

THE LAWYERS WEEKLY

The landlord's lament

Has the Residential Tenancies Act gone too far in protecting the tenant?

By Matthew Urbach

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In 2007, the *Residential Tenancies Act* replaced the *Tenant Protection Act*. The objective was to modernize the current law to balance the rights and responsibilities of residential landlords and tenants.

However, the RTA remains so heavily weighted in favour of the tenant that, practically speaking, there is little or no balancing of the rights and responsibilities. Indeed, the act is a one-way street. I was recently involved in a case that demonstrates the weakness and unfairness of the legislation.

A landlord applied for an order to terminate the tenancy of an individual and evict them after an incident involving the theft of clothes belonging to other tenants. This had occurred in the communal laundry room. The tenant claimed they could not remember the incident and suffered from a schizoaffective disorder — raising the disability card. That meant the landlord was dead in the water, despite the fact it was never verified that the 'disability' was connected to the incident.

Still, it was ruled that the landlord must accommodate the tenant, and there would be "no undue hardship" on the landlord's part in doing so. The result? The landlord's application for eviction was dismissed. During the proceeding, which lasted six months, the tenant remained in the building and the Landlord and Tenant Board took comfort in the fact that no further incident occurred in this time. This elapsed time ultimately benefitted the tenant.

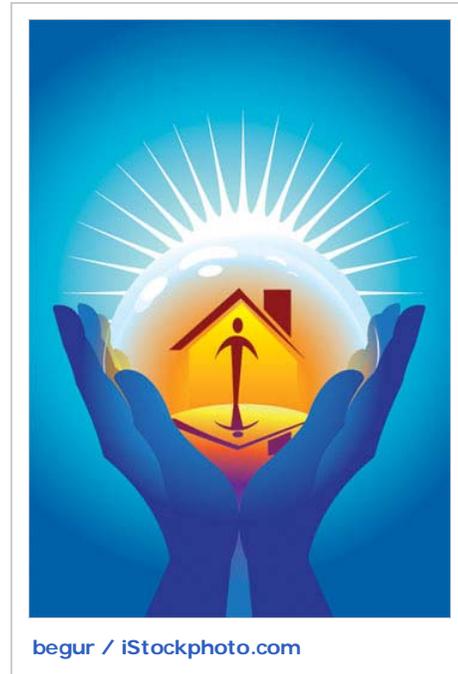
According to the act, the board can refuse to grant the application to evict a tenant unless, having regard to all the circumstances, "it would be unfair to refuse," but this is so broad in scope that there is no limitation as to what those circumstances might be. Two other cases illustrate this dilemma for landlords.

In a decision rendered Aug. 31, 2011 (*2011 LNONLTB 2107*), the board dismissed a landlord's eviction notice because of disability. The tenant was a hoarder who so cluttered up his balcony that other tenants complained. But according to the ruling: "The Tenant suffers from a mental disability, which causes his hoarding behaviour and is entitled to accommodation by the Landlord under the *Human Rights Code*." This was the case even though we are talking about "excessive clutter, combustible material and improperly stored food."

The tenant, who may have endangered the health of other tenants and created a fire hazard, was protected from eviction because of disability, and had to be accommodated in accordance with *Section 83* of the act. The adjudicator found that the economic hardship to the landlord (i.e., clean-up cost) was not enough to warrant the eviction, and the tenant was given another chance.

What was strange in this decision is that the interests of other tenants, such as health risks due to the hoarding, were ignored but for a passing mention.

In another case (*2008 LNONLTB 45*), a tenant assaulted other tenants in a residential complex. But the board found that the tenant suffered from mental disabilities, refused to grant eviction, and gave the tenant one more chance: "The assaults were serious enough to impair the safety of other tenants, but at the lower end of the spectrum of impaired safety issues that might be seen at the Landlord and Tenant Board," the board wrote, adding that "the Landlord's attempts to accommodate the



Tenant's disabilities under the *Ontario Human Rights Code* were minimal."

In this case, the time that elapsed from the event to the proceeding again worked in favour of the tenant. The hearing of these cases often takes months, and during this time the tenant remains in the building and is on their best behaviour.

But what if a tenant sells cocaine from a unit, and is disabled as a result of that cocaine use? It might be a post-traumatic stress disorder. Common sense dictates that selling drugs near children is a legitimate threat to their well-being, and it interferes with other tenants. But the act is such that the tenant can always raise the issue of disability. The Human Rights Code spells out what is a disability — cocaine use does not qualify — but the RTA is so vague and broad in scope that even a case like this may spell defeat for the landlord.

The act cites circumstances where the board must refuse the eviction order, but does not have a corresponding section that lists circumstances where the board must grant the eviction order. The act should be amended to add a list of "granting" scenarios, which could include:

- a finding of drug use/sales in a complex where some of the residents are children;
- damage to the complex of more than \$5,000;
- a reasonable threat to the personal safety of other residents.

Of course, persons with disabilities must be protected, but their protection cannot unreasonably burden the legitimate interest of others. In this sense, the act has gone too far.

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