



Landlord
and
Tenant
Board

Summaries of **SELECTED DECISIONS**

(August 31, 2008 to June 30, 2009)

The Landlord and Tenant Board (the Board) has selected a number of decisions that may be of interest to you. These decisions were selected by the Board because they:

- interpret or explain an area of law;
- provide a clear analysis of a point of law;
- apply or distinguish decisions of a court of competent jurisdiction, including the Divisional Court;
- apply an Interpretation Guideline of the Board or provide clear reasons for not applying an Interpretation Guideline; and/or
- raise new or interesting issues.

The Selected Decisions are examples of the types of decisions the Board makes but these decisions:

- are **not** binding on Members of the Board who may be considering the same, or similar, issues in a subsequent case and
- are **not** intended to reflect the official position of the Board on how to interpret or apply the *Residential Tenancies Act, 2006*, the *Statutory Powers Procedure Act* or any other law.

Note: The Board disclaims responsibility for the accuracy of the summaries of the Selected Decisions and for any consequences resulting from a person relying on the Selected Decisions provided by the Board.

CEL-11709 – *s. 27 – entry into rental unit with notice - s. 35 – changing locks - s. 64 – termination for cause, reasonable enjoyment*

The Landlord had given the Tenant notice that the Landlord intended to enter into the Tenant's rental unit between the hours of 11 a.m. and 8 p.m. to inspect the rental unit to determine if it was in a good state of repair and fit for habitation. The Tenant refused entry to the Landlord. The Landlord also claimed that the Tenant had installed a form of pad lock on a chain which, in an emergency, would block the Landlord from having access to the rental unit. The Landlord did not have a key to the pad lock and had not authorized its use by the Tenant.

The Member dismissed the application relating to the issue of entry into the rental unit on the basis that the notice of entry did not comply with subsection 27 (3) of the RTA as it did not specify a time of entry within the twelve hour window (8 a.m. to 8 p.m.) set out in that provision of the RTA. The Member found that the Landlord did not have to be as specific as to set out the exact hour and minute of entry, but that a nine hour period does not comply with the RTA.

The Member found that the intent of section 35 of the Act is to ensure that a landlord has access to a rental unit in an emergency and ordered the Tenant to provide the Landlord with a key to the door and locking mechanism.

CEL-11712 – *RTA – s 18 – covenants running with the land – s. 105 – security deposits, limitation – s. 106 (2) – amount of rent deposit – Mortgages Act – s. 47 – person deemed to be landlord*

Pursuant to the *Mortgages Act* a mortgagee in possession is deemed to be the Landlord. The Tenant had voluntarily prepaid rent to the prior Landlord. The Tenancy Agreement between the Tenant and the prior Landlord did not contain a term providing for prepaid rent in an amount greater than one month's rent. The prepayment of rent occurred after the Tenancy Agreement had been entered into between the prior Landlord and the Tenant.

The Member, in allowing the current Landlord's application for arrears of rent and termination, found that, on the facts of the case, the prepayment of rent was not a covenant intended to run with the land. The Member also found that subsection 106 (2) of the RTA precludes prepayment of a security deposit in excess of one month's rent. The amount paid by the Tenant to the previous Landlord was not in accordance with the RTA, and was illegal.

CEL-18579 – *s. 58, persistent late payment of rent – s. 78, conditional order – s. 204(1), conditions fair in the circumstances*

The Landlord applied to evict the Tenant for persistent late payment of rent. The Landlord also requested that, as a condition of relief from eviction, the Member order the Tenant to pay rent

arrears under s. 204(1) of the RTA. That section allows the Board to include in an order whatever conditions it considers fair in the circumstances.

The Member made a conditional order pursuant to s. 83 and 204(1) which required the Tenant to pay the rent on time for the next twelve months, and allowed the Landlord to apply under s. 78 if the Tenant failed to make any of those payments.

The Member refused to order arrears under s. 204(1) because doing so would effectively convert the L2 application into an L1 application. For an L1, an N4 notice must be served and the Tenant has the opportunity to void that notice. If the notice is not voided, the Landlord can file an L1 application for arrears. Ordering arrears on an L2 would circumvent that entire process. Moreover, a conditional order under s. 78 would not give the Landlord a remedy. Under s. 78, the conditions imposed must give rise to the same grounds of termination as were claimed in the original application. The Landlord's L2 application sought termination for persistent late rent, not arrears of rent, and therefore the Landlord would be left without a remedy if the rent arrears were not paid.

CET-01727 – s. 2 – “*services and facilities*” - s. 22 – *landlord not to interfere with reasonable enjoyment* – s. 130 – *reduction in services* – O. Reg. 516/06 – s. 39 – *rules relating to reduction in services*

The tenancy commenced in 1993. Electricity was included in the monthly rent. In June 2008, the Landlord wrote to the Tenant to inform him that Stratacon had been chosen to provide electricity sub-meters and billing services for electricity consumption each suite in the building. The Landlord advised that once sub-meters were installed, the Tenant would be responsible for paying his own electricity consumption directly to Stratacon and the rent would be reduced. In August 2008, the Landlord advised the Tenant that the sub-meters were installed and the Tenant's rent would be reduced by \$32.16 per month. In September 2008, the Tenant advised the Landlord that the Tenant objected to the rent reduction and the change in the way electricity is paid.

The Member found that the RTA specifically contemplates that a landlord may reduce or discontinue a service or facility that was previously supplied and the RTA provides for a remedy in the form of a rent reduction. The Member noted, however, that the application before her was not one based for a rent reduction as a result of a discontinuance of a service or facility, and the Member made no findings regarding the reasonableness of the Landlord's discontinuance of the service of electricity included in the rent.

The Member noted that, following the issuance of the Ontario Energy Board's Compliance Bulletin in March 2009, the Landlord wrote to the Tenant and advised that its electricity conservation program was being placed in abeyance and the full rent was again payable to the Landlord.

The Member found that, contrary to the Landlord's assertions, the Landlord and Tenant Board has the jurisdiction, in proceedings before it to consider both the Ontario Energy Board's Compliance Bulletin and the *Electricity Act*. The Member found that, irrespective of whether

the Landlord's actions were unlawful and unauthorized, she was required to determine if the Landlord's actions resulted in a substantial interference with reasonable enjoyment.

The Member found that the Tenant never acknowledged the rent reduction, never paid Stratacon and always paid the full rent each month. The Member found that the Landlord did not substantially interfere with the Tenant's reasonable enjoyment of the rental unit by unilaterally changing a term of the tenancy agreement and implementing a sub-metering program.

The Tenant also contended that he did not consent to the Landlord providing the Tenant's name to Stratacon and that action on the Landlord's part also amounted to the Landlord substantially interfering with the Tenant's reasonable enjoyment of the rental unit.

With regard to the release of confidential information, the Member considered that the Landlord had advised the Tenant in August 2008 that, if the Tenant had a good record of paying rent on time, the Tenant could give the Landlord a written request to have the Landlord provide that information to Stratacon in order that the \$100.00 security deposit could be waived from the first bill from Stratacon. The Tenant asked the Landlord to provide that reference letter. The Member found that the Tenant did consent to the release of the information and there was no interference with his reasonable enjoyment in that instance.

Note: This decision was issued before the Ontario Energy Board Decision EB-2009-0111 was issued on August 13, 2009 and therefore did not consider the relevance, if any, of that decision.

CET-01821 – s. s. 2 – “services and facilities” - s. 22 – landlord not to interfere with reasonable enjoyment – s. 130 – reduction in services – O. Reg. 516/06 – s. 39 – rules relating to reduction in services

The tenancy commenced in 2005. Electricity was included in the monthly rent.

The lease included a term which provided that, where hydro is currently included in the rent, the Landlord, in its sole discretion, may at any time choose to meter the Tenant's unit separately and transfer responsibility for payment of hydro directly to the Tenant based on the Tenant's own consumption. The Tenants testified that they did not dispute the clause in the lease and were not opposed to sub-metering, but filed the application because they disputed the amount by which the Landlord reduced their rent.

In May 2008, the Landlord wrote to the Tenants to inform them that Stratacon had been chosen to provide electricity sub-meters and billing services for electricity consumption each suite in the building. The Landlord advised that once sub-meters were installed, the Tenants would be responsible for paying their own electricity consumption directly to Stratacon and the rent would be reduced. In August 2008, the Landlord advised the Tenant that the sub-meters were installed and the Tenant's rent would be reduced by \$41.93 per month effective September 1, 2008.

The Member found that the RTA specifically contemplates that a landlord may reduce or discontinue a service or facility that was previously supplied and the RTA provides for a

remedy in the form of a rent reduction. The Member also found that the lease contemplated a unilateral change in the way hydro was billed and paid for.

The Member noted that, following the issuance of the Ontario Energy Board's Compliance Bulletin in March 2009, the Landlord wrote to the Tenants and advised that its electricity conservation program was being placed in abeyance and the full rent was again payable to the Landlord as of April 1, 2009.

The Member found that, contrary to the Landlord's assertions, the Landlord and Tenant Board has the jurisdiction, in proceedings before it to consider both the Ontario Energy Board's Compliance Bulletin and the *Electricity Act*. The Member found that, irrespective of whether the Landlord's actions were unlawful and unauthorized, she was required to determine if the Landlord's actions resulted in a substantial interference with reasonable enjoyment before she could order a remedy.

In this case, the Tenants paid four of Stratacon's bills directly to Stratacon and also continued paying their full, unreduced rent to the Landlord. The Landlord had credited the Tenants with the total amount the Tenants paid to Stratacon which the Tenants deducted, with the consent of the Landlord, from their April 2009 rent.

The Member found that the Tenants had suffered no harm or loss as a result of the Landlord's change in how electricity was paid and the Landlord did not substantially interfere with the Tenants' reasonable enjoyment.

The Tenants also contended that they did not consent to the Landlord providing the Tenants' names and address to Stratacon and that those actions on the Landlord's part also amounted to the Landlord substantially interfering with the Tenants' reasonable enjoyment of the rental unit.

With regard to the release of confidential information, the Member considered that the Landlord had advised the Tenant in August 2008 that, if the Tenant had a good record of paying rent on time, the Tenant could give the Landlord a written request to have the Landlord provide that information to Stratacon in order that the \$100.00 security deposit could be waived from the first bill from Stratacon. In November 8, 2008, the Tenants e-mailed the Landlord and asked the Landlord to provide a reference letter to Stratacon. The Member found that, as a result of their e-mail, the Tenants had consented to the release of their information to Stratacon, but, that the first bill had been sent to the Tenants by Stratacon before the Tenants consented to the release of their information. However, the Member found that, in an addendum to the lease with respect to the Landlord's privacy policies, the Tenants had consented to the release of their personal information for the purpose of enforcing the terms of the tenancy agreement.

Note: This decision was issued before the Ontario Energy Board Decision EB-2009-0111 was issued on August 13, 2009 and therefore did not consider the relevance, if any, of that decision.

SOL-14390 - clause 63 (1) (b) – termination for cause – shorter notice period - use of rental unit in a manner that is inconsistent with its use as a residential premises – significant damage

The Landlord sought termination of the tenancy and eviction on the basis that the Tenant parked his motorcycle in the rental unit, kept live chickens at the rental unit and modified the shed on the property to house live chickens. The Tenant agreed that he had three live chickens on the property that he kept in the shed and that he removed a brick from the shed to provide access to his chickens. The Tenant acknowledged that he once had a young chicken inside the rental unit but that chicken had died and submitted that the alleged motorcycle was, in fact, an electric bike that he kept in the rental unit because of his concerns about theft.

The Member, in dismissing the application, found that, to succeed in an application based on clause 63 (1)(b) of the RTA, the Landlord was required to prove (i) that the use of the rental unit was inconsistent with its use as residential premises, (ii) that the inconsistent use can be reasonably expected to cause damage or has caused damage and, (iii) that the amount of the damage is significantly greater than the amount that would be required to give the Tenant a Notice to Terminate the tenancy for damage under subsection 62 (1) or clause 63 (1)(a) of the RTA. In this case, the Member found that the damage occasioned by the removal of a brick in the shed did not meet the third part of the test and the inconsistent use of the rental unit relating to the storage of the motorcycle or electric bike did not occasion damage.

SOL-15389 –s. 2 (1) – definition of “superintendent’s premises” - s. 58 (1) – notice at end of term – additional grounds – s. 93 – superintendent’s premises – s. 94 – application to the Board

The Tenant claimed to have been an employee of the Landlord and that, as an employee, his tenancy could only be terminated in accordance with paragraph 3 of subsection 58 (1) of the RTA, that is, on 60 days’ notice. The Tenant argued that he worked only a few hours a day doing work at more than one location and, therefore, he was an employee, not a superintendent. The Tenant also argued that the manner in which he was paid indicated he was an employee and not a superintendent.

The Member found that the locations at which the Tenant worked were a related group of buildings forming one residential complex and that the majority of the Tenant’s work related to that residential complex. The Member also found that the manner in which the Tenant was paid (the hours of work were accumulated at a specific rate per hour and rent deducted from the gross pay) is not uncommon in the case of a superintendent.

The Member found that the Tenant’s job description was more that of a janitor than a superintendent, and, in applying the definition of “superintendent’s premises” in the RTA, which means, in the relevant part, “a rental unit used by a person employed as a janitor...” the Member found that the Tenant occupied a superintendent’s premises and sections 93 and 94 of the RTA applied to the termination of the tenancy.

SOT-01515-RV – s. 22 – *landlord not to interfere with reasonable enjoyment* - s. 24 – *changing locks* – s. 25 – *privacy* – s. 204 (1) – *conditions in order* – s. 204 (2) – *order re costs* – *Rule 27 - costs*

The Tenant had succeeded on his application for an order that the Landlord had entered the rental unit illegally, had altered the locking system without giving the Tenant replacement keys and had substantially interfered with the Tenant's reasonable enjoyment. The Tenant requested a review on the basis that the hearing Member had not given adequate reasons to support the quantum of compensation the Member had ordered. The Tenant had asked for an award of \$2,100.00 and the Member had awarded the Tenant \$500.00. The Member who conducted the review hearing granted the Tenant's request for review on the basis that the hearing Member had not given adequate reasons to support the quantum of compensation and also granted the Landlord's request that the review hearing proceed *de novo* and not be limited to the issue of the quantum of the award.

The Tenant is a university student who, for several years, got along well with the Landlord. Towards the end of June 2008, the Landlord suggested to the Tenant that the Tenant find other accommodation and the Tenant demanded 60 days notice until the end of August 2008, but, agreed to move out earlier if he found another place before the expiry of the sixty days. The Tenant found alternate accommodation and claimed that his new landlord agreed to let him move into the new place on July 25, 2008. The Tenant claimed that he told his Landlord that he would move over the course of a number of days between the end of July and August 8, 2008. The Tenant did not pay rent for the month of August 2008 to the Landlord. The Tenant claimed that, after July 25, 2008, when he had moved some property from the premises, he left behind other property which he claimed to have told his Landlord he would remove on or about August 8, 2008. The Tenant claimed that when he went to his former rental unit on August 8, 2008, the room was open, repainted and his property was gone. The Tenant claimed that at a subsequent meeting with the Landlord, the Landlord shook a hammer at him.

The Landlord claimed that the Tenant agreed to an earlier termination date, that the Tenant took everything with him when he moved, and that he returned any items that were left behind to the Tenant. The Landlord claimed that the Tenant told him that he would vacate the unit on August 2, 2008. The Landlord gave evidence that on August 1, 2008, he found the Tenant's room empty except for papers, pennies on the floor and one garbage bag containing garbage. The Landlord denied shaking a hammer at the Tenant.

The review Member found both the Landlord and the Tenant credible on the issue of the illegal lockout and dismissed the Tenant's claim based on illegal entry. The Member preferred the Landlord's evidence with respect to the property the Tenant left behind in the unit. The Member considered that the burden of proof is on the party bringing the application on a balance of probabilities and found that there was insufficient evidence to permit her to make a finding that the Landlord illegally locked out the Tenant and illegally disposed of \$2,038.00 worth of his goods. The Member dismissed the Tenant's application, and, as the Landlord had paid the Tenant \$500.00 based on the original order, the Member ordered the Tenant to repay that money to the Landlord. The Member also awarded the Landlord \$150.00 in costs.

SOT-01914 – s. 29, *interference with enjoyment* – s. 154, *mobile home park rules*

The Tenants of a mobile home park applied for an order determining that the Landlord had substantially interfered with their reasonable enjoyment. The Tenants' complaint was that the Landlord is imposing rules that restrict what the Tenants are allowed to have on their sites such as boats, trailers and other vehicles.

The Member determined that the Landlord has the right to make such rules under s. 154 of the RTA, but set out the following principles gleaned from court decisions on the rule-making power of condominiums: the rules should be reasonable; the rules must not be contrary to the legislative scheme; the courts should not substitute their opinion for that of the rule maker unless the rules are unreasonable. The Tenants' application was dismissed.

SOT-02058 – s. 9, *whether the Act applies* – s. 5(a), *boat slip occupied for a seasonal or temporary period*

The applicant applied for an order determining whether the RTA applies to the slip where he keeps his boat at the respondent's Marina. The boat has two sleeping rooms, a kitchen, bathroom and shower. As well, the applicant has erected extensive decking, a gazebo and storage shed. He has rented the same slip for six years and spends a lot of time there from April to October each year. He moves the boat to a different location for winter storage and then brings it back to the Marina in the spring. The Member determined that the RTA does not apply because of the exemption in s. 5(a) which states that the Act does not apply to living accommodation occupied for a seasonal or temporary period.

SWL-16920 – s. 78 – *application based on mediated settlement* – *order terminating tenancy* – *motion to set aside order* – s. 69.3, *Bankruptcy and Insolvency Act (Canada)* – *automatic stay of proceedings*

The Landlords had filed an application with the Board seeking termination of the tenancy and eviction on the basis of arrears of rent. The application was filed two weeks before the Tenant filed an assignment in bankruptcy and was scheduled to be heard one day after the filing of that assignment. On the hearing date, the Landlord and Tenant entered into a mediated settlement that encompassed the period of three months before the assignment into bankruptcy and one month after it and provided for payment of the arrears. Four weeks after the date of the mediated settlement, the Landlords filed a proof of claim in the bankruptcy. Later, the Landlords, pursuant to section 78 of the RTA, obtained an *ex parte* order for arrears and for termination and eviction from the Board which the Tenant moved to set aside.

The issue before the Board on the return of the Tenant's motion was whether the Board had the jurisdiction to make the order terminating the tenancy and evicting the Tenant.

In setting aside the order the Landlord's had obtained *ex parte*, the Member considered and applied the Divisional Court's decisions in *Forestwood Co-operative Homes Inc. v. Pritz* and

in *Peel Housing Corporation v. Siewnarine*, and found that the case before her was consistent with *Forestwood* insofar as the Landlords had applied for both arrears and termination of the tenancy in the same application to the Board and the termination and arrears were inextricably linked and formed part of a claim provable in bankruptcy. The Member found that all amounts claimed in the Landlord's original application before the Board were stayed by virtue of the bankruptcy and that any new arrears that may have arisen subsequent to the period provided for in the mediated settlement could possibly be sought by the Landlords in a new proceeding.

SWL-21457 – s. 126 – *application for above guideline increase* – s. 129 – *capital expenditures* – Ontario Regulation 516/06 – Schedule – *Useful Life of Work Done or Thing Purchased*

The Landlord applied for an order permitting an above guideline increase. The Member found that the Landlord had justified an above guideline increase because of capital expenditures in relation to window replacement and renovations in the common areas of the buildings.

Single pane-windows which had outlived their useful life were replaced with double-glazed aluminium windows in all the rental units. The Member found that the window replacement was an eligible capital expenditure.

The Landlord made a number of common area renovations to the main lobby, hallways, the laundry room and elevators, including, replacement of the flooring, change of the lighting, merging a cleaning supply room and old mail room to create a social room for the Tenants, replacement of carpeting in the corridors and replacement of the flooring and interior skin in the elevators. The Tenants contended that the common area renovation work was substantially cosmetic in nature, designed to enhance the level of prestige or luxury in the building and did not meet the definition of "capital expenditure" in s. 18 (1) of O. Reg. 516/06. The Tenants particularly contested the eligibility of the expenditure related to the social room.

The Member found that the Landlord did not establish, on a balance of probabilities, that the social room met any of the eligibility tests in s. 126 (7) of the RTA or any of the exceptions in s. 126 (8) of the RTA. The Member severed the expense for the social room from the balance of the Landlord's claim. The Member allowed the balance of the claim relating to the common area expenses and found that, although there is a cosmetic aspect to any new installation, the renovations were not substantially cosmetic in this case.

The Member also found that the RTA does not permit the Board to consider the potential tax deductions the Landlord may be able to take for capital expenditures that are incurred and also found that the ordinary guideline increase is designed to take into account increases in a landlord's building maintenance and operating costs, but not extraordinary expenses such as eligible capital expenditures.

SWL-24276 – s. 2, landlord (successors in title) – s. 2, tenancy agreement

A previous Board order determined there was no tenancy between the Landlord RW and the Tenant because their relationship was spousal. RW later transferred the property to his father, BW. BW applied for an order for arrears and termination. The Member observed that a tenancy agreement continues when a new owner purchases the rental unit, and the existing tenant and the successor landlord continue to be bound the tenancy agreement. However, when there is no tenancy agreement in the first place, as determined in the previous order, there is nothing to transfer. In order for a Landlord and Tenant relationship to exist, the parties would have to establish a tenancy agreement for the period of time under consideration in the application. The Landlord failed to prove such an agreement, and the application was dismissed.

SWT-02253 – s. 50, notice of termination for renovations – s. 54(1), landlord to offer the tenant another rental unit acceptable to the tenant – s. 135, money retained illegally

The Tenant applied for an order determining that he was entitled to compensation of three months rent because he vacated after receiving the Landlord's notice of termination for renovations. The Landlord argued that the Tenant had been offered another rental unit which the Tenant refused and therefore was not entitled to compensation. The Tenant refused the Landlord's offer because although there were other units that had a similar layout to his, none of them had the same location which was also important to the Tenant. Pursuant to s. 54(1), the Member determined that the rental unit must be "acceptable to the tenant." It follows that the test as to whether or not the unit is "acceptable" is a subjective one. The Landlord was ordered to compensate the Tenant the equivalent of three months rent.

TEL-13102 – s. 61 (1) - termination for cause, illegal act – s. 2 – definitions – "residential complex"

The Landlord was a social housing provider that operated separate townhouse complexes on different streets a short distance from each other in the same municipality. The complexes were separated from each other by a park and a school.

The Tenant's teenage son was observed by the police in the laundry room area of the residential complex where the Tenant lived. The officers pursued the Tenant's son to the second residential complex and the officers charged the Tenant's son with forcible confinement in relation to an incident that allegedly occurred at the second residential complex. As a result of that incident, the Landlord sought to terminate the tenancy on the basis that an illegal act had occurred at the Tenant's residential complex.

The Member, in dismissing the application, considered the definition of "residential complex" and found that "related group of buildings" means "geographically related in terms of...being in one adjoining area". In this case, the Member found that the buildings were not adjoining,

but were located on separate streets, interrupted by a park and other un-related structures not owned by the Landlord and did not share common facilities.

TEL-12889 – RTA- s. 61 – termination for cause, illegal act – s.83 - power of Board, eviction - Human Rights Code – s.10 – disability – s. 17 – duty to accommodate

The Tenant was a long time resident in a residential complex in which the Landlord was a community housing provider. The Tenant was a tenant representative and a volunteer for building and community activities. Along with other tenant volunteers, the Tenant was given access to a computer in the Landlord's on site office. The Tenant also had a computer on loan in his rental unit.

The Tenant had downloaded images of child pornography onto both computers, and was arrested, charged with, and pled guilty to offences relating to child pornography and to an unrelated sexual assault charge. The sexual assault charge was not part of the Landlord's Notice of Termination but was included in the joint submission to the Board Member by the representatives of the Landlord and of the Tenant. As a result of the convictions, the Tenant submitted to a psychiatric assessment and was given a conditional sentence of 6 months and 3 years' probation.

The Member found that the illegal act committed by the Tenant entitled the Landlord to an order for eviction as that "act has the potential to affect the character of the premises or to disturb the reasonable enjoyment of the Landlord or other tenants".

The Member found that the psychiatric evidence that the Tenant has a "sexual preference" (hebephilia) did not justify, on a balance of probabilities, a finding that the Tenant had a disability within the meaning of the Human Rights Code. Similarly, the Member found that the Tenant had not established, on a balance of probabilities, that the Tenant had schizophrenia. In addition, there was no evidence to support a finding that the illegal acts of possession of child pornography and sexual assault were directly caused by schizophrenia.

The Member further found that, if the Member were in error, and the Tenant did have a disability within the meaning of the Human Rights Code, accommodating the Tenant would cause undue hardship to the Landlord and to the other tenants.

The Member, in applying section 83 of the RTA and ordering the eviction, considered the hardship to the Tenant that may result from eviction. The Member found that, considering all the circumstances, including the grave harm associated with possession of child pornography, the connections between possession of child pornography and the sexual abuse of children, the diagnosis of hebephilia, and the risk of reoffending, it would be unfair to the other tenants of the residential complex to deny the eviction.

NOTE: *The Tenant has filed a Notice of Appeal in this case, and, until the appeal is decided by the Divisional Court, the Board's order is stayed.*

TEL-13109 – s. 74 (2) – non-payment of rent – discontinuance of application – cl. 74 (2)(b) - payment of additional rent as at the date of payment

The Tenant had made a series of payments in May 2008 that totalled all the rent in arrears, the additional rent due under the tenancy agreement as of the date of payment, and the Landlord's application fee. The Landlord submitted that the application was not discontinued as the Tenant had not paid rent for the month of June 2008 and that sum became due and payable before the hearing date.

The Member, in dismissing the Landlord's application, found that the fact that the June rent became due and payable after the date of payment of all amounts set out in subsection 74 (2) of the RTA was immaterial for the purposes of that provision of the RTA.

TEL-16435 – RTA – s. 59 (2) – non-payment of rent – amount of rent due – *Mortgages Act* – s. 50 – mortgagee's rights after default – s. 50 (6) – application to the Superior Court of Justice for compliance order

The application was heard on September 17, 2008. The mortgagee in possession had been in possession since June 2008 but did not have a copy of the tenancy agreement and had been unable to obtain particulars relating to the tenancies from the prior Landlord (the mortgagor) or from the Tenants. The mortgagee in possession determined that, for the purposes of calculating the arrears of rent in the Notice to End a Tenancy Early for Nonpayment of Rent, its application to the Board would claim a monthly rent in an amount sufficient to satisfy the monthly mortgage payments.

In dismissing the application, the Member found that, in a case where the prior Landlord and the Tenants were unwilling to provide particulars of the tenancy agreement, including the monthly rent, the current Landlord must first pursue its rights under section 50 of the *Mortgages Act* to obtain an order from the Superior Court requiring disclosure. The Member found that the current Landlord could not in good faith claim that the Board must accept its arbitrary determination of the monthly rent simply because the current Landlord has been unable to obtain particulars from the prior Landlord or from the Tenants.

TEL-16694 – s. 2 – interpretation – “superintendent's premises” – s. 93 – superintendent's premises – termination of tenancy

In February 2006 the parties signed a tenancy agreement where the Tenants were ordinary tenants. Around the same time, the Landlord wanted to find a superintendent for the residential complex. In March 2006, the Landlord and the male Tenant (the “Tenant”) executed a “Superintendent Contract” which specified the superintendent's responsibilities. The Tenants were not required to pay rent or utilities and the Landlord refunded the last month's rent to them. The Tenant was also paid a salary.

In January 2007, the Tenant and the Landlord executed a document entitled, “Annex to Employment Contract” which, among other matters, provided that the “Superintendent’s Contract” would be terminated, the Tenant would not receive a salary, that the Tenant would perform certain duties, including cleaning, snow and garbage removal, and, would continue to live in the same rental unit but not pay rent, utilities or parking.

In February 2007, the Landlord posted a notice to the tenants of the residential complex that the Tenant was no longer the “live-in superintendent”, and, that maintenance requests were to be directed to the main office phone number. In August 2008, the Landlord wrote to the Tenant and advised that his services were terminated and he was required to vacate the unit.

The Member considered whether, by executing the Annex, the parties had altered the fundamental nature of their relationship. The Member found that the fact that the Tenants occupied a unit historically occupied by the superintendent is only one factor to consider but that it was not determinative of what constitutes a “superintendent’s premises”.

The Member, in dismissing the Landlord’s application, found that the terms used in the two agreements (Superintendent Contract and Annex) between the parties were to be given their ordinary meaning, and that any ambiguity was to be construed against the author of the agreements, that is, the Landlord. In this case, upon the execution of the Annex, the Tenant ceased to be “employed” by the Landlord and the rental unit no longer met the definition of a “superintendent’s premises”.

TEL-19970-RV – s. 59 – non-payment of rent - s. 82 – tenant issues in application for non-payment of rent – s. 83 – power of Board, eviction - s. 196 – Board may refuse to proceed if money owing - s. 209 (2) – power to review – reasonably able to participate

The Tenants did not attend the original hearing as their disabled daughter’s school bus was late due to weather and road conditions on the morning of the hearing. The Member found that the Tenants were not reasonably able to participate in that hearing and the Member allowed the Tenants’ request for review and held a hearing.

Before the second hearing date of the review application, Board staff advised the Member that one of the Tenants had an outstanding costs award against him from an earlier matter. The Member found that, although section 196 of the RTA does not directly address the issues raised by a tenant pursuant to section 82 of the RTA, a perverse result would occur if a tenant could raise maintenance issues “through the back door” when a tenant could not do so “through the front door” by filing an independent application. However, the Member considered and applied section 83 of the RTA in the context of the Tenants’ twelve maintenance issues with respect to whether the Landlord’s alleged failure to maintain the rental unit rose to the level of a “serious breach” requiring the Board to dismiss the Landlord’s application.

The Member found that the alleged violations did not constitute a “serious breach” for the purpose of section 83 of the RTA. The Tenants elected to file a separate tenants’ application once the outstanding costs were paid. The Member found that the Tenants were in arrears of

rent for a significant period and ordered the tenancy terminated subject to the applicable “pay and stay” provisions of the RTA.

TEL-20880-SA – s. 78 (6) – *application based on previous order, mediated settlement – motion to set aside order – s. 78 (11)(b) – order of the Board – s. 190 (2) – Board may extend, shorten time*

The Landlord obtained an *ex parte* order terminating the tenancy and evicting the Tenant because the Tenant had failed to meet a condition specified in a settlement mediated by the Board. The Tenant was granted an extension of time to file a motion to set aside the *ex parte* order.

The mediated agreement required the Tenant to make three separate payments – two in January and one in February 2009 and to pay rent monthly on the first day of each month starting March 1, 2009, failing which section 78 of the RTA would apply. The Tenant did not make the January 23, 2009 payment. The Tenant explained that a couple of days before January 23, 2009, she had received a cheque for funds from her mother who lived in the United States but those funds were subject to a five day hold. To avoid the hold, the Tenant requested that her mother give her funds in a manner that would be immediately negotiable, however, it took about one week for those funds to arrive. The Tenant claimed that she spoke to the Landlord’s manager on January 23, 2009 and explained that payment would be a few days late. The Tenant testified that the manager said that would be acceptable provided that the arrears were fully paid. The Landlord opposed the Tenant’s motion to set aside the order and claimed to have spent \$330.00 on sheriff’s fees to enforce the eviction.

The Member found that the Tenant had paid the arrears by February 18, 2009 and that she paid the March rent on Monday, March 2, 2009, the first business day after March 1st. The Tenant had lived in the residential complex for 19 years, was a single mother of two teenaged children and had made arrangements with her mother to provide her with sufficient funds to pay the rent on the first day of each month. The Member found that the missed payments were due to unforeseen extenuating circumstances, that the Tenant had paid up all the arrears and that the Tenant always intended to maintain the tenancy. The Member allowed the Tenant’s motion to set aside the *ex parte* eviction order.

The Member found that, with regards to the Sheriff’s fee, the Landlord had chosen to enforce the order although its agent had made alternate arrangements with the Tenant. The Member did not order the Tenant to reimburse the Landlord for the sheriff’s fee.

TEL-22999 – s. 61 – *termination for cause, illegal act – s. 66 – termination for cause, impairs safety – s. 83 – powers of Board, eviction*

The residential complex, designated as an adult “50 plus” community consisted of 82 rental units. The Tenant moved into the rental unit in January, 2009 and in March, 2009, the police executed a search warrant at the Tenant’s rental unit and found crack cocaine, drug

paraphernalia and money at the unit. During the execution of the search warrant, an individual in the Tenant's unit jumped from the unit to the balcony below, went through the unit of the tenant below and broke a door frame in that unit. The Tenant, the person who fled, and, another person in the unit at the time of the search were arrested and charged with possession of a controlled substance for the purpose of trafficking in it.

The Tenant claimed that he had moved to Belleville from another municipality to distance himself from the other arrested individuals who were gang members involved in drug trafficking. The Tenant claimed that he cut off contact with those persons except for one female associate, named "M".

M visited the Tenant in Belleville in March 2009 and was accompanied by two gang members who remained in the rental unit for a day and one-half and conducted drug transactions from that unit. Those persons returned on two more occasions in March 2009, including the date on which the search warrant was executed. At the time the search warrant was executed, the Tenant was at the court house meeting with his probation office, and, when he returned home, he surrendered to the police officers who were still at the rental unit. The Tenant claimed that he let the other individuals into his unit out of fear for his safety and that he did not participate directly in the sale of drugs.

The Member found that the Tenant was well aware that he was allowing entry to potentially violent gang members involved in the drug trade. The Member found that, at best, the Tenant demonstrated extremely poor judgment in allowing gang members into his rental unit and, at worst, that the Tenant condoned the illegal activities which put all the residents of the residential complex at risk.

The Member considered and applied section 83 of the RTA in determining whether to refuse the eviction or to postpone it for a period of time. The Member found that the Tenant had not established a record of being a "model tenant" in the complex, that, in allowing gang members into his rental unit, he was in breach of his probation, and that his poor decisions had brought crime and disorder into a residential complex populated by seniors a mere two months after his tenancy began. The Member found that the prejudice to the Landlord and to the other tenants' expectation of safety and quiet enjoyment outweighed the burden that eviction would cause to the Tenant. To permit the Tenant an opportunity to organize his affairs, the Member delayed the eviction for approximately three weeks from the date of the order.

TEL-23178 – *s.191 (2) – when notice deemed valid – Rules of Practice – Rule 5.1*

The Landlord served the Tenant with a Notice of Termination and the Landlord's application for termination and eviction by sending both to the Tenant by registered mail. The Notice of Termination was returned to the Landlord as unclaimed by the Tenant. Neither the application of the Notice of Hearing had been signed for by the Tenant and only the Landlord attended the hearing.

The Member found that the Tenant was not served with the Notice of Termination, the application or the Notice of Hearing in a manner approved by the Board. The Member referred to Rule 5.1 of the Board's Rules of Practice, which permits the Board to accept a method of

service other than those listed in subsection 191 (1) of the RTA if it can be proven that the documents came to the attention of the intended party. The Member found that the Notice of Termination could not have come to the Tenant's attention as it was returned to the Landlord. The Member dismissed the application without prejudice to the Landlord.

TSL-14313-SA – *s. 59 – arrears of rent – s. 74 (11) – non-payment of rent to Landlord instead of the Board – payment after order becomes enforceable*

The Tenants filed a motion to set aside the Board's order terminating the tenancy and evicting the Tenants. The Tenants submitted that the order was void as the Tenants had paid the amounts required under subsection 74 (11) of the RTA to void the order.

The Landlord submitted that the Tenant's motion should be dismissed as, while the Tenants had paid all the amounts required to be paid under subsection 74 (11) of the RTA to void the order, the Tenants had paid those amounts directly to the Landlord and not to the Board.

The Member dismissed the application and found that the Legislature's intent was to give tenants an opportunity to void an order after it becomes enforceable and that the requirement to pay to the Board was to provide clear proof of payment. The Member found that where, as in this case, there is clear proof of payment to the Landlord, it would defeat the intent of the legislation to allow the Landlord to proceed with the eviction even though the arrears were paid and the Landlord received those sums earlier than it would have if the Tenants had paid the money to the Board.

TSL-16589 – *RTA – s. 66 – termination for cause, act impairs safety s. 78 – application based on previous order – s.83 - power of Board, eviction – Human Rights Code – s. 10 – disability - s. 17 - duty to accommodate*

The residential complex housed persons who have mental illnesses. The Tenant, who had a disability because of mental illness, had assaulted other tenants in the residential complex.

The Member found that the Tenant's conduct seriously impaired the safety of other tenants in the residential complex. The Member found, however, that there had been no further incidents for two months prior to the hearing, the assaults were at the lower end of the spectrum, the Tenant was remorseful and, to the date of the hearing, the Landlord's attempts at accommodation within the meaning of the Human Rights Code were minimal.

The Member found that the Tenant's actions resulted from the Tenant's disability. Having considered the Landlord's duty to accommodate to the point of undue hardship, the Member issued a conditional order continuing the tenancy and requiring the Tenant to refrain from assaulting anyone in the residential complex for twelve months. In the event of a future assault by the Tenant within the twelve month period from the date of the order, the Landlord could apply to the Board under section 78 of the RTA for termination and eviction.

TSL-17876 – RTA – s. 64 – termination for cause, reasonable enjoyment — s.78 – application based on previous order – s. 83 – powers of Board, eviction - *Mortgages Act* - s. 50 – mortgagee’s rights after default – s. 50 (5) – obligations of mortgagor and tenant – s. 50 (6) – application for compliance order

The Landlord was a mortgagee in possession who had served the Tenant with a Notice of Attornment of Rents pursuant to the *Mortgages Act*. The Landlord had also demanded particulars from the Tenants relating to the tenancy, including the Tenants’ names, the amount of the monthly rent and the term of the tenancy agreement. The Tenants had not provided those particulars to the Landlord.

The Landlord served the Tenants with a notice of termination in which the Landlord alleged that the Tenants had substantially interfered with a lawful right of the Landlord by failing to provide the information requested.

The Member referred to section 50 of the *Mortgages Act*, and noted that, despite the existence of that provision allowing for an application to the Superior Court of Justice, it was appropriate for the Member to make the order the Landlord requested because, in refusing to provide the requested particulars, the Tenants had substantially interfered with a lawful right of the Landlord.

The Member ordered the Tenants to provide the particulars to the Landlord and provided that, if the Tenants failed to comply with that requirement, the Landlord could apply under section 78 of the RTA for an order terminating the tenancy and evicting the Tenants.

TNL-17979 - RTA– s. 37 – termination only in accordance with RTA – s. 37 (2) – termination by notice – s. 86 – compensation – s. 88 – arrears of rent when tenant abandons or vacates without notice

The Tenant vacated the rental unit on October 3, 2008 after the Landlord had given the Tenant a Notice to Terminate with a termination date of August 29, 2008. The Board’s hearing was held on October 7, 2008. The Landlord submitted that the Tenant did not vacate the rental unit in compliance with the Notice and further submitted that the Board should issue an order determining that the tenancy ended on October 31, 2008 as that date was a date earlier than the Tenant could have been deemed to have given notice pursuant to section 88 of the RTA.

The Member found that subsection 88 (1) of the RTA applies only to circumstances where a tenant abandons or vacates a rental unit without giving notice, where there is no agreement to terminate, or where the landlord has not given a notice to terminate.

The Member found that a tenancy may only be terminated in accordance with the RTA, that is, by notice, agreement or order. The Member found that, the tenancy, in this case, was terminated by notice effective on the termination date specified in the notice. From the date specified in the notice until the date the Tenant actually vacated the rental unit, the Tenant was an overholding tenant who was required to pay compensation to the Landlord for those days.

TSL-87099-RV/TST-01120-RV - RTA – s. 16 – minimize losses – s. 20 – landlord’s responsibility to repair - s. 29 (2) – tenant applications, time limitation – s. 30 – order, repair, comply with standards – s. 31 – other orders re s. 29

The Tenant’s application for an order based upon the Landlord having failed to meet the Landlord’s maintenance obligations was filed in January 2008. The Member at the original hearing had allowed an abatement of rent for the period of January 2005 to July 2007. At the review hearing, the Landlord submitted that the Member at the original hearing should only have awarded remedies going back one year from the date on which the Tenant filed his application.

The Member considered the meaning to be given to the limitation period set out in subsection 29 (2) of the RTA and found that it sets out a one-year limitation period for bringing an application under subsection 29 (1) of the RTA. The Member found that subsection 29 (2) does not contain any limitation on the remedy available provided that the application itself is brought in time. Once the application is brought in time, the potential remedies allowed for in sections 30 and 31 of the RTA may include the entire period during which the condition existed. The bringing of the application and the remedies available are distinct from each other.

NOTE: *The Landlord has filed a Notice of Appeal in this case, and, until the appeal is decided by the Divisional Court, the Board’s order is stayed.*

TSL-12596 – s. 50 – notice – demolition, conversion or repairs – s. 73 – demolition, conversion or repairs – s. 83 – power of Board, eviction - Ontario Human Rights Code – s. 17 – disability, accommodation

The Landlord intended to convert the rental unit to a non-residential use. The residential complex was a house in the High Park area of Toronto and part of a parcel of land the Landlord had assembled for redevelopment on which 12 vacant homes plus the subject property are situated. At the time of the Landlord’s application to the Board, the issue of a demolition permit from the City of Toronto was the subject of not yet concluded proceedings at the Ontario Municipal Board (the “OMB”). Pending a determination by the OMB of the demolition issue, the Landlord wanted to convert the Tenant’s home to a non-residential use, namely vacant property.

The Member found that the principal issues in the application were:

- (1) whether the Landlord’s plan to render the residential complex vacant is permitted under the RTA;
- (2) whether the Landlord had made reasonable efforts to accommodate the Tenant’s disability; and
- (3) whether the eviction should be delayed or denied.

The Member found that the RTA does not require that a residential complex be decrepit in order to justify converting it to a vacant closed property. The Member also found that, while a landlord may make a business decision to convert a property to non-use, the circumstances of the conversion are relevant in a determination by the Board of its discretion to delay or deny an eviction.

The Member applied section 73 of the RTA that outlines two preconditions for making an order for termination under section 50 of the RTA, namely, that the Landlord must in good faith intend to convert to a use other than residential premises and that the Landlord must obtain all necessary permits or authority required to carry out the activity on which the notice of termination is based. The Member found that demolition and conversion are separate options available to the Landlord, and, while demolition requires a permit, conversion to a non-residential use does not.

The Tenant suffered from Multiple Chemical Sensitivities, a disability as defined in the *Ontario Human Rights Code*. The Landlord acknowledged that pursuant to the Code, it had a duty to accommodate the Tenant's disability, but noted that "accommodation is a two-way street and the Tenant had not fully participated in the Landlord's efforts to find her suitable alternative living accommodation". The Member found that a useful starting point in determining whether the Landlord had made reasonable efforts to accommodate the Tenant is the nature of the Tenant's disability. In this case, the Tenant had great sensitivity to chemicals found in building materials. The Landlord had previously been ordered by the City of Toronto to effect repairs to the walls and roof of the residential complex and in making those repairs in a manner that would accommodate the Tenant's sensitivities to chemicals, the Landlord became familiar with the parameters for accommodating the Tenant. In order to accommodate the Tenant, the Landlord was prepared to spend up to \$200,000 (including remediation cost) to buy a house somewhere in Ontario (the Tenant wanted a small house "off the beaten track"), adapt the house to suit the Tenant, and, rent that house to her.

The Member found that the steps taken by the Landlord to accommodate the Tenant's disability constituted reasonable accommodation and that, given the difficulty in finding a suitable home, more time was required to permit the Landlord to find alternate living accommodation for the Tenant. The Member found that delaying the eviction would serve the Tenant's needs better than denying the eviction, since the residential complex is on an arterial road, required extensive renovations and the Tenant could neither stay in the complex while it was being renovated nor could she afford the rent for the entire (two-storey) complex. The Member delayed the eviction for one year to permit the Landlord to find her alternate accommodation.

TSL-13225 – s. 64 – termination for cause, reasonable enjoyment – s. 83 – power of Board, eviction s. 204 (3) – order re costs

During his tenancy, the Tenant erected a shed on the residential complex in a manner that, as disclosed in a survey of the properties, encroached onto the property of the next door neighbour. The Tenant also parked his car in a manner that blocked the neighbour's side of the

mutual driveway. The Tenant ignored demands that he cease parking in that manner and that he remove the shed.

The Tenant argued that the Notice of Termination was void because it did not provide sufficient particulars of the conduct about which the Landlord complained. The Member found that the Notice was valid as it put the Tenant on notice of the case that was required to be met.

The Tenant argued that he had built the shed with the consent of the previous owners of both properties.

The Member found that the Tenant had blocked the neighbour's access to the mutual driveway and that the Tenant's refusal to remove the shed exposed the Landlord to potential litigation by the neighbouring property owner. The Tenant's conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex and substantially interfered with the Landlord's lawful right, privilege or interest.

The Member ordered termination and eviction. In applying section 83 of the RTA, the Member found that the relationship between the Landlord and the Tenant was beyond repair. The Member delayed the eviction in view of the impending holidays and to give the Tenant time to remove the shed and clear his contents from the garage.

The Member ordered the Tenant to pay \$500.00 in costs to the Board for the Tenant's having acted improperly and unreasonably in the proceedings, including challenging rulings after they were made, failing to follow the Member's directions and continuing to pursue matters the Member had ruled were irrelevant.

TSL-16165 – *s. 100 – unauthorized occupancy – s. 83 – powers of Board, eviction*

The Landlord had purchased the residential complex in 1994. The Tenant had lived in the rental unit since 1991 and is the son of the developer of the residential complex. The Occupants are the sister of the Tenant and her spouse.

After purchasing the building, the Landlord discovered that the Tenant had a lease that provided for rent for the rental unit and two parking spaces of \$214.00 per month, a rent far below market value. At the time of the Landlord's application, the rent was \$354.35 a month, also far below market value.

In 2002, the Landlord changed access to the residential complex from key access to fob access and asked the tenants how many fobs and cards would be required by each tenant. The Landlord, when it inquired of the tenants who would need key fobs for the new locking system, discovered that the Tenant's sister was an occupant of the rental unit as the Tenant had asked for cards for himself and for his sister whom he listed as an occupant.

In the spring of 2002, the Landlord applied to the Ontario Rental Housing Tribunal for an order for termination of the tenancy on the basis that the Tenant had transferred occupancy to his

sister and had abandoned the rental unit. The Tribunal dismissed the application and, in terms of the improper transfer of tenancy application, the Tribunal found that it had no jurisdiction to consider it because it was filed more than 60 days after the Landlord discovered the unauthorized occupant. In 2003, on an application by the Tenant that the Landlord had harassed him and had substantially interfered with him, the Tribunal found for the Tenant and ordered the Landlord to provide a key fob for the sister's use and a second parking space. In June 2008, the Tenant wrote the Landlord to advise that the Tenant had lost two pass cards and needed replacements. When the Tenant went to pick up the pass cards, the superintendent of his building was away and the Tenant had to go to the superintendent of the neighbouring building in the complex. At that time, the Tenant gave identification to the superintendent that disclosed a residence address for the Tenant other than at the rental unit. The Tenant had moved out of the building in 2004 but continued to use a parking space in the building as it was near his health club.

The Member found that the Landlord first discovered the Tenant had moved out of the building in June and July of 2008 and the Landlord's application was filed within sixty days of discovering the unauthorized occupancy as required by s. 100 (2) of the RTA.

The Member found that the Tenant transferred occupancy of the rental unit in a manner other than by an assignment authorized by s. 95 of the RTA or a subletting authorized by s. 97 of the RTA. The Member found that, although the Tenant retained some connection to the rental unit by keeping some personal effects there and by parking there, he had moved out of the rental unit and had transferred occupancy of it in a manner other than as authorized by the RTA.

The Member also found that the Landlord's application was not barred by *res judicata* or through some other form of issue estoppel. The Member found that, in the earlier application dismissed by the Tribunal, the issue was whether or not the Tenant had moved out prior to the application being brought and had relinquished control to his sister. In this application, the issue was whether the Tenant had moved out after the first application and had left his sister in control of the rental unit. The fact that the Tenant had moved out in 2004 after the previous litigation was found to be a substantive and material change in circumstances.

The Member found that the Tenant does not need the rental unit to have a home and declined to exercise her discretion to relieve against eviction.

TSL-22156 – s.62 – termination for cause, damage – s. 64 – termination for cause, reasonable enjoyment – s. 68 – notice of termination, further contravention – s. 69 (2) – application by Landlord, time for filing – s. 89 – compensation for damage

The Landlord had served two Notices of Termination on the Tenant alleging substantial interference; the first notice was served on October 6, 2008 with a termination date of November 4, 2008 and the second notice was served on December 5, 2008 with a termination date of January 4, 2009. In September 2008, the police, proceeding with a search warrant, had entered the Tenant's rental unit. The first Notice of Termination set out two grounds, that the Tenants and her guests were interfering with others in the common areas of the buildings and

that the actions of the Tenant and her guests led to the police attending. The second Notice of Termination referred to the damage caused to the door of the rental unit when the police broke in to that unit.

Having found that the Tenant had voided the first notice and that the second notice contained no reference to that conduct having continued, the Member dismissed the Landlord's application. The only difference between the first and second notice was the inclusion of an amount the Landlord sought for the broken door. The Member found that the second notice was invalid as it did not describe anything new occurring in the interim. The Member also found that, as the only valid notice was the first, and, as the application was not filed until February 2, 2009, it was filed too late and was void.

The Member found that the damage was caused by the police and not by the Tenant or her guests and subsection 89 (1) of the RTA does not allow for vicarious liability in these types of circumstances.

TSL-24659 – *s. 94, superintendent's premises – s. 83, relief from eviction*

The Landlord applied to evict the Tenant because her employment as superintendent had ended. The Tenant was hired as an administrative assistant in 2005. She was not required to live in the Landlord's residential complex and did not live there. In 2006 she was given the position of reservations manager and later that year moved into the residential complex. Although she lived there she actually worked at the Landlord's office located nearby. The Landlord failed to establish that the Tenant occupied the unit as a condition of being the reservations manager. The Member determined that a residential tenancy exists and this tenancy is not dependent on the Tenant's employment with the Landlord. The Landlord's application was dismissed.

The Member further determined that even if he had found the rental unit to be superintendent's premises, he would have denied the eviction under s. 83 of the RTA because the Landlord already has a live-in superintendent and does not require the rental unit for a new manager.

TST-01514 – *s. 2 – interpretation, "landlord" – s. 57- former tenant's application where notice given in bad faith – s. 187 (2) – add or remove parties*

The Tenant had resided at the rental unit for nearly 25 years and had a good relationship with "Landlord 1" who operated a business on the main floor below the rental unit. The Tenant vacated the unit after having received a second Notice of Termination from Landlord 1 for the purchaser's (Landlord 2) own use.

The Tenant claimed that he became aware that no one had moved into the rental unit within a reasonable period after he had moved.

Landlord 1 testified that he relied on the real estate agent retained by both Landlords 1 and 2 who had told Landlord 1 that Landlord 2 required vacant possession of the entire building and that Landlord 2 intended to live in the rental unit.

Although Landlord 2 did not want to be a party to the former Tenant's application, the Member found that it was appropriate that Landlord 2 be added as a party as the definition of "Landlord" in section 2 of the RTA includes successors in title.

Landlord 2 testified that she had not told the real estate agent that she required vacant possession of the rental unit and that she had no contact with Landlord 1 throughout the purchase and sale of the property.

The Member, in applying clause 57 (1)(b) of the RTA found that Landlord 1 relied on the agent's assurances about the intention of Landlord 2 to occupy the rental unit, and also found that Landlord 2 had never indicated that she intended to occupy the rental unit. The Member found that "bad faith" is "not "simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of a dishonest purpose..." and further found that the fact that Landlord 2 did not move in did not, on its own, demonstrate bad faith.

The Member dismissed the former Tenant's application. The Member found that, if anyone was at fault, it was the real estate agent, and, that neither Landlord 1 nor Landlord 2 had acted in bad faith.