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RESIDENTIAL LEASES:

How to Deal with Snow and Ice Removal Obligations

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Abstract

It is prudent for residential landlords to specify in the written lease that tenants are responsible for snow and ice removal of common walkways and stairs in order to avoid any possible claim of negligence.

Full Article

Montgomery v. Van, 2009 Can LII 1146 (ON S.C.) deals with a motion brought by the defendant (the "Landlord") for determination as to whether a provision in a residential lease executed by the plaintiff (the "Tenant") that requires the tenant to remove ice and snow from the common walkways is void, as being inconsistent with the *Tenant Protection Act, 1997*, S.O. 1997, c. 24 (the "Act").

The Tenant entered into a written tenancy agreement with the Landlord to rent an apartment in a building of six apartments, all of which utilize common walkways and stairways. The lease indicates that "tenants are responsible for keeping their walkway and stairway clean (including snow removal)." The Tenant slipped and fell on ice and snow that had accumulated on the walkway leading to the basement apartments. At the time of the fall, the Tenant was holding a glass bottle that broke and lacerated her left hand causing injury to the tendons and nerves of her left hand.

The Tenant, amongst other matters, alleges negligence against the Landlord. Specifically, the Tenant alleges that the Landlord failed to keep the walkway free of snow and ice.

The Landlord has pleaded that the Tenant was responsible for the removal of ice and snow from the common walkways pursuant to the lease.

The court stated that the relationship between the Landlord and the Tenant is governed by the Act. It sets out the duties and obligations of the Landlord and the duties and obligations of the Tenant.

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Snow and Ice Removal Obligations

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Section 24 of the Act provides that:

- (1) A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
- (2) Subsection (1) applies even if the tenant was aware of a state of non-repair or a contravention of a standard before entering into the tenancy agreement.

Ontario Regulation 198/98 sets out the maintenance standards for the purposes of the Act. Section 2(2) of Ontario Regulation 198/98 provides:

"Except as otherwise provided, the landlord shall ensure that the maintenance standards in [Regulation 198/98] are complied with."

Section 26 of Ontario Regulation 198/98 provides:

"Exterior common areas shall be maintained in a condition suitable for their intended use and free of hazards and, for these purposes, the following shall be removed:

...

5. Unsafe accumulations of ice and snow."

The Tenant's duties are set out in Section 29 of the Act which provide that "[t]he tenant is responsible for ordinary cleanliness of the rental unit, except to the extent that the tenancy agreement requires the landlord to clean it".

The duties of the Tenant with respect to the rental unit do not include the care and maintenance of the common areas, etc.

Section 16 of the Act provides that any provision in a tenancy agreement "that is inconsistent with the Act or the regulation is void."

The Tenant submitted that the Act represents a codification of the rights and obligations of landlords and tenants and as such these duties are non-delegable. Section 24 of the Act establishes that a landlord is responsible for snow and ice removal for all exterior common areas. The Tenant submits that this is inconsistent with the provision in the lease which attempts to make the Tenant responsible for snow and ice removal of an exterior common area.

The Landlord submits that the Act (and the regulations thereto) do not specifically require a landlord to personally complete snow removal tasks from common areas. As noted above, a landlord is simply required to "ensure" that such tasks are completed. On that basis, it is submitted that landlords may fulfill their statutory obligations by delegating snow removal tasks to others. The Act and associated regulations do not state that snow removal tasks may never be assumed by a tenant and, as such, the lease executed by the Tenant is not inconsistent with the Act and should not be considered to be void.



The court agreed with the Landlord and held that a finding that a tenant may never consent to participating in any snow removal tasks would be an absurd result. As such, the court concluded that the provision of the lease that indicates that the Tenant will complete snow removal tasks with respect to the stairwell area is not inconsistent with the Act.

