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## What Landlords need to know about Bill 184 and prospective amendments to Ontario's *Residential Tenancies Act, 2006*

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On March 12, 2020, Ontario's Minister of Municipal Affairs and Housing introduced Bill 184, proposing the new *Protecting Tenants and Strengthening Community Housing Act*. If passed, Bill 184 will effect changes to Ontario's *Residential Tenancies Act, 2006* (the "RTA"), which will be relevant to residential landlords and tenants.

As the COVID-19 crisis has largely dominated news coverage over the past two months and as vacancy rates for residential apartments remain at historic lows, these proposed changes have attracted relatively little attention.

While Bill 184 proposes a number of amendments to the RTA, the focus of this article is five proposed amendments that are likely to be of primary interest to landlords.

### 1. Compensation from Former Tenants

Currently, landlords are permitted to apply under Sections 87 and 89 of the RTA for the purpose of seeking compensation for rental arrears, overholding or damage to a rental unit where a tenant remains in actual possession of the rental unit beyond the expiry date of the lease. Bill 184 proposes to expand the application of these sections by permitting landlords to apply to the Landlord and Tenant Board (the "Board") for this purpose after the tenant vacates the unit, as long as the application is made within one year of the date that the tenant vacated.

Additionally, Bill 184 would permit landlords to apply to the Board to seek compensation with respect to a tenant interfering with another tenant's reasonable enjoyment of the residential complex, as well as a tenant's failure to pay any utility costs for which it was responsible, within one year from the date that the former tenant vacated the rental unit.

As such, landlords will be pleased to learn that they may no longer be restricted from pursuing a former tenant at the Board for compensation after the tenant has vacated the rental unit.

## **2. Improperly increased rents deemed not void**

Currently, Section 135(1) of the RTA provides that a tenant or former tenant of a rental unit may apply to the Board for an order requiring the landlord to pay the tenant any money that the landlord collected as rent in contravention of the RTA, whether as a result of improper notice of a rental increase or a rental increase above the prescribed guideline amount set out by the Ontario Ministry of Housing and Municipal Affairs on an annual basis, provided that the application seeking such order was filed with the Board no more than one year after the illegal rent was paid.

Bill 184 proposes that a tenant cannot seek reimbursement for an improper rental increase if the tenant has already paid the increased rent for at least twelve consecutive months, provided that the tenant did not make an application to the Board challenging the validity of that rental increase within one year from the date that the rental increase was first charged.

These proposed amendments, if enacted, will provide peace of mind to landlords, as well as to prospective purchasers and lenders, that rental amounts paid by tenants for at least one year are no longer subject to challenge.

## **3. Increased Cost Consequences of Terminating a Tenancy in Bad Faith**

Currently, if the Board concludes that a landlord has acted in bad faith in terminating a tenancy under Sections 48, 49 or 50 of the RTA by reason of the landlord's personal use, a purchaser's personal use, or for demolition, conversion or substantial renovation, the Board may order the landlord to compensate the former tenant for: (i) any portion of increased rent that it has incurred or will incur for a one-year period after vacating the rental unit; and (ii) reasonable out-of-pocket moving, storage or similar expenses incurred, as well as an administrative fine not exceeding \$35,000.00.

Bill 184 proposes to supplement these potential penalties by permitting the Board in this context and in the Board's discretion to also require the landlord to compensate its former tenant(s) in an amount equal to up to twelve months' rent at the monthly rate last charged by the landlord to that tenant.

## **4. Affidavits now required in connection with Applications to the Board to Terminate a Tenancy**

Bill 184 proposes new requirements that a landlord must comply with when filing an application to terminate a tenancy pursuant to any one of Sections 48, 49 or 50 of the RTA noted above. Specifically, the Bill requires that the landlord include in its application a sworn affidavit setting out the particulars of the reason for termination, whether such termination is due to the landlord requiring the rental unit for its own personal use, a purchaser's personal use, or as a result of planned demolition, conversion or substantial repair and renovation to the rental unit. Additionally, the landlord is required to indicate in the affidavit whether or not it has within two years prior to filing the present application given any other notice of termination under Sections 48, 49 or 50 of the RTA in respect of the same or a different rental unit.

Bill 184 includes proposed amendments that permit the Board to consider a landlord's previous use of notices of termination under Sections 48, 49 and 50 in determining whether or not it is acting in good faith in currently applying for the termination of a tenancy under those same Sections.

Like the proposed increased cost consequences for landlords who are found to have acted in bad faith, as described above, the proposed affidavit requirements are intended to deter landlords from acting disingenuously when terminating tenancies under Sections 48, 49 or 50 of the RTA, as well as to provide the Board with additional evidence regarding applications where it is alleged that a landlord has terminated a tenancy in bad faith.

## **5. Penalties**

Currently, Section 238(2) of the RTA provides that corporations found liable for a breach under the RTA

are liable on conviction to a fine of not more than \$100,000. Bill 184 proposes to increase this maximum fine to \$250,000.

## Status of the Bill

As of June 15, 2020, Bill 184 has passed its Second Reading in the Legislative Assembly of Ontario and has been referred to the Standing Committee on Social Policy for further review and comment.

As Bill 184 has not yet been passed and is subject to further amendments, landlords and tenants are encouraged to watch for additional information regarding the status of Bill 184 as it works its way through the Ontario Legislature and to ensure that they are in a position to comply with the RTA, as amended, if and when Bill 184 comes into force.

In addition, readers should note that this article does not contain an exhaustive list of the proposed amendments to the RTA under Bill 184. For example, Bill 184 also includes important proposed amendments to Section 194 and Section 206 of the RTA which, if enacted, would reduce restrictions on landlords and tenants finalizing binding settlement agreements with respect to certain applications pending at the Board and would expedite the issuance of eviction and payment orders by the Board where tenants have failed to comply with the terms of binding settlement agreements.

*If you have any questions regarding Bill 184 and/or related matters, we encourage you to contact a member of our Real Estate Group.*

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