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L A W Y E R S

RENT CONTROL BULLETIN

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TENANTS ARE NOT ALLOWED TO HARASS YOUR ON-SITE STAFF. (And here's what you can do about it...)

Most landlords and on-site staff have probably encountered the “difficult” tenant who uses verbal abuse, personal attacks, threats, and intimidation (“harassment”) as a means of getting what they want. LTB decisions and some employer Landlords have sometimes downplayed the seriousness of a situation where a tenant engages in harassment of landlord employees, the implicit message being that accepting tenant harassment of landlord employees is “just part of the job”: but it isn't, and the law takes this kind of harassment seriously. Landlords have a legal obligation to take steps (including eviction of the tenant) to ensure that such harassment stops.

What does the law require? There are two statutes that are most relevant to the legal obligations imposed on landlords to prevent tenant harassment of their staff: 1. The *Occupational Health and Safety Act* (OHSA); and, 2. *The Residential Tenancies Act* (RTA).

The OHSA requires that employers prepare a written harassment policy and a workplace harassment implementation program to address workplace harassment. A landlord who employs more than 5 persons is required to post that written policy in the workplace, but regardless of the number of employees, having the harassment policy is mandatory. For many landlord employees, the “workplace” is, or includes, the apartment building where they work: cleaners, building managers/administration, and maintenance personnel are all entitled to a workplace environment that is free from harassment from tenants, members of their household, and guests. The OHSA imposes a positive obligation on the landlord/employer to take measures to curb tenant harassment and a landlord who fails to do so invites prosecution and liability under the OHSA. In summary, tenants who harass employees of a landlord trigger a landlord's potential liability under the OHSA and thereby interfere with the landlord's “legal interest” to maintain a harassment free workplace.

Section 36 of the RTA confirms that harassment of Landlords (which includes employees) by a tenant is conduct which interferes with a landlord's legal interest. Section 36 RTA states: “A tenant shall not harass, obstruct, coerce, threaten or interfere with a landlord”. A breach of this section of the RTA by a tenant properly gives rise to service of an N5 Notice of Termination on the grounds of “interference with the landlord's legal interest”.

What do you as a landlord do when you are faced with allegations of harassment by a tenant? The OHSA requires that an employer have, in its harassment implementation program, measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor and a process for how the employer will investigate and deal with incidents and complaints of workplace harassment. So make sure that you have the required policies in place and that what you are dealing with is harassment. The

regulations to the OHSA define “workplace harassment” as a person “...engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome”. The language is very broad and open to subjective interpretation. A tenant asking that maintenance be done, and following up again and again, is not harassment. A tenant engages in harassment by making repeated, derogatory, personal comments directed at the employee and/or to other tenants about the conduct, dress, ethnicity or work ethic of a superintendent; or, engaging in “bullying”, by threatening the landlord’s employee with loss of employment or through verbal abuse directed at the employee.

By ensuring that the Workplace Harassment Policy and your Implementation Program include policies to address harassment of employees by tenants, and having reasonable steps in place to address such harassment, Landlords can effectively deal with abusive tenants. Usual protocols involve recording the complaint, investigating the complaint, and a progressive approach to ensuring that the harassment stops. In terms of the “progressive approach”, the first step is to make the tenant aware of the offensive conduct alleged to have occurred and give the tenant an opportunity to respond and/or to stop the conduct complained of. Assuming the harassment continues (and it often does) then the next step is to serve an N5, pointing out the tenant’s breach of s. 36 of the RTA and the interference with the Landlord’s legal interest under the OHSA to ensure that the workplace be free from harassment. If the tenant stops the behavior, the N5 is “void” but if the behavior continues in the 7 days following service of the N5, or if the first N5 is “void” due to compliance but a second N5 is served on the same tenant within 6 months of the first N5, then an application may be made to the Board for eviction. Remember, the names, times, and full details of the conduct complained of must be set out in the N5 or the notice, and any application based on it, will be dismissed due to vagueness.

The Board always has an overriding discretion to refuse eviction on the grounds that the tenant’s conduct is not “serious” or that it would not be unfair to refuse the eviction. In the past, there were instances where the Board did not consider tenant abuse of Landlord staff to be particularly serious but the OHSA obligations to create a harassment free workplace are a powerful aid to establishing the legislature’s acknowledgement that harassment, even by tenants, is “serious” and that no worker, even a landlord employee, should have to accept exposure to such harassment.

Assistance in developing general harassment policies is available from an OHSA website and through enrollment in FRPO’s *Certified Rental Building Program* (CRB). In tailoring the policies to deal specifically with tenant/resident behaviors, it is prudent to obtain legal advice and training from someone familiar with OHSA harassment policy drafting, implementation, and training. Special care should be taken when dealing with individuals who attribute the manifestation of their abusive conduct to a disability, in which case special rules and policies under the *Human Rights Code* may apply. A link to the OHSA site is:

<http://www.labour.gov.on.ca/english/hs/pubs/wpvh/harassment.php>

This article is written for information purposes and not intended as legal advice. For legal advice to address specific fact situations and consultation relative to your Workplace Harassment Policy contact your legal advisor. This article is submitted by Joe Hoffer, a Lawyer with Cohen Highley LLP: hoffer@cohenhighley.com