



LAWYERS



The Purchase and Sale of a Residential Revenue Property

April 8, 2015

Discussion Outline

- Offer to Purchase
- Legislative Framework
 - *The Residential Tenancies Act*
- Vendor's right to terminate
- Closing Adjustments and Related Issues
 - Getting Information
 - Security Deposit
 - Rent Adjustments
 - Rent Arrears
 - Interest on Security Deposits
- Transferring Possession and Tenant Files

- Is the Offer already firm?
 - Vacant or subject to existing tenancies

- Negotiating the Offer
 - Conditional on review of tenancy agreements and tenant files
 - Representation that information regarding tenancy agreements, rents and security deposits are complete and accurate
 - Dealing with tenant receivables (unpaid rent)
 - Closing deliverable – assignment of tenancy agreements, bill of sale, etc.

- *The Residential Tenancies Act*

- section 38:

“(2) Subject to section 39, a new landlord has the same rights and is subject to the same liabilities and obligations, as the former landlord pursuant to this Act with respect to all subsisting tenancy agreements and all security deposits held in trust by the former landlord.”

“(3) Every new landlord is deemed to have notice of all subsisting tenancy agreements with respect to which the new landlord becomes the landlord,”

“(5) Every new landlord is substituted as the landlord in all subsisting tenancy agreements with respect to which the new landlord becomes the landlord to the same extent as if each of the tenancy agreements had been entered into with the tenant by the new landlord.”

- *The Residential Tenancies Act*
 - Hearing officer can relieve the new landlord from existing liabilities and obligations
 - section 39:

“(2) A hearing officer may order that the former landlord remains subject to all or any of the existing liabilities and obligations, and relieve the new landlord from those liabilities and obligations, if the hearing officer is satisfied that it would be unjust to make the new landlord subject to those existing liabilities and obligations.”

- Vendor's Right to Terminate

- Very limited right to terminate
- section 60:

“(6) A landlord may end a periodic tenancy respecting a rental unit if:

- (a) the landlord enters into an agreement in good faith to sell the rental unit; and
- (b) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member or friend of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and an individual owning voting shares in the corporation, or a close family member or friend of that individual, intends in good faith to occupy the rental unit.

- Section 62 of the Act allows the tenant to apply for compensation against the landlord or the purchaser

- Getting Information for Closing
 - What are the rents?
 - Are there any security deposits?
 - Remember the deeming provision at section 38(3)
 - Get the vendor to certify or represent that the information is complete and accurate

- Rent Adjustments
 - When are the rents payable – 1st of the month?
 - Closing on the 1st – Dealing with rent cheques

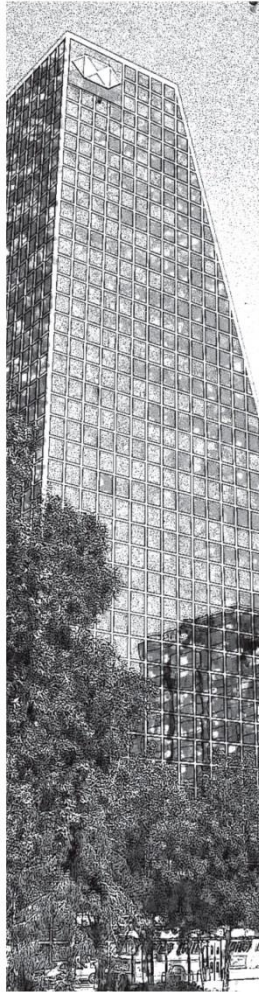
- Dealing with Rent Arrears
 - What does the Offer say?
 - Is the purchaser buying the receivable?
 - New landlord's right to terminate on the basis of unpaid rent

- Security Deposits
 - New landlord remains liable to the tenant for security deposits held by the former landlord (section 38(2))
 - How do you know if you have them all?
 - Adjust or pay?
 - Advise purchaser of obligation to invest or hold security deposits in a trust account (sections 28 and 29)
 - Adjustment – credit the purchaser with existing security deposits
 - What about interest?
 - *section 5 - The Residential Tenancies Regulations, 2007*

- section 38(6):

“(6) On the day that the new landlord becomes the landlord, the former landlord shall immediately:

- (a) deliver to the new landlord the copies of all written tenancy agreements entered into by the former landlord with respect to which the new landlord is substituted as the landlord; and
- (b) subject to section 39, transfer to the new landlord:
 - (i) all security deposits held in trust by the former landlord pursuant to section 28 and all accrued interest earned on those security deposits pursuant to section 29; and
 - (ii) all records of the former landlord with respect to those security deposits and the accrued interest earned on those security deposits.



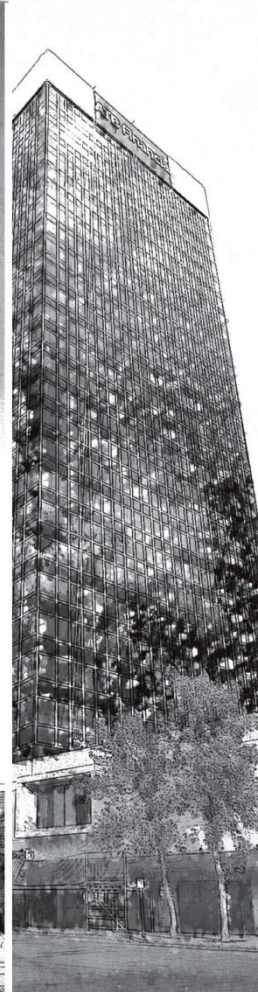
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