



**Edmonton Community
Legal Centre**

**PBLA Stakeholders' Round Table
Calgary, Alberta**

November 5, 2009

Presenter: Sarah Eadie, Staff Lawyer

Challenge:

- How to improve communication between clinics, and between staff and volunteers to 1) reduce duplication of efforts and 2) increase knowledge of relevant law and policy?
- How to effectively provide CLE (continuing legal education) to our volunteers about poverty law issues
- How to contribute to developing a body of poverty law jurisprudence, and a community of interested parties, in Alberta?

The **Access Review:**
Developments in Poverty Law in Alberta

(working title)

Expected first publication:
December, 2009

Contents

- Recent poverty law jurisprudence
- Recent policy development
- Seminal cases / tips
- Contributor profile
- Resources
- Subscription information

Contributors

- Everyone!
- Staff lawyers
- Outreach / social workers
- Volunteers / pro bono lawyers with expertise in appropriate practice areas
- Interested professionals who don't volunteer yet

Intended Audience

- Clinic staff
- Clinic volunteers
- Alberta Legal community (lawyers, judiciary)
- Not for profit staff working with low-income population: Legal Aid, etc.
- Help us build our readership!

Format

- Free, electronic distribution
- HTML format with hyperlinks
- Printed archive kept on site
- Access Review email address (TBA) for submissions / subscription

Some Highlights from Issue 1

Boardwalk Rental Communities v. Ravine 2009 ABQB 534
Veit J., rev'g RTDRS

**Residential Tenancies Law – Landlord's obligation of peaceful enjoyment
– Damages for bedbug infestation**

Tenant experienced severe bedbug infestation, left premises and brought claim for rent abatement. RTDRS found landlord was not negligent in dealing with infestation, and did not commit "substantial breach" but awarded tenant complete rent abatement for time period tenant out of premises.

On appeal to QB, damage award upheld. A bedbug infestation which, on a finding of fact, makes it impossible to live in the premises, is a breach of the landlord's obligation to provide peaceful enjoyment. Also held (in obiter): only a serious case of bedbug infestation that cannot (or is not) dealt with promptly will justify termination of tenancy.

Counsel: T. Patterson (for Respondent Tenant)

(case may be appealed - name withheld for now, Alta. Prov. Ct.)

Residential Tenancies Law – what constitutes lease

A group of temporary foreign workers was recruited in the Philippines to work in the Canadian restaurant service industry. On the night before leaving for Canada, and while the recruiter still had their airline tickets and passports, the workers were given a series of documents to read and sign: a “Lease Agreement,” an “Indemnification Agreement,” an “Authorized Payroll Deduction,” and a “Declaration and Undertaking.” The documents purported to bind the workers to a two year residential tenancies lease with an Alberta registered company closely associated with the recruiter. None of the documents identified an address for rental or the rent amount. About 4 months after arriving in Canada, the workers found alternate accommodations and moved. The Canadian company sued them for the remainder of the rent under the 2 year term.

Held: The documents the workers signed, even when considered together, did not constitute a valid lease. Further, even if there was a lease and the tenants breached it, the landlord failed to mitigate its damages by not trying to rent the property at a substantial loss.

Counsel: T. Patterson (for the Defendant tenants)

Beaverbone v. Sacco, 2009 ABQB 529 Veit J., rev'g RTDRS

Residential Tenancies Law – Limit of jurisdiction of RTDRS – Standard of Review on Appeal

Tenants evicted by Edmonton Police Service, who inserted themselves into the role of the landlord. At the RTDRS, the tenancy dispute officer refused to transfer the matter to provincial court for hearing of human rights and Charter issues and granted order for possession.

On appeal to QB, held: it was an error of law to fail to transfer matter once human rights and *Charter* issues were raised. The court declined to decide the *Charter* and human rights issues (which were argued fully) and referred the matter back to the RTDRS for Respondents' elections as per *RTDRS Regulation*.

Further, on the standard of review, the Court confirmed that if a Tenancy Dispute Officer makes a “palpable error” of fact, he has made an error of law reviewable on appeal.

Counsel: S. Eadie (for Appellant tenants)

Capital Region Housing Corporation v. Ashley,
September 29, 2009, Alta. Prov. Ct. (unreported)

Residential Tenancies Law – Human Rights Law – Hoarding as disability, accommodation required

Landlord applied for order for possession on basis rental suite was not reasonably clean and constituted fire hazard. Tenant presented medical evidence she suffered from psychological condition which caused her to exhibit hoarding behaviours.

Held: Hoarding constitutes a disability for the purposes of Human Rights legislation in Alberta, and the landlord is required to accommodate up to the point of undue hardship. Accommodation required that she not be held to the same standard of cleanliness as persons without her disability, notwithstanding term in lease. Application adjourned sine die with conditions on the tenant, to allow the landlord to inspect the premises and ensure there were no ongoing fire safety issues.

Counsel: S. Eadie (for the Defendant Tenant)

McDowell-McCullough (Re), September 23, 2009, QB (unreported)

Bankruptcy – property exempt from distribution – extenuating circumstances

A discharged first time bankrupt with severe disabilities applied for, and received, additional income tax refunds (disability amounts) for two years during which she had been in bankruptcy. The trustee brought an application for advice and direction.

Held: The bankrupt could keep the refunds. A small amount of the money had not devolved on the bankrupt prior to discharge. Further, the Superintendent of Bankruptcy had just announced that they did not consider disability tax refunds to be “income.”

Counsel: S. Eadie (for the bankrupt)

What we need from you:

- Email addresses
- Contributions: please submit caselaw or policy developments for consideration for publication. For this issue only, submit to: seadie@eclc.ca.