

Tough to build a case for homeowners suing contractors

By AdvocateDaily.com Staff



Homeowners face an uphill battle when it comes to winning disputes with contractors, Toronto civil litigator [Sarah O'Connor](#) tells [AdvocateDaily.com](#).

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), has successfully represented clients in matters involving contractors but says it's never straightforward.

"Case law is firmly rooted on the side of the contractor," she explains. "As much as you might want to, you can't just cancel a contract.

"Once signed, it's a binding agreement between the two of you, and they have a right to finish the job," O'Connor adds, noting that property owners have three basic obligations to contractors in relationships of this kind:

- to pay them on a timely basis
- to make the site available
- not to interfere in the performance of the work

"People think they can just tell a contractor to get off their property and don't come back," O'Connor says. "But a homeowner who did that would likely be in breach of the contract, and the contractor may be able to put a lien on the property for whatever remains on the contract."

Still, she says property owners can protect themselves by checking out references for reputable contractors and hiring a lawyer to review the contract governing the work. They can also add clauses that specify time limits for the completion of work.

"Otherwise, a court will be left to determine what is a reasonable time, which will vary from case to case, depending on the circumstances," O'Connor says.

When a dispute seems to be brewing during the course of the job, she says homeowners should seek another contractor's opinion on whether the work is up to scratch and meets all necessary bylaws and codes.

Even then, the contractor will usually need to have an opportunity to remedy any issues identified, O'Connor adds.

She says homeowners are entitled to terminate a deal if the contractor is in breach.

"It would have to be a serious breach to allow the homeowner to terminate. If a contractor walked off the job, they may be in breach, but a homeowner will still need to follow up and do their due diligence, to confirm that the breach has occurred," O'Connor explains. "From there, the homeowner can sue for any damages done, subject to their duty to mitigate.

"If you are going to terminate and you need to mitigate your damages, then you should get a few quotes from different contractors because courts like to see that if it comes to litigation," she adds.