



Volume XVIII Number 1

January 2023

Residential Leases

Tenant Evictions: Landlords to Evict Lawfully or Suffer the Consequences

By

Andrew Kirk, Lawyer

andrew@defranlaw.com

In the recent case of *Minas v. Adler*, 2022 ONSC 6706, the Ontario Superior Court of Justice ruled in favour of the tenants by dismissing an appeal of their landlords who had claimed that the *Residential Tenancies Act* (RTA) did not apply to the tenancy in this case. The tenants, Kerry Adler and his company, Eagle Capital Corporation, had rented a luxury home in 2019 from landlords Victor and Janet Minas. Due to a change in the tenants' circumstances in December 2020, Adler had relocated closer to his office in Dubai while continuing to rent the Toronto Property.

In August 2021, landlords Victor and Minas performed an inspection of the property and determined the property was in a "state of disrepair." As a result of their discovery, the landlords collectively elected to terminate the tenancy and repossess the property without first obtaining an order to do so from the Landlord and Tenant Board.

In response, the tenants filed an action seeking both general and punitive damages as well as possession of the property. In 2021, this action was dismissed by the court but the tenants had concurrently filed an application before the Landlord and Tenant Board for possession of the property while the decision from the previous action was under reserve. The landlords sought to defend this action by claiming the RTA did not apply to the tenancy but, to their dismay, the Board found that the RTA indeed did apply. Following its decision, the Board ordered that Adler and Eagle Capital Corporation be given possession of the premises.

The landlords contended that the Board was *ultra vires*, meaning that it had acted beyond their legal power or authority. In the event that the matter did fall under the jurisdiction of the Board, they argued that the tenants' application was an abuse of process, an argument vehemently denied by Adler and Eagle Capital. On the matter of jurisdiction, Justice Varpio used excerpts from s. 168 of the RTA supporting the position that "the Board has exclusive jurisdiction to hear matters falling within the purview of the RTA." Alternatively, s.207 of the RTA states that "the Superior Court of Justice may exercise any power specifically allocated to the Board when a plaintiff/applicant seeks certain monetary relief."



The abuse of process issue was shut down as the court decided that the Board hearing was the most efficient use of the court's time and the party's money, in accordance with the approach taken in *Trindade v. Janzi, 2021 ONSC 1927*.

Finally, the landlords advanced the argument that the Board's interpretation of the term "vacant" was incorrect for the period in question as they had been occupying the premises. This argument was declared null and void by the fact that the landlords had evicted the tenants illegally, which, in turn, supported the Board's interpretation of the term "vacant" being accurate in this context. In effect, the landlords' interpretation would enable future landlords to take possession of rental units illegally, thereby thwarting the Board's ability to protect the rights of innocent tenants.

To conclude, there are some notable takeaways from the above analysis of this case. First, the procedural requirements for residential lease termination should always be complied with in accordance with the law, in this case the RTA. This includes giving the proper form of notice since there was no previous termination agreement executed by both parties.

At De Francesca Law, we are very knowledgeable in these matters and have experience in both residential and commercial evictions. Evicting a tenant does carry significant legal consequences for a landlord and it is absolutely critical that evictions be carried out carefully and lawfully. Without proper regard for the correct manner of evicting a tenant, an unknowing landlord may be inviting legal trouble.

