

The Eviction Process w/ Mark McMackin – Ricketts, Harris LLP Presented November 2010 Exclusively to the Members of REIN™

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“THE BOOT”

“Making the Best of the Eviction Process”

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Mark R. McMackin

- Partner at Ricketts Harris LLP practicing in the Commercial Real Estate and Corporate Law. His experience spans many aspects of commercial real estate law including financings and refinancings, condominium, design build and subdivision development, co-ownerships, co-operative, life lease developments, acquisitions and dispositions as well as industrial, office and retail leasing. Has acted for financial institutions, real estate developers and builders as well as landlords and tenants of both commercial and residential properties. In addition since 1998 Mark's range of legal interest has included the conversion of co-operatives, co-ownerships, industrial and residential apartment properties throughout Ontario. Mark on occasion has acted as a consultant for condominium matters and conversions in other Canadian Provinces and the Middle East. Mark has also a keen interest in elderly housing and condominium development for the aging population. Mark has been asked as the only non-governmental individual recently to sit on the construction of regulations for the newly proclaimed Ontario Retirement Homes Act.
- LL.B., Dalhousie Law School, LL.B University of Southampton
- Queens University BA (Hons)
- Called to the Ontario Bar, 1997

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Additional Information

- Recent Contributing Articles
 - John Jaffey, “Dubai: the new frontier for Canadian business lawyers,” The Lawyers Weekly, March 31, 2006.
 - Robert Todd, “Real estate fraud not diminishing,” Law Times April 7, 2008.
 - Gail Swanson, “Co-ownership offers suite deals,” Toronto Star, August 23, 2008.
 - Co-Ownerships “Real Estate Broker is Working Outside the Box,” Now Magazine, September 2008.
 - Condo Conversions Feature, Canadian Real Estate Magazine, April 2010
 - Condo Conversions Feature, Canadian Real Estate Magazine, May 2010
 - Condo Conversions Feature, Canadian Real Estate Magazine, June 2010
- Publications
 - Mark R. McMackin, “Welcome to Your Brand New 70 Year Old Condominium: Overcoming the Challenges of Condominium Conversions” The Canadian Institute of Condominium Law

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Additional Information

- Recent Contributing Articles
- Useful Links
 - www.condoconversions.ca
 - www.rickettsharris.com
 - www.reinlaw.ca
 - Landlord Self Help Line 416-504-5190
 - Info@landlordself-help.com

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Does Your Tenant have a Ph.D in the RTA?

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- **Key Points to Remember**
- Due Diligence: Ontario and California have the Toughest Tenancy Legislation in North America.
 - Treat every new Tenant Prospect as “the Mythical Professional Tenant”
 - Don’t let vacancy pressure rule the day when selecting a Tenant
 - CYA: Always use written correspondence in communicating with your Tenant (try to ensure that they have an e-mail that you can directly correspond with them)
 - Use a Strong Lease that is prepared by a professional who understands the downside of the consequences of a poorly written lease (Dye and Durham means rip and burn’em)
 - Ensure that you use the proper Residential Tenancy Forms as prescribed if you should have to face a defaulting cotenant

Slide 5

RH1 I like both of these but you should probably just use one.
Ricketts Harris LLP, 9/23/2010

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Key Points to Remember

- The Law of Distress:
 - a. Landlord Remedies: When to effectively use Distress as a Landlord Remedy
 - b. What is a "Kelly Douglas Termination"

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• Giving Notice S. 43

- Identify rental unit
- State the termination date
- Sign it or have your agent sign it
- Set out the reason
- Inform the tenant that you will seek an order if they do not leave
- Inform the tenant that they are entitled to challenge the order

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• Landlord Gives Notice: Basic Period

- Daily or weekly tenancy S. 44(1)
 - 28 days
- Monthly tenancy S. 44(2)
 - 60 days
- Yearly tenancy
 - 60 days
- Fixed Term
 - 60 days

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• Landlord Gives Notice: Non-Payment of Rent

- May give notice immediately
- Notice is effective 7 days from service for daily and weekly tenancies; 14 days for all other tenancies
- Notice is void if tenant pays the outstanding amount before the landlord applies for a termination order.

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• Landlord Gives Notice: For Cause

- Income Misrepresentation S.60
 - 20 days notice
- Illegal activity S.61
 - 10 days for drugs, 20 days for all other acts
- Causing damage S. 63
 - 20 days with 7 days to fix damage, or 10 days if damage is wilful
- Interference with other tenants (aka reasonable enjoyment) S. 64
 - 20 days with 7 days to change behaviour, or 10 days if building has not more than three tenants (S. 65)

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• Landlord Gives Notice: For Cause (con't)

- Tenant's actions impair safety S. 66
 - 10 days notice
- Too many occupants S. 67
 - 20 days with 7 to change behaviour
- Repeated contraventions S. 68
 - If within 6 months of fixing a problem under Ss. 62, 64 or 67 and avoiding eviction, the tenant contravenes Ss. 60, 61, 62, 64 or 67

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- **Landlord Gives Notice: Personal Use of Property S. 48**
 - The landlord is entitled to terminate a tenancy if the unit is required in good faith by any of the following groups:
 - the landlord;
 - the landlord's spouse;
 - a child or parent of the landlord or the landlord's spouse; or
 - a person who provides care services for any of the above people
 - Notice is 60 days

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- **Landlord Gives Notice: Purchaser Use of Property S. 49**
 - For buildings with **not more than 3 units**, if the landlord enters into agreement in good faith to sell the building, and the new landlord intends in good faith to occupy unit S. 49
 - The landlord is entitled to terminate a tenancy if the unit is required in good faith by the purchaser or any of the following groups:
 - the purchaser;
 - the purchaser's spouse;
 - a child or parent of the purchaser or the purchaser's spouse; or
 - a person who provides care services for any of the above people
 - Notice is 60 days

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- **Landlord Gives Notice: Demolition, Conversion, or Renovation S. 50**
 - The landlord can terminate the tenancy to perform any of the following actions:
 - demolish it;
 - convert it to use for a purpose other than residential premises; or
 - do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit.
 - Notice is 120 days and the tenant gets right of first refusal on the unit or three months compensation (compensation only applies in the case of renovations if the property has more than 5 rental units Ss. 52-53)
 - Tenant wishing to have a right of first refusal must give written notice before vacating the unit S.53(2)

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- **Landlord Gives Notice: Conversion to Condominium S. 51**
 - Tenant must be notified of landlord's intention to convert and of tenant rights
 - Notice cannot be given pursuant to S. 48 & 49
 - This does not apply unless some units were rented before July 10, 1986
 - Tenant can stay in unit even if sold to third party
 - Tenant gets 72 hours to match any offer to purchase
 - This does not apply to offers to purchase more than one unit

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War Stories From the Cobblers