

## OCCUPATION RENT

### **INTRODUCTION:**

Occupation rent in domestic contexts refers typically to monies (rent) owed by one spouse in respect of the matrimonial home after separation where he or she occupies it to the exclusion of the other. It is consideration for the benefit of the use of an asset in which the other spouse has a proprietary interest of some kind but is denied the benefit of use.

At common law the general principle was that one co-owner could not “walk away” from jointly owned property and then claim rent from the remaining co-owner. Occupation rent was payable by the remaining co-owner, however, where he forced the other from the property (“ouster”). Further, even where one co-owner leaves the property voluntarily, he may still be entitled to occupation rent where the occupying owner claims for a contribution to property related expenses (e.g., mortgage payments, property taxes, insurance, maintenance).

The Law of Property Act touches on this where, in section 17(2), it permits a court to consider whether one co owner is a tenant of the other, or whether, where one co owner is claiming non capital expenses in respect of the land, he should be required to pay “a fair occupation rent”. Section 8 of the Matrimonial Property Act, while not specifically referring to occupation rent, is broad enough to allow a court to consider the issue of use of property between separation and final distribution. Occupation rent also becomes an issue when support issues are raised. The excluded spouse who has an interest in the property occupied by the other spouse may claim that there is a financial benefit conferred upon the occupying spouse which can be quantified and taken into account when support is considered. The relevant sections of the Divorce Act and Domestic Relations Act are certainly broad enough, especially concerning spousal support, to take this into account.

Occupation rent, therefore, may be raised under the Law of Property Act in the case of a jointly owned property; under the Matrimonial Property Act as a factor in determining the equity of a proposed distribution of matrimonial property; and under the Divorce Act or Domestic Relations Act in respect of child or spousal support.

### **THE GENERAL THEORY:**

Most of us suspect we understand the basic idea of occupation rent: namely, that if a house is owned by two people, and only one gets the benefit of the use of it, there should be some