Is the Landlord or Tenant Responsible for Maintenance

Such As Snow Shoveling, Lawn Mowing, Gardening, Leaf Raking, Duct Cleaning, Painting, etc.

Who Should Do the Lawn Mowing?
The Landlord or The Tenant?

Property Maintenance is the Legal Responsibility of the Landlord.

In almost all circumstances, the landlord is required to provide property maintenance services such as snow shoveling, lawn mowing, leaf raking, gardening, among other things. Generally, the ***Residential Tenancies Act, 2006***, S.O. 2006, Chapter 17 ("***RTA***") requires that the landlord perform the property maintenance services. Additionally, the law disallows a lease from attempting to alter the legal mandate. Specifically, section 4 of the ***RTA*** says:

> **Provisions conflicting with Act void**
>
> 4 (1) Subject to subsection 12.1 (11) and section 194, a provision in a tenancy agreement that is inconsistent with this Act or the regulations is void.

The duty to perform the property maintenance, being indoor maintenance as well as outdoor maintenance, such as taking care of snow and ice during the winter and then lawn care in the summer, among other things, can be found in section 20 of the ***RTA*** which says:

> **Landlord's responsibility to repair**
>
> 20 (1) A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.

Accordingly, per section 20 of the ***RTA***, which imposes the duty of property maintenance upon the landlord, the landlord is required to perform snow shoveling and lawn mowing, among other things. Furthermore, as section 4 of the ***RTA*** forbids and voids lease provisions that conflict with any other section of the ***RTA***,

with a few exceptions that are inapplicable here, any provision within a lease that attempts to shift the responsibility for snow shoveling or lawn mowing onto the tenant is void. This incapacity to use a clause within a lease or tenancy agreement to shift maintenance responsibilities to the tenant was confirmed in the case of ***Montgomery v. Van***, 2009 ONCA 808 where it was stated:

> [11] Turning to the provision in this case, I begin by observing that, read literally, it addresses the "responsibility" for snow removal, without specifying any services to be provided by the tenant. By providing that tenants are "responsible" for snow removal, the clause clashes with the legislation that places that responsibility squarely on the landlord. Thus, if taken literally, the clause would be inconsistent with the *Act* and void pursuant to s. 16.

> [12] I recognize, however, that the parties and the motion judge did not interpret the provision literally, but understood it to assign the task of snow removal to tenants. As the motion judge put it, the provision "indicates that the Tenant will complete snow removal tasks." I continue the analysis on that basis.

> [13] In order to be effective, a clause that provides that a tenant will provide snow removal services must constitute a contractual obligation severable from the tenancy agreement. The reason such a clause must be able to stand alone as an enforceable contract is because s. 16 of the *Act* voids provisions of tenancy agreements that are inconsistent with the *Act* or Regulations. The *Act* and Regulations make clear that in the landlord and tenant relationship, the landlord is responsible for keeping the common walkways free of snow and ice. Therefore, it cannot be a term of the tenancy that the tenant complete snow removal tasks.

> [14] This does not mean that the landlord cannot contract with the tenant as a service provider to perform snow removal tasks. It does mean, however, that the clause under which the tenant agrees to provide such services, even if included in the same document as the tenancy agreement, must create a severable contractual obligation. The severable contractual obligation, while it cannot transfer the landlord's statutory responsibility to ensure maintenance standards are met, may support the landlord's claim over against the tenant in contract.

> [15] In this case, the provision is inextricable from the tenancy agreement. It does not indicate a definite consideration for the snow removal task separate from the provision of the premises. As well, a consideration of the context leads me to conclude, it is too indefinite to create an autonomous contract for services. The tenant lives in one of several basement apartments of a multi-unit residential complex. The provision vaguely places the task of snow removal "from their walkway and stairway" on tenants jointly. It does not set out specifically what part of the complex's common walkways this tenant agrees to keep clean and does not stipulate on what schedule she should perform the joint obligation. The provision fails to define this individual tenant's task clearly enough to create an enforceable contractual obligation.

> [16] Landlords cannot fulfill their statutory duty to ensure the prescribed maintenance standards are met by provisions as ill-defined as this one. As I see it, this vague provision, even reading it as did the motion judge is nothing more than an impermissible attempt by the landlord to avoid his statutory obligations. I would conclude the provision is not consistent with the *Act* and is void.

It is notable that section 4 of the current ***RTA*** is similar to the section 16 of the ***Tenant Protection Act, 1997***, S.O. 1997, Chapter 24 as was applicable to the matter reviewed in the ***Montgomery*** decision.

Of course, none of this to say that a landlord and tenant are absolutely without a capacity to agree that the person, who is the tenant, will accept duties and responsibilities to perform various property maintenance services; however, what is stated or implied is that any agreement purporting to shift property maintenance

duties away from the landlord must be an agreement that places the tenant into a capacity that is other than 'tenant'; and accordingly, a landlord and tenant may, and often do, enter into a separate contract wherein a property owner, who is the "landlord" within the context of the separate lease agreement, and a contractor, who is the "tenant" within the context of the separate lease agreement, agree that the 'contractor' will perform snow shoveling and lawn mowing, among other things, on behalf of the 'property owner'. The 'legal trick' is that a landlord and tenant are statutorily unable to agree that the tenant will take on property maintenance responsibilities; however, a property owner and a contractor are free to do so.

With all the above said, there does remain some possibility that a tenant may be deemed responsible to perform routine maintenance such as snow shoveling and lawn mowing, among other things, whereas section 33 of the ***RTA*** mandates that the tenant keep the rental unit in a state of cleanliness; however, whether the presence of 'snow' and 'grass' are concerns relating to cleanliness remains undecided by the judiciary.

Lastly, it is important to recognize that the duties and responsibilities for maintenance as between the landlord and tenant may, and likely are, without affect to third party persons who may suffer injury as a result of alleged poor maintenance such as a 'slip and fall' on snow or ice. Whereas the ***Occupier's Liability Act***, R.S.O. 1990, c. O.2 imposes various obligations upon occupiers of premises, and whereas both the owner and the tenant of a premises are defined as occupiers, the issue of liability for injury to a third party is likely a separate, yet connected, matter to the legal question as to who actually has to perform the maintenance upon the rental premise. Cases to review on this point of concern include; ***Miaskowski v. Persaud***, 2015 ONCA 758 and ***Taylor v. Allen***, 2010 ONCA 596, among others.

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