

For Immediate Release

Major Legal Victory at the Court of Appeal for Ontario Renters Facing Own-Use Evictions

Toronto, ON – November 30th, 2023 – The Advocacy Centre for Tenants Ontario has secured a major legal victory at the Court of Appeal. The judgement released this week will have positive impact for tenants across Ontario in seeking justice if they are the victims of bad faith, own-use evictions by their landlord. In *Elkins v. Van Wissen*, 2023 ONCA 789 (Gillese, Benotto and Copeland JJ.A.), the Court found that the Landlord and Tenant Board (“LTB”) had erred in dismissing the tenant application submitted by tenants who were trying to assert that their landlord wrongfully evicted them and in bad faith. The Court of Appeal ordered that the matter be sent back to the LTB for a new hearing.

Bad faith evictions are on the rise in Ontario. Many tenants are pushed out of their homes so that the landlord can charge higher rents to someone new, a process that is incentivized by an Ontario-wide policy of vacancy decontrol. “Too many tenants across Ontario lose their homes to bad faith evictions. The Landlord and Tenant Board needs to do more to stop bad faith evictions from happening, and needs to take tenants seriously when they sue landlords for bad faith evictions,” says Ryan Hardy, Staff Lawyer with ACTO and lead counsel on the appeal case.

Tenants deserve a fair process for seeking justice if evicted in bad faith

In allowing the appeal and sending the T5 back to the LTB for redetermination, the Court of Appeal found that:

- The LTB’s assessment of whether a landlord gave a notice of termination in bad faith must include not just the time the notice is given, but an assessment of all relevant evidence.
- in the context of T5 applications involving N12s for purchasers’ own use, the LTB must consider the purchasers’ good faith, not only the good faith of the landlord who gave the notice, and having assessed the good faith of each, the LTB must consider what orders to make in respect of the landlord and purchaser; and,
- the LTB has a duty to give reasons that meaningfully account for the central issues and respond to the parties’ submissions, so as to permit meaningful appellate review. If the LTB fails to grapple with evidence and submissions in its reasons, that may prevent review and be an error of law.

The LTB has a duty to uphold the law and prevent tenants from becoming the victims of a bad faith eviction. Failing that, they must then take seriously tenant applications to sue a landlord for evicting them in bad faith. *Elkins v. Van Wissen* “is a significant victory, not only for our client, but for tenants across Ontario seeking justice after being evicted in bad faith,” adds Hardy.

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About Advocacy Centre for Tenants Ontario

The Advocacy Centre for Tenants Ontario (ACTO) is a specialty community legal clinic with a province-wide mandate to advance and protect the interests of tenants living with lower incomes. ACTO specializes in housing issues related to tenants. ACTO also provides legal information and assistance to self-represented tenants appearing at the Landlord and Tenant Board through the Tenant Duty Counsel Program (TDCP).

For more information, including interviews with representatives, please contact:

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