



MTW TODAY

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It is with pleasure that Mullin Thwaites Ward, LLP takes this opportunity to publish the fifth of what is becoming a regular newsletter for our clients. We believe that it is important for us to communicate with our clients in an effort to keep them abreast of developments in the law (in Ontario) touching their personal or business life or the life of the community. We would like to extend our appreciation to our clients who we have had the privilege of serving and look forward to serving you in the future. We invite our readers to contact us by telephone, fax or at our website to learn more about us and our practice.

Landlord and Tenant Legislation:

The Act

The *Tenant Protection Act* was introduced in 1997. The *Act* consolidated a number of pieces of legislation relating to residential tenancies, the aim of which was to create an environment with less red tape for all parties. In an effort to create a more manageable means of determining disputes between parties, the *Act* empowered a Tribunal to hear and determine the issues. This removed the process from the Courts in an attempt to expedite matters and allow for a hearing in a less formal environment.

About rent

A landlord and a **new** tenant decide the rent for a rental unit. In most cases this rent cannot be increased for 12 months. The Ontario Government sets a guideline for annual rental increases. For 2002, the increase is 3.9 per cent and for 2003, the increase is 2.9 per cent.

The landlord can collect a deposit from a new tenant but it cannot be more than one month's rent, or if the rent is paid weekly, one week's rent. Also, the landlord must pay the tenant six per cent interest on the deposit, annually.

The landlord may ask for payment by cash, cheque or money order. He can ask for post dated cheques but may not demand them. Receipts for rental payments must be issued, free of charge, for any tenant who requests them.

Landlord's have an obligation to keep a rental property in a good state of repair. If something doesn't work because of normal wear and tear, the landlord must fix it. All health and safety laws in the jurisdiction must be obeyed. For instance there may be a municipal by-law requiring heat to be kept at a certain minimum. Additionally, the landlord may not withhold vital services such as water, fuel, or electricity.

Privacy

Landlord's may not enter a unit without written notice unless:

- it is an emergency
- the tenant allows the landlord in
- in the case of a care home there is an agreement allowing or requiring "bed checks."

A landlord may enter between the hours of 8 a.m.-8 p.m. without written notice if:

- there is an agreement for cleaning the unit
- a notice of termination has been given or there is an agreement to terminate.

Terminating a Tenancy

Renewing a Lease

Just because a lease comes to an end does not mean a tenant has to move out. A lease can be renewed, or a new lease can be made, if both parties agree. If no agreement is reached, the tenant has the right to stay as a month-to-month tenant. In this case, all of the rules of the former lease will still apply to both landlord and tenant.

If a Tenant Wants To Leave

A tenant must give their landlord notice in writing if they plan to move out. A monthly tenant must give at least 60 days notice and the termination date is the final day of the monthly rent period. A tenant with a lease can not have a termination date which is earlier than the final day of the lease.

Termination of the Lease By the Landlord

Landlords can only terminate the tenancy for reasons allowed by *The Tenant Protection Act*. Some of the reasons allowed by the *Act* are as follows:

1. The tenant not paying the rent in full.
2. The tenant often paying the rent late.
3. The tenant engaging in an illegal activity.
4. The tenant affecting the safety of others.
5. The tenant disturbing the enjoyment of other tenants or the landlord.
6. The tenant allowing too many people in the unit.
7. The tenant not reporting income when living in subsidized housing.

The landlord may also terminate the tenancy for reasons which are no fault of the tenant. Some of those reasons are:

1. The landlord needs the rental unit for their own residence or for that of their spouse, partner, child, or parent.
2. The landlord has agreed to sell the property to someone who wants all or part of the property for their own residence.
3. The landlord plans major repairs or renovations that require a building permit and vacant possession.
4. The landlord plans to demolish the rental property.

All of the above apply only to residential tenancies. Any commercial tenancies are bound by *The Commercial Tenancies Act* and leases regarding those types of tenancies are considerably more complex. Please be sure to consult your lawyer before entering into any of those types of Agreements.

Copyright Information

The Society of Composers, Authors and Music Publishers of Canada (SOCAN)

The Copyright Act in Canada dates back to 1924 and was, until recently, considered to be way out of step with the times. The process of reform began in 1994 and major changes to the *Act* arrived in 1997, with phase two of the reform, which amounted to a complete overhaul in the area of Copyright Law. Under this reform, exemptions were clarified for disabled people and non-profit institutions such as Universities, Libraries, Archives and Museums. Additionally, two key provisions were added which affect the music industry and those of us who listen to music;

1. A tariff on blank audio tapes was instituted;
2. For the first time in Canada, "neighbouring rights" on sound recordings were established.

The tariff on blank tapes has been extended to blank CD's. It has also been increased in subsequent years and this year a large increase has been sought. This tariff has had the effect of legalizing the recording of music at home for personal use. The concept of "neighbouring rights" refers to rights the musician retains against those who would perform or cover a musician's work. Currently, *The Copyright Act* allows the artist to be compensated for any public performance of their music. These performances, when done by telecommunication or in public, are what attract SOCAN tariffs. It is interesting to note that in Canada under this new legislation when you buy a CD you only get the right to play it for your own pleasure, in private. In the United States you can still play any legitimate CD authorized for distribution by the copyright holder, any where, any time. The Americans only run into trouble if they were to play a "burned" copy for the public.

While we all may understand why commercial radio stations and television stations would pay a tariff to the artists responsible for creating the products which they distribute, some people may be surprised to learn of the wide range of tariffs which are applicable. For instance, if you are holding a wedding and plan to play music, either live or by a disc jockey, there is a tariff payable and a license which must be sought from the people at SOCAN. This may be added to the rental cost imposed by the facility. Additionally, music played in hockey arenas must also be licensed under the tariff system. Motion picture theatres must pay a tariff of \$1.14 per seat. If you have been wondering why the cost of a movie has been getting increasingly more expensive, perhaps this is part of the answer.

Strolling musicians, buskers, marching bands, circuses, ice shows, fireworks displays, and similar events, all have a tariff rate to pay, even Ontario Place and Canada's Wonderland pay a tariff for every thousand people in attendance and a portion of their live music entertainment costs as a tariff.

Some businesses play music for those people who are waiting on hold on their telephone line. You may be surprised to learn that there is a tariff to be paid for this as well. Background music is similarly charged, depending on

the square footage of the area in which the music is played. In fact, even the owners of aircraft must pay a tariff for music played during take off and landing.

So before you hold your next social event, you may want to check with the people at SOCAN to determine your own need with regard to a license. To assist you in making that determination, you can look up the society on the internet at www.socan.ca or you can reach them by telephone at 1-800-557-6226.

The Estates Update

Powers of Attorney

As written about in earlier editions of *MTW Today*, the individual has the right to appoint a Power of Attorney For Personal Care to authorize that person to make personal care decisions for them when they are incapable. A question often asked though is "What about a situation where a person has a problem, such as alcoholism or an illness requiring medication?". We have heard of the circumstances where a person will require some kind of treatment but, because of their illness, will refuse to undertake that treatment. A specially drafted Power of Attorney can contain a clause that may be of some assistance in this situation. It is called a Ulysses Contract. This allows for the individual Grantor to authorize the attorney to use force that is necessary and reasonable in the circumstances, to determine whether the Grantor can make a decision or not regarding their health care or treatment, as well as authorizing that person to use necessary and reasonable force to take the Grantor to any place for care or treatment, to admit the Grantor to that place, and to detain or restrain the Grantor in that place during the care or treatment". This is a very specialized clause and has special restrictions attached to it to ensure its validity, but it can be very powerful in those situations where an individual recognizes that they may require assistance but will be unable to ensure that they receive it. The name Ulysses Contract is based on the myth regarding Ulysses, who had his shipmates put wax in their ears and ordered them to tie him to the masthead while they sailed through the passage where the sirens would be singing. The sirens would so distract sailors going through this passage that

they would ultimately crash their ship upon the rocks. In an effort to ensure that this wouldn't happen, Ulysses instructed his crew to ignore any instructions he gave them while he was under the influence of the sirens. By doing this, he was able to safely navigate the passage. If you wish to include this type of clause in any Power of Attorney that you are contemplating, you should seek Legal Advice.

Do It Yourself Will Kits

We are often asked whether "Do It Yourself Will Kits" will in fact produce a legally binding Will in the Province of Ontario. The answer to that question is that as long as the Will is executed in accordance with the laws of the Province of Ontario, you can effect a valid Will. The difficulty arises, however, in ensuring that the Will says what you think it says and that your wishes are actually being carried out.

For example, in a Will you may change the beneficiary designation on such products as your Life Insurance and your R.R.S.P.'s or R.R.I.F.'s. Sometimes this is used to change the beneficiary from one individual to another, but often Will kits will indicate that these products are to be made payable to the Estate. The Will may go on to say that the Estate is to then be paid or transferred to your spouse. By indicating these assets are to be made payable to the Estate, however, brings them into the Estate and could trigger tax implications as they no longer pass tax free or on a tax deferred basis. In the first place, by having these items and assets brought into the value of your

Estate, they must be included for the purpose of evaluation in order to determine the correct amount of Estate Tax to be paid, if your Estate needs to apply into Court for a Certificate of Appointment of Estate Trustee. Secondly, the other implication relates to Income Tax. For example, if your R.R.S.P. is intended to go to your spouse but the Will says it is to come to the Estate, then the asset must be brought into the Estate, which means Income Tax due and payable on the value of the entire R.R.S.P. must be paid, with the net amount then being transferred to your spouse. What this means is that if you had an R.R.S.P. worth \$50,000.00, approximately 40% of that would be payable in Income Tax, with the balance due to your spouse. If the designation was your spouse, however, the entire amount could roll over to your spouse on a tax deferred basis so that income tax is only payable on the value of that asset at the time of your spouse's death.

The old adage, caveat emptor, would seem to apply in that in order to save yourself the expense of having a lawyer prepared Will, you may inadvertently cost your Estate thousands of dollars in taxes that would not have otherwise been due or payable on your death.

We invite our clients to visit our website to receive information about our firm, the services provided and to be kept updated on our newsletters at the following address: www.mtwlawoffice.com.

Our law firm is proud to support *The Orangeville Theatre, The Orangeville Minor Hockey Association* and *The Orangeville Minor Lacrosse Association*. A link to each of their websites is provided on our own website.

This MTW TODAY is provided as an information service to our clients and is a summary of legal matters. It is not meant to be a legal opinion. Readers are cautioned not to act on information provided herein without seeking specific legal advice with respect to their unique circumstances. Comments and suggestions are welcome.



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