

Tenant Dry Cleaner Wins at Court: Landlords Must Give Tenants Reasonable Period of Time to Comply with Regulatory Requirements in their Leases

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In *Jay-Pee Drycleaners Inc v 2321324 Ontario Inc*¹ the Ontario Court of Appeal confirmed that when commercial landlords require tenant dry cleaners to comply with training requirements in the Ontario *Dry Cleaners* regulation as a condition of their lease, landlords must:

- ♦ Give tenants a reasonable period of time to achieve compliance, and
- ♦ Properly notify tenants when terminating leases on grounds of non-compliance.

This decision serves to remind tenant dry cleaners to know their rights and obligations under their commercial lease. The consequences of not complying with dry cleaning regulations may include eviction, where provided for in a lease.

Dry Cleaner Training Requirement

The *Dry Cleaners* regulation under the *Environmental Protection Act*,² states that “[n]o person shall operate dry cleaning equipment³ at a commercial establishment unless a trained person works full time at the establishment.”⁴ A “trained person” is someone who has, within the preceding five years:

- ♦ Successfully completed a course approved by the Director of the Ministry of the Environment and Climate Change (“MOECC”), such as the Ontario Dry Cleaners Training Course
- ♦ Otherwise satisfied the Director that he or she is qualified to manage contaminants and wastes in connection with the operation of dry cleaning equipment, or
- ♦ Satisfied the Director that he or she holds a valid authorizing certificate that is in good standing issued by an out-of-province regulatory authority.⁵

¹ 2017 ONCA 798 [Jay-Pee Drycleaners].

² RSO 1990, c E 19.

³ O Reg 323/94, s 1(2), the operation of dry cleaning equipment includes the use, maintenance, servicing and repair of dry cleaning equipment, the removal from dry cleaning equipment of residues that are dry cleaning solvents or contain dry cleaning solvents, the handling and other management of such residues and the making of arrangements for the recycling or disposal of such residues.

⁴ O Reg 323/94, s 2(1).

⁵ O Reg 323/94, s 1(1).

The *Dry Cleaners* regulation defines dry cleaning equipment as “any device used to clean material with dry cleaning solvent or to remove residual dry cleaning solvent from previously cleaned material.”⁶ Dry cleaning solvent is defined to include perchloroethylene, methyl chloroform, and petroleum solvents.

The *Dry Cleaners* regulation does not apply to wet cleaners or to dry cleaners who use alternative solvents that do not contain perchloroethylene, methyl chloroform, or petroleum.

Background

Byeongheon Lee leased a commercial space in which he operated a dry cleaning business.⁷ Mr. Lee’s lease required him to “comply with all applicable statutes and regulations affecting the premises”.⁸ This included the *Dry Cleaners* regulation.

On April 5, 2012, Mr. Lee’s lease was assigned to a new landlord, 2321324 Ontario Inc.⁹ On April 20, 2012, the new landlord instructed Mr. Lee to “successfully complete a course approved by the Director in the Management of Contaminants and Wastes in connection with the operation of dry cleaning equipment” within 90 days and to provide proof of completion of the course.¹⁰

The Ontario Dry Cleaners Training Course had been unavailable since March, 2012, and remained unavailable until 2013.¹¹ Mr. Lee was unable to complete the course in the time stipulated by his new landlord. The MOECC checked Mr. Lee’s dry cleaning operation and determined that it was unnecessary for Mr. Lee to complete the course.¹² Despite these circumstances, the landlord terminated Mr. Lee’s lease on the grounds that Mr. Lee did not complete the course and did not provide evidence of completion.¹³

Court Case

Mr. Lee sued his landlord for damages arguing that his lease had been unlawfully terminated. The landlord counterclaimed for damages arising from Mr. Lee’s failure to vacate the premises after eviction, and moved for a summary judgement dismissing Mr. Lee’s claim.¹⁴

The motion judge found that Mr. Lee had “failed to provide evidence that he had taken a dry cleaning course or that he had a trained person working at all times on the premises.”¹⁵ The motion judge dismissed Mr. Lee’s claim and awarded \$23,122.56 to his landlord.¹⁶ Mr. Lee appealed the motion judge’s decision to the Court of Appeal.

⁶ O Reg 323/94, s 1(1).

⁷ Jay-Pee Drycleaners at para 2.

⁸ Jay-Pee Drycleaners at para 2.

⁹ Jay-Pee Drycleaners at para 3.

¹⁰ Jay-Pee Drycleaners at para 4.

¹¹ Jay-Pee Drycleaners at para 9.

¹² Jay-Pee Drycleaners at para 12 and 20.

¹³ Jay-Pee Drycleaners at para 8.

¹⁴ Jay-Pee Drycleaners at para 11.

¹⁵ Jay-Pee Drycleaners at para 14.

¹⁶ Jay-Pee Drycleaners at para 13.

The Court of Appeal determined that Mr. Lee's lease had been wrongfully terminated and remitted the action to the Superior Court for an assessment of Mr. Lee's damages.¹⁷ The Court of Appeal based its decision on the following.

- ♦ The Commercial Tenancies Act, 18 s. 19(2) provides that a landlord's right of re-entry for breach of a lease, except as regards payment of rent, is unenforceable unless:
 - the landlord provides its tenant with notice specifying the particular breach. The motion judge relied on Mr. Lee's failure to provide evidence that he had a trained person working at all times on the premises, as required by the *Dry Cleaners* regulation. The landlord did not rely on this failure in its notice of termination to Mr. Lee.¹⁹
 - the landlord provides its tenant with a reasonable period of time to remedy the breach, if the breach can be remedied. The motion judge did not consider that the course was unavailable during the 90 day period provided for in the lease, making it impossible for Mr. Lee to attend the course. The landlord did not provide Mr. Lee with a reasonable period of time to comply with the lease and relevant regulations.²⁰
- ♦ The motion judge failed to consider the other ways to comply with the training component of the *Dry Cleaners* regulation. Mr. Lee had evidence that the MOECC checked his operation and deemed the course unnecessary. Mr. Lee met the definition of "trained person" because he had satisfied the Director that he was qualified to manage contaminants and wastes in connection with the operation of dry cleaning equipment.²¹

Mr. Lee's damages associated with the wrongful termination of the lease have not yet been assessed by the Superior Court.

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¹⁷ Jay-Pee Drycleaners at para 24.

¹⁸ RSO 1990 c L.7.

¹⁹ Jay-Pee Drycleaners at para 18-19.

²⁰ Jay-Pee Drycleaners at para 21.

²¹ Jay-Pee Drycleaners at para 20.