

Richmond News

All eyes on Amacon appeal: Tenants rights groups worry a favourable decision could set precedent

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Page: 3
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Tenants facing eviction from a Vancouver highrise are holding their breath, as they await the outcome of an Appeal Court hearing Wednesday involving Richmond Gardens tenants and their landlord.

Amacon Property Management Services is appealing a B.C. Supreme Court decision that overturned a Residential Tenancy Office adjudication that upheld the eviction of more than two dozen Richmond Gardens tenants.

If Amacon wins its appeal, the original RTO decision stands, and the 18 tenants still fighting eviction will have to leave.

The court reserved its decision Wednesday.

The case is an important one for renters throughout the Lower Mainland, said Martha Lewis, executive director of the Tenant Resource and Advisory Centre (TRAC).

"If this case goes Amacon's way, we're concerned it's going to be easy for other landlords to do what Amacon is doing," said Lewis.

In fact, tenants at Bay Towers at 1461 Harwood Street in Vancouver say they are in the same boat as Richmond Gardens tenants.

When they refused to accept a voluntary rent increases far in excess of the annual rent caps set by the province, they say their landlord, Hollyburn Properties Ltd., started sending out eviction notices.

The evictions were overturned by an RTO arbitrator and appealed to the Supreme Court by Hollyburn.

Bay Towers tenants are therefore closely watching what happens in the Amacon appeal, and were in court Wednesday to lend their support to Richmond Gardens tenants.

"We want to support Richmond Gardens," said Janine Fuller. "We wouldn't have the ruling that we have if it wasn't for the work they have done."

Amacon bought the 36-year-old, 240-unit Richmond Gardens on Gilbert Road in 2005, and started issuing eviction notices at the end of September 2005.

Tenants appealed the evictions to the Residential Tenancy Office. In February 2006, RTO adjudicator M.A. Morrow agreed that the scope of the \$3 million worth of renovations Amacon planned to undertake did not require that the suites be vacant. But she

agreed that it would be more practical and more economical for Amacon if they were and allowed the evictions.

In May 2006, B.C. Supreme Court Justice Harry Slade overturned Morrow's decision, calling it "patently unreasonable" and based on "irrelevant considerations."

David Church, Amacon's lawyer, argued Wednesday that Slade erred in his definitions of "patently unreasonable."

Were it not in the arbitrator's purview to take into consideration practical matters, like the added cost of doing renovations while tenants are in their suites, Church argued "absurd" situations could arise in which nothing short of demolition could require suites to be vacant when a landlord renovated.

"Economics is a relevant consideration," he said.

Lawyer Louise Kim, who represents the Richmond Gardens tenants still fighting the evictions, pointed out that there is a provision within the Residential Tenancy Act that allows landlords to apply to increase rents above the annual rent cap to provide needed upgrades -- something Amacon chose not to do.

Kim argued that Morrow's decision had taken into consideration irrelevant matters. For example, Morrow wrote that, given the current housing market, Amacon would have little difficulty renting out renovated suites at a higher rate to new tenants -- something Kim said is irrelevant to whether or not the suites needed to be vacant in order to carry out the work.

Lewis fears what may happen to renters if the Appeal Court overturns the lower court decision.

"Landlords can get higher rent because there's a big demand and less supply (of rental property)," she said. "So what they are doing is evicting current tenants, doing some upgrades -- sometimes cosmetic renovations -- and then they can bring in new tenants with higher incomes who can pay the higher rents."

"The Residential Tenancy Act is the only thing that can protect tenants."

Bay Towers tenants have formed a new group called Renters At Risk, which is calling on the B.C. government to tighten up the RTA to better protect renters.