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CANADIAN LAW OF LANDLORD AND TENANT

Williams & Rhodes

Release No. 9, December 2024

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 legislation, Appendix WP. Words and Phrases and Appendix SLL. Index to Canadian Legal Literature.

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Highlights

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

APPENDIX WP. WORDS AND PHRASES – EXCLUSIVE USE COMMON AREA – An exclusive use common area is part of the common facilities registered for exclusive use by the unit’s occupants, such as a parking space, a balcony, or ... a mailbox. *Metropolitan Toronto Condominium Corp. No. 905 v. Davies*, 2024 CarswellOnt 8469, 2024 ONSC 3288 (Ont. S.C.J.) at para. 15 Akazaki J.

APPENDIX WP. WORDS AND PHRASES – ARREARS OF RENT – The term “arrears of rent” has an objective meaning under the RPLA [*Real Property Limitations Act*, R.S.O. 1990, c. L.15]. As Mew J. noted in *Pickering Square Inc. v. Trillium College Inc.*, 2014 ONSC 2629, 44 R.P.R. (5th) 251, affirmed on other grounds, 2016 ONCA 179, 64 R.P.R. (5th) 175, the term does not depend on how rent is defined by the parties in their lease; it is not “an empty vessel that the parties may fill at their discretion”. It must be interpreted in light of the context, scheme and object of that statute and the law of limitations in Ontario: at para. 52. Although the Shed Area was not part of the Rentable Area of the Premises (and therefore did not attract rent under the Lease), this conclusion did not take it outside the terms of the RPLA. Monthly payments by the Tenant to the Landlord for the exclusive occupation of the Shed Area fit neatly within the RPLA’s definition of “rent” as they constitute “periodical sums of money charged upon or payable out of land”. *Northwinds Brewery Ltd. v. Caralyse Inc.*, 2023 ONCA 17, 2023 CarswellOnt 193 (Ont. C.A.) at para. 24, 25 van Rensburg J.A. (Sossin and Copeland JJ.A. concurring)

APPENDIX WP. WORDS AND PHRASES – § WP:81. OWNER – ... Section 50 of the [*Expropriation Act*, R.S.A. 2000, c. E-13] allows compensation for disturbance to an “owner other than a tenant”, and Section 1(k)(iii) defines owner broadly as “any other person who is in possession or occupation of the land.” Therefore even though [the claimant] did not have a lease, evidence that [the claimant] was in occupation of the land would still support a finding that [the claimant] was an “owner” entitled to disturbance compensation that may be available under Section 50. The Panel’s interpretation of the broad definition of owner is consistent with the Court’s decision in *Edmonton (City) v. Business Care Corp.*, 2019 ABQB 724 where the Plaintiff unsuccessfully sought to narrow the definition of owner to be consistent with the provisions of the *Land Titles Act* [R.S.A. 2000, c. L-4]. *Instant Storage (Edmonton) Inc. v. Edmonton (City)*, 2022 CarswellAlta 3356, 2022 ABLPRT 1397 (Alta. L.P.R.T.) at para. 52, 53 Boyer (Chair)