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ONTARIO RESIDENTIAL TENANCIES LAW

Robert G. Doumani
Release No. 6, July 2022

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.

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Ontario Residential Tenancies Law, 2nd Edition provides a comprehensive annotation of Ontario’s major residential tenancy laws and has been completely revised to include the new *Residential Tenancies Act, 2006*. The text features updated commentary based on the new legislation, as well as new regulations under the new *Residential Tenancies Act, 2006*. The previous *Tenant Protection Act, 1997* has also been included for ease of reference. This invaluable resource also includes Rules of practice for the new Landlord and Tenant Board, relevant Landlord/Tenant Forms and Notices, the relevant regulations and form and notices, and summaries of leading reported and unreported decisions of courts and tribunals. This publication provides the busy practitioner with a ready reference to every aspect of the law of residential tenancies with the most comprehensive case law review of the process in Ontario.

This release features updates to the commentary and case law comprising the annotations to the *Residential Tenancies Act, 2006*.

Highlights

- **§ 48:5 Section 48 — The Good Faith of the Landlord; § 210:3 Section 210 — Decisions** — The tenants appealed a Board decision allowing an owner-occupation application for the owner’s mother in her 80s who had declining health and needed assistance. The tenants took the position that the application was not in good faith because there had been a prior application where the mother had not moved in as well as evidence of a winter trailer in Florida. The tenants sought to adduce new evidence that the mother had lived this past winter in Florida which they contend challenges the idea of full-time occupancy. Appeals to Divisional Court lie only on a question of law under s. 210. The new evidence, even if admitted, does not give rise to an error of law, “Both the finding of good faith and the finding of intended fulltime occupancy are findings of fact”. Appeal was dismissed, tenants were ordered to pay costs of \$3,000: *Delic v. Enrietti-Zoppo*, 2022 CarswellOnt 3250, 2022 ONSC 1627.
- **§ 100:2 Section 100 — Decisions; § 210:6 Section 210 — Costs Awards** — Appeal by a person who the Board determined to be an unauthorized occupant, failed. Four tenants entered into a fixed term tenancy with the option to leave early. All four tenants chose an earlier termination date. D’Costa (the unauthorized occupant who was also a lawyer) had sublet for the last two months from one of the other tenants. D’Costa asked for and was denied an adjournment and became so obstructive by refusing to stop talking that he was blocked from attending the balance of the hearing. Costs award was gradually increased to \$1,000 before D’Costa was

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blocked entirely, “we do not know how the Member would have dealt with the accommodation request because Mr. D’Costa foreclosed that possibility by refusing to take direction from him to wait his turn and stop talking”. D’Costa also attempted a number of other arguments, all of which failed: *Koda Holdings Inc. c/o Domus Inc. v. Gareth D’Costa, David Evans, Griffin Rush, Hugh Kelly, Cameron Hanson and Shane Bulwa*, 2022 CarswellOnt 3728, 2022 ONSC 1865.

§ 210:3 Section 210 — Decisions — At issue here was whether or not s. 210 gives the right to appeal an interlocutory order. The tenants appealed an order that did not have the effect of disposing finally of a claim. The interim order in question was one where the Board had ruled that an order refusing eviction because the heat had been turned off did not give rise to *res judicata* or *issue estoppels* in a subsequent proceeding to collect rent. In this case, “where the effect of an order is to continue the inquiry, it is not final” and in this case the effect of that order was that the application to collect rent would continue. Section 210 does not confer a right to appeal an interlocutory order. *Marshall v. Brady* (2022), 2022 CarswellOnt 45922022 ONSC 2158.

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