

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Court File No. CV-18-00604410-00CP

B E T W E E N:

CLEMENT CHU, NAHOM ABADI and IDA FABRIGA-CHU

Plaintiff

and

**PARWELL INVESTMENTS INC., BLEEMAN HOLDINGS LIMITED, 650 PARLIAMENT
RESIDENCES LIMITED, 650 PARLIAMENT (LHB) INVESTMENTS LIMITED,
ELECTRICAL SAFETY AUTHORITY, GREATWISE DEVELOPMENTS CORPORATION
and 77 HOWARD (LHB) INVESTMENTS LIMITED**

Defendants

PROCEEDING COMMENCED UNDER THE *CLASS PROCEEDINGS ACT, 1992*

Court File No. CV-18-00605178-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

YULIA TOMASH

Plaintiff

and

**650 PARLIAMENT RESIDENCES LIMITED a.k.a. 650 PARLIAMENT RESIDENCES
INC., 650 PARLIAMENT (LHB) INVESTMENTS LIMITED, PARWELL INVESTMENTS
INC., BLEEMAN HOLDINGS LTD., and WELLESLEY/PARLIAMENT SQUARE LIMITED**

Defendants

PROCEEDING COMMENCED UNDER THE *CLASS PROCEEDINGS ACT, 1992*

FACTUM

PARWELL INVESTMENTS INC., BLEEMAN HOLDINGS LIMITED, 650 PARLIAMENT RESIDENCES LIMITED, 650 PARLIAMENT (LHB) INVESTMENTS LIMITED, GREATWISE DEVELOPMENTS CORPORATION and 77 HOWARD (LHB) INVESTMENTS LIMITED, and WELLESLEY/PARLIAMENT SQUARE LIMITED

May 28, 2019

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Lawyer for the Electrical Safety Authority

INTRODUCTION

1. The defendant owners and managers of 650 Parliament St., Toronto (“650”) bring this motion for an order allowing them to relocate the contents of all apartment units at 650 to have them placed and secured in the garage below 650, to allow for the repairs and restoration of 650 in a timely and expeditious manner.
2. In addition, these defendants seek an order validating service of the motion on the displaced tenants of 650, in accordance with the Affidavit of Service to be provided.

OVERVIEW

3. On August 21, 2018, fire caused extensive damage to 650. The City of Toronto ordered the immediate and complete evacuation of the building. Repairs to the building are ongoing. Restoration experts engaged by these defendants to effect repairs to 650 have determined that removal of the contents from all apartments is necessary in order to cost effectively complete repairs to the building in a timely fashion.
4. During repairs to the building, the property of the tenants of 650 will be relocated to and secured in the basement of 650 where they can be accessed by their owners, inspected, valued and removed if requested after inspection.
5. The estimated completion date of repairs is now the end of September 2019 at the earliest, if the apartment contents are removed. If the contents remain in the apartment units, the estimated completion of repairs is the end of December 2019. The estimated cost

of repairs if the contents were to remain inside the apartments during repairs is \$1,700,000 more than the cost if the contents were all removed.

THE FACTS

6. The damage to 650 is significant and unprecedented. Nathan Normoyle, the person in charge of the repairs to 650, agrees with Toronto Fire Department's Deputy Fire Chief, Jim Jessop, who is quoted in the Toronto Star February 28 2019, "*the catastrophic damage that was done to the electrical system and the repair that has been required is absolutely the worst I have seen for that type of fire.*"

Ref: Affidavit of Nathan Normoyle sworn of February 4, 2019, para. 2.

7. ARS has recommended to the owners of 650 that to facilitate remediation of the apartments, the tenants' contents must be emptied. ARS determined that if the contents remain in the suites, it will impair the ability of ARS to complete the remediation and significantly delay the work.

Ref: Affidavit of Nathan Normoyle, sworn on February 4, 2019, paras. 3, 4.

8. ARS will provide access to the contents to the tenants who wish to inspect the contents, have them appraised, removed, stored or disposed of.

Ref: Affidavit of Nathan Normoyle, sworn on February 4, 2019, para. 5.

9. Specialized Property Evaluation Control Services Limited ("SPECS"), an independent company with expertise in building repairs, was retained by the owners. SPECS agreed with the ARS proposal to remove the contents from the units because:

- a) Keeping the contents in the units increases the security costs for monitoring contents in the units; and
- b) This also increases the time and the costs required to complete the repair work in the units as the labour needed to work around the contents while keeping them safe and secure is increased.

Ref: SPECS report to Bruce A. Thomas dated May 7, 2019, Exhibit C to the affidavit of Nathan Normoyle sworn on May 21, 2019.

10. ARS has determined that the quantity of the contents, in at least 70% of the units, makes it impossible to work around the contents. ARS's targeted completion date of August 30, 2019 was contingent on receiving approval to remove the contents from the building by March 15, 2019. Every day that passes pushes the scheduled completion date one day further.

Ref: Affidavit of Nathan Normoyle, sworn on May 21, 2019, para. 3.

11. To protect the contents during construction repairs, ARS has boxed contents within each unit. It is proposed that contents be relocated to a locker with secured fencing in the parking garage below 650.

Ref: Affidavit of Nathan Normoyle, sworn on May 21, 2019, paras. 7, 8

12. Tenants will be advised when their contents will be moved. Security personnel will be in attendance at all times in the parking garage. The tenants will be able to make arrangements to inspect their contents, and identify those which they wish to keep and those they wish to dispose of. The owners plan to offer compensation to the tenants for damage to their contents and give time to accept the offers of compensation.

Ref: Affidavit of Nathan Normoyle, sworn on May 21, 2019, para. 5

13. ARS will arrange delivery of contents to the place designated by the tenants within the GTA or dispose of those items they do not wish to keep.

Ref: Affidavit of Nathan Normoyle, sworn on May 21, 2019, para. 6.

14. Should the owners not receive court approval to remove contents, the repair and remediation process will be extended by at least 3 months and an added cost of \$1,700,000.00 in construction costs, contents manipulation, additional security, site operations, management, health and safety and administration costs.

Ref: Affidavit of Nathan Normoyle, sworn on May 21, 2019, para. 12

ISSUES

15. There are three issues to be answered:

(1) Does the court have jurisdiction in law or in equity to order the relocation of the contents from the apartment units into the basement garage below 650?

(2) Is the proposal to relocate and store the contents reasonable and fair to the displaced tenants, in the circumstances to enable the owners to meet their obligations to repair the building?

(3) Does service of the motion on the tenants constitute valid service?

THE LAW

(1) The Court has Jurisdiction

16. Section 207 subsection (2) of the *Residential Tenancies Act, 2006* (the “Act”) allows a person entitled to apply under the *Act* but whose claim exceeds the Landlord

Tenant Board's monetary jurisdiction to commence a proceeding in any court of competent jurisdiction. Pursuant to section 204 subsection (1) of the *Act* the Landlord Tenant Board, or the court of competent jurisdiction, may include in an order whatever conditions it considers fair in the circumstances.

Ref: *Residential Tenancies Act*, S.O. 2006, c. 17, ss. 207(2) and 204(1).

17. In circumstances where the claim exceeds the jurisdiction of the Landlord Tenant Board and the jurisdiction of the Small Claims Court, an applicant is entitled to commence his or her proceeding in the Superior Court of Justice. Further, the Ontario Court of Appeal has held that through the operation of section 207(2) of the *Act*, the Superior Court of Justice may make any order the Board could have made in addition to any relief it could grant in a court proceeding, which includes equitable relief.

Ref: *Letestu Estate v Ritlyn Investments Limited*, 2017 ONCA 442 (CanLII) at para 11. *Courts of Justice Act*, R.S.O. 1990, c. C. 43, s. 96(1).

(2) The Proposal is Reasonable and Fair to Enable the Owners to Meet Their Obligations

18. Section 20 of the *Act* imposes an obligation on landlords to maintain the rental units and the residential complex in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
19. While the *Act* does not specifically allocate responsibility for the work required to prepare the unit for work to be performed in order to meet that obligation, a purposive interpretation of the *Act* supports the conclusion that the obligation to do preparatory work must be part of the statutory duty to repair. While landlords are obligated to complete repairs in compliance with their obligations, tenants are obligated not to interfere with those

efforts and are obligated by s. 16 of the *Act* to take reasonable steps to minimize losses to the landlord.

Ref: NT-89197-17-RV 2017 CanLII 70563 (ONLTB).

Hagel v Tenant of Clement Road, Sharbot Lake File Nos EAL-16554, EAL-16630 and EAL-16726, MacKinnon (ONLTB).

20. The City of Toronto authorities, the Toronto Fire Services, have prohibited 650's tenants from entering the residential complex unless properly supervised and protected. The tenants are therefore unable to physically move the contents to enable repairs to the interior of the units.
21. To protect the rights and interests of the tenants, the landlords have put in place procedures to ensure:
- a) The tenants will have an opportunity to view the storage areas, lockers and security system in place in the garage where their contents will be removed;
 - b) The tenants will have access to inspect and make decisions concerning their belongings, which remained in their apartments;
 - c) The tenants can have access to their belongings in storage.

(3) Service of the Motion is Valid

22. Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may make an order for substituted service or, where necessary in the interest of justice, may dispense with service.

Ref: Rule 16.04 of the *Rules of Civil Procedure*

ORDER REQUESTED

23. These defendants therefore ask for the order allowing the relocation of apartment contents into the 650 parking garage, and for validation of service of this motion on the tenants.

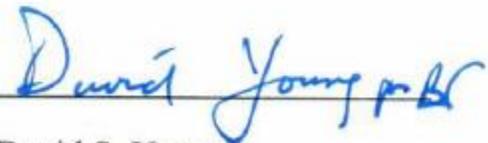
ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of May, 2019.

A handwritten signature in blue ink, appearing to read "Bruce A. Thomas", written over a horizontal line.

Bruce A. Thomas Q.C.

A handwritten signature in blue ink, appearing to read "Ramon V. Andar", written over a horizontal line.

Ramon V. Andar

A handwritten signature in blue ink, appearing to read "David S. Young", written over a horizontal line.

David S. Young

SCHEDULE “A”
LIST OF AUTHORITIES

1. *Letestu Estate v Ritlyn Investments Limited*, 2017 ONCA 442 (CanLII).
Access to case:
<https://www.canlii.org/en/on/onca/doc/2017/2017onca442/2017onca442.html?resultIndex=1>

2. NT-89197-17-RV 2017 CanLII 70563 (ONLTB).
Access to case:
<https://www.canlii.org/en/on/onltb/doc/2017/2017canlii70563/2017canlii70563.html?autocompleteStr=2017%20CanLII%2070563%20&autocompletePos=1>

3. *Hagel v Tenant of Clement Road, Sharbot Lake* File Nos EAL-16554, EAL-16630 and EAL-16726, MacKinnon (ONLTB).
Case enclosed.

CHU *et al.*
Plaintiffs

and

PARWELL INVESTMENTS INC. *et al.*
Defendants

Court File No: CV-18-00604410-00CP

Tomash.
Plaintiff

and

PARWELL INVESTMENTS INC. *et al.*
Defendants

Court File No. CV-18-00605178-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

FACTUM OF THE DEFENDANTS

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Order under Section 226(2)
Residential Tenancies Act, 2006

File Number: EAL-16554
EAL-16630
EAL-16726

In the matter of: Clement Road
Sharbot Lake ON K0H 2P0

Between: Margaret Hagel
Tim Hagel

and

TENANT

I hereby certify this is a true copy of
 Order Direction

(Signature of Staff Member)

Landlords

Dated this JUN 16 2009

Tenant

Landlord and Tenant Board

Margaret Hagel and Tim Hagel (the 'Landlords') applied for an order to review a Provincial Work Order.

This application was heard in Kingston on June 3, 2009. The Landlords, represented by Michael Clifflen, and the Tenant, represented by William Florence, attended the hearing.

It came to the attention of the Board that the Landlords have filed two additional applications with the Board. The second application, EAL-16630, was initially scheduled for June 10, 2009 and the third, EAL-16726, for June 24, 2009. At the hearing the Tenant's representative indicated that the Tenant wanted to file applications with the Board. Considering the fact that one of the applications filed by the Landlords is for arrears of rent and termination of tenancy, the Tenant was provided the option to raise issues under section 82 of the *Residential Tenancies Act* at a re-scheduled hearing and disclosure was ordered to be completed by June 5, 2009 with the agreement of the parties.

In addition to the request for a review of a Provincial Work Order, the other two Landlord applications were an L-1 application applying for an order to terminate the tenancy and evict the Tenant and to collect the arrears of rent; the other was a Landlord application for damages caused in the rental unit by the Tenant.

These applications were heard together, in Kingston, on June 24, 2009. The Landlords, and their representative, Michael Clifflen (MC), and (the 'Tenant'), and her representative, William Florence, attended the hearing. There were several witnesses brought by the Landlord and one witness brought by the Tenant.

After a very lengthy hearing on all of the issues, and with consideration of all of the issues contained in these three applications (review of a Provincial Work Order, termination of tenancy and payment for damaging the rental unit and the termination of tenancy for non-payment of rent and collection of the arrears of rent), and consideration of the all of the evidence provided by the parties, I make the following determinations.

Determinations:

1. Both parties want the work, as outlined in the work order, done, and done within a reasonable time period. Consequently I shall extend the deadline to have this work completed.
2. There are no arrears of rent at this point in time, and the Tenant had couriered her rent payment to the Landlord in a timely fashion.
3. The Tenant did not cause any damage in the rental unit. The hole in the ceiling was enlarged and it appears that it was enlarged by the Fire Marshall. The Landlord provided no evidence that would lead one to believe that the Tenant enlarged this hole.
4. As per the Board's guidelines on costs, there was no evidence that would induce me to award costs to either party.
5. The issues around maintenance and repair are not the fault of the Tenant, and therefore the responsibility becomes the Landlord's responsibility to repair and maintain and to move furnishings and other obstacles in the way of carrying out these repairs.

It is ordered that:

1. The Provincial Work Order is varied in that the compliance period noted in the work order is to begin on July 1, 2009. The remainder of the work order is confirmed and in effect.
2. The Landlord's L-1 Application for termination of the tenancy for non-payment of rent is dismissed.
3. The Landlord's L-2 Application for termination of tenancy and for payment of \$1,000.00 in damages is also dismissed.
4. The Tenant shall abide by properly issued notices to enter to do these repairs, and shall also not impede, in any way, the reasonable progress of this work.

June 26, 2009
Date Issued


Wayne MacKinnon
Member, Landlord and Tenant Board

Eastern Region
4th floor, 255 Albert Street
Ottawa ON K1P 6A9

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.