



Hamilton Community Legal Clinic
Clinique juridique communautaire de Hamilton

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To Whom It May Concern,

Re:
Residential Tenancies and COVID-19 - Mitigation Measures:
Enforcement of eviction of Orders and the issuance of “No Trespass Orders/Letters”

In light of the COVID-19 pandemic the Ministry of the Attorney General Office has indefinitely suspended the enforcement of eviction orders issued by the Landlord and Tenant Board and accordingly, the Court Enforcement Office (the Sheriff) is not enforcing them at this time.

The tenant subject to eviction is legally entitled to remain in their unit until such time that the Sheriff enforces the Order, which would take place once the moratorium is lifted by the Attorney General.

The Court Enforcement Office has exclusive authority to enforce eviction orders issued by the Landlord and Tenant Board and writs of possession issued by the Superior Court of Justice; accordingly, no other entity has the authority to act on this, including Hamilton Police Services, either directly or indirectly.

Additionally the issuance of a No Trespass Order issued pursuant to the Trespass to Property Act does not circumvent the legal process outlined above. In other words, this cannot be used in place of enforcement of evictions through the Sheriff. Hamilton Police Services does not have the authority to remove a tenant from their rental unit based on a no trespass issued by their landlord, where their tenancy remains intact. A tenancy remains ongoing until such time that the Sheriff enforces an eviction order issued by the Landlord and Tenant Board. As well, trespassed persons are entitled to attend units as guests of the tenant. Trespassed persons must however only attend the unit to which they were invited, otherwise they may be in breach of the trespass issued.

The *Residential Tenancies Act*, 2006, S.O. c. 17 [RTA] overrides provisions in the Trespass to Property Act where it may conflict with the RTA:

3(1) This Act applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary.

3(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.

Cunningham v. Whitby Christian Non-Profit Housing Corp (1997), 33 O.R. (3d) 171 (Ont. Gen. Div.), Docket 75988/96, provides a good discussion of the rights of tenants and landlords with respect to occupiers and guests and the interaction with the TPPA. This was social housing. The Court held that the landlord could prohibit occupiers other than the tenant, but could not prohibit guests of the tenant. In this case, an action had been brought in the Ontario Court (General Division) by a tenant after the landlord had illegally banned her boyfriend from the premises. After determining that both the tenant and landlord were considered “occupiers” by the *Trespass to Property Act*, the Court concluded that the landlord did have the right under the TPPA to prohibit a person from entering a rental unit, **but only if the person is not an invitee of the tenant**. Furthermore, s. 2(1)(b) of the TPPA, which states that a person is guilty of trespassing if they do not leave the premises immediately after he or she is directed to do so, only applied where the person enters without permission or where the permission is withdrawn by the inviting occupier.

It also must be made abundantly clear that a landlord cannot exercise their own “self-help remedy” by locking out a tenant themselves. If this takes place, the Hamilton Police Services ought to facilitate restoring the tenant to occupancy and affected tenants should call the Hamilton Community Legal Clinic immediately for assistance at (905) 527-4572.

Sincerely,

HAMILTON COMMUNITY LEGAL CLINIC

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