



RESIDENTIAL TENANCIES:

Landlord Property Maintenance Obligations and Avoiding Negligence

In *Youssef v. Redi-Mix Limited*, 2018 ONSC 6409, the Defendant tenant rented a rural residential property that included a farm for its donkeys. The property was fenced, separating it from the roads running along its eastern, northern and western borders. Late one night, in September 2009, the Plaintiff happened to be motorcycling along the road adjacent to the northern side of the property and was seriously injured in an accident when he hit a donkey that had escaped from the farm. Police visiting the scene determined the donkey had escaped through an unlocked metal gate that could be opened by hand.

The now disabled Plaintiff, Amir Youssef, sued both the tenant and the landlord; the landlord brought a summary judgment motion seeking a dismissal of the Plaintiff's claim. In its summary judgment motion, the landlord argued that it had "no duty to monitor the activities of its tenant" and that it had met its obligations with respect to fencing. It was further argued that, while the ordinary rules of negligence that determine the issue of liability of owners of animals apply, such rules ought not to be applied to the non-owner of a domestic animal. Accordingly, Youssef sought a dismissal of the summary judgment motion, together with a judgment in its favour against the landlord for liability.

The Court determined that the ordinary rules of negligence applied along with the *Residential Tenancies Act* 2006, S.O. 2006, c. 17 ("*RTA*"), Section 20(1), which states:

"A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards."

Moreover, a landlord's obligation with respect to fences is specifically addressed in the *RTA*, section 8 of O. Reg. 517/06, which states:

"Retaining walls, guards and fences in exterior common areas shall be maintained in a structurally sound condition and free from hazards."



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The Court found the tenant negligent since it had failed to ensure the donkeys could not escape onto the road. It further found the landlord to be negligent as it had leased the property to a tenant, knowing it had donkeys but without having the requisite policies and procedures in place to inspect or repair the fence to prevent the animals from escaping onto the adjacent roads. Consistent with the *RTA* and its regulations, it is the owner's obligation to maintain fences in a structurally sound condition. Judgment was accordingly granted in favour of the plaintiff Youssef against the landlord. Further appeals of this judgment to the Ontario Court of Appeal and Supreme Court of Canada were dismissed.

This case provides further clarification as to the obligations of residential landlords regarding the maintenance of rented properties. In this instance, the landlord purchased the property with the fences in place and, although it knew that the tenant kept domestic animals at the property, it had no policy or procedure in place to inspect or repair the fences, even though it knew of their obligation to do so. At De Francesca Law, we firmly believe that to avoid a potential claim for negligence, all residential landlords should have written policies and procedures in place to address maintenance of the demised premises. Notably, should there be anything unique with the property or its use that may increase landlord liability, the landlord should undertake additional proactive measures to ensure that the property is maintained in a structurally sound condition and that it is free from hazards.

