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The Landlord's Positive Obligation to Inspect and Repair

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Ignorance of the law is no excuse. The *Residential Tenancies Act*[1](hereinafter referred to as *"RTA"*), clearly outlines the responsibilities of a Landlord; it is readily available online, and through the Landlord Help Center. When a landlord makes the decision to have income properties, with that decision comes the responsibility of caring for their tenants. *CET-12441-11,* at para 4 of the reasons, states:

> regardless of the reasons why a landlord is unable to provide a rental unit in a good state of repair and fit for habitation, if they are unable to do so, they are in breach of their obligation under the Act.

Doesn't the tenant have to tell me about necessary repairs?

s.20 of the *RTA* outlines the landlord's responsibility to repair and maintain a rental unit. Pursuant to pages 1, 2 and 3 of Guideline 5 (Breach of Maintenance Obligations) it is stated that the unit should be "best maintained" by the Landlord as an ongoing obligation.

This principle is further demonstrated in *Mortimer v. Cameron*[2]*,* where, at paragraph 26, it is stated that the "owner and occupier of this building was under an ongoing duty to inspect" and that "a reasonable inspection should have included a periodic, thorough examination of interior and exterior areas that were exposed to view".

Further, in *Quann et al. v. Pajelle investments Limited*[3] *(*hereinafter referred to as *"Quann"),* the spirit of the law is clear when, at paragraph 2 of page 10, it states, "there is in my view no requirement that a tenant give notice to a landlord that certain repairs need to be done in order to bring into being the landlord's obligation to repair".

Moreover, *Quann* stated on page 13 that the "repair obligation and an obligation relating to the fitness of the premises for habitation should be placed upon the Landlord". Moreover, at page 16, *Quann* held as follows:

> there is by implication in every lease a covenant by the landlord that he will maintain such rented premises in a good state of repair and fit for habitation in accordance with the provisions of any health and safety standards or including any housing standards which are required by law.

Which is to say, whether or not the Board feels the tenant informed the landlord of the disrepair, the landlord is ultimately responsible for the unit being kept in a healthy and safe state and condition.

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[1] *Residential Tenancies Act,* 2006 S.O. 2006, c.17
[2] *Mortimer v. Cameron,* [1994] O.J. No. 277
[3] *Quann et al. v. Pajelle investments Limited,* (1975), 7 O.R. (2d) 769

How much damage is too much damage?
While it is unreasonable for a tenant to expect a new home be constructed from the old, in the words of Lord Blackburn[4], "patch where it needs patching".

What if I include a clause stating I'm not liable for repairs or damage?
Per *Bhasin v. Hrynew*[5], the Supreme Court of Canada ruled that the parties to a contract will act honestly and in good faith. Including a clause contrary to statute with the intent of disregarding your responsibilities could end poorly for you.

In *Punch v. Savoy's Jewellers Ltd. et. al.*[6] it was stated:

> Clauses which exempt or limit the liability of a contracting party in situations where there is a failure to carry out the contractual obligations have long troubled the courts. Often these clauses are included in a standard form of contract where the contracting parties are of very unequal status...It appears frustrating that a contracting party should undertake to do something and then specify that it will not be liable if it fails to fulfil its undertaking.

It is further acknowledged in *Firestone Tyre v. Vokins*[7] that "it is illusory to say we promise to do a thing but we are not liable if we do not do it".

How about a clause stating that the tenant will do the maintenance work?
Per *Montgomery v. Van*[8]*,* paragraphs 13-16, a landlord cannot assign responsibility for maintenance to a tenant by way of a lease agreement. This decision has been upheld by the Board in matters such as *TST-49807-14,* where, at paragraphs 30 and 38, the Board recognizes that if a Tenant must pay 100% of their rent, the Landlord must fulfill 100% of their responsibilities towards maintenance.

If a landlord wants to contract out maintenance such as snow removal, lawn and garden care, or work inside the home it must be done by way of a separate contract. All elements of a contract must be met.

What about damage caused more than a year ago?
Page 3 of Guideline 5 (Breach of Maintenance Obligations) and Page 2 of Guideline 6 (Tenant's Rights) outline that when maintenance concerns are ongoing, the one-year limitation period runs from the date the repair is completed or the standard is complied with. While these documents aren't binding on the Board, they are called "Interpretation Guidelines" for a reason.

What are the consequences of failing to maintain a rental unit?
At para 5 the Divisional Court case of *Offredi v. 751768 Ontario Ltd*[9] stated:

> The question of fault on the landlord's part is not the issue... What the tenants claim is a breach of contract. The tenants were paying full rent for premises which the landlord was under an obligation... to keep in a good state of repair and fit for habitation. The landlord failed to do that. That is the basis for the claim for an abatement...

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[4] *Supra 3* page 11
[5] *Bhasin v. Hrynew* 2014 SCC 71
[6] *Punch v. Savoy's Jewellers Ltd. et. al.* (1986) 54 O.R. (2d) 383
[7] *Firestone Tyre v. Vokins* [1951] 1 Lloyd's Rep. 32
[8] *Montgomery v. Van,* 2009 ONCA 808 (CanLII)
[9] *Offredi v. 751768 Ontario Ltd,* 1994, 116 D.L.R. (4th) 757 (Ont. Div. Ct.)

This concept was simplified in ***TSL-60729-15*** where, at paragraph 26, the Board stated:

> Abatement of rent is a contractual remedy based on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then you should be entitled to abatement equal to the difference in value.

In short, the Board may order the landlord to pay compensation to the tenant for the cost of repairing or replacing property damaged, destroyed or disposed of as a result of the landlord's breach, as well as other reasonable out-of-pocket expenses. Further, *TNT-70983-15,* at para 21, recognizes the Board's authority to administratively fine a landlord who has blatantly disregarded the act.

Failing to comply with the maintenance standards may also lead you to a breach of s.22 of the *RTA,* as this lack of maintenance could substantially interfere with the Tenant's quiet enjoyment of the home.

Finally, these conditions will likely also amount to violations of *Ontario Regulation 517/06* and local Property Standards By-Laws.

While this provides a brief overview, the law can be very complex, and many aspects are case specific.

If you have an issue, call Cochrane Moore LLP for a free consultation.
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