Court File No. CV-24-00098058-0000

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, C B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, C C.43, AS AMENDED

AND IN THE MATTER OF THE APPOINTMENT OF A RECEIVER OVER THE PROPERTY, ASSETS AND UNDERTAKING OF 2067166 ONTARIO INC., 2265132 ONTARIO INC., ASHCROFT HOMES – LA PROMENADE INC., 2195186 ONTARIO INC., 1284274 ONTARIO INC. AND 1019883 ONTARIO INC.

# FACTUM OF MUHAMMAD YAASIR HOSENIE, RESIDENTIAL TENANT

**(Receiver's Motion for Sale Approval and Vesting Order and Distribution and Ancillary Order – Envie I, Returnable July 31, 2025)**

July 30, 2025

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**TO: SERVICE LIST**

*"No person exercising rights under a mortgage may obtain possession of a rental unit from the mortgagor's tenant except in accordance with the Residential Tenancies Act, 2006"*

-*Mortgages Act*, RSO 1990, c M.40, subs 48(1)

*"There is no evidentiary basis for concluding that [section 243 of the Bankruptcy and Insolvency Act] was meant to circumvent the procedural and substantive requirements of the provincial laws where the appointment is sought. General considerations of promptness and timeliness, no doubt a valid concern in any bankruptcy or receivership process, cannot be used to trump the specific purpose of s. 243 and to artificially extend the provision's purpose to create a conflict with provincial legislation."*

-*Saskatchewan (Attorney General) v Lemare Lake Logging Ltd,* 2015 SCC 53 at para 68.

## PART I – OVERVIEW

1. KSV Restructuring Inc., the Receiver of the Envie I residential apartment complex, seeks to render homeless two hundred and seven students and young professionals with minimal notice and inadequate compensation, during the summer holiday and just before the start of the new academic year. It does this so that ACM Advisors Ltd., a multi-billion dollar mortgage fund, can avoid having its junior secured mortgage be impaired, since the sale of a vacant apartment building will net more proceeds to the receivership than selling the building tenanted or having the secured lenders fund the cost of proceeding through the lawful eviction process (a lawful eviction process that the secured lenders would have been well-aware existed at the time they advanced their loans).

2. On the equities alone, the Court should reject a plan to bail out Bay Street executives at the expense of ordinary tenants. Lenders who choose to make money off of Ontario's residential tenancy system should not get to opt out of the risks of that system just because they made a bad bet.

3. But the Receiver's motion faces a bigger, more fundamental barrier than the equities.

4. The Receiver's motion is illegal. It violates several unambiguous Ontario laws. The Receiver asks this Court to ignore those laws, because following them would be expensive and inconvenient. But this is a court of law, not a court of convenience. Where the law is clear, it must be followed.

5. To the extent the Receiver implies—though never expressly argues—that federal bankruptcy law allows this Court to disregard provincial law, then that is a constitutional challenge. But the Receiver has neither sought a declaration that the *Residential Tenancies Act*[1] and the *Mortgages Act* are rendered inoperative by the *Bankruptcy and Insolvency Act*[2] nor provided the mandatory notices to the federal and provincial Attorneys General required to make such a challenge.

6. Finally, to the extent this Court is inclined to assess the merits of the Receiver's motion despite its manifest jurisdictional deficiencies, it should order a proper briefing schedule so that the residential tenants have sufficient time to retain counsel and so that the underlying evidence the Receiver relies on—but has not formally submitted into evidence—can be challenged and the legal issues properly briefed.

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[1] *2006*, SO 2006, c 17 ("*RTA*").
[2] RSC 1985, c B-3 ("*BIA*").

## PART II – STATEMENT OF FACT

7. Hosenie, who was given notice of this motion eight days before the return date, and who first spoke to undersigned counsel four days before the return date, has had insufficient time to prepare and submit a responding motion record to this motion. Undersigned counsel can advise that Hosenie is a tenant at the Envie I property on what is currently a month-to-month lease. He works as an estimator for an Ottawa construction property and lives in a unit that presently has mould. He will be forcibly evicted from his home should the Receiver's motion be granted.

## PART III – POINTS IN ISSUE

8. Hosenie takes no position on the question of whether the Envie I should be sold and the proceeds distributed. Nor does he oppose an order authorizing the Receiver to enter into *voluntary* settlement agreements with any tenants who wish to terminate their leases in exchange for compensation.

9. The Receiver's request, however, for writs of possession evicting tenants who have not voluntarily terminated their leases, goes well outside the jurisdiction of this Court and contravenes express legislative direction that such tenancies may only be terminated for the grounds under, and following the procedure required by, the *RTA*. The Landlord and Tenant Board is the only body with the jurisdiction to make such eviction orders.[3]

[3] The *RTA* allows the Superior Court of Justice to exercise the powers of the Landlord and Tenant Board, but only where there is a claim against the tenant in excess of the monetary jurisdiction of the Small Claims Court, which is presently $35,000: *RTA,* subs 207(2). There is no evidence that this limited jurisdiction applies here, and the landlord would still need to obey the procedural requirements for a notice of termination.

10. Hosenie submits that the Receiver's motion must be rejected because:

a. The *RTA* provides a complete and comprehensive code for the eviction of residential tenants for repairs or demolition, which the Receiver has not followed, and which ousts this Court's jurisdiction. An express statutory prohibition is not a "gap" that can be filled by inherent jurisdiction or the permissive language of the *BIA*.

b. The Receiver's reliance on the *BIA* to override express provincial law is a backdoor claim of federal paramountcy. Such a claim requires a request for declaratory relief in the notice of motion and a notice of constitutional question served at least fifteen days before the hearing. And even if brought, it would fail given clear Supreme Court precedent on the interplay between section 243 of the *BIA* and provincial law.

c. Section 243 of the *BIA* cannot empower this Court to vest away the tenants' residential leaseholds when the secured loans are legislatively subordinated to the residential tenancies regime. Even if it could, the test for such a vesting is not met.

d. The Receiver has not given "sufficient notice of the proceeding" to "all persons in actual possession of any part of the land," as required by rule 60.10 of the *Rules of Civil Procedure*,[4] nor provided sufficient evidence for the issuance of a writ of possession.

[4] RRO 1990, Reg 194.

## PART IV – LAW AND ARGUMENT

*The Receiver Must Follow the RTA to Obtain Vacant Possession for Repairs*

11. While a writ of possession is a remedy that can generally be ordered by the Superior Court, this can only be done when the moving party has an underlying claim for legal possession over the land. Other than this Court's jurisdiction to vest away third-party rights on a sale (which argument will be addressed further below), the Receiver points to no law that would give it the right to obtain vacant possession over rental units occupied by tenants under valid residential leases, relying only on a case where the Court ordered the eviction of an illegal squatter.[5]

12. Instead, the Receiver relies on the general language of section 243 of the *BIA*, arguing that vacant possession would be generally beneficial for the receivership estate, as it would allow faster remediation of the mould. The mere desirability of the sale and remediation, however, does not bestow on the Receiver any rights above and beyond the security interests that led to its appointment.

13. Those security interests arise under the *Mortgages Act*. And the *Mortgages Act* is very clear that the *RTA* and its restrictions on when and how a landlord can evict a tenant apply equally to secured lenders and those acting on their behalf as it does to owners.

14. Part V of the *Mortgages Act* sets out specific limitations and procedures where a lender maintains a mortgage on property subject to a residential tenancy. It prevails over any conflict with any other part of the Act or any other Act (except where the other Act says otherwise).[6] It also applies "despite any agreement to the contrary."[7] Where a mortgagee takes possession over

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[5] *KingSett Mortgage Corporation v 30 Roe Investments Corp*, 2023 ONSC 3323, at paras 22-59.
[6] *Mortgages Act*, subs 46(1).
[7] *Mortgages Act*, subs 46(2).

the rental complex, it is "deemed to be the landlord"[8] under the RTA and "continues to be liable for the obligations of a landlord that were incurred while the person was deemed to be a landlord."[9]

15. While the provisions governing a mortgagee in possession may not be sufficiently clear to also cover a receiver acting on behalf of the mortgagee, section 48 is far broader, specifying that "no person exercising rights under a mortgage may obtain possession of a rental unit from the mortgagor's tenant except in accordance with the *Residential Tenancies Act, 2006*."[10] Where such a person gives a tenant a notice of termination, they are "deemed to be a landlord"[11] and subject to the *RTA*.

16. While the Receiver may not be a mortgagee, it is undoubtedly "exercising rights under a mortgage" for the benefit of the secured lenders. The *BIA* is merely a procedural statute in this instance allowing the appointment of a national receivership. The receiver's actual rights to exercise possession and control over the rental complex arises from a mortgage governed by the *Mortgages Act*. The Receiver cannot use its appointment arising from that mortgage to evict a tenant unless in compliance with the *RTA*

17. Even if this provision wasn't in the *Mortgages Act*, the *RTA* itself would still preclude the Receiver from recovering possession without an LTB order. The *RTA* contains a supremacy clause requiring any court or tribunal to follow the *RTA* whenever it conflicts with any other Act other than the *Human Rights Code*.[12] The *RTA* defines "landlord" broadly as including "any

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[8] *Mortgages Act*, subs 47(1).
[9] *Mortgages Act*, subs 47(5).
[10] *Mortgages Act*, subsection 48(1).
[11] *Mortgages Act*, subsection 48(2).
[12] *RTA*, subsection 3(4). The Court of Appeal has previously applied this provision to find invalid a provision of the *Mortgages Act* that allowed a mortgagee exercising a power of sale to terminate a tenancy mid-term to provide

other person [other than a tenant] who permits occupancy of a rental unit" as well as any non-tenant "who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement of this Act, including the right to collect rent."[13]

18. It is not disputed that the Receiver has permitted occupancy of the rental units in the building and has enforced the rights of a landlord under various tenancies agreements, and collected rent. The Receiver is therefore a "landlord" under the RTA. And as the Receiver notes, a landlord cannot recover possession of a tenanted rental unit unless the tenant voluntarily vacates or abandons the unit unless there is an LTB order evicting the tenant.[14] The Receiver also concedes that binding Court of Appeal jurisprudence has limited the jurisdiction of this Court to order vacant possession of a rental unit.[15]

19. The Receiver argues that there is a "gap" in the *RTA* or the *BIA*, and that the Court's inherent jurisdiction must fill in the gap by allowing eviction outside the *RTA*. The issue with this argument is twofold: first, if there is a "gap" in the *BIA*, that merely gives the Court permissive powers. It does not authorize the Court to exercise those powers where expressly barred by provincial law. Second, the "functional gap" asserted by the Receiver does not exist.

20. Contrary to the Receiver's allegation, there is a comprehensive scheme in the RTA for the eviction of tenants to carry out repairs that require vacant possession. Section 50 of the RTA gives a landlord the power to give notice of termination of a tenancy (called an "N13") where vacant possession of the unit is required to demolish it or do extensive repairs requiring a

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vacant possession to a purchaser: *Canada Trustco Mortgage Company v Park*, 2004 CanLII 60006 (Ont CA), aff'g 2003 CanLII 49385 (Ont Div Ct).
[13] *RTA*, subsection 2(1).
[14] *RTA*, section 39.
[15] *Fraser v Beach*, 2005 CanLII 14309 (Ont CA) at para 15.

building permit and vacant possession of the unit.[16] The termination date must be at least 120 days after notice is given, must be the last day of a period of the tenancy (i.e. the end of the month in a month-to-month tenancy with rent paid at the beginning) and cannot be before the end of a fixed-term tenancy.[17] Where the eviction is for repairs, the tenant is entitled to a right of first refusal.[18] The tenant is also entitled to monetary compensation, unless the repairs were ordered to be carried out.[19]

21. This is not a "gap". It is a comprehensive scheme, carefully thought out by the legislature, to balance the landlord's interests to make extensive repairs to a unit with a tenant's right to serve out the term of their lease, have adequate notice to find new accommodation, be compensated for the inconvenience (unless the repairs are necessary to comply with an order), and re-occupy the unit at guideline-adjusted rent when it is once again habitable.

22. The only "gap" identified by the Receiver is that it is "unable to comply with Section 20 of the RTA,"[20] which requires a landlord to maintain a rental unit in a state of good repair and fit for habitation.

23. But that is not a "gap" that has anything to do with insolvency law. Any landlord who must make extensive renovations to comply with section 20 is in the same situation. And it is a

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[16] *RTA*, subsection 50(1).
[17] *RTA,* section 50(2).
[18] *RTA*, section 53.
[19] *RTA*, section 54. The Receiver argues that any such claim for monetary compensation would be an unsecured claim entitled to no distribution. This is an incorrect reading of the law, given: (a) the payment of compensation is a condition precedent to termination of the tenancy, not merely a monetary claim post-termination; and (b) the *Mortgages Act* expressly provides that anyone exercising a power arising from a mortgage to terminate the tenancy of a residential tenant is deemed to be an *RTA* landlord. It is therefore the *Receiver*, and not the debtor, that is liable to pay the compensation where it is the Receiver seeking to evict a Tenant. The Receiver can be reimbursed for such liability by the Receiver's Charge on the estate. To the extent the appointment order immunizes the Receiver from statutory liability for voluntarily exercising a power of eviction that requires compensation, the order should be modified to instead provide a priority charge to cover such obligation. Moreover, it is a provincial offence to recover possession of a rental unit without paying the required compensation (see *RTA*, para 233(f)).
[20] Receiver Factum, p 29, para 89.

situation where the legislature has decided that the need to keep the unit in good repair does not allow a landlord to short-circuit the notice provisions, avoid paying compensation or offering a right of first refusal, or fail to prove to the LTB's satisfaction that a building permit and vacant possession are both required to conduct the repairs.

24. It may well be that the Receiver presently does not have sufficient assets to carry out the repairs. But that is not required for the Receiver to obtain vacant possession on an N13. It must only prove, to the LTB's satisfaction, that a building permit and vacant possession are required to conduct the repairs. If the Receiver first allows Ottawa Property Standards or the LTB to order it to conduct the repairs, then it does not even need to pay compensation. Once the tenants have been lawfully evicted by the LTB, then the Receiver can still proceed with a sale to a buyer who will actually carry out the repairs.

25. Nor is a potential lack of funding a true gap that would stop the building from being repaired. Under the *Building Code Act, 1992*,[21] municipalities can order a property owner to comply with municipal by-laws. If the order is not complied with, the municipality itself can conduct the repairs and impose the costs as a lien that would have priority over the secured lenders.[22]

26. If the concern is over hazard to tenant health for the four-month notice period after serving an N13, that concern too is addressed by the *BCA*. A municipal inspector can require the

[21] SO 1992, c 23 ("*BCA*").
[22] *BCA*, section 15.4. From a practical perspective, it is unlikely that the Receiver will actually require the City of Ottawa to conduct these repairs. While the Receiver cries poverty, the current value of the property appears to be around $60 million, given the senior loan will be assumed in full and the junior loan with minimal impairment. It is unlikely that the secured lenders will actually allow the building to go to waste and lose tens of millions in the value of their collateral when funding the repairs and the negative carry while getting eviction orders will cost them well under that. And if the secured lenders are truly short-sighted enough not to make protective advances, $60 million is a very large cushion to secure DIP financing against.

remediation of an unsafe building. If the order is not required with, the municipality's chief building official "may by order prohibit the use or occupancy of the building."[23] An order by a public authority prohibiting the occupancy of a rental unit does not terminate the lease or grant possession to the landlord and therefore does not contravene the *RTA*.[24] Similar authority in the *Health Protection and Promotion Act*[25] allows a medical officer of health to order premises to be vacated where necessary to decrease the effect of, or eliminate, a health hazard.

27. In other words, the legislature has made a policy choice that it is only public authorities, and not a landlord, that can force a tenant out of their unit for repairs without complying with the notice and other requirements of the *RTA*.

28. There are no grounds to rely on the Court's inherent jurisdiction or the permissive language of the *BIA* to create a new remedy out of whole cloth when the province has enacted comprehensive schemes to remediate health hazards, repair unsafe buildings, and evict tenants. Provincial law bars this Court from granting the Receiver the relief sought in this motion, and it should be denied.

*The Receiver Makes a Backdoor Paramountcy Argument*

29. While the Receiver acknowledges that the express provisions of the *RTA* and binding jurisprudence does not allow a landlord to obtain possession of a rental unit other than through the LTB, the Receiver seems to imply that such authority can nonetheless be granted because the receiver has "broad jurisdiction under the BIA, a federal statute."[26] The Receiver relies on *Peace River*, a Supreme Court precedent giving judges "the broadest possible mandate in insolvency

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[23] *BCA,* subsection 15.9(6).
[24] *Kenora (City) v Eikre Holdings Ltd*, 2018 ONSC 7635 at paras 61 and 70.
[25] RSO 1990, c H.7, subs 13(4).
[26] Receiver Factum, p 28, para 85.

proceedings to enable them to react to any circumstances that may arise,"[27] But the Receiver ignores what the Supreme Court notes just three paragraphs later: that the *BIA* must be interpreted in a manner that gives "harmonious interpretations of federal and provincial legislation" over "interpretations that result in incompatibility."[28] The Supreme Court therefore relied on its interpretation of provincial, rather than federal, law in *Peace River* to authorize the receivership court to decline to enforce an arbitration agreement.

30. The Receiver makes the exact opposite request here, asking this Court to disregard the clear and specific dictates of provincial law based on general, permissive powers in the *BIA*.

31. This is not tenable. If the Receiver believes that *Peace River* is truly applicable, then as in that case, it must show why provincial—and not federal—law permits this eviction. But provincial law clearly does not permit it. The *RTA* expressly overrides any other provincial law that might permit it. The Receiver instead implicitly argues that provincial and federal law are in conflict, and provincial law must give way. In other words, the Receiver is making a paramountcy argument.

32. The Receiver cannot, however, make that argument on this motion. The Receiver has sought no declaratory relief in its notice of motion to find the *RTA* or the *Mortgages Act* inoperative due to federal paramountcy. And section 109 of the *Courts of Justice Act*[29] sets out mandatory procedural requirements where the "constitutional validity or constitutional applicability of an Act of the Parliament of Canada or the Legislature" is "in question." Failure to provide a notice of constitutional question on the Attorney General of Canada and the

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[27] *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41 at para 148 ("*Peace River*").
[28] *Peace River*, at para 151.
[29] RSO 1990, c C.43, section 109.

Attorney General of Ontario at least fifteen days before hearing means that the relevant statutory provision "shall not be adjudged to be invalid or inapplicable."[30]

33. In this case, the Receiver has given no such notice. This Court should not countenance a de-facto nullification of the *RTA* on federalism grounds where the Attorney General of Ontario has been given no opportunity to defend the enforceability of provincial law.

34. Even were it proper to consider the Receiver's de-facto constitutional challenge, it would still have no merit. The Supreme Court of Canada has already weighed in on the interplay between the *BIA*'s receivership provisions and substantive and procedural provincial law in *Saskatchewan (Attorney General) v Lemare Lake Logging Ltd*.[31]

35. In that case, Saskatchewan's mandatory 150-day notice period to enforce security against farm land was challenged as frustrating the purposes of the receivership provisions in section 243 of the *BIA*. By a 6-1 majority, the Court determined that no operational conflict existed between the two laws such that paramountcy could be invoked.

36. The Court found that there was no wide or comprehensive purpose to the *BIA*'s receivership regime. Rather there was "a simple and narrow purpose: the establishment of a regime allowing for the appointment of a national receiver, thereby eliminating the need to apply for the appointment of a receiver in multiple jurisdictions."[32] Because section 243 is permissive, there was no operational conflict with the more rigorous requirements of provincial law: "[p]rovincial interference with a discretion granted under federal law is not, by itself, sufficient to establish frustration of federal purpose."[33] The Court also noted that section 72 of the *BIA*

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[30] *Courts of Justice Act*, subsection 109(2).
[31] 2015 SCC 53 at para 68 ("*Lemare*").
[32] *Lemare* at para 45.
[33] *Lemare* at para 47.

expressly states that the *BIA* "shall not be deemed to abrogate or supersede the substantive provisions of any other law or statute relating to property and civil rights that are not in conflict with this Act."[34]

37. *Lemare* is almost certainly controlling precedent on any challenge to the *Mortgages Act* or the *RTA* on the grounds of federal paramountcy. The laws do not directly conflict: obviously the Receiver can both exercise control of the property under the Receivership Order while making applications to the LTB in accordance with the *RTA* to obtain vacant possession of rental units. And the Receiver does not identify any provision of the *BIA* the purpose of which would be frustrated by complying with provincial law. Indeed, the Receiver's argument is that authority to evict the tenants comes not from the *BIA* at all, but from a gap in the *BIA*.

38. At best, the Receiver can argue that the *BIA* creates a permissive discretion for a Court to give a receivership vacant possession of tenanted receivership property where desirable to remediate a health hazard. The *RTA*'s express prohibition on this Court exercising such a power does not frustrate the limited purposes of the *BIA*'s receivership provisions. At most it is "provincial interference with a discretion granted under federal law." That is insufficient to render the comprehensive provincial scheme inoperative.

*The Receivership Cannot Vest Property Where Prohibited by Law*

39. The Receiver also argues that the leases, despite being a third-party property interest, can be vested out by a sale order, relying on *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*[35] The Receiver is correct that absent a conflicting statutory prohibition, section 243 of the *BIA* gives a court jurisdiction to "vest out" property not belonging

[34] *Lemare* at para 49.
[35] 2019 ONCA 508 ("*Third Eye*").

to the debtor or the receivership. However, this jurisdiction can only be exercised where appropriate.[36]

40. The problem is that there is conflicting law in this case: the *Mortgages Act* and the *RTA*. Just as in *Lemare*, while there may be jurisdiction and a discretion granted by federal law, there is a provincial law expressly limiting how that jurisdiction can be exercised, both by limiting the grounds on which a tenancy can be terminated and by defining a "landlord" to include a "successor in title" to the owner of a property.[37] If discretionary federal jurisdiction cannot be exercised without conflicting with a provincial statute, then the provincial statute must be obeyed absent a proper paramountcy challenge and a showing that the provincial law frustrates the federal purpose.

41. However, even were the "vesting out" not prohibited by Ontario law, the Receiver still cannot satisfy the *Third Eye* test. The Receiver misleadingly describes the residential leases as "short term" leases of "student housing," worthy of less recognition than "long term leases of family residences." Putting aside that the Receiver seems to be asking this Court to discriminate based on family status in contravention of the *Human Rights Code*,[38] the term of an Ontario residential lease does not matter because any residential lease—of any length—renews indefinitely in the absence of a valid notice of termination.[39] While dorm-style housing may cease to become desirable at a certain age, every tenant in the building has the right to remain in their unit until the day they die, as long as they pay their rent and comply with the *RTA*.

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[36] *Third Eye*, at para 93.
[37] *RTA*, subs 2(1).
[38] RSO 1990, c H.19.
[39] *RTA*, subs 38(1).

42. If anything, a leasehold interest, whether registered or not, is the closest thing one can get to a fee simple interest under the *Third Eye* test. The nature of the interest in the rental unit is not a fixed monetary interest but rather "an interest in a continuing and an inherent feature of the property itself,"[40] namely a full possessory interest over the unit. Surely a residential tenant, with statutory protections over security of tenancy, has a "reasonable expectation" that their leasehold "is of a continuing nature and, absent consent, cannot be involuntarily extinguished in the ordinary course through a payment in lieu."[41]

43. With respect to the second element of the test, a residential tenant can hardly be said to have subordinated their interest to a secured lender or reasonably expect to lose their leasehold interest in an insolvency. To the contrary, provincial law is expressly designed to protect the continuation of a tenancy. In the absence of a *BIA* receivership there would be no question that a mortgage lender exercising a power of sale could not vest out the tenancy. Under the *Mortgages Act*, any person who "obtains title to the residential complex by foreclosure or power of sale shall be deemed to be the landlord under the tenancy agreement."[42] A secured lender should not be able to use a receivership—a procedural mechanism that is not designed to substantively increase the scope of the lender's security—when their security interest is expressly subordinated to a residential lease by law.

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[40] *Third Eye* at para 111.
[41] *Third Eye* at para 105.
[42] *Mortgages Act*, subsection 47(1).

44. While the first two factors can hardly be said to be inconclusive, in the event the Court did reach consideration of the equities, they still favour a decision not to vest out the tenancies:

a. the tenants would suffer significant prejudice, having lost their homes with minimal notice right before the start of the school year;

b. the order proposes minimal compensation—below the three months required by the *RTA*—and only to those tenants who sign a termination and release. No proceeds of the sale are reserved for tenants who refuse to sign a release, and they will be given only worthless unsecured claims;

c. while there is no equity in the property, the secured lenders are recovering nearly their entire security of $62 million on a sale, notwithstanding that such a sale is only possible by depriving the tenants of their third-party tenancy interests;

d. it is difficult to reconcile an eviction with this little notice with good faith, especially when the underlying engineering reports have not been made available to the tenants and one of them appears to indicate that the mould remediation can be done without vacant possession over the building

45. Notwithstanding the proposed vesting order being in the interest of deep-pocketed lenders, the proposed vesting order is contrary to provincial law and unjustifiable under the jurisprudence.

*Insufficient Notice Has Been Provided to Issue Writs of Possession*

46. Under the *Rules of Civil Procedure*, a writ of possession can only be issued on an order granting leave, and such an order may only be granted where the Court "is satisfied that all persons in actual possession of any part of the land have received sufficient notice of the proceeding in which the order was obtained to have enabled them to apply to the court for relief."[43] Predecessors to this rule have existed for more than half a century, and it is designed to ensure that all the individuals actually in possession of the property are given adequate notice that they may be removed by the sheriff and have sufficient opportunity to assert their claims to the Court.[44]

47. To obtain possession, a moving party must provide affidavit evidence indicating:

*a.* Who is in actual possession of the property;

*b.* The manner of determining who was in possession of the property;

*c.* The capacity in which each individual occupant possesses the property; and

*d.* Whether the moving party has heard from any other person who claims an interest in land or appears to be a person in possession and whether anyone in possession appears to be a person under disability.[45]

48. Here, the Receiver has given no specific evidence of the occupant of each unit for which it desires a writ of possession, the manner of determining the actual occupant, and whether notice was given to each actual occupant. Notice has only been given by email and through posting at

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[43] *Rules of Civil Procedure*, subrule 60.10(2). The *Rule of Civil Procedure* are incorporated into *BIA* proceedings by the *Bankruptcy and Insolvency General Rules*, CRC, c 368, rule 3.
[44] *Jamort Investments Ltd et al v FitzGerald*, 1968 CanLII 371 (Ont Sup Ct).
[45] *YF Capital Inc v Harrison Frank Roy*, 2024 ONSC 2029 at para 9.

the entrance and reception area and in the elevators of the units.[46] This is inadequate to ensure that notice has actually been given to each person actually in possession of each unit.

49. Moreover, the amount of time provided to respond is woefully insufficient. While ten days notice is required to enforce a security interest or apply for a bankruptcy order,[47] tenants have only been given eight days notice that they may lose their homes.

50. Under previous jurisprudence interpreting this rule, fourteen days notice is required to individuals in possession so they can apply to the Court for relief before a plaintiff can seek an order for a writ of possession.[48] And of course were someone to assert a claim in that fourteen days, a proper briefing schedule would need to be established so the parties can meaningfully participate in the hearing. Here, the tenants have had barely any time to try to retain counsel, let alone enough time to develop their own evidentiary record or challenge the Receiver's evidence. To the extent the Court wishes to further consider the Receiver's motion despite its manifold legal frailties, the tenants must be given adequate time to fully participate in the hearing, including receiving copies of the Pinchin Report and the Fisher Report and the opportunity to adduce their own expert evidence and to cross-examine the authors of those reports.

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[46] Receiver's Fourth Report, p 45, paras 7-8.
[47] *Bankruptcy and Insolvency General Rules*, rule 70(1); *BIA*, section 244.
[48] *Central Guaranty Trust Co v McRae*, 1993 CanLII 8542 (Ont Sup Ct); *VWR Capital Corp v Dookie*, 2023 ONSC 375 at para 5

## PART IV – RELIEF SOUGHT

51. This Court must reject the Receiver's motion for possession of the residential units and vesting of the property free of the residential leases. Alternatively, the Court should set a proper briefing schedule on the motion so that it can be argued on a proper evidentiary foundation.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 30th day of July, 2025

**KEVIN WIENER**

**SCHEDULE "A"**

**LIST OF AUTHORITIES**

1. *Canada Trustco Mortgage Company v Park*, 2003 CanLII 49385 (Ont Div Ct)
2. *Canada Trustco Mortgage Company v Park*, 2004 CanLII 60006 (Ont CA)
3. *Central Guaranty Trust Co v McRae*, 1993 CanLII 8542 (Ont Sup Ct)
4. *Fraser v Beach*, 2005 CanLII 14309 (Ont CA)
5. *Jamort Investments Ltd et al v FitzGerald*, 1968 CanLII 371 (Ont Sup Ct)
6. *Kenora (City) v Eikre Holdings Ltd*, 2018 ONSC 7635
7. *KingSett Mortgage Corporation v 30 Roe Investments Corp*, 2023 ONSC 3323
8. *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41
9. *Saskatchewan (Attorney General) v Lemare Lake Logging Ltd*, 2015 SCC 53
10. *Third Eye Capital Corporation v Ressources Dianor Inc/Dianor Resources Inc*, 2019 ONCA 508
11. *VWR Capital Corp v Dookie*, 2023 ONSC 375
12. *YF Capital Inc v Harrison Frank Roy*, 2024 ONSC 2029

I certify that I am satisfied as to the authenticity of every authority.

Dated: July 30, 2025

**KEVIN WIENER**