

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

<p style="text-align: center;">CANADIAN LAW OF LANDLORD AND TENANT Williams & Rhodes Release No. 4, July 2022</p>
--

Publisher's Special Release Note 2021

The pages in this work were reissued in April 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the April 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table on the following pages if you wish to confirm references.

THOMSON REUTERS CANADA®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

Fax 1-416-298-5082 (Toronto)

Fax 1-877-750-9041 (Toll Free Canada Only)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

Williams and Rhodes' *Canadian Law of Landlord and Tenant*, 6th Edition, is an in-depth examination of both commercial and residential tenancies law in every jurisdiction in Canada. It provides a consolidation of all statutory and regulatory developments, including rent control. Topics discussed in the publication include the creation of the landlord and tenant relationship, requisites of leases and agreements, various tenancies and leases, rent and recovery of rent, and termination of tenancies. The text also includes landlord and tenant legislation from all Canadian jurisdictions set out full together with concordance between provinces.

This release features updates to the case law and commentary in the following chapters: 1 (The Creation of the Relation), 3 (Requisites of Leases and Agreements), 7 (Recovery of Rent by Action), 8 (Distress), 12 (Determination of Tenancies), 14 (Renewals—Valuation of Buildings—Options to Purchase), 15 (Assignment and Devolution), and 20 (Rent). This release also features updates to Appendix K (Saskatchewan).

Highlights

New and significant case law discussed in this release includes the following:

Distress: Resisting Improper Distress—The Action for Damages— The Court of Appeal for Ontario dismissed the assignee's appeal and awarded the landlord costs in the amount of \$5,000 as agreed by the parties. The motion judge's finding that the assignee had no proprietary interest in the leased premises because the landlord had refused its consent to the assignment was supported by the record and it was open to the motion judge to make such a finding. Distinguishing the Supreme Court of Canada's decision in *Canadian National Railway v. Norsk Pacific Steamship Co.*, 1992 CarswellNat 168, 1992 CarswellNat 655, EYB 1992-67217, 91 D.L.R. (4th) 289, [1992] 1 S.C.R. 1021, 228 W.A.C. 70, [1992] S.C.J. No. 40 (S.C.C.), the appeal court held that the assignee did not have a contractual (or other) relationship with the landlord that would entitle the assignee to claim a possessory or proprietary interest in the leased property. Having no such interest in the leased property, the assignee was not owed any duty of care by the landlord. Given the motion judge's finding that the landlord had not consented to the assignment, there was also no basis on which to ground the necessary finding of proximity for a successful negligence claim. The court confirmed that the motion judge's decision to refuse to allow the assignee to further amend its claim was owed deference. The motion judge had observed that the assignee had already been given the opportunity to do so and had noted that no such amendment would save the assignee's claim: *2460907 Ontario Inc. v. 1521476 Ontario Inc.*, 2021 CarswellOnt 13793, 2021 ONCA 682.

The Creation of the Relation: Estoppel—Force, Fraud or Misrepresentation— On the hearing of the tenant's claim and the landlord's counterclaim, the court observed that neither the Offer to Lease nor the lease itself referenced any projected occupancy levels for the mostly residential building that was being constructed and in which the leased premises were to be located, nor did either document make any express reference to free customer retail parking. The tenant claimed that the landlord had made oral representations before the Offer was signed (and after the lease was executed) that alleg-

edly induced the tenant to enter into the 10-year, fixed-term lease and ultimately caused the tenant to forfeit the lease; the landlord denied any negligent misrepresentations and relied on the “entire agreement” clause in the lease. Citing the test for negligent misrepresentation as articulated by the Supreme Court of Canada in *Queen v. Cognos Inc.*, 1993 CarswellOnt 972, 1993 CarswellOnt 801, EYB 1993-67486, 99 D.L.R. (4th) 626, 147 N.R. 169, 60 O.A.C. 1, [1993] 1 S.C.R. 87, [1993] S.C.J. No. 3 (S.C.C.), the court found that the landlord had made representations to the tenant concerning occupancy targets for the building and the tenant’s access to free retail customer parking through both the landlord’s representative and the Retail Leasing Brochure and Master Plan for the primarily residential development. While the court concluded that the landlord’s representation concerning occupancy targets was inaccurate, it did not conclude that such representation was negligent. Given that the tenant admitted that it had understood that the targets were estimates, not guarantees, the court was not convinced that but for the occupancy target representation, the tenant would not have entered into the lease.

The court did find the landlord’s representations concerning free access to customer retail parking were inaccurate and/or misleading as well as negligent. The court held that given that the landlord knew how crucial free retail customer parking was to the tenant’s success, it was implicit in the landlord’s representation regarding free retail customer parking that such access would be convenient for the tenant’s customers. The court concluded that the tenant’s reliance on the landlord’s representation that the tenant’s customers would have such access was reasonable. As the tenant had entered into the lease and undertaken the design, construction and fixturing of the leased premises as a result of that representation, the tenant had relied on that representation to its detriment. The court rejected the landlord’s claim that the “entire agreement” clause in the lease precluded the tenant’s claim based on negligent representation: ample, free, convenient customer parking was a fundamental factor as contemplated by both parties and if the landlord did not intend to make such parking available to the tenant, the landlord was obligated to correct that representation through a term in its Offer to Lease and ultimately in the lease itself. The court awarded the tenant its operating losses pre-termination of the lease; its design, construction and fixturing expenses; and full damages as per the line items contained in the tenant’s Notice of Damages that was filed in the trial record. The court also provided a written costs submission procedure for the parties: *Spot Coffee Park Place Inc. v. Concord Adex Investments Limited*, 2021 CarswellOnt 14321, 2021 ONSC 6629.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView

- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages