

Can a real estate agent be liable for a tenant's damages? (Carola v. VIP Reality Inc.)

Damages | Litigation | Litigation & Dispute Resolution | Tenant

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In addition to acting on purchases and sales, real estate agents may be engaged to find tenants for their clients. The services provided in this regard can include listing the rental property and vetting potential tenants. If a tenant found through the listing process causes damage to the client's property, can the agent be liable to the client? In *Carola v. VIP Reality Inc.* 2025 ONSC 440 (CanLII), the Ontario Superior Court of Justice left this possibility open.

The plaintiff in the case was the owner of a property in Cumberland, Ontario. The defendants were an agent and a brokerage who represented the plaintiff in listing the property for rent.

The agent did not meet with the prospective tenants herself, nor did she attend with them at the property for showings. She provided the plaintiff with a family photograph of the tenants, some bank statements, and advised that all necessary background checks had been completed. She did not provide copies of the tenants' rental application or their identification. She allegedly told the plaintiff that she would be "lucky" to have these individuals as tenants.

In August 2020, almost immediately after the property was rented to the tenants, issues arose. The tenants broke a lock and cut the wires to the building's security system. Police were called. In November 2020, the plaintiff began eviction procedures with the Landlord and Tenant Board (LTB).

The plaintiff subsequently discovered that the tenants had provided fraudulent identification when they entered into the lease agreement. One of the tenants had a lengthy criminal record, including for growing marijuana in rental properties. In March 2021, the tenants were arrested and charged with fraud and forgery.

In July 2021, the tenants vacated the property. The plaintiff claimed that she discovered the extent of physical damage when she accessed the property July 2021. The interior of the home was destroyed, it required major repairs, and the damage was so severe that the residence was not liveable or rentable.

In June 2023, the plaintiff sued the agent and brokerage for damages in the amount of \$199,902.

The defendants brought a motion under [Rule 21.01](#) of the Ontario [Rules of Civil Procedure](#) to dismiss the action on the basis that the subject matter of the claim fell within the exclusive jurisdiction of the LTB, that it did not disclose a reasonable cause of action, and/or was statute-barred under the Ontario [Limitations Act, 2002](#) since it was commenced more than two years after the claim was or ought to have been discovered.

For the purposes of a motion under Rule 21.01, the pleadings must be given a generous interpretation and the court must take all facts pleaded in the statement of claim as true, unless they are patently unprovable.

The motion judge rejected the argument that the court did not have jurisdiction for the claim. While the LTB has jurisdiction over residential tenancies and occupancy issues, the plaintiff's claim against the agent was not about the terms of the lease *per se*. The tenants were not defendants. The essential allegation in the claim was that the defendants were negligent in failing to adequately vet and identify the tenants *before* the plaintiff entered into the lease agreement. In the motion judge's view, the alleged negligence of a real estate agent is not a matter within the LTB's exclusive jurisdiction.

In addition, the monetary jurisdiction of the LTB is limited to the greater of \$10,000 while the monetary jurisdiction of the Small Claims Court is currently \$35,000. The damages claimed by the plaintiff far exceeded the amounts within the LTB's jurisdiction and she was therefore entitled to commence her proceeding in the

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Superior Court: *Letestu Estate v. Ritlyn Investments Limited*, 2017 ONCA 442 (CanLII) at paragraph 11.

The defendants further argued that the statement of claim failed to adequately plead a cause of action in negligence against them, which requires: (i) the alleged duty of care owed by the defendant to the plaintiff; (ii) that the defendant breached the alleged duty of care; and (iii) that damage resulted from the breach: *Moore v. Habib-Allah*, 2022 ONSC 5290 (CanLII) at paragraph 37. While the defendants agreed that the plaintiff pleaded that a duty of care was owed, they argued that the statement of claim did not plead facts to show that they failed to meet the standard of care in the circumstances.

This too was rejected by the motion judge. The statement of claim did allege that the defendants breached their duty of care by failing to take reasonable steps to ensure the tenants were trustworthy, solvent, and had no prior history of property damage or criminal activity. Based on a generous reading of the pleadings and facts deemed to be true for the purposes of the motion, this was sufficient.

Lastly, the defendants argued the claim was statute-barred and that it had been well more than two years from the time that the plaintiff first discovered the damage caused by the tenants. In response, the plaintiff argued that she did not know the extent of the damages until she accessed the property after the tenants vacated in July 2021. Only then did it become apparent that a legal proceeding against the defendants would be appropriate.

The motion judge declined to make a determination that the action was statute-barred based on the pleadings alone. The damage before July 2021 was allegedly minor. As noted in the decision, section 5(1)(a)(iv) of the *Limitations Act, 2002* contains a discoverability element that is intended “to discourage parties from resorting to litigation at the drop of a hat.” Whether a legal proceeding would have been appropriate given the nature of the damages before July 2021 was not an issue that could be addressed on a pleadings motion where the facts pleaded were assumed to be true.

The defendants' motion was therefore **dismissed**, and the action will continue in the ordinary course. The decision signals the issues that may arise if a client is able to argue that appropriate steps were not taken when assessing potential tenants. Whether or not the agent and brokerage will be found liable for damages caused by the tenant in this case has yet to be determined. A PDF version is available for download [here](#).

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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