

LANDLORD LEGAL

Tenant Troubles? Landlord Legal is Coming!

Hoarding Tenants:

Housing Providers, Emergency Services, and the Landlord and Tenant Board

In May of 2011, we were retained by a local subsidized housing provider to assist with the eviction of a tenant who was problematic, to say the least. By the time of our firm's involvement, the tenant had received a series of eviction notices in form and content consistent with the Board's guidelines, and application had just been made to the Board to terminate the tenancy. Most interesting to us was the fact that the tenant was already "evicted" from the subject unit by police and fire personnel.

How was that possible? The Fire Department can "evict" tenants?

Here's an excerpt from the Directive that created a very unique twist to this case:

NOTICE Under Section 15 of the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, To: (Landlord), I (Fire Department employee), an "Assistant to the Fire Marshal"...had reasonable grounds to believe that a risk of fire posed an immediate threat to life at (address), those grounds being:

Accumulation of excessive combustibles to constitute a fire hazard.

Dangerous use and disposal of smokers materials.

Means of egress being obstructed with combustibles and debris preventing escape.

Combustibles too close to service equipment which constitutes a fire hazard.

Accumulation and storage of combustibles and debris creating a hazard to emergency responders.

I have entered this property, without a warrant, under the authority of subsection 15(1) of the Fire Protection and Prevention Act...for the purpose of removing or reducing the threat to life, by implementing one or more of the procedures below:

X Removed persons on the land or premises... etc.

At the time the application to terminate was made to the Board, the tenant was not permitted to reside in the unit, but did have supervised access offered to him on a number of occasions. Was he in possession of the rented premises? Did the Board have jurisdiction in this matter? That was to be seen.

We viewed photos depicting a unit that was literally teeming with a wide variety of refuse, drug paraphernalia, and combustibles, and evidence of willful structural damage sustained over a period of time. Of greatest concern to us, the client, and emergency personnel who had viewed the premises: the smoke alarms were disabled by the tenant. The history suggested that this tampering of safety equipment was a recurring problem. Exacerbating matters, the subject unit was attached to an adjacent tenant occupied dwelling, that housed a family with children. Impaired safety was a real issue here. It was no wonder that the Fire Services Personnel were concerned, and acted swiftly.

This was going to be a challenge.

The Board hearing was held in Barrie on May 26, 2011, a full **six weeks** after the application was made! Impaired safety applications are supposed to receive priority, and earlier hearings, but that didn't happen here. Remember, the neighboring tenants and their children were "sitting ducks", the entire time, as were first responders in the very real likelihood of a fire in the subject unit. The tenant did not attend, or send a representative to speak on his behalf. The subject unit had not been touched by the landlord, other than to secure it, and disconnect services that could potentially fuel a fire.

Witnesses for the landlord: the property standards by-law officer, an official from the fire department, the maintenance/purchasing manager, and the property manager, all of whom gave good testimony related to the state of the unit, the estimated cost to repair, and the degree of the problem in this unit. The applications were for illegal act, and impaired safety, and final termination of the tenancy was the goal. A claim for monetary compensation for the damages was also sought.

Surprisingly, the presiding Member did not jump on the fact that the tenant was no longer occupying the unit at the time the application was made. It was expected that this would be a preliminary issue, and our greatest challenge.

The Member reserved, and took an appropriate amount of time to issue her directive, under the circumstances. The result was not what was needed. The damages claim was awarded in full, and the impaired safety was acknowledged, yet under section 83 of the Act, termination of the tenancy was refused!

I have considered all of the disclosed circumstances in accordance with subsection 83(2)(3) of the Residential Tenancies Act, 2006, (the 'Act'), and find that it would not be unfair to grant relief from eviction pursuant to subsection 83(1)(a) and 204(1) of the Act. Specifically, on April 7, 2011, the Landlord unlawfully altered the locking system on a door giving entry to the rental unit without giving the tenant replacement keys.

Now what?

Clearly, the Board agreed to jurisdiction, because they awarded in full for the damages portion of the Claim. However, when it came to termination, they decided that the landlord's removal of the tenant from the unit was inappropriate. Was it the landlord's decision? Was it "unlawful"?

We challenged the Order from a number of angles, and on July 7, 2011, our Request to Review that Order was denied!

Enter David Strashin, Toronto lawyer extraordinaire, who was presented with the next stage of proceedings, our challenge to the Divisional Court.

David will tell you what happened next, but I will say this story has a happy ending... At the end of the day, this case illustrates that Tenant Rights may indeed trump even life safety, according to the Board. The landlord was caught in the middle of a Fire Marshal determined to prevent tragedy, and a Board determined that no tenancy will be terminated by anyone other than them.

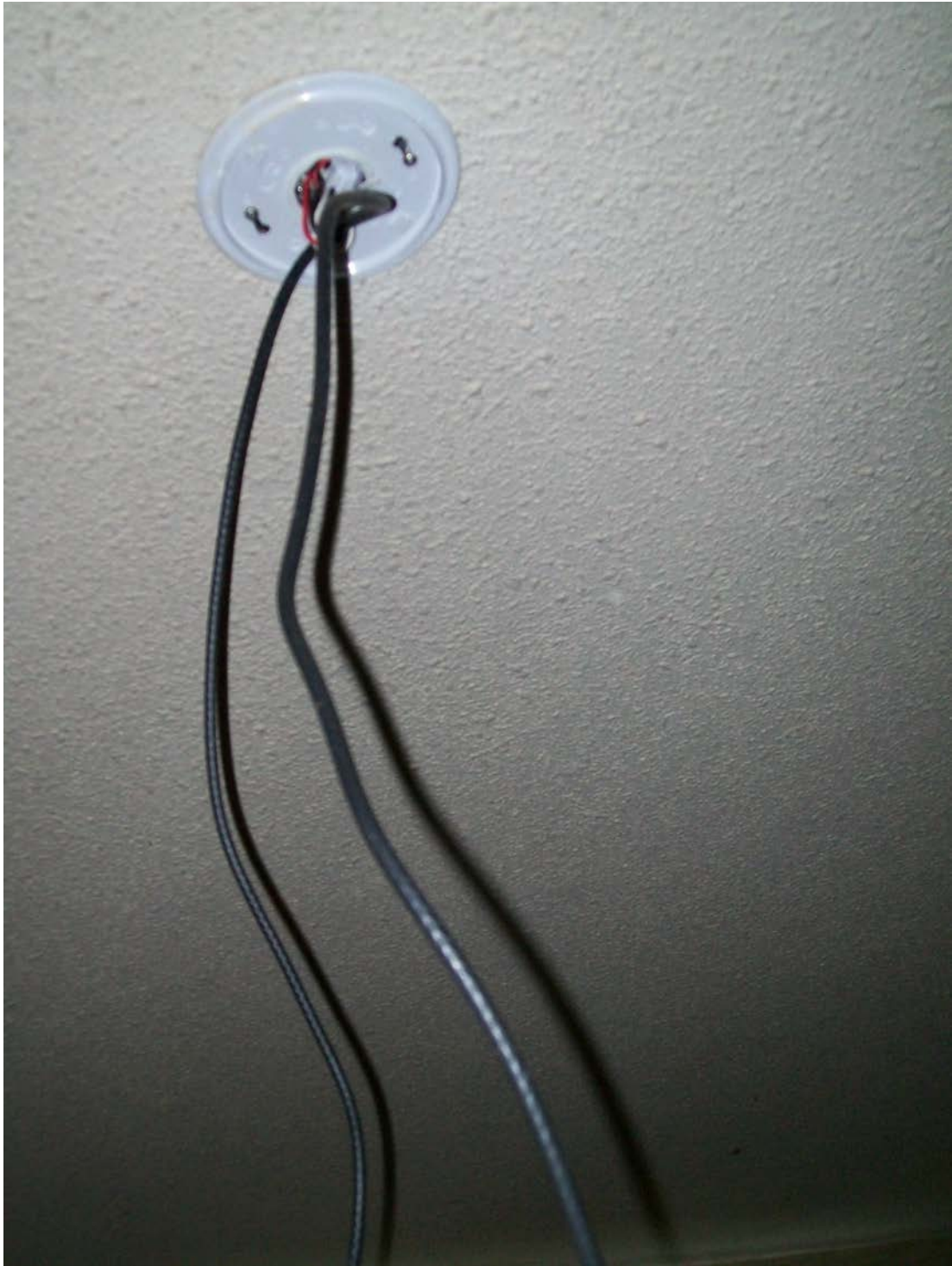
Exceptional circumstances do arise, and the Board needs to recognize this. Other government agencies such as the Fire Department and Fire Marshal's Office similarly need to educate themselves in the ways of the Residential Tenancies Act, and the Landlord and Tenant Board. Conflicting statutes should not put real people in harm's way.

Thankfully, there was no fire, and there was no loss of life. If this tenant remained in control of the subject unit while the landlord waited those six long weeks for a hearing, I have a feeling the outcome would have been much different, and potentially very tragic.

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