

Memo To: All Lawyers  
File: Alexsei Research Memo (Public)  
Research ID: 4000154456890b  
Jurisdiction: Ontario, Canada  
Date: April 15, 2020  
Regarding: Residential Landlord Duties During COVID-19

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## Issue

What obligations, if any, does a residential landlord have to protect the health and safety of the tenants if a tenant of the building is diagnosed with a highly infectious disease and quarantined in their unit?

## Facts

No additional facts were supplied.

## Conclusion

A landlord is responsible for maintaining a residential complex, including the rental units in it, in a good state of repair fit for habitation, and for complying with health, safety, housing and maintenance standards. The standards to which a landlord must maintain a residential complex are set out in O Reg 517/06 and municipal by-laws, if applicable. All interior common areas and exterior common areas must be kept clean and free of hazards. (*Residential Tenancies Act, 2006*).

No court or Landlord and Tenant Board (“LTB”) decisions discussing maintenance standards in the context of an infectious disease could be identified. However, some local public health authorities have given guidance on the measures landlords should be taking to prevent transmission within a residential complex (*General Infection Prevention and Control (IPAC) Practice and Disinfection Guidance for Commercial and Residential Buildings; Landlords, Condo Boards urged to adopt new health and safety measures to protect residents from COVID-19*). The recommended measures include but are not limited to: closing all non-essential common areas, limiting the capacity of elevators, regular sanitization of frequently touched surfaces, and the provision of hand sanitizer at entrances.

Decisions discussing landlords' obligations in respect of pest infestations may also be instructive. Landlords had a positive duty to prevent infestations from spreading throughout the building (*SWT-83475-15 (Re)*).

The main principles governing claims for disrepair are (*TSL-34724-12 (Re)*):

1. Landlords cannot be held financially liable for problems they did not know about;
2. If a landlord responds to a disrepair complaint in a timely and effective manner, then the tenant is not entitled to any remedy; and
3. Tenants have a duty to mitigate their damages.

## Law

In Ontario, the *Residential Tenancies Act, 2006*, SO 2006, c 17 ("*RTA*") imposes a duty upon residential landlords to maintain residential complexes in a good state of repair, fit for habitation, and in compliance with health and safety standards:

### Landlord's responsibility to repair

20 (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. 2006, c. 17, s. 20 (1).

Landlords are also subject to the general duty of care set out in the *Occupiers' Liability Act*, RSO 1990, c O.2 to take such care as in all of the circumstances of the case is reasonable to see that persons are reasonably safe while on the premises:

### Occupier's duty

3 (1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises.

### Idem

(2) The duty of care provided for in subsection (1) applies whether the danger is caused by the condition of the premises or by an activity carried on on the premises.

Idem

(3) The duty of care provided for in subsection (1) applies except in so far as the occupier of premises is free to and does restrict, modify or exclude the occupier's duty. R.S.O. 1990, c. O.2, s. 3.

...

Obligations of landlord as occupier

8 (1) Where premises are occupied or used by virtue of a tenancy under which the landlord is responsible for the maintenance or repair of the premises, it is the duty of the landlord to show towards any person or the property brought on the premises by those persons, the same duty of care in respect of dangers arising from any failure on the landlord's part in carrying out the landlord's responsibility as is required by this Act to be shown by an occupier of the premises.

Idem

(2) For the purposes of this section, a landlord shall not be deemed to have made default in carrying out any obligation to a person unless the landlord's default is such as to be actionable at the suit of the person entitled to possession of the premises.

Definitions

(3) For the purposes of this section, obligations imposed by any enactment by virtue of a tenancy shall be treated as imposed by the tenancy, and "tenancy" includes a statutory tenancy, an implied tenancy and any contract conferring the right of occupation, and "landlord" shall be construed accordingly.

The standards to which a landlord must maintain the complex are set out in the regulations to the *RTA* and municipal by-laws, if applicable. The *RTA* states:

Application of prescribed standards

Local municipalities

224 (1) The prescribed maintenance standards apply to a residential complex located in a local municipality and the rental units located in the residential complex if,

(a) there is no municipal property standards by-law that applies to the residential complex; or

(b) there is a municipal property standards by-law that applies to the residential complex and the prescribed circumstances apply. 2016, c. 25, Sched. 5, s. 5.

*Maintenance Standards*, O Reg 517/06 prescribes maintenance standards for the purpose of *RTA* section 224(1). In respect of common areas, section 44 provides:

#### Common areas

44. (1) All interior common areas and exterior common areas shall be kept clean and free of hazards. O. Reg. 517/06, s. 44 (1).

(2) For the purpose of subsection (1),

“interior common areas” includes laundry rooms, garbage rooms, corridors, lobbies, vestibules, boiler rooms, parking garages, storage areas and recreation rooms. O. Reg. 517/06, s. 44 (2).

No court or Landlord and Tenant Board (“LTB”) decisions discussing maintenance standards in the context of an infectious disease could be identified. However, decisions discussing landlords’ obligations in respect of pest infestations may be instructive.

In *SWT-83475-15 (Re)*, 2017 CanLII 48954 (ON LTB), the tenants complained of several pests in their unit, including mice and cockroaches. Witnesses also observed cockroaches in the building’s common areas. In addressing the issue, the LTB stated:

[32] Subsection 20(1) of the Act imposes a responsibility on the Landlords to maintain the entire residential complex, including all of the rental units in it, in a good state of repair and fit for habitation. In other words, the Landlords had a positive duty to both these Tenants and the other tenants in the complex to prevent the infestation from spreading throughout the building. ...

The LTB set out the principles governing claims under *RTA* s. 20(1) in *TSL-34724-12 (Re)*, 2012 CanLII 98024 (ON LTB):

[15] Over the years the case law with respect to disrepair has developed some principles regarding appropriate remedy. The first of these principles is: a landlord cannot be held financially liable for a problem he or she did not know about. Here the Landlords acknowledged knowing about the bed bug infestation prior to the tenancy commencing so this first principle has no impact upon remedy in this case.

[16] The second principle is that if a landlord responds to a disrepair complaint in a timely and effective manner, then the tenant is not entitled to any remedy. I believe this principle is based on the idea that during any tenancy both parties can expect some problems to arise so if they are dealt with promptly and appropriately no remedy should flow. Here the evidence clearly establishes that although the Landlords made token efforts to address the situation, the infestation was not effectively dealt with. I would point out at this juncture that subsection 20(1) of the Act clearly lays responsibility for maintenance and repair at the feet of the landlord. This means it is not enough under the Act to provide a tenant with powders or cans of spray or a steam cleaner and expect the tenant to do all the work to treat a bed bug infestation. That work is the landlord's responsibility. Given that the bed bug infestation continues to this day it cannot be said the Landlords here responded to the Tenants complaints in either a timely or effective manner.

[17] The third principle with respect to remedy is that the tenant has a duty to mitigate his or her damages under section 16 of the Act. What this means is that tenants have an obligation to report disrepair problems and co-operate reasonably with resolving them. Here the only evidence that the Tenants failed to co-operate was the complaint of the Landlord before me that when he tried to set up a time to show the Tenants how to use the steamer, they demurred and said the time he chose was not convenient. Given the fact that the Tenants should not have been expected to take on the burden of using the steamer as that was the Landlords' job, any reluctance on their part of agree to the Landlords' coming to teach them how to use it cannot be considered as a failure to mitigate. The Landlord who attended the hearing asked a number of questions on cross-examination regarding whether or not the unit was properly prepared for the one professional treatment that occurred, but no evidence was actually elicited to indicate the Tenants had not followed the instructions they were given. As a result, I am satisfied that the Tenants mitigated their damages as required by the Act.

[18] The normal remedy awarded in cases such as this is abatement of the rent. Abatement is a contractual remedy and is designed to address the idea that if a tenant is paying rent for a bundle of goods and services and not receiving them then the tenant is entitled to abatement of the rent proportional to the difference between what is being paid for and what is being received. Here the Tenants were paying for a unit that was not infested with bed bugs and did not receive what they were paying for, so they are entitled to abatement of the rent.

Tenants who become aware of a disrepair should inform the landlord through the proper channels. In *TET-20134-11 (Re)*, 2012 CanLII 44831 (ON LTB), the LTB denied a claim for rent abatement as a result of a bed bug infestation but allowed it for a mice infestation due to the plaintiff's complaints or lack thereof:

[22] In the case of a maintenance claim, the key elements that must be established are: i) the nature of the problem; ii) when was the problem reported to the landlord or when should the landlord have reasonably know about the problem; iii) what was the landlord's response to the problem, if any; and iv) what impact did the maintenance issue have on the tenant. The burden of proof rests with the applicant tenant to establish his or her allegations on a balance of probabilities.

[23] The evidence before me leads me to conclude that after the January 27, 2010 hearing of TET-02033-09, the Tenant remained silent on the issue of bed bugs in his unit until August 18, 2011. At a minimum, the Tenant did not report his concern through the proper channel until August 31, 2011 when he submitted a written service request. It is curious that the Tenant, who went to some effort to compile photographic and video evidence to support his current application, would not have logged his maintenance concerns in writing with the Landlord. Yet from the January 27, 2010 hearing up to August 31, 2011 there is no written record of the Tenant ever complaining to the Landlord about bed bugs. It is incumbent on the Tenant to promptly report his concerns using the established maintenance request protocol setup by the Landlord. This is especially true in the case of a multi-tenant residential complex.

[24] The Landlord in my view acted reasonably during the month of September 2011 to initiate an investigation of the bed bug problem and to schedule a treatment of the Tenant's unit. I also note that the Tenant interference with the generally accepted pest control protocol such as requesting the removal of the preventative

dusting on September 22, 2012. The Tenant also delayed treatment of his unit by not having it properly prepared on September 22, 2012.

[25] The Tenant claimed to have an ongoing problem with bed bugs in his living room and kitchen after the September 29, 2011 treatment. Yet there is no record of the Tenant complaining about the problem after this date. I note that the Tenant testified that he experienced bed bug bites during the month of December 2011. Interestingly, when the Tenant wrote to the Landlord on December 8, 2011 to request action about a mouse problem, he made no mention of having his unit re-treated for bed bugs.

[26] The Tenant requested that he be reimbursed for the cost of material and labour for installing a sealed boat hatch door on his bedroom door as a means of isolating his sleeping quarters from bed bugs. The Tenant was not authorized to perform this structural modification to the rental unit. The claim is denied. The Tenant also requested reimbursement for the cost of a protective mattress cover. In view of the Landlord's response, this claim is also denied.

[27] The evidence reveals that the Landlord has not been so forthcoming to address the Tenant's concerns about mice in the rental unit. The Landlord's witness, A.G., testified that no complaint had been received from the Tenant regarding mice. The December 8, 2011 service request regarding mice which was tendered at the hearing suggests otherwise. Furthermore, video evidence taken by the Tenant on February 1, 2012 revealed the presence of rodent droppings in the under cabinet area next to the kitchen sink. While the Landlord did eventually dispatch a pest control company to the Tenant's unit on February 8, 2012, this was two months after the problem was reported in writing and only after the Tenant involved municipal licensing and standards. A two month rent abatement in the amount of fifty percent is warranted to addresses the seriousness of the maintenance issue while at the same time recognizing that the Tenant was still able to make use of his unit.

Accordingly, while landlords should be taking protective measures due to the prevalence of the COVID-19 outbreak, a landlord will not be liable for breach of *RTA* s. 20(1) for failing to undertake any special or additional measures that may be required as a result of a tenant testing positive for COVID-19 unless the landlord knows or should know that a tenant has tested positive. However, given that the safety measures recommended by public health authorities are prefaced on the fact that a large number of people can be infected without showing symptoms,

the preventative measures that a landlord should take to prevent the spread of the virus may be the same whether or not a tenant has tested positive.

Some local public health authorities have given guidance on the measures landlords should be taking to prevent transmission within a residential complex. On March 26, 2020, Toronto Public Health released its *General Infection Prevention and Control (IPAC) Practice and Disinfection Guidance for Commercial and Residential Buildings* in response to the COVID-19 crisis. The document addresses both the health of building operators and staff, as well as disinfection practices for building common spaces. The document recommends that all non-essential common areas be closed, and provides the following sanitization guidance:

Building operators and staff should follow these guidelines when cleaning and disinfecting the environment:

Commonly used cleaners and disinfectants are effective against COVID-19.

Frequently touched surfaces are most likely to be contaminated. Ensure cleaning staff, clean and disinfect frequently touched surfaces in common areas. In addition to routine cleaning, surfaces that have frequent contact with hands should be cleaned and disinfected twice per day and when visibly dirty. Examples include doorknobs, elevator buttons, light switches, toilet handles, counters, hand rails, touch screen surfaces and keypads.

Use only disinfectants that have a Drug Identification Number (DIN). A DIN is an 8-digit number given by Health Canada that confirms it is approved for use in Canada.

Check the expiry date of products you use and always follow manufacturer's instructions.

In addition to routine cleaning, check with your organization for any specific protocols for cleaning COVID-19.

Staff should use appropriate Personal Protective Equipment (PPE), such as gloves, according to existing policies and procedures, as well as following label directions for all cleaning products.

Encourage and support proper handwashing by keeping washroom facilities stocked with soap and paper towels at all times, and ensure custodian staff keep hand washing sinks in a state of good repair.

Consider having alcohol-based hand sanitizer in common areas, including but not limited to bathrooms, laundry rooms, gyms and playrooms, and other high traffic areas at all times.

No evidence to suggest that building waste needs any additional disinfection.

The City of Toronto also issued a news release (Landlords, Condo Boards urged to adopt new health and safety measures to protect residents from COVID-19) on March 27, 2020 urging landlords and condo boards to adopt rigorous cleaning routines to prevent viral spread:

Building operators and staff should follow these guidelines to protect residents in vertical communities:

Alcohol-based hand sanitizer or a hand washing station with soap and water should be placed at all building entrances.

Alcohol-based hand sanitizer should be available in all common areas that remain open, such as laundry rooms.

Close non-essential common areas such as bathrooms, gyms, playrooms, playgrounds and other high traffic areas.

Routine cleaning of frequently touched surfaces in common areas, including doorknobs, elevator buttons, light switches, toilet handles, counters, hand rails, touch screen surfaces and keypads, with common household cleaners and disinfectants.

Organize the building to accept deliveries of essential goods, like medications, for residents to avoid non-essential trips outside.

Post signage limiting the number of residents allowed in common areas, including laundry rooms and elevators, to ensure that individuals are able to maintain a two-metre distance. Consider allowing a maximum of three residents at a time in elevators.

When showing units or suites for sale or lease, practice physical distancing - keep a safe distance of two metres from the resident and wash hands with soap and water, and or use an alcohol-based hand sanitizer, before and after the visit.

## Authorities

*Residential Tenancies Act, 2006*, SO 2006, c 17  
*Occupiers' Liability Act*, RSO 1990, c O.2  
*Maintenance Standards*, O Reg 517/06  
*SWT-83475-15 (Re)*, 2017 CanLII 48954 (ON LTB)  
*TSL-34724-12 (Re)*, 2012 CanLII 98024 (ON LTB)  
*TET-20134-11 (Re)*, 2012 CanLII 44831 (ON LTB)  
*General Infection Prevention and Control (IPAC) Practice and Disinfection Guidance for Commercial and Residential Buildings*, March 26, 2020  
*Landlords, Condo Boards urged to adopt new health and safety measures to protect residents from COVID-19*, March 27, 2020