

THE STANDARD LEASE: How Much Protection Does it Really Provide?

Kenneth G. Hood

Leases are a valuable form of protection—when properly drafted. Landlords run considerable risks if they rely on standard form leases, or if they enter into lease agreements without first obtaining legal advice.



A recent Ontario Court of Appeal decision, *Montgomery v. Van*, highlights these risks.

A tenant, who was injured when she slipped on ice on the walkway leading to her basement apartment, sued her landlord for her injuries and damages. In his defence, the landlord argued that since a clause in her lease provided that “Tenants are responsible for keeping their walkway and stairway clean (including snow removal),” the tenant should not be allowed to sue him, since she was the one who had failed to keep her walkway clear of snow and ice.

Landlords should first obtain legal advice if they want to enter into such an arrangement with their tenants, or wish to avoid having lease provisions found void.

The regulations of the *Residential Tenancies Act*, 2006, provide that exterior common areas must be maintained free of hazards and that unsafe accumulations of ice and snow must be removed. Any provision in a lease that is inconsistent with the Act or its regulations is void. The landlord in this case argued that while the regulations made him initially responsible for ice and snow removal, he had contracted with the tenant, in her lease, to make her responsible.

The Court of Appeal disagreed, finding that the “provision fails to define this individual tenant’s task clearly enough to create an enforceable contractual obligation.” Further, the Court stated that “... this vague provision... is nothing more than an impermissible attempt by the landlord to avoid his statutory obligations.” However, the Court left it open for landlords to contract with tenants in the lease for tenants to provide some of the landlord’s services. Such agreements do not avoid the landlord’s responsibilities under the Act and regulations, but they can enable landlords to sue tenants for breach of contract if they fail to carry out these responsibilities.

Had the clause in the lease been properly drafted as a stand-alone contract for the tenant to provide snow clearing services, the landlord would have been protected, because the Court agreed that landlords may contract with tenants to provide snow removal tasks or any other services that the landlord would usually be expected to provide. However, like any contract, such a provision would have to be clear, specifying what is required of the tenant, where and when the work is to be done, and what the landlord is giving in exchange for the tenant’s work. A standard form lease does not cover these provisions. Landlords should first obtain legal advice if they want to enter into such an arrangement with their tenants, or wish to avoid having lease provisions found void.

Lawrences’ Real Estate Group has significant experience in advising on leases for many different circumstances. We can help you ensure that the provisions of your lease will stand up in court.



Kenneth G. Hood is a member of Lawrences’ Litigation Group. A Certified Specialist in Civil Litigation, Ken has significant experience in landlord and tenant disputes. He can be reached at 905-452-6890 or khoo@lawrences.com.

Are You Ready for the HST?

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How Lawrences Can Help

Our lawyers and staff are familiar with how the HST will affect your transactions. Whether you are the purchaser or builder of a new home, a business owner selling products to the public, or have any other transactional needs, we will ensure that your interests are protected, including the application for any rebates that are available.

Where it may be beneficial for our clients, we will be billing work in progress before July 1, 2010, in order not to incur HST. If you have any questions about your bill, your lawyer will be happy to answer them for you.



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