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PARALEGAL SERVICES

August 4, 2020

Dear Client,

I hope this finds you and your family well. I just wanted to reach out and touch base with each of you and let you know a little bit on what is going on now that things are starting to get to the "new normal".

I have clients who are involved with the Small Claims Court as well as the Landlord and Tenant Board, so I have included both jurisdictions within this letter. If one section doesn't apply to you then skip it!

Small Claims Court

Small Claims will not resume until November 2, 2020. This has been established by way of an Order by Associate Chief Justice Frank Marrocco.

> **ORDER**
>
> **[1] By Notice to the Profession and the Public dated June 2, 2020, the operations of the Small Claims Court have been suspended, with the exception of urgent motions and garnishment hearings and select remote settlement conferences, until further notice.**
>
> **[2] I now make the following order:**
>
> **All Small Claims Court proceedings that were, as of March 13, 2020, scheduled for a hearing between March 16, 2020 through October 30, 2020, and are not assigned a new date between March 16, 2020 and October 30, 2020, are adjourned to November 2, 2020 or to such other date as determined by the Court.**

The Small Claims Court is holding Settlement Conferences by phone if it is requested by both parties. If you have a pending settlement conference and I have not reached out to you, it is because I think that your matter is too complicated to do by phone. I have been involved in several Board hearings by phone and they are very tricky to maneuver through.

The current limitation periods are still stayed or "frozen":

1. Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any limitation period shall be suspended, and the suspension shall be retroactive to Monday, March 16, 2020. O. Reg. 73/20, s. 1; O. Reg. 258/20, s. 1.

If you have any questions, please don't hesitate to email me.

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Landlord and Tenant Matters

As of today, the stay of evictions has been lifted. There are many protests going on today and last week there was a Motion filed to have the stay of evictions stayed but that was dismissed on the long weekend.

I am hearing mixed messages about the evictions. The first priority of the sheriff's is to get through the back log of evictions that were already scheduled. If you have an Order for Eviction **that was already scheduled,** then they will be rescheduling them. I am hearing that you may have to reach out to them or they may call you. One client has been told that it will be months before they get an appointment here in Durham Region. I am hearing some Courthouses are open for booking and some sheriff offices are turning people away stating they don't have the authority from the AG as of yet.

Hearings going forward are a bit of mystery as well. I have heard that hearings will be done by Microsoft Team and will start to be scheduled in August, but August will be the pilot project month. I am unsure when we will have the hearings' we were supposed to have earlier this year.

Of course, the elephant in the room, Bill 184.

Bill 184

I am sure all of you have been watching the news and have seen that Bill 184 has now been given the Royal Assent. The Board has been busy updated the forms to follow suit. Here is what Bill 184 has amended:

- Compensation is now required if a purchaser of the property would like to use it for personal use. Before Bill 184, only if the Landlord was going to require the unit for personal use was it necessary to compensate the Tenant one month's rent. It is now required for both a Purchaser and Landlord. (N12)
- Compensation is now required when issuing a repair or renovation Notice. Compensation must be equal to one months rent if the tenant doesn't give first rights of refusal, if the unit contains five or less units (three month's compensation for more than five), and it was not order by an Authority. (N13)
- The Act has been changed with respect to Bad Faith Applications to allow the Adjudicator to order a Landlord to pay general compensation in an amount not exceeding the equivalent of 12 months of the last rent charged to the former tenant, regardless whether actual expenses have been incurred. The Adjudicator can also include future out-of-pocket expenses. **NOT IN FORCE.**
- Bad Faith Applications will be available to Tenants for up to 2 years after the Tenant vacated the rental unit (currently one year). **NOT IN FORCE.**
- With respect to Applications for personal use, the Board will require that the Affidavit that is required to be filed along with the Application and the Affidavit must include:
    - indicate whether or not the landlord has, within two years prior to filing the application, given any other notice for personal use or purchasers own use within respect of the same or a different rental unit; and

- set out, with respect to each previous notice described in clause above
  - the date the notice was given,
  - the address of the rental unit in respect of which the notice was given,
  - the identity of the intended occupant in respect of whom the notice was given if the notice was given under the same section.
    NOT IN FORCE.

- Evidence with respect to Bad Faith Applications will now include any previous Notices of Eviction for personal use, purchaser's own use or renovation and demolition, that is relevant. **NOT IN FORCE.**
- The process which a tenant can raise issues that could be subject to a Tenant Application will be dealt with differently. Sometimes I would appear at the LTB for a rent arrears application and the tenant would raise issues on the spot with the Adjudicator. I would then have no choice but exercise my right to adjourn the matter to a later date, which is often months later. The Tenant is told to pay their rent into the Board, which they normally don't. Now the Tenant cannot have issues addressed unless:
  - The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
  - The notice shall be given within the time set out in the Rules
  - The notice shall be given in writing and shall comply with the Rules (the last amendment to the Rules was January 23, 2019).
- New consideration will be given to whether a Landlord has attempted to negotiate a payment agreement with Tenant during a rent arrears hearing.
- The Landlord will be able to apply to the LTB for rent arrears even after the Tenant has vacated the unit, up to a year after the tenant has possessed the unit. **NOT IN FORCE.**
- A Landlord can apply for compensation for substantial interference of reasonable enjoyment, etc. (N5) even after the tenant has left the unit up to one year after the tenant has vacated. **NOT IN FORCE.**
- A Landlord can apply to the LTB for utility costs of a tenant or former tenant, up to one year after the tenant vacates. **NOT IN FORCE.**
- The Landlord can apply to the LTB for damaged property even after the tenant has vacated for up to one year after the tenant ceases to be in possession of the rental unit. **NOT IN FORCE.**
- If the Landlord, in the past, did not give the proper N1 form and 90 days notice, the increase of rent would have been considered an illegal charge. Now if the tenant has paid this rent without filing an application for 12 consecutive months, it is no longer an illegal charge.
- If the Landlord brings an application against a former tenant, the Board may require the Landlord to serve the Application and Hearing Notice on the former Tenant. **NOT IN FORCE.**
- If the Landlord has filed a rent arrears application with the Board, and the Landlord and Tenant make an agreed payment plan and submit it to the Board prior to the hearing the Board may issue an order without an hearing which may include section 78. (Section 78 is used in mediated agreements already – it allows the Landlord to file an application stating that the Tenant has breached the agreement).

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- Production orders may be obtained from the Superior Court of Justice **NOT IN FORCE.**
- Maximum fines have been increased from $25,000 for a person to $50,000 and for a corporation from $100,000 to $250,000.

I hope all of you stay safe and your families as well. Once I hear something about your matter, I will reach out but, in the meantime, if you have any questions, please let me know.

Yours truly,

Suzanne Bemrose
Paralegal