



Order under Section 9(2)
Residential Tenancies Act, 2006

File Number: HOT-10196-21

In the matter of: 310, 2300 UPPER MIDDLE RD W
OAKVILLE ON L6M 0T4

Between: Audrey Mckeen

Tenant

and

HSCC No. 647
Signature Property Management Corp. aka 2219645
Ontario Inc
Ivan Prasin
Mirisa Prasin

Landlords

Audrey Mckeen (the 'Tenant') applied for an order to determine whether the *Residential Tenancies Act, 2006* applies.

This application was heard by videoconference on May 19, 2021, beginning at 1:00 p.m.

The Tenant, the Tenant's Legal Representative Shaun D. Harvey, Ivan Prasin, Mirisa Prasin, (the 'Landlords'), the Landlord's Legal Representative Yusef Elsohemy, and the condominium corporation HSCC No. 647's Legal Representative Justin Black attended the hearing. As of 1:30 p.m., Signature Property Management Corp. aka 2219645 was not present or represented at the hearing, although properly served with a notice of this hearing by the Board.

Determinations:

1. This is the Tenant's application to determine whether the *Residential Tenancies Act, 2006* (the 'RTA') applies and whether the respondents are Landlords pursuant to the RTA.
2. The rental unit is a condominium apartment.
3. The Tenant asks the Board to find that:
 - (1) Halton Standard Condominium Corporation No. 647 (the "condominium corporation"), Signature Property Management Corp aka 2219645, I.P. and M. P. are the joint Landlords for the purposes of the RTA; and

- (2) The Landlord and Tenant Board has the exclusive jurisdiction to grant the remedies sought by the condominium corporation in Superior Court of Justice application CV-21-562-00.
4. The following facts are not in dispute:
- a. The condominium corporation is responsible for maintaining the common and exterior elements of the condominium building, for performing its duties and obligations, and for exercising its statutory powers conferred under the *Condominium Act, 1998* (the 'CA').
 - b. Signature Property Management Corporation aka 2219645 Ontario Inc. acts as the condominium corporation's property manager.
 - c. I.P. and M.P. are the Landlords as defined by the *RTA* in respect of this rental unit.
 - d. The Tenant A.M. is severely immuno-compromised and has not left the apartment since July 2020.
 - e. The tenancy commenced on July 1, 2017 when the Tenant took occupancy of the rental unit from the owners I.P. and M.P., pursuant to a written lease agreement, in which I.P. and M.P. are named as the Landlords.
 - f. On June 17, 2017 M.P. emailed a copy of the condominium corporation's declaration, by-laws and rules to the Tenant, the content of which establishes that A.M. notified the Tenant of the "Fire System Inspection Monthly Schedule".
 - g. The condominium corporation alleges that the Tenant was served with proper notice of entry into the condominium unit for the purposes of an inspection relating to the fire safety equipment installed in the unit under s.19 of the *CA*, including performing maintenance, and/or repairing defective devices. This was a mandatory, annual fire safety inspection as required by the Fire Code (O.Reg. 213/07; *Fire Protection and Prevention Act*, 1997).
 - h. The condominium corporation attempted entry to the condominium unit on two occasions: November 30, 2020 and February 3, 2021. The Tenant refused entry, citing reasonable Covid-19 concerns.
 - i. On February 18, 2021 the condominium corporation commenced an application in the Superior Court of Justice (CV-21-562-00) under s.134(1) of the *CA*, to enforce the provisions of entry as against the owners I.P. and M.P. and the Tenant.
 - j. The Tenant raised the issue of jurisdiction with the Superior Court of Justice, where the matter was adjourned for a determination of the jurisdictional issues before the Landlord and Tenant Board.

The Residential Lease

5. On July 1, 2019, I.P., M.P. and A.M. renewed the fixed term lease, which states at page 2: "This lease renewal is subject to the same terms and conditions as the original lease agreement dated 31 May 2017."
6. The lease agreement dated April 28, 2019 names I.P. and M.P as Landlords and provides as follows:

Para. 13: The Landlord and Tenant acknowledge and agree that a standard form of lease as prescribed by the *Residential Tenancies Act, 2006*, as amended from time to time, is required.

Para. 14: The Landlord shall have the right, at reasonable times, to enter and show the demised premises to prospective tenants, purchasers or others. The Landlord, or anyone on the Landlord's behalf, shall also have the right, at reasonable times, to enter and inspect the demised premises.

The 2017 lease agreement provides somewhat different wording with regards to the above:

Paragraph 12: "...The Landlord shall provide the Tenant with information relating to the rights and responsibilities of the Tenant and information on the role of the Landlord and Tenant Board and how to contact the Board..."

Schedule A to the 2017 lease provides:

Paragraph 4: "The Landlord and Tenant acknowledge and understand that all provisions under the *Residential Tenancies Act* of Ontario apply to this Lease.

The Condominium Corporation Declaration

7. The condominium corporation is the legal entity representing the collective interests of the condominium unit owners, allowing purchasers of the units to own property while sharing the cost of maintaining the common elements with the other owners through condominium fees. It is governed by its declaration, by-laws, and rules, and must comply with the provisions of the CA: s.17(1) and (2); s. 119(1)
8. A copy of the existing declaration of HSCC No. 647 aka Creekbank Developments Limited (the "Declaration") was submitted into evidence by parties. The Declaration states, in part:

Article IV- Units, 4.1(b): Each Owner shall comply, and shall require all members of his or her family, occupants, tenants, ... to comply with the Act, the Declaration, the By-Laws and all agreements authorized by By-Law and the Rules; ...

Article IV, 4.6(d) Any Owner leasing his or her Residential unit shall not be relieved thereby from any of his or her obligations with respect to the Residential Unit, which shall be joint and several, with his or her tenant.

Article V- Maintenance and Repairs, 5.1(a): Each Owner shall maintain his or her Unit, and subject to the provisions of this Declaration, shall repair his or her unit after damage, all at his or her own expense.

Article X- General Matters and Administration, Rights of Entry to the Unit, 10.1(a): The corporation...their respective agents or any other person authorized by the Board shall be entitled to entry any Unit...at all reasonable times and upon giving reasonable notice, to perform the objects and duties of the corporation, and without limiting the generality of the foregoing. For the purpose of making inspections...making repairs...remedying any condition which might result in damage to the Property...or carrying out any duty imposed upon the Corporation.

Positions of the Parties

9. The parties agree that I.P. and M.P. are Landlords, and that A.M. is the Tenant.
10. The parties are unable to agree whether the condominium corporation and/or property management company should be deemed as "Landlords" under the *RTA*, or Landlords jointly with I.P. and M.P..
11. A "landlord" under section 2 of the *RTA* includes: (i) an owner or a rental unit, or any other person who permits occupancy of a rental unit- (s.2(a)); (ii) the personal representatives of the owner or other person as described in (i)- (s.2(b)); or a person who is entitled to possession of the residential complex and who attempts to enforce any rights of a landlord (s.2(c)). I will refer to the more fulsome definition in my analysis, below.
12. There is also a dispute between the Tenant, the condominium corporation and the Landlords with respect to the legislation that applies to lawful entry into the Tenant's unit and the proper venue for enforcement of a breach of a right of entry.

Tenant- Submissions and Evidence

13. The Tenant seeks a determination of the "trier of first instance" and a finding of fact that the condominium corporation, Signature Property Management Corporation and I.P. and M.P are jointly and severally the Landlords under the *RTA* for the purposes of enforcing the rights of entry as between the condominium corporation and the Tenant.
14. The Tenant's Legal Representative S.H. argues that, if the three respondents are found to be co-Landlords, then the Landlord and Tenant Board has exclusive jurisdiction to determine the issues relating to the right of entry into the rental unit, subject to any monetary award sought which exceeds the *RTA*'s statutory limitations, in which case the matter should proceed before the Superior Court of Justice pursuant to s.207(2) of the *RTA*.

15. The most persuasive evidence that the condominium corporation is a landlord, S.H. submits, can be found under s.11(2) of the CA. The provision states that each owner is entitled to exclusive ownership and use of that owner's unit and, further, that all of the owners are tenants in common of the common elements of the residential complex. S.H. contends that while the condominium corporation is not entitled to possession of the rental unit, it is entitled to possession of the common elements of the residential complex. I.P. and M.P, in their capacity as part-owners of the common elements, are also entitled to possession of the same common elements.
16. He suggests that a designation of co-landlords is established under s.11(2) by virtue of the joint responsibility to ensure the common elements are maintained. In that capacity, the condominium corporation (and likely the property management company) meet the criteria for a "landlord".
17. S.H. refers to s.19 of the CA which sets out the condominium corporation's right to enter a unit "of which an owner has exclusive use". He asserts that the CA only applies when there is a direct relationship between the condominium corporation and an owner during the specific period of time when the owner has exclusive use of the unit.
18. When an owner rents the unit to a tenant, the owner no longer has exclusive use of the unit, he says. This has the effect of rendering s.19 of the CA inoperable. S.H. maintains that a direct relationship is consequently established between the condominium corporation and the tenant. In this sense, the condominium corporation assumes the role of the Landlord, and any entry into the unit must then be governed by the provisions of the RTA. If the condominium corporation needs to enforce its right of entry, it must do so by application to the Landlord and Tenant Board.
19. Finally, S.H. relies on s. 23(1) of the CA which, he states, authorizes the condominium corporation and/or the property management company to commence, defend and settle a legal action on its own or on behalf of I.P. and M.P. The condominium corporation, he argues, acts as the personal representative of the Landlords. S.H. takes the position that an application to the Landlord and Tenant Board constitutes an "action" under s.23(1)(ii) of the CA.
20. S.H. advocates for a finding that all of these factors together confirm that the three Respondents are Landlords jointly and severally under either or both of s.2(a) and/or 2(c) of the RTA.
21. In his summary, the Tenant's Legal Representative reiterated that the Landlord and Tenant Board has exclusive jurisdiction over all matters that fall under the RTA. Thus, if the condominium company or the property management company or I.P. and M.P. or all three together wish to gain entry to the unit, relief may only be obtained as co-applicants, or individually, by pleading the case before the Landlord and Tenant Board.

Condominium Corporation HSCC No. 647- Submissions and Evidence

22. The condominium corporation does not characterize itself as a Landlord, as defined by the RTA. The corporation's Legal Representative J.B. submits that s.134 of the CA

entitles the condominium corporation to commence an application seeking relief in the Superior Court against both the owner-landlord of a unit and a tenant occupying the unit (which, in this case, is to seek an order compelling entry to the unit for the purposes of conducting the fire inspection). This, he asserts, is the only legal option available to the condominium corporation.

23. The condominium corporation, J.B. submits, is not attempting to enforce its rights as a landlord under a residential tenancy agreement or the *RTA*. It is attempting entry through the *CA* and the specific entry provisions of the Declaration in order to perform its statutory duties. There are potentially grave consequences for a failure to perform a fire safety inspection of all 88 units. He states that the Directors of the condominium board and the property management company could be exposed to criminal law sanctions for non-compliance.
24. J.B. rejects the claim that the corporation owns the common elements of the residential complex. He points out that the unit owners, as a group, are the only owners as tenants in common, per s.11(2) of the *CA*. The corporation is not entitled to possession of an owner's unit or of the residential complex. It would lead to an absurd result, he says, if a determination was made that the condominium corporation is an owner of the common elements and is consequently deemed a landlord. By applying that logic, all of the owners in the complex would also be deemed landlords in relation to this Tenant's rental unit. In his view, this was not what the legislature intended.
25. The condominium corporation maintains that it does not meet any of the three definitions of "landlord" as set out in s.2 of the *RTA*.
26. J.B. also points to the inability of the Condominium Authority Tribunal to settle disputes between the condominium corporation and tenants. This fact accentuates the absence of any relationship between the condominium corporation and the Tenant. (*Metropolitan Toronto Condominium Corporation No. 933 v. Lyn*, 2020 ONSC 196, at para. 24)

I.P. and M.P.-Submissions and Evidence

27. The Landlord's Legal Representative Y.E. affirms that the owners of the subject rental unit, I.P. and M.P., are the proper Landlords in this case. They take no position as to whether the condominium corporation or the property management company are Landlords as defined by the *RTA*.
28. I.P. and M.P. have not commenced any proceedings before the Board with respect to the issue of entry into the unit. They have, however, commenced an L1 application before the Board as against the Tenant for alleged arrears of rent. The respondent condominium corporation and the respondent property management company were not named as co-applicants.
29. Y.E. maintains that the Landlords have take all reasonable steps as required by s.119(2) of the *CA* to comply with the Declaration and the rules. It matters not to them whether the issues are determined before the Superior Court or before the Landlord and Tenant Board. They simply want to have the appropriate venue confirmed.

30. The existence of parallel legal processes in the Superior Court and the Landlord and Tenant Board, merits some consideration, says Y.E. The Landlords are hesitant to commence an application to the Board under s.27 of the *RTA* as it would essentially duplicate the proceedings already before the Superior Court.
31. Hypothetically, says Y.E., if the Landlords I.P and M.P. apply to the Landlord and Tenant Board for a compliance order but are unsuccessful, the condominium corporation will continue to remain exposed to criminal liability and potentially significant monetary penalties for its failure to comply with the requirements of the Fire Code.
32. The condominium corporation's Legal Representative also indicated that the potential effect of duplicative proceedings is of significant concern. It invites the possibility of inconsistent results and duplicity of costs. He refers to s.138 of the *Courts of Justice Act*, which states that multiple legal proceedings are to be avoided.

Analysis

33. It is evident that the legislation does not speak directly to the circumstances present in this case. It is incumbent upon the Board to make determinations that are consistent with the provisions of the *RTA* and best accord with the purposes of the Act.

Who is the Landlord?

34. The *RTA* sets out the definitions of a landlord and a tenant in section 2, as follows:

"landlord" includes,

(a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,

(b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent; ("locateur")

...

"tenant" includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant's heirs, assigns and personal representatives, but "tenant" does not include a person who has the right to occupy a rental unit by virtue of being,

(a) a co-owner of the residential complex in which the rental unit is located, or

(b) a shareholder of a corporation that owns the residential complex;
("locataire")

35. Neither the *RTA* nor the *CA* define an “occupant” of a unit.
36. In determining whether a particular relationship exists between parties, the Board has the authority and is required to look beyond the surface of an agreement to fully understand the substance of a relationship between parties. The authority to do so is set out in s.202(1) of the *RTA*:

202(1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit, and the good faith of the participants, and in doing so,

 - (a) may disregard the outward form of a transaction or the separate corporate existence of participants; and
 - (b) may have regard to the pattern of activities relating to the residential complex or the rental unit.
37. It is not disputed that at the time a residential lease is entered into, an owner of a condominium unit becomes a landlord and the occupant becomes a tenant, as defined by the *RTA*.
38. In order to be characterized as a landlord, the person or entity must have the authority and ability to exercise the integral functions necessary as landlord, as set out in the *RTA*. These include: entering into a residential tenancy agreement; permitting people to take occupancy of, or to vacate, a rental unit; collecting rent from tenants; performing maintenance and repairs within the rental unit; changing the entry locks to the unit; showing the unit to prospective tenants; and ensuring the tenant maintains the unit in accordance with the standards required under the Act.
39. Under the *RTA*, a landlord may also: give notice of termination of the tenancy to the tenant based on the tenant’s conduct, arrears of, or persistently late, rent, and for the landlord’s personal use or to otherwise regain possession of the unit. The landlord may dispose of a tenant’s property under certain conditions. Additionally, a landlord may be subject to a Board order finding that the landlord is in breach of the Act.
40. The definition of a “landlord” under s.2 of the *RTA* is fairly broad. The legislation envisions a comprehensive scheme which encapsulates the whole of the relationship in respect of a residential tenancy agreement and any issues arising out of a tenancy. There is no expression in the Act that provides for a ‘limited scope landlord’, such as where the landlord’s sole function is to maintain and repair the rental unit, and/or the residential complex, and/or the common elements of the complex, and which only includes the authority to enforce a tenant’s non-compliance in that regard. I note that it is possible, though, for there to be more than one landlord for a single rental unit.
41. Neither the *CA* or the *RTA* expressly address whether a condominium corporation effectively becomes the landlord or a co-landlord when a tenant leases and occupies an owner’s unit. The circumstances in this case warrant regard to the nature and scope of the existing relationships between the Tenant and the respondents to determine whether

the condominium corporation meets the definition of “landlord” in the particular circumstances.

42. No evidence was tendered to demonstrate that the existing residential tenancy agreement stipulates that the corporation is the personal representative or agent of the Landlords I.P. and M.P., or that the corporation is a co-Landlord and has the ability to exercise the functions of a landlord under the *RTA*.
43. There is no evidence that the Landlords I.P. and M.P. have provided the Tenant with written authorization permitting the corporation to assume the role of landlord at any time, for any reason. In fact, the evidence shows that the corporation’s relationship with the Tenant consists of narrowly-based communications with the Tenant about the maintenance of the common elements of the complex (including ensuring the communal fire safety system is properly functioning and attempting entry to the unit to perform that task). The condominium corporation acknowledges that its role does not include exercising all, or even a majority, of the functions incidental to being a landlord.
44. The Tenant does not appear to be proposing that the corporation be accorded the full rights and responsibilities of a landlord in relation to this tenancy. The Tenant and the corporation must accept that, if the corporation is found to be a co-Landlord, the corporation must necessarily be charged with meeting obligations accorded to landlords under the *RTA*. I do not think this is what the parties intend.
45. Common law establishes that there is no legal relationship between a condominium corporation and a tenant who occupies an owner’s unit within the residential complex and who pays rent to the owner of the unit for that privilege. A condominium corporation has no legal standing before the Landlord and Tenant Board, with one exception, as discussed below. A series of Landlord and Tenant Board cases confirms this principle. (See, for example, TEL-96466-18 /TET-97624-18, 2019 CANLII 126965 (ON LTB); *Chimel v. MacLachlan*, 2020 CANLII 118438 (ON LTB); TSL-09662-19; *K.G. v. J.D.L.R.* 2019 CANLII 87771 (ON LTB); TST-95268-18; TNT-99110-17)
46. The courts have made similar determinations. In *Carleton Condominium Corporation No. 555 v. Legacé*, 2004 CANLII 26137 (ON SC), the court stated at paragraph 19: “By virtue of the *Condominium Act, 1998* and the governing documents...the party with whom the condominium corporation has a relationship with is the unit owner, not the tenant. The unit owner also has a legal relationship with the tenant, by virtue of landlord and tenant law and the terms of the tenancy agreement between them. ... In the case of a breach, the corporation demands compliance from the owner, who in turn, demands compliance from the tenant.”
47. In *Legacé*, the condominium corporation sought an order for costs against the unit owner in relation to the owner’s failure to take reasonable steps to rectify numerous breaches of the *CA* by the tenant. The owners claimed that they had been unaware of the tenant’s “litany of breaches”, and that costs ought not to be granted against them because they were denied an opportunity to take the reasonable steps necessary to correct the breach.

48. The corporation commenced the application without notifying the owners in advance, on the basis that it was not certain if the owners “would take immediate steps to terminate the tenancy”, which the court noted would have cost them far less than defending a court application. The court reduced the cost award, stating that it would have been prudent for the corporation to inform the owners of the intended court application “if the owners did not immediately take the necessary steps to terminate Legacé’s tenancy through landlord and tenant proceedings.”
49. Condominium corporations are not landlords, with one exception. Where a condominium corporation owns a unit and assigns that unit to an employee for purposes of occupancy, such as a superintendent, the corporation assumes the role of landlord.
50. The Tenant’s Legal Representative referred to *York Region Condominium Corp. No. 639 v. Lee*, 2013 ONSC 503 (Div.Ct.), an appeal from two Landlord and Tenant Board orders, in relation to this exception. The condominium corporation owned a unit as a common element and had previously leased it to an on-site building superintendent. More recently it had entered into a tenancy agreement with a tenant unconnected to the corporation. The condominium corporation wished to resume possession of the unit in order to provide a residence for a new on-site superintendent. The question for the court was whether a corporation can “possess” a rental unit for the “personal use of the landlord” (para. 12).
51. The panel of judges determined that if a corporation can occupy a unit for the purpose of operating and maintaining an office, retail business, warehouse, etc., then it must be able to occupy a unit for the purposes of residential occupation incidental to its status as a landlord (para. 25).
52. The court held that when a corporation as landlord “occupies” a rental unit for the purposes of providing on-site residency, it is “reasonably open to the landlord to invoke” s.48(1) of the RTA to seek an order granting possession of the unit for the landlord’s own use (para. 26). That is not the case here. The condominium corporation does not own the subject unit. A finding that it is a landlord in respect of a unit it owns does not extend to a finding that the condominium corporation is a landlord in respect of all units in the residential complex or in respect of this Tenant’s unit.
53. The CA , including s.11(2) as referenced by the Tenant's Legal Representative, does not stipulate that the condominium corporation is an owner or part-owner of the common elements of the residential complex. The corporation, which is comprised of the owners of the individual units, was created solely to manage the affairs of the corporation as regulated by the CA, declarations, by-laws and rules. Its primary purpose is to manage the condominium property. This does not equate to the corporation sharing ownership of the common elements of the residential complex.
54. The condominium corporation’s Legal Representative referenced three cases: *TSCC No. 1724 v. Evdassin*, 2020 ONSC 1520, *York Condominium Corporation No. 26 v. Ramadani*, 2011 ONSC 6726, and *Metropolitan Toronto Condominium Corporation No. 1328 v. 2145401 Ontario Inc.*, 2019 ONSC 733, each regarding the right of entry into a condominium unit. The relevant parties in these proceedings are the condominium corporations and the owners of the unit. The cases merely confirm the undisputed

authority of the court to find a unit owner non-compliant with the entry provisions of the CA, and so are of minimal assistance.

55. J.B. pointed to *Nipissing Condominium Corporation v. Kilfoyl*, 2009 CANLII 46654 (ON SC), (upheld on appeal; 2010 ONCA 217) in support of the court's jurisdiction to decide residential tenancy issues. In *Kilfoyl*, the declaration prohibited the owners from renting the unit to any persons other than a single family, in particular to "roomers and boarders", and it required the owners to provide an occupancy list to the corporation whenever there were new occupants. The court found that the four occupants were unrelated students renting rooms. Two of the tenants had already vacated the unit. The issue was whether a provision of the declaration that restricted the occupation of the unit to family constellations infringed the *Human Rights Code* on the ground of family status. The court determined that the restriction did not breach the *Code*.
56. The court found that the Landlords had breached their obligation to provide an occupancy list to the corporation and suggested that the Landlords had failed to take all reasonable steps to bring the tenancy into compliance. The court ordered the Landlords and any future occupants to comply with the occupancy restrictions. The court did not order the termination of the remaining tenancies. I do not find this case very helpful.
57. The Tenant's Legal Representative asks the Board to give due consideration to the application of s.23(1) of the CA, which he says allows the condominium corporation to "step into the shoes of the landlord" for the purpose of applying to the Landlord and Tenant Board for relief under the RTA.
58. I disagree with this characterization. Section 23(1) states that a corporation may, on its own behalf and on behalf of an owner:
 - (a) commence, maintain or settle an action for damages and costs in respect of any damage to common elements, the assets of the corporation or individual units; and
 - (b) commence, maintain or settle an action with respect to a contract involving the common elements or a unit, even though the corporation was not a party to the contract in respect of which the action is brought.
59. This provision is reasonably interpreted to apply solely to contracts for which third parties are retained to perform, for example, maintenance, repairs or renovations within a unit, or to the common elements designated for use by the owner. The legal standing authorized by this section underscores the "consumer protection objective of the Act". (*York Region Standard Condominium Corporation No. 1206 v 520 Steeles Developments Inc. et al.*, 2019 ONSC 2911 (CANLII), at paragraphs 37-39)
60. Subsection 2(2)(g) *Consumer Protection Act, 2002*, states that the Act does not apply to "consumer transactions regulated under the *Residential Tenancies Act, 2006*." As a result, I am not persuaded that s.23(1) of the CA bestows upon the condominium corporation the statutory right, on its own or on behalf of the owners, to initiate or to respond to legal proceedings before the Landlord and Tenant Board.

61. I therefore find that only I.P. and M.P. meet the definition of “landlord” contained in the *RTA*.
62. Since I have determined that the condominium corporation is not the Landlord, there is no need to determine whether Signature Property Management Corporation aka 2219645 Ontario Inc. is also the Landlord.

Application of the Residential Tenancies Act, 2006

63. The Landlord and Tenant Board has exclusive jurisdiction over matters that fall within its prerogative. For some matters, the Board and courts have concurrent jurisdiction. For example, if a monetary award sought in an application exceeds the statutory limitations, the matter should proceed before the Superior Court (s.207(2) of the *RTA*), or where a landlord has applied to the Board for a monetary remedy for damages but the tenant vacates the rental unit after the application was filed, in which case the claim must proceed before the courts (s.89(1) of the *RTA*).
64. The Board provides a less formal, more affordable and, generally, a more expedient way to resolve disputes than the courts. Mediation services are available if both parties consent. The Board has special knowledge and particular expertise about residential tenancy issues. Conversely, courts have expertise in multiple areas of law.
65. The overriding objective of the *RTA* is to promote the security of tenancies:

S.37 (1) A tenancy may be terminated only in accordance with this Act.

66. The purposes of the *RTA* are described in s.1:

The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes.

67. The *RTA* provisions cover, among other things, payment of rent, rent increases, deposits and other charges, repairs and maintenance, reasonable enjoyment of the residential premises, privacy, including lawful entry into a rental unit, damages to the rental unit, illegal acts within the rental unit or the residential complex, and ending a tenancy.
68. The *RTA* has primacy over all other legislation relating to residential tenancies unless that legislation specifically states that the *RTA* does not apply. Subsections 3(1) and (4) of the *RTA* provide:
- (1) This Act, except Part V.1, applies with respect to rental units in residential complexes, despite any other Act, and despite any agreement or waiver to the contrary.

...

- (4) If a provision of this Act conflicts with a provision of another Act, other than the *Human Rights Code*, the provision of this Act applies.

69. A residential condominium building constitutes a residential complex, as defined under the *RTA*. Condominium units are not exempt from the application of the *RTA* : s. 5.

Right of Entry

Condominium Act, 1998

70. It is commonplace, and permitted under the *CA*, for the condominium corporation's board of Directors to hire a property manager as agent (or employee), or a property management company, to oversee the day-to-day operations of the corporation, including maintaining the common elements of the residential complex.

71. Pursuant to the *CA*:

- a. On giving reasonable notice the corporation or person authorized by the corporation may enter a unit at any reasonable time to perform the objects and duties of the corporation or to exercise the powers of the corporation: s.19
- b. A corporation and an owner have the right to require that a person who is required to comply with the *CA*, declaration, the by-laws and the rules does so: s.119(3)
- c. An owner shall take all reasonable steps to ensure that an occupier of the unit complies with the *CA*: s.119(2); similarly, a condominium corporation has a duty to take all reasonable steps to ensure that owners and occupiers comply with the *CA*: s.17(3)

Residential Tenancies Act, 2006

72. The rights of entry into a rental unit are set out in ss. 25- 27 of the *RTA*:

Privacy

25 A landlord may enter a rental unit only in accordance with section 26 or 27.

Entry without notice, emergency, consent

26 (1) A landlord may enter a rental unit at any time without written notice,

- (a) in cases of emergency; or
- (b) if the tenant consents to the entry at the time of entry.

Entry with notice

27 (1) A landlord may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry under the following circumstances:

1. To carry out a repair or replacement or do work in the rental unit.

2. To allow a potential mortgagee or insurer of the residential complex to view the rental unit.
 3. To allow a person who holds a certificate of authorization within the meaning of the *Professional Engineers Act* or a certificate of practice within the meaning of the *Architects Act* or another qualified person to make a physical inspection of the rental unit to satisfy a requirement imposed under subsection 9 (4) of the *Condominium Act, 1998*.
 4. To carry out an inspection of the rental unit, if,
 - i. the inspection is for the purpose of determining whether or not the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligations under subsection 20 (1) or section 161, and
 - ii. it is reasonable to carry out the inspection.
 5. For any other reasonable reason for entry specified in the tenancy agreement.
73. Relying on s.19 of the *CA*, the Tenant's Legal Representative S.H. argues that a landlord-tenant relationship was established between the condominium corporation and the Tenant when the Tenant gained exclusive use of the unit, permitting the corporation to gain entry to the unit under the relevant provisions of the *RTA*. I do not agree. Rather, I accept the submissions of J.B. on this issue. I find that the correct interpretation of s.19 is as follows:

On giving reasonable notice, the corporation...**may enter a unit,**

OR

may enter part of the common elements over which an owner has exclusive use...

74. Section 19 of the *CA* permits the condominium corporation to enter a *unit* to conduct a fire inspection upon proper notice. Entry into a *rental unit* for this purpose is governed only by the *RTA* (s.27(4)(i)), not the *CA*. If a landlord requires entry into a rental unit, the landlord must comply with the *RTA*'s notice requirements and can only enter for a reason permitted by the Act, even if the *CA* suggests otherwise.
75. However, it is possible to interpret and apply these two regimes harmoniously. If the condominium corporation requires entry to the unit for a reason permitted by the *CA*, it can ask the landlord to serve the tenant with a Notice of entry in accordance with the *RTA*. Alternatively, the landlord, or an agent of the landlord, can enter the unit for the purpose of conducting an inspection. If the tenant refuses to allow entry after the landlord has served a valid Notice of entry, the landlord can file an application to the Landlord and Tenant Board for relief.
76. The condominium corporation and the owners of the unit have a direct relationship. The owners in turn have a direct relationship as Landlords with the Tenant by virtue of the tenancy agreement involving this Tenant. The owners as Landlords have an

obligation to take all reasonable steps to ensure their Tenant complies with the notice of entry given by the corporation or its property manager. Therefore, the reasonable steps the owners as Landlords must take are determined by the provisions in the *RTA*.

77. Section 3 of the *RTA* is unambiguous: the Act applies with respect to this rental unit, and to this residential tenancy, despite any similar provisions of the *CA*. Where there is a conflict the *RTA* governs the process. I find that, in this case, the *RTA* applies.

Limits on Jurisdiction- Remedies

78. In *Metropolitan Toronto Condominium Corporation No. 933 v. Lyn*, 2020 ONSC 196, the court described the limits to the authority it may exercise over landlord and tenant relationships. The court confirmed that its authority was constrained by the operation of the *RTA*.
79. In *Lyn*, the respondents were tenants residing in next door condominium units. One of the tenants made a noise complaint against the other to the condominium corporation's concierge manager. The condominium corporation commenced an application in Superior Court, seeking a declaration of a breach of quiet enjoyment and an order (i) requiring the tenant to comply with the declaration and rules, and (ii) terminating the tenancy if the tenant failed to comply with the order.
80. The court accepted that it could find that that tenant violated the declaration and rules and issue a compliance order. However, the court affirmed that its authority stopped short of being able to order a termination of the tenancy. At paragraph 25, the court stated:

“Since hers is a residential tenancy, it may be terminated only via a proceeding brought before the Landlord and Tenant Board.” (citing *Beach v Moffat* (2005), 75 O.R. (3d) 383 (C.A.) at para. 15.)
81. Neither the parties nor the court in *Lyn* addressed the issue of jurisdiction. Accordingly, the court did not consider the operation of s.3 of the *RTA*.
82. The Board has authority to order an appropriate remedy for matters covered by the *RTA*. The Board could terminate the tenancy if found warranted in the circumstances, or issue a conditional order requiring the Tenant to comply with a proper Notice of entry, failing which the tenancy could be terminated and an eviction ordered. Subject to the exception in s.207(1) of the *RTA*, termination of the tenancy and eviction are not remedies readily available in the Superior Court proceedings but, for landlords, they are a form of relief that brings finality to a dispute.
83. I am not persuaded by the argument that an unsuccessful application to the Landlord and Tenant Board will intensify the condominium corporation's exposure to criminal law sanctions. There is always the possibility that a Superior Court might reach the same conclusion as the Board.

84. An application by I.P. and M.P. to the Landlord and Tenant Board respecting the Tenant's alleged failure to allow an inspection of the rental unit's fire safety equipment would, in my view, be consistent with the requirements of s.119(2) of the *CA*. If Landlords commence such an application with the knowledge of the condominium corporation, then I.P. and M.P. are satisfying their legal obligation to take the reasonable steps expected of them under the *CA*.
85. It follows that the condominium corporation may apply to the courts for appropriate relief if, and only after, the Landlords have demonstrated that they are unwilling or unable to take the reasonable steps necessary to obtain a remedy for the claim under the *RTA*.
86. For all of the reasons above, I find that the Landlords are I.P. and M.P., and that the *RTA* applies with respect to the subject rental unit, despite any agreement or waiver to the contrary.

It is ordered that:

1. The Act applies.
2. Pursuant to s.2 of the *Residential Tenancies Act*, 2006, the Landlords are Ivan Prasin and Mirisa Prasin.

July 22, 2021
Date Issued

Elle Venhola
Elle Venhola
Member, Landlord and Tenant Board

Head Office
777 Bay Street, 12th Floor
Toronto Ontario M5G2E5

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

APPENDIX A

Condominium Act, 1998

Summary of Relevant Provisions

The condominium corporation is the legal entity representing the collective interests of the condominium unit owners, allowing owners to own property while sharing the cost of maintaining the common elements with the other owners through condominium fees. It is governed by its declaration, by-laws, and rules, and must comply with the provisions of the CA: s.17(1) and (2); s. 119(1)

All unit owners and occupants must comply with the CA and the corporation's declaration, by-laws, and rules: s.119(1)

A condominium corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with the CA, the declaration, the by-laws and the rules: s. 17(3)

An owner shall take all reasonable steps to ensure that an occupier of the unit complies with the CA: s.119(2)

A corporation and an owner have the right to require that a person who is required to comply with the CA, the declaration, the by-laws and the rules does so: s. 119(3)

The CA prohibits conduct by any person, who permits a condition to exist if the condition is likely to damage the property or cause injury to an individual: s. 117

On giving reasonable notice, the corporation or person authorized by the corporation may enter a unit or part of the common elements over which an owner has exclusive use at any reasonable time to perform the objects and duties of the corporation or to exercise the powers of the corporation: s.19

In the event of violations by a unit owner or occupant, the corporation may seek a court order for compliance, for damages, and for costs: s.134