



Ombudsman
Toronto

Listening. Investigating. Improving City Services.

Ombudsman Toronto Enquiry Report

Enquiry into how the City Handled the Sale of a Tenant's Business at St. Lawrence Market

April 6, 2018

Complaint Summary

1. For many years, the complainant owned a business and was a tenant of the St. Lawrence Market, a large city owned market complex at Front and Jarvis Streets in Toronto.
2. In 2015, he wanted to sell his business to new owners. His lease required that to do this, he obtain City approval and transfer his Lease.
3. He complained that the City's Real Estate Services division ("Real Estate Services") had delayed the sale of his business, and unfairly charged him interest on rental arrears and administration fees. He also said that staff had behaved unprofessionally throughout the sale process.

Steps Taken

4. We gathered and analyzed information, both oral and documentary, from the complainant and from staff at Real Estate Services.

Issues Identified and Analysis

Charging interest at the end of the sale on previous rental arrears

5. The complainant's lease stated that interest would be charged on all rental arrears:

All amounts of Semi-Gross Rent and Additional Rent shall bear interest from their respective due dates until the actual dates of payment at a rate of five percent (5%) per annum in excess of the prime commercial rate of interest

charged by the Landlord's chartered bank at Toronto for commercial loans from time to time, calculated and compounded monthly.

6. During the last few years of the tenancy, the complainant's business often paid its rent late. The City did not explicitly state at the time that interest would be owing on late payments.
7. When the complainant was in arrears, the City sent requests for payment, noting that the City could seek all remedies available under the lease or at law, including "commencing proceedings for the outstanding amount plus interest and any other amounts owing".
8. None of the letters stated that interest would still be owing even once the arrears were paid. None of the arrears statements attached to the letters contained a line item showing any accumulating interest, or any other reference to interest owing.
9. A March 2014 arrears letter sent to the complainant, while it stated that the tenant was not released from any obligations under the lease, did not specifically refer to interest accumulating on the arrears.
10. In October 2015, when the sale of the business was almost complete, the City told the complainant that he owed over \$7,000 in interest, which had accrued on his rental arrears going back to 2012. The City said the complainant had to pay the interest before the sale could be completed.
11. City staff told us they believed they had spoken with the Complainant several times in 2014 and 2015 about the interest owing, but there were no notes or other documentation to verify this.
12. While it is incumbent on a tenant to be aware of the terms of their lease, Real Estate Services should, as a matter of fairness, be clear and explicit about what it is charging its tenants and what they owe. This is so particularly when statements do not indicate that any further amounts are, or may be, owing.

Administrative Fee

13. The complainant said that the City told him for the first time when the transfer of the lease was almost complete that he would have to pay an administrative fee.
14. The *Municipal Code* Chapter 441 and amending bylaw 1265-2009 provide that the City **shall** charge an administrative fee for assignments of leases. This means that the administrative fee is mandatory.
15. The Request for Assignment or Transfer of Lease form completed by the complainant referred to this requirement.

16. For this reason, we did not find evidence of unfairness in how the City handled the administrative fee.

Alleged Delay by the City

17. The Request for Assignment or Transfer of Lease completed by the complainant stated on its face that a business sale usually takes approximately six months to complete.

18. The complainant submitted his intention to sell his business in late March 2015. The new owners took possession of the store in October, 2015.

19. At the time of the sale, the complainant's business was still in arrears with its rental payments. There were also some conditions that the new owners had to complete before the lease could be transferred.

20. The complainant complained that after he sold his business, the City completed the business transfer for another St. Lawrence Market tenant much faster than his own.

21. Information provided by the City, however, showed that while the other sale was completed in a slightly shorter timeframe, it was not significantly shorter than the time required to complete the complainant's sale. The City also told us that the other sale was less complex than the complainant's, as there were no arrears to collect from the other tenant.

Alleged lack of professionalism

22. The complainant said that Real Estate Services was unprofessional in its dealings with him. He said that one staff member had asked him if he really wanted to "open that can of worms", in relation to the interest issue. The staff member refuted this claim.

23. Besides asking staff about the complainant's account of their behaviour, we also reviewed all their written correspondence, which appeared professional.

24. Based on our analysis of the available evidence, we could not conclude that the City had acted unprofessionally during the sale process as the complainant suggested.

Ombudsman Recommendations

25. In consideration of the information gathered through this Enquiry, we made the following recommendations:

1. Real Estate Services should clearly advise tenants in writing that the interest on all rental arrears is calculated in accordance with the terms set out in the lease, and will be applied in all cases, even after the rent is paid.
2. Real Estate Services' arrears letters and/or attached statements should clearly reference the amount of interest owing to date and the rate at which it is continuing to accrue.
3. Real Estate Services should document the details of its actions in files involving the transfer of leases resulting from the sale of a tenant's business.

Division Response

26. Real Estate Services agreed to implement our recommendations.

27. It changed the letters and rental arrears statements it sends to St. Lawrence Market tenants. Letters now clearly advise tenants that interest is accumulating on rental arrears, the interest rate, and the amount of interest owing to date. Statements also now include interest on rental arrears as a specific line item.

Follow-Up

28. Ombudsman Toronto will follow up with Real Estate Services by June 1, 2018 to see how these changes are working. This includes implementation of our recommendation that it keep better records to document its activities.

(Original signed)

Susan E. Opler

Ombudsman