



Cochrane Moore LLP

Legal Services

57 Simcoe St. S., Suite 2A, Oshawa, ON. L1H 4G4

www.cctmlegal.com

P: (905)240-4529

F: (905)240-3030

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Where Relief from Eviction is Required

Written by: Lee-Anne Moore, managing partner at Cochrane Moore LLP

It may come as no surprise that there are circumstances in which the *Residential Tenancies Act*¹ does not permit the Board to grant a request for eviction. Section 83(3) of the Act states:

Circumstances where refusal required

(3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

- (a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;
- (b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards;
- (c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights;
- (d) the reason for the application being brought is that the tenant is a member of a tenants' association or is attempting to organize such an association; or
- (e) the reason for the application being brought is that the rental unit is occupied by children and the occupation by the children does not constitute overcrowding. 2006, c. 17, s. 83 (3).

If you are looking to evict a tenant, be sure that you are not in serious breach of your responsibilities under the Act. While that seems pretty straight forward, what does "attempting to secure or enforce legal rights" look like? Is it limited to situations where a tenant has brought an application against you? As it turns out, no. The Courts have held that if you ask the tenants to pay an illegal increase in rent and they refuse, your next application may be dismissed.

¹ *Residential Tenancies Act*, 2006, S.O. 2006, c. 17

In *Yundt v. Parker*², and *Loc Le v. O'Grady*³, both found, on appeal, that the Landlord's applications for eviction, filed shortly after the tenants refused an illegal rent increase, should be dismissed.

No eviction before compensation, residential occupation, demolition, etc.

(4) The Board shall not issue an eviction order in a proceeding regarding termination of a tenancy for the purposes of residential occupation, demolition, conversion to non-residential rental use, renovations or repairs until the landlord has complied with section 48.1, 52, 54 or 55, as the case may be. 2017, c. 13, s. 17.

What if you have served an N12 or an N13 for personal use, or demolition, but don't want to pay compensation to the tenant because the tenant owes rent arrears? In *Marineland of Canada Inc. v. Olsen*⁴, the Court determined that with the purpose of the Act being to balance the interests of landlords and tenants, the landlord should be permitted to set-off the compensation against arrears owed by the tenant:

“While the tenants were entitled to \$3,000.00 in compensation because of the N13 Notice, the landlord was owed more than \$3,000.00 by them at the time of their application. The amount owing for arrears of rent should have been taken into consideration in determining the amount of compensation owing. Had that been done, the Board would have had to conclude that the tenants were owed nothing in compensation at the time of the application because of the set-off.”

While this provides a brief overview, the law can be very complex, and many aspects are case specific. If you have an issue, call a paralegal at Cochrane Moore LLP in Oshawa for a free consultation.

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² *Yundt v. Parker*, 2014 ONSC 1805 (CanLII)

³ *Loc Le v. O'Grady*, 2018 ONSC 6387 (CanLII)

⁴ *Marineland of Canada Inc. v. Olsen*, 2011 ONSC 6522 (CanLII)