

Landlords await new bill with much trepidation

By Harry Fine
For Law Times

I read with special interest your story on changes to the Tenant Protection Act in the January 31st edition of *Law Times*, but at this point, it's all speculation as the government has not yet introduced the Bill that was promised within a year of their election win.

While Kathy Laird from ACTO has a certain perspective, as head of the predominant tenant's advocacy group in Ontario, her views are neither realistic nor balanced based on my 3 years as an adjudicator at the Ontario Rental Housing Tribunal.

You don't hear Ms. Laird complaining about the 6% interest on a last month's rent deposit that landlords are required by law to pay annually? Nice rate of return if you can get it! This government showed disdain for the landlord community by eliminating the 2% component to the 2005 annual guideline allowance through regulation, without any consultation with the industry. But the real issue that Ms. Laird and the column's author failed to address, is that vacancy decontrol is working.

There is a vacancy rate of between four and five percent across the province. Market forces are controlling rents, and to potentially eliminate the provision allowing landlords and tenants to freely contract when a new tenancy begins is unfair.

One of the biggest issues facing landlords is the amount of time it takes to resolve applications at the Ontario Rental Housing Tribunal,



where a tenant's arrears or conduct force the landlord to seek termination of the tenancy. Arrears mount while awaiting a final resolution, and the landlord has no ability to have the tenant pay money into the Tribunal pending resolution. The Tribunal allows tenants

to file defenses to a landlord's claim, stating nothing more than "I DISPUTE", which triggers a hearing at which the tenant often doesn't show up. By the time the tenant files a set aside motion of the default judgment, followed by a review of the order, followed by an appeal to the Divisional Court, it can be six months before the landlord gets vacant possession. Fees are another issue. Landlords pay \$150 for most Tribunal applications, while tenants pay either \$45, or nothing at all for



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certain types of actions. And even though landlords generally receive the \$150 application fees as costs in an order for a successful application, the Tribunal's practice directions don't normally permit costs for representation. And often, the evicted tenant is judgment-proof.

Worse, the Ontario Court of Appeal in a recent 2004 decision, *1162994 Ontario v. Bakker*, has settled the issue of the Tribunal's jurisdiction when a tenant is no longer in possession of a rental unit, overturning a 2003 Divisional Court ruling. The Court of Appeal unwisely decided that a Tribunal that was created to provide for one-stop-shopping for residential landlord and tenant matters loses its jurisdiction if the tenant is no longer in possession of the rental unit. While possession and occupation used to be distinct concepts in landlord and tenant law, as affirmed by the Divisional Court in *George V Apartments v. Cobb File No. 61791/02*, with a tenant potentially still being in possession even while not in occupation, the Court of Appeal all but eliminated that as a possible finding.

The landlord need then to go to Small Claims Court in order to seek

compensation for physical damage, arrears of rent, leases with remaining term abandoned etc., while tenants can make an application with the Tribunal up to one year from the time of the (landlord's) conduct that gave rise to filing the application occurred, even if they moved out long ago.

And finally, the legislation, with the endorsement of the Court, requires the adjudicator to consider all sorts of extraneous and irrelevant factors when considering eviction, and eviction is often denied even when arrears or conduct issues are proven and serious. While the government fails to properly fund social housing (or provide rent subsidies to private landlords, if that is its wish), they put the onus on private landlords to become public housing providers or philanthropists.

Landlords are easy targets for the Provincial Liberals, and landlords await the introduction of the new Bill with much concern.

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