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CANADIAN LAW OF LANDLORD AND TENANT

Williams & Rhodes

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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: 13 (Delivery Up of Premises and Recovery of Possession), 14 (Renewals – Valuation of Buildings – Options to Purchase), 19 (Definitions), 23 (Termination for Cause), 25 (Obtaining Possession), 27 (Caretaker's Premises) and 29 (Offences). In addition, the legislation in Appendix M (Quebec) was updated.

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Highlights

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

RESIDENTIAL TENANCIES – DEFINITIONS – RESIDENTIAL PREMISES AND RENTAL UNITS – ONTARIO – In *Egan v. Kincardine Golf & Country Club*, 2023 CarswellOnt 11954 (Ont. Div. Ct.), the landlord appealed from a final order of the Landlord and Tenant Board (the "Board") that declared that the leased premises were not exempt under s. 5(a) of the *Residential Tenancies Act, 2006*. As the lease was for 99 years, the Board concluded that the occupation of the premises was not, as the exemption under the Act provided, "seasonal or temporary" and that, therefore, the exemption did not apply. Invoking the applicable standard of review of correctness, the court rejected the landlord's contention that as the property was intended to be (and had been) used seasonally, the lease was exempt. The court held that there was a difference between a seasonal rental—whereby travellers, vacationers and others requiring temporary accommodation enjoyed such accommodation for a season (e.g., the summer or winter)—and an annual rental of premises that are used seasonally (i.e., only during certain months of the year). The court concluded that a seasonal rental was exempt from the Act whereas an annual rental of premises that are used seasonally was not so exempt.

RESIDENTIAL TENANCIES – CARETAKER'S PREMISES – BRITISH COLUMBIA – In *Del Puppo v. Austeville Properties Ltd.*, 2023 CarswellBC 2216 (B.C. S.C.), the tenant sought judicial review of the Residential Tenancy Branch arbitrator's dismissal of the tenant's application seeking to cancel the landlord's Notice to End Tenancy for Demolition or Conversion of a Rental Unit under s. 49(6)(e) of the *Residential Tenancy Act*. The tenant claimed that, under the Act, the caretaker who would be occupying the tenant's rental unit could only be looking after that particular rental on behalf of the landlord and not, as the landlord had stated, the landlord's other, adjacent, multi-rental unit properties. Dismissing the tenant's petition, the Supreme Court of British Columbia held that the deliberate employment of the word "use" under the Act to permit the landlord to "convert the rental unit for use by a caretaker," rather than the employment of the word "occupy" to describe the caretaker's position vis à vis the rental premises, "strongly suggests that the caretaker has duties extending beyond simply residing in the rental unit while they are employed as a caretaker… [meaning] that a caretaker will be taking care of property beyond just that of the rental unit."

RESIDENTIAL TENANCIES – OFFENCES – ALBERTA – In *Ceresne v. Crosby*, 2023 CarswellAlta 2024 (Alta. H.R.T.), the tenant brought a complaint under s. 5 of the Alberta Human Rights Act claiming that the landlord had discriminated against the tenant based on sexual orientation. Citing the test as set out by the Supreme Court of Canada in its decision in *Moore v. British Columbia (Education)*, the Tribunal found it probable that there was a link between the landlord learning the tenant's sexual orientation and the onset of the landlord's derogatory language and threatening and aggressive behaviour towards the tenant. The landlord taunted and directed a homophobic slur at the tenant, threatened the tenant that his life would not be easy in the building, and tampered with the tenant's mailbox lock. The Tribunal held that such

behaviour constituted discrimination and that it had disrupted the tenant's quiet enjoyment of his tenancy. The Tribunal awarded the tenant $13,000 in general damages.

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