# Divisional Court orders sheriff to evict retirement home resident

**February 28, 2020**

On January 23, 2020, the Divisional Court released its decision in *Sunrise North Senior Living Ltd. v. The Sheriff (Regional Municipality of York)*, confirming sheriffs have a duty to enforce eviction orders despite any perceived impediments.

The Divisional Court's decision should provide comfort to businesses and landlords renting spaces to people who may have disabilities, vulnerabilities, or other circumstances that might complicate an eviction. While there may be challenges with enforcing orders, the Court confirmed that it is the Sheriff's duty to not only comply with and execute orders, but to determine how best to do so in difficult circumstances.

## History of the case

Mr. Rohan Salmon was a long term resident of Sunrise retirement home but had not paid his rent for years. Sunrise sought relief from the Landlord and Tenant Board (LTB) and in November 2017, the LTB made an eviction order upon Mr. Salmon that required him to move out by May 31, 2018.

Mr. Salmon was morbidly obese, paraplegic and had care needs. Despite his disabilities, he was fully capable of making decisions about his care and housing.

Mr. Salmon did not vacate his unit by May 31, 2018. Sunrise filed the eviction order for enforcement by the local Sheriff. Mr. Salmon advised the Sheriff that he would not willingly leave his unit and that he had no place to go. Ultimately, the Sheriff refused to enforce the eviction because of health and safety concerns.

Beginning in January 2019, Sunrise sought recourse with the courts. The matter was heard on multiple occasions, and on July 2, 2019, the Divisional Court ordered Mr. Salmon to take a number of steps to find suitable alternative accommodations. The Court also ordered Mr. Salmon to advise the Sheriff where he could move to by November 30, 2019.

Mr. Salmon did not move out nor meet all of his obligations under the July 2 court order, therefore the matter returned to the Divisional Court on January 14, 2020. Sunrise

sought a *mandamus* order (a mandatory order), compelling the Sheriff to execute the eviction.

# Court ruling

With respect to Mr. Salmon, the Court found the following:

> While Mr. Salmon has significant health issues and limitations, the evidence before us plainly demonstrates that there are alternatives available to Mr. Salmon that are within his budget. The evidence before us also suggests that he has acted unreasonably by failing to cooperate in the search for an alternative home. There is no doubt that this places the Sheriff in a difficult situation. **However, this does not give the Sheriff an excuse to abdicate a clear statutory duty. There is a clear public interest in ensuring that valid eviction orders are enforced.** (Emphasis added)

With respect to Sunrise, the Court found the following:

> Based on the record before us, there is **no doubt that Sunrise has acted fairly and appropriately throughout these proceedings.** Initially, in the proceedings before the Board, Sunrise consented to an order that provided Mr. Salmon with a generous period of time for finding alternative accommodations, while foregoing significant arrears in rent. More than two years have elapsed since that order was made. In the interim, while Sunrise has pursued its right to enforcement of the eviction order, **the record before this Court makes clear that Sunrise has worked cooperatively with Mr. Salmon and the Sheriff in trying to find alternative accommodations for Mr. Salmon.** (emphasis added)

The Court agreed with Sunrise that this case met the legal test for ordering *mandamus*. The Sheriff had a non-discretionary legal duty to act under the *Residential Tenancies Act, 2006,* which duty was owed to Sunrise according to the eviction order filed with the Sheriff's office. In compelling the Sheriff to act, the Court confirmed that the Sheriff's duty was to evict Mr. Salmon, not to find him a permanent home. To provide the parties sufficient time to implement the eviction, the Court gave the Sheriff until March 31, 2020 to act.

By

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