Parents or Other Persons
as Guarantors Upon Lease Agreements

Co-Signor or Guarantor Clauses May Be Unenforceable Unless Properly Drafted

Typical within a Residential Tenancy Agreement is a 'guarantor' clause whereas a person, commonly the parent or parents of a young tenant, agree to guarantee the debts and liabilties of the tenant. The intent and desire of the landlord is to obtain the assurance that the guarantor will pay on behalf of the tenant if the tenant fails to pay rent, or if the tenant causes damage to the rental unit. Regretably, landlords often fail to properly prepare lease contracts as well as fail to properly pursue the claims as against guarantors.

Two common issues where landlords 'drop the ball' occur when:

- The landlord attempts to bring a claim in the Small Claims Court as against the guarantor without first obtaining an Order as against the tenant from the Landlord Tenant Board; and
- The landlord fails to properly draft the lease so as to adequately define the guarantee obligations of the guarantor.

In regards to principles relating to guarantors, a general concept of 'guarantee' is that the person who acts as a guarantor is liable on behalf of the person for whom the guarantee was provided but only if the person for whom the guarantee was provided is firstly liable. The liability of the guarantor co-exists with the liability of the primary debtor and without liability owed by the primary debtor the guarantor is without liability; ***Stamm Investments Limited v. Ryan***, 2015 CanLII 52577 at 21. Stated more clearly using a tenancy example, if Sally rents an apartment from ABC Properties Inc. and ABC Properties Inc. obtains a 'guarantee' from the parents of Sally, the parents of Sally become 'guarantors' who shall pay on behalf of Sally in the event that Sally becomes liable. However, the key word is that Sally must be liable. A landlord, ABC Properties Inc. in this example, must first pursue liability against Sally and be awarded an Order from the Landlord Tenant Board, if indeed the matter is within the jurisdiction of the Landlord Tenant Board. If ABC Properties

Inc. skips the step of pursuing liability against Sally, in the proper forum, then ABC Properties Inc. should fail in any subsequent attempt to seek payment from the parents of Sally. Quite simply, the parents of Sally, as guarantors, cannot pay liability on behalf of Sally for a liability not owed, or at least not yet owed, by Sally.

An additional challenge that a landlord may face is where the landlord failed to adequately define the obligations within the guarantee provided by the guarantors. Where a landlord fails to adequately define the obligation, the landlord will be unable to enforce the guarantee upon the guarantor; ***Times Square v. Shimizu***, 2001 BCCA 448:

> [26] The plaintiff landlord prepared the document. It failed to include language which spelled out the obligation to be assumed by the guarantor. I cannot accept that in the absence of any such language it should be implied that the obligation consists of guaranteeing all the obligations of the tenant. In the final analysis, although Mr. Shimizu, senior, indicated a readiness to assist in the leasehold arrangements by acting as a guarantor, the landlord did not actuate that intention by settling the applicable terms.

Using the example involving Sally and the parents of Sally, assume for this explanation that the lease agreement simply contained signature lines denoting "*Guarantor(s)*" where upon the parents of Sally provided signatures. Surprisingly, it seems that landlords will commonly draft a lease agreement, rather than obtain help from an experienced lawyer, and the landlord wrongfully presumes that including the word "guarantor" sufficiently imposes a blanket obligation upon the guarantor. As the landlord often learns the hard way, the word "*guarantor*" fails to impose a blanket obligation upon the guarantor and some clause, or clauses, within the lease agreement are required to define the specifics of the obligation.