termination notice can be voided by the tenant by the tenant simply remaining in the rental unit and not vacating. This may be done without any further notice to the landlord of the tenant having changed their mind about vacating. In addition to the notice, the tenant must attach either an order that was issued not more than 90 days prior to the date the notice is given and the order is from a court indicating that the tenant is a victim of domestic violence. In lieu of such order, the tenant can simply fill out a form that will be found on the LTB website and allege that (s)he or her child has been the victim of domestic violence or threatened with such violence or fears for his/her own safety or that of his/her child, including "following, contacting, communicating with, observing or recording the tenant or the child. The person who is responsible for such violence or threat or causing such fear must be a spouse or former spouse, or has lived in a conjugal relationship for any amount of time with the tenant or was dating the tenant. Such person need not reside with the tenant or even reside in the same city or province as the tenant, such person need not be identified by name or relationship to the tenant, identify against whom the alleged violence occurred or identify the nature of the alleged violence but must state that the tenant believes that (s)he and/or his/her child is at risk of such violence. Given the requirement that the order be less than 90 days old, I would expect that every tenant who wishes to rely on these provisions will simply fill out the approved form.

In the absence of such provisions, a residential tenant who gives notice under the RTA of his/her intention to vacate must do so in accordance with that notice, failing which the landlord can enforce the notice by way of application to the Landlord and Tenant Board (the "LTB") which results in a termination order which can be enforced through the Sheriff's office.

However, Bill 132 takes away this enforcement provision with respect to tenants who are deemed to have experienced violence or abuse or has a child who is deemed to have experienced violence or abuse. Pursuant to the provisions of Bill 132, the RTA will be amended and a new s. 47.2(5) of the RTA would provide that:

Where notice void

(5) A notice given under subsection (1) becomes void with respect to a tenant who gave the notice, if the tenant does not vacate the rental unit on or before the termination date set out in the notice.

Subsection (1) referred to in that subsection is the new subsection 47.1 which allows a tenant who is "deemed" to be a victim of violence or domestic abuse or has a child residing with the tenant is deemed to have experienced violence or abuse to simply "change his or her mind" and remain in the unit simply by not vacating the unit, without even informing the landlord of the tenant's change of intention.

This is problematic for landlords since they cannot be certain if their unit will be vacant on the date they expect. Once a landlord receives a termination notice the landlord generally begins the process of finding a replacement tenant as soon as possible and entering into a tenancy agreement with that tenant. If the tenant who has this ability to void the notice by simply remaining in the rental unit, the landlord is at risk of facing legal action by the incoming tenant who expected to be able to move in to the rental unit on a certain date. This creates a situation where a landlord would be unable to contract with a new tenant until after the tenant who has given the notice as a victim of domestic violence actually vacates. As most tenants must give 60 days' notice of their intention to vacate, most tenants are looking for accommodation starting 2 months later and not immediate possession. This will result in the landlord having a period of up to two months' vacancy after the tenant vacates.

In addition, because the RTA requires a landlord to apply the last month's deposit to the last month of a tenancy, it is likely that the tenant intending to vacate on just 28 days' notice will stop paying rent. The landlord will notionally apply the deposit to the last month of the tenancy and not collect rent for that month. If the tenant changes his/her mind and remains in the rental unit, that tenant will likely be in arrears of rent and the landlord will have not served a notice of termination for non-payment of rent. If the tenant then fails to get caught up in his/her rent obligations, the landlord will likely have a larger arrears balance than usual having been delayed an extra month in commencing the eviction process for non-payment of rent. Again, this represents a perhaps unintended hardship for landlords.

This new regime would also allow a tenant to vacate and sever a joint tenancy, leaving behind joint tenants in possession by alleging that the person vacating has been a victim of domestic violence and fears for his/her safety. This may leave the landlord with a tenant or tenants who are unable to fulfill the obligations of the tenancy, including the payment of rent, without the assistance of the tenant who vacates pursuant to these provisions.

Showing the Unit

Under Bill 132, s. 47.1(5) of the RTA would provide that:

Entry to show unit to prospective tenants under s. 26 (3)

(5) The landlord to whom a notice is given with respect to a rental unit under subsection (1) may enter the unit in accordance with subsection 26 (3) only after the tenant or all the joint tenants, as applicable, have vacated the unit in accordance with the notice and, for that purpose, clause 26 (3) (c) does not apply.

Section 26(3) of the RTA provides:

Entry to show rental unit to prospective tenants

- (3) A landlord may enter the rental unit without written notice to show the unit to prospective tenants if,
- (a) the landlord and tenant have agreed that the tenancy will be terminated or one of them has given notice of termination to the other;
 - (b) the landlord enters the unit between the hours of 8 a.m. and 8 p.m.; and
 - (c) before entering, the landlord informs or makes a reasonable effort to inform the tenant of the intention to do so.

The proposed provision would prohibit the landlord from showing a unit to prospective tenants until vacant possession of the rental unit is returned to the landlord. This hampers the landlord's ability to avoid periods of vacancy during which no rental income is received.

Presumably, the rationale of the legislation is to protect the victim from having the abuser learn that the tenant is moving. This prohibition from showing the unit exists regardless of whether such secrecy is necessary including situations where the abuser is in jail or out of the country or is otherwise unlikely to learn that the tenant is vacating.

Suggestions for Amendments to the Proposed Legislation

I attended at the Ministry of Housing for a meeting with the Ministry when this Bill was at the Committee stage (before it became law). I was representing the interests of small-scale landlords as a Board member of the Landlord Self Help Centre. Some proposals for changes to this draft legislation to protect landlords from the unintended consequences of the intended benefits to victims of domestic violence were made to the Ministry at that meeting. We advised that this legislation is open to abuse by tenants who seek to leave on short notice, end a tenancy during its fixed term, sever joint tenancies and otherwise forego the usual obligations of a tenant to give proper notice to vacate and to vacate in accordance with that notice.

These suggestions were met with a polite but firm response that the Ministry is very proud of this legislation and has no interest in amending it. However, we were told that if these provisions become the subject of abuse by tenants, then landlords who become the victims of such misuse should advise the Ministry who would revisit the legislation if the misuse of the legislation becomes widespread.

E. & O.E.

This commentary is intended to provide general information only and not to provide legal advice for a particular legal issue. Legal advice from a qualified legal services provider should be obtained for specific legal problems.