

Real Estate

Too darn hot: mandating max residential temperatures

By Ray Mikkola



Ray Mikkola

(September 14, 2018, 9:03 AM EDT) -- Residential landlords in Ontario are required to ensure that all habitable areas of a residence are maintained at a temperature of at least 20 degrees Celsius, pursuant to section 15 (1) of *O Reg 517/06* made under the *Residential Tenancies Act, 2006 SO 2006 c. 17* (the RTA). The law is much less clear regarding the obligation of a residential landlord when it comes to the provision of cooling of residences.

The impact of a heat wave on residential tenants can be deadly: a *Globe and Mail* article on Aug. 20, 2018, reported that 90 people in Quebec died due to "heat related" causes over the span of one week. Of 53 people who died in Montreal, none had air conditioning at home.

Currently in Ontario there is no provision in the RTA or regulations which stipulates a maximum temperature which a landlord must maintain in residential premises. No legal requirement is imposed on landlords to install air conditioning, unless the landlord is bound to do so pursuant to the provisions of the lease. Instead, in circumstances where air conditioning must be provided, or is provided by way of central air conditioning, the maximum permitted temperature is established by a patchwork of municipal bylaws and codes.

For example, if air conditioning is required by the terms of the lease, or if there is a central air conditioner, *Toronto Municipal Code* Chapter 629, s. 629-38(F) provides that all air conditioning systems must be operated from June 2 to Sept. 14 so as to maintain an indoor temperature of not more than 26C. Mississauga's maximum temperature bylaw was enacted in June 2018, but it contains no summer date restrictions, and it also applies only if an air conditioning system or unit has been installed in the residential premises. The fine for contravening the bylaw can be up to \$100,000.

The statutory authority for municipal regulation of maximum temperatures in residences can be found in ss. 11(2) of the *Municipal Act, 2001, S.O. 2001, c.25*, which provides that a municipality may pass bylaws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons and the protection of persons and property. But nowhere in Ontario is a residential landlord required to install air conditioning where none exists, absent a contractual obligation to do so.

It seems likely that generally rising summer temperatures may make the possible mandatory provision of air conditioning a political issue, perhaps through the making of a regulation under the RTA or through an ever increasing and more broadly worded patchwork of municipal bylaw requirements. Recently, Mississauga council considered declaring air conditioning to be an "essential service" to be provided by landlords.

Last year, Mississauga Coun. Carolyn Parrish was quoted as saying "I don't agree that cooling isn't a necessity ... if it's 40 degrees in your apartment and you've got emphysema, it's a necessity."

Certainly, there are challenges to mandating cooling standards in residential premises. The landlord of a residential condominium unit may not be able to install air conditioning if, as is frequently the case, the installation requires alterations to the common elements. The installation of air conditioning

may become a mandatory condition of subdivision or condominium approval, thereby adding to already high housing prices.

Maintaining consistent temperatures across dwelling units, particularly in multilevel buildings, can be a technically challenging task. Operating air conditioners can come with very significant hydro costs, which neither the landlord nor the tenant may be able to afford. Retrofitting old homes may be prohibitively expensive. Municipalities may need to hire more inspectors. Residential rents, already higher than many can afford, would likely rise.

For the time being, tenants and landlords may need to address cooling issues expressly in lease agreements, and in particular the question of which party bears the cost of maintaining a mandated maximum temperature. The solution will not likely be found in the small print — the new standard residential lease form is silent on the issue of cooling.

Ray Mikkola is a partner with the firm of Pallett Valo LLP.

Photo credit / PRIImageFactory ISTOCKPHOTO.COM

Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437- 828-6772.

© 2018, The Lawyer's Daily. All rights reserved.