



## A Tenant's Right to Enjoyment under a Lease: Landlords Be Careful!

In *1944949 Ontario Inc. (c.o.b. OMG On The Park) (the "Tenant") v. 2513000 Ontario Ltd. [2019]* (the "Landlord"), the Landlord leased space to the Tenant, who operated a bakery/café business, known as OMG On The Park, on the premises. In December 2017, when the HVAC at the location in question broke down, the parties could not agree on whose responsibility it was to repair the system.

Subsequently, the Tenant found a new location to lease and approached the court for permission to have its lease terminated in June 2018. In considering the lease, the court noted expressly that "Repair and Maintenance of the in-suite HVAC unit shall be paid for by the Landlord throughout the Lease Term." As well, there was a complementary requirement in Schedule "B" to the lease that required the Landlord to "Provide the HVAC system in good working order."

Due to these cut and dried provisions, the court found that under the terms of the lease, repairing and maintaining the HVAC system in good working order was clearly the responsibility of the Landlord, and that the Landlord was in breach of the lease.

The court further found that the Landlord, not having repaired and maintained the HVAC, was in breach of the lease, which led to a further breach of the Tenant's quiet enjoyment and fitness of the premises as an operational café. The right to the quiet enjoyment of a premises by a tenant is essentially a fundamental right that tenants have in the exclusive use and possession of the premises being leased. If a landlord takes any action to interfere with this right, then the landlord may be in breach of the lease.

The court terminated the lease and directed a trial on the issue of damages owed to the Tenant due to the Landlord's alleged breach of its obligations. The Landlord then appealed the decision of the lower court, arguing that the lease had been interpreted erroneously, in part because the court did not admit into evidence an affidavit of the Landlord that included an outline of events and other materials that might have altered the court's interpretation of the lease. The appeal court found that there was nothing in the affidavit that would have altered the substantive lease issues, that the court's interpretation of the lease was reasonable, and decided in favour of the Tenant.



# A Tenant's Right to Enjoyment under a Lease: Landlords Be Careful!

Continued.../

For landlords, this case clearly highlights the importance of ensuring that all of the listed obligations of the landlord under a lease are fulfilled. By ensuring compliance, landlords can avoid breaching their tenant's right to enjoyment under the lease.

