

Province's Fall Economic Statement

The Province delivered its Fall Economic Statement on November 15, 2018 which offered an update on the "Plan for the People" and included short term plans for spending restraint and some tax relief. The fall mini budget, the first for a PC government in 15 years, sets the stage for an austerity budget in the spring. Finance Minister Vic Fedeli cautioned "Everyone across the province will be required to make sacrifices, without exception."

The Province is projecting a \$14.5 billion deficit, which it inherited from the previous government, has achieved \$3.2 billion in savings through a variety of efficiencies, and confirmed that there have been no job losses. The government also claims \$2.7 billion has been put back in the pockets of the people through tax relief, the elimination of planned tax increases, and the cancellation of cap and trade.

The Province announced LIFT - the Low-income Individuals and Families Tax Credit, an estimated 1.1 million workers earning less than \$30,000 will pay no provincial income tax beginning Jan. 1, 2019; cancellation of the planned surtax on the highest earning Ontarians; the cancellation of funding for a proposed French university and 3 satellite campuses; elimination of 3 independent provincial watchdogs organizations (Environment Commissioner, Child Advocate and Francophone Affairs) and integration with Auditor General and Ombudsman offices; review of the Ontario Drug Benefit Program, and plans to reform social assistance.

The Statement included a gem for landlords, an amendment to the Residential Tenancies Act, 2006 to create an exemption from rent control for newly created rental units, occupied for the first time for residential purposes after November 15, 2018. This measure is intended to stimulate the development of new rental housing stock.

New Rent Control Exemption - The amendments to the *Residential Tenancies Act, 2006* (RTA) which created an exemption from rental control for new units came into force on December 6, 2018 with the proclamation of Bill 57, *Restoring Trust, Transparency and Accountability Act, 2018*.

Section 6.1 of the Act provides details of the amendment for rent control exemption which refers to two types of rental units: 1) A building, mobile home park or land leased community, no part of which was occupied for residential purposes on or before November 15, 2018; and 2) Rental units located in detached, semi-detached and row houses which meet and are subject to specific requirements.

The exemption for new rental units located in detached houses, semi-detached houses or row houses, not occupied for residential purposes on or before Nov. 15, 2018, are subject to the following:

- the detached, semi-detached or row house contained not more than two residential units on or any time before November 15, 2018;
- the residential unit has its own bathroom and kitchen facilities; has one or more exterior and interior entrances; at each entrance the unit has a door equipped so it can be secured from the inside of the unit; and at least one door is capable of being locked from the outside;
- the owner, or one of the owners, lived in another residential unit in the house; or the house was unfinished space immediately before the rental unit became a residential unit.

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Disclaimer

The material contained in this publication is intended for information purposes only, it is not legal advice.

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Changes to Rules of Procedure and Guidelines

The Rules of Procedure have been reformatted and now use plain language and provide an important resource for anyone filing or responding to an application at the Landlord and Tenant Board. The Interpretation Guidelines assist the parties in understanding the LTB's usual interpretation of the law and reference actual cases as examples using hyperlinks.

The Landlord and Tenant Board has announced changes to the Rules of Procedure, forms, Interpretation Guideline 6: Tenant Rights and Interpretation Guideline 12: Eviction for Personal Use, Demolition, Repairs and Conversion. Some of the changes include:

Declaration - The LTB now permits the use of a declaration rather than a sworn affidavit pursuant to Rules 1.5: Where the RTA requires an affidavit respecting a specified statement or specified information, the LTB will also accept a signed and dated declaration containing the specified statement or specified information provided the declaration confirms the truth of the information or statement and acknowledges that making a false declaration is an offense.

Allowing Service by Email - The Rules now permit email delivery for limited landlord/tenant communication pursuant to Rule 3. The landlord and tenant must first sign a form, *Consent to Service by Email*, agreeing to the use of email as a method of service and specify the email address at which the document(s) may be delivered. The following are the only documents which may be served electronically:

- Notice of Rent Increase
- Landlord Notice of Entry
- Documents or Submissions related to an RTA application (except notice of hearing, copy application, motion or request for review)
- Communication regarding issues related to the tenancy

The parties must indicate whether they agree for any or all of the above documents to be delivered by email.

Notice to Enter - The Rules of Procedure have changed with respect to serving a notice to enter the premises. Previously, landlords were permitted to post a notice of entry on the tenant's door. The rules have now been changed to allow service by email with the consent of the tenant and the option of posting on the door has been eliminated.

Service by Regular Mail and Registered Mail - The Rules of Procedure (Rule 3) has changed to permit the delivery of documents by registered mail as well as service by regular mail

You will find a list of updated forms on page 6 of the newsletter. For a complete list of all the changes to the Rules of Procedure, forms, Interpretation Guideline 6: Tenant Rights and Interpretation Guideline 12: Eviction for Personal Use, Demolition, Repairs and Conversion, visit <http://www.sjto.gov.on.ca/en/latest-news/>

Please note: Electronic version of this column was revised 2018-12-21

GOVERNMENT CONSULTATION: Increasing Housing Supply in Ontario

The government is developing a Housing Supply Action Plan that will address the barriers getting in the way of new ownership and rental housing. To inform the Action Plan, the government wants to hear the view of Ontarians on how to expand the housing supply in Ontario. You will find the consultation document at www.mah.gov.on.ca/AssetFactory.aspx?di=19940 and the online survey at: www.mah.gov.on.ca/Page20905.aspx

Landlord's Self-Help Centre is developing a comprehensive submission for the consultation which will represent the interests, concerns and experiences of small landlords in Ontario. We will utilize data we've gathered through service delivery and are launching the Small Landlord Online Survey. We are asking small landlords to complete our survey to provide data that will be used to illustrate points, arguments and serve as examples in LSHC's submission. Our submission will advocate for reforms and improvements to the regulatory environment which will encourage small landlords to stay in the rental business and encourage those thinking about it to get into the business.

We think changes to the regulatory environment that create a better balance between the rights and responsibilities of tenants and small landlords would be a good place to start. Please share your perspective and stories with us: <https://www.surveymonkey.com/r/sm-landlord-2018>

Tribunals Ontario

Attorney General Caroline Mulroney has announced a new cluster of tribunals, Tribunals Ontario. The super cluster combines 19 tribunals under the Ministry of the Attorney General's three tribunal clusters, Social Justice Tribunals Ontario, Environment and Land Tribunals Ontario and Safety, Licensing, Appeals and Standards Tribunal Ontario to create Tribunals Ontario effective January 1, 2019. The change is expected to help improve front line service delivery.

How to deal with lawn care and snow removal at a rental property

Snow removal and lawn care in accordance with municipal by-laws and regulations is the owner's responsibility. However it is not uncommon for the landlord to enter into an arrangement with the tenant who lives on the premises to manage this task.



If you would like your tenant to be responsible for lawn care and snow removal maintenance ("the services") at the rental property, DO NOT include this as a clause in your tenancy agreement. Instead, create a separate employment contract and hire them as an employee to perform these services. It is important that the rent payments are kept separate from what you will be paying the tenant for these services, or you may not be able to prevent the Landlord and Tenant Board (LTB) from determining that these are your maintenance responsibilities as the landlord.

Example #1 (the wrong way): The monthly rent is \$1,000 and you are willing to pay the tenant \$50/month for these services. To keep things "simple" the tenant is therefore asked to pay \$950/month for rent. However, during the tenancy the tenant stops performing these services and refuses to pay the full monthly rent of \$1000. You file with the LTB for non-payment of rent and the LTB rejects your application because they determine that you cannot contract out of the Residential Tenancies Act and pass your responsibilities onto your tenant. Therefore, the lawful monthly rent is determined to be \$950/month and you, as the landlord, are responsible to maintain the lawn and shovel the snow.

Example #2 (the right way): The monthly rent is \$1,000 and you are willing to pay the tenant \$50/month for these services. Each month when the rent is due you expect the tenant to pay \$1000. Separately, once the services have been provided, you then pay your tenant \$50 (preferably by cheque or e-transfer so it is easy to track). If they do not provide the services for that month, you simply do not pay them the \$50.

Don't Forget: Use the Standard Form of Lease!

Landlords, you are now required to use Ontario's Standard Form of Lease when entering into a written tenancy. This requirement is mandatory and came into force on April 30, 2018 pursuant to section 12.1 of the *Residential Tenancies Act*, no other written agreement is valid. Landlords that fail to use the Standard Form of Lease and continue to use their own agreement (or any other agreement they may find online or are provided by property managers or real estate agents) may face penalties. For instance, tenants can withhold the payment of one month's rent if the landlord does not provide the standard lease upon written request by the tenant within 21 days under section 12.1 (6) of the RTA.

For more information on the Standard Form of Lease, please review our RTA fact sheet Residential Tenancy Agreement (Standard Form of Lease). This document can be found at: <https://landlordselfhelp.com/media/2018-Residential-Tenancy-Agreement-Standard-Form-of-Lease.pdf>

The Standard Form of Lease can be found at: <http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?OpenForm&ACT=RDR&TAB=PROFILE&SRCH=&ENV=WWE&TIT=2229E&NO=047-2229E>

NOTE: OREA forms should **NOT** be used for tenancy agreements. If a tenant signs the OREA form (and provides a deposit), the contract has been formed and they are not obligated to sign the Standard Form of Lease.

Standard Lease Tips

- Landlord must completed the Standard Lease entirely, before giving it to the tenant.
- The Standard Lease should be signed by the tenants and landlord before the tenant takes possession of the rental unit. After the lease is signed by all parties, give a copy to the tenant.
- Include a copy of the Information for New Tenants brochure available on the LTB website with the Standard Lease Form.
- To allow for email service of certain forms and notices, ensure the Consent to Service by Email is signed by the tenant and the landlord.
- Before adding your own terms to the lease, review the Appendix included in the Standard Lease as it will help you determine what types of terms you cannot include or enforce.
- Review the Guide to Ontario's Standard Lease, available in multiple languages: <https://www.ontario.ca/page/guide-ontarios-standard-lease-newcomers>

Self-Help TIPS

In this issue of the **Self-Help Tips** we attempt to clarify the definition of a tenant, joint tenants, tenants in common, guarantor and occupants.

Distinguishing the difference between joint tenants, tenants in common and occupants is important when serving termination notices or documents to your tenants. The Residential Tenancies Act, 2006 (RTA) has specific provisions relating to sublets, assignments, and unauthorized occupants.

Tenant - The Residential Tenancies Act, Subsection 2(1) defines a “tenant” as:

- a person who pays rent in return for the right to occupy a rental unit and includes the tenant’s heirs, assigns and personal representatives, but “tenant” does not include a person who has the right to occupy a rental unit by virtue of being,
- a) a co-owner of the residential complex in which the rental unit is located, or
 - b) a shareholder of a corporation that owns the residential complex.

Where two or more persons occupy a rental unit, it is important to define the nature of their relationship with the landlord in order to determine if the tenants are joint tenants, tenants in common, or occupants.

Joint Tenants - In a joint tenancy, there is one rental agreement to which all of the tenants agree and sign. The joint tenants enter and sign the rental agreement at the same time. In a joint tenancy, all the tenants are jointly and severally liable for the payment of the entire rent for the rental unit. A Notice to Terminate a Tenancy has to name and be given to all the tenants who signed the lease. One tenant cannot terminate the tenancy agreement on behalf of the other tenant(s).

Tenants in Common - Tenants in common have separate tenancy agreements with the landlord and live separately from one another, such as in the case of a rooming house. Each tenant in common is responsible for paying his/her share of the rent for the rental unit. A Notice to Terminate a Tenancy is served to each tenant and the rental unit should be clearly identified on the notice.

Occupants and Roommates - The RTA does not provide a definition for “occupants or roommates”. An occupant or roommate is a person who lives and shares the rental unit with the tenant and is not considered a tenant. A person may reside at the rental unit with the tenant as an occupant or a roommate with or without the consent of the landlord.

If the tenant vacates the rental unit or the tenancy is terminated by the Landlord and Tenant Board, the occupant or roommate must vacate the rental unit along with the tenant or they will become an unauthorized occupant. If the tenant leaves and the occupant remains, the landlord has 60 days to file an application with the Board under section 100 of the RTA for an order terminating the tenancy and evicting the unauthorized occupant.

Since they are not tenants, an occupant or a roommate should not be named on a **Notice to Terminate a Tenancy**, and they cannot file an application against either the landlord or the tenant at the Landlord and Tenant Board.

Guarantor - A guarantor is a person that guarantees the payment of rent by the tenant. A guarantor should not be named as a tenant in the rental agreement since the guarantor does not have the right to occupy the rental unit within the meaning of the RTA and should not be named as a tenant on a notice to terminate the tenancy.

When it is not clear who the tenant is, **Section 202** of the RTA requires the Board to make findings on an application pertaining to the true facts about the relationship between a landlord and a tenant. The Board will determine who is a tenant by looking at a number of factors such as who entered into the agreement with the landlord, who is entitled to occupy the rental unit, and who pays the rent.

Tips

- The rental agreement should clearly identify who the tenants are.
- Landlords should only accept rental payments from their tenants.
- A landlord does not have the right to restrict, prohibit, or interfere with a tenant's right to have people live with them in the rental unit.
- Communicate only with your tenant(s) regarding any tenancy concerns.
- For further information refer to Interpretation Guideline #21 on Landlords, Tenants, Occupants and Residential Tenancies which can be found at <http://www.sito.gov.on.ca/documents/ltb/Interpretation%20Guidelines/21%20-%20Landlords%20Tenants%20Occupants%20and%20Residential%20Tenancies.html>

Did You Know?

Q: I have served my tenant with a notice of termination because I will be doing major renovations to the rental property which require a building permit. I will be proceeding to the Landlord and Tenant Board to evict the tenant because he's already indicated that he's not leaving. He also told me that if he does have to leave he has the right to return to the premises once the renovations are complete and at the same rent. Is this true? I was planning on re-renting it to a new tenant after the renovations are done and charge a higher rent.

The tenant does have the right of first refusal when served with this type of notice of termination. However, the tenant must advise the landlord in writing before vacating the rental unit if he wishes to re-occupy the unit. It is also a condition of the tenant's right of first refusal that the tenant inform the landlord in writing of any change of address. It is also true that the tenant can return at the same rent and the landlord would then have to file an application with the Landlord and Tenant Board for a rent increase above the guideline based on the capital improvements.



Q: One of my tenants filed an application against me at the Landlord and Tenant Board but we have since reached an agreement and the tenant said she would cancel the hearing. I checked the file status on the Board's website and it still states the file is open. How do I contact the Board to close the file?

When an application is filed, it is up to the applicant to ask the Board to withdraw their application if they do not wish to proceed. The request to withdraw should be done in writing. If the application is not withdrawn, the hearing will still be held. You should contact your tenant to ask that she notify the Board to withdraw her application. Otherwise, you would have to attend the hearing and if the tenant does not show up for the hearing then the Board will dismiss the application.



Q: I have been renting my house to a tenant for several years and now I have decided not to rent anymore and sell the property. However, I would like to do some renovations to the house first. Which notice do I serve my tenant if I wish to renovate the house and put it up for sale?

There is actually no notice of termination that can be given for the reason that you have described. Basically the tenant does not have to vacate the premises if you plan on selling it. The tenant has the

right to remain even if the property is sold unless the purchaser will require the premises for their own personal use.



Q: I have a tenant who moved in a few years ago and when he moved in he brought a cat, since then he has obtained two more cats and three dogs. Is there any law on how many cats or dogs the tenant is allowed to have in his unit?

The *Residential Tenancies Act* does not include any provision on the number of pets tenants are allowed to have in their units. The number of dogs and cats a resident is allowed to have is regulated by the municipality. You will have to contact your local health department for these details.



Q: One of my tenants has not paid the rent for two months, I have served her with the notice for nonpayment of rent – Form N4. She has since tried to give me partial payment of the rent owing. I don't know if I should accept it, I'm afraid if I accept the payment I will have to start all over again. Is it okay to accept partial payment?

It is in your best interest to accept whatever payment the tenant makes and issue a receipt. By accepting this payment it does not nullify the notice, it will still remain in effect until it's paid in full. You can still proceed to the Landlord and Tenant Board after 14 days based on the notice already given and make the adjustment of the rent owing when you file your application.



Q: I allowed one of my family members to live in the house that I own. He has been living there for a few months now and the agreement was that he would just pay for the utilities, I did not charge him any rent. I have just discovered that he has not been paying for the utility bills. How do I get him evicted from the house? I can't find any notice of eviction for this particular situation.

In order to evict this person, you would first have to get a determination on whether he would be considered a tenant. There is an application that can be filed with the Landlord and Tenant Board for the Board to determine whether this would be considered a tenancy under the Residential Tenancies Act. The application you would file is the Application to Determine Whether the Act Applies (Form A1).



What's New?

Landlord and Tenant Board Updates Forms

The SJTO-LTB has published two new forms pursuant to recent amendments to the Residential Tenancies Act, 2006 (RTA) pursuant to the Rental Fairness Act, 2017 (Bill 124). The new forms include: Consent to Service by Email; and Declaration.

Several LTB forms have been updated to reflect the change which permits the use of a declaration rather than an affidavit, these include:

- L2: Application to End a Tenancy and Evict a Tenant
- L3: Application to End a Tenancy - Tenant Gave Notice or Agreed to Terminate the Tenancy
- L4-A: Application to End a Tenancy - Tenant Failed to Meet Conditions of a Settlement or Order
- L4-B: Application to End a Tenancy - Tenant Failed to Meet Conditions of a Settlement or Order
- Tenant's Motion to Void an Eviction Order for Arrears of Rent; Request to Re-open an Application
- C4-A: Application to End the Occupancy of the Member Unit and Evict the Member because the Member failed to Meet Conditions of a Settlement/Order
- C4-B: Application to End the Occupancy of the Member Unit and Evict the Member because the Member failed to Meet Conditions of a Settlement/Order
- Co-op Member's Motion to Void an Eviction Order for Non-Payment of Housing Charges

The new forms should be used immediately and can be found at <http://www.sjto.gov.on.ca/ltb/forms/>. Always be sure to use the latest version of forms and immediately destroy old forms to avoid confusion.

2018 Landlord Learning and Networking Forum

Strong interest and a sell-out crowd at the 2018 Landlord Forum made this year's event a standout. The Landlord Forum is an annual event organized by LSHC to provide the small landlord community an opportunity to network with service providers and their peers and learn about the trends and changes which affect residential housing providers.

This year educational presentations included N12 - Terminating a Tenancy for Landlord's Own Use. LSHC will organize another presentation in 2019 to tackle this important topic in an attempt to address the complexities and confusion surrounding recent changes. We've also posted additional information about the N12 and the termination process at <https://landlordselfhelp.com/media/N12-Landlord-Own-Use.pdf>

The Forum also highlighted requirement for landlords to use the Standard Form of Lease which came into force on April 30, 2018. You will find information on this topic at <https://landlordselfhelp.com/media/MAH-standard-form-lease-2018-10-25.pdf>. In addition, Jane Ferguson presented an overview Standard Form of Lease Addendum or Additional Clauses developed by LSHC and available to LSHC members online in the Members' Area of the website. The form can be adapted to reflect the terms of individual tenancy agreements and by adding or removing clauses which do not apply.

The *No Smoking Policies - What landlords need to know* presentation was also featured to help landlords understand the process for implementing a no smoking policy, both tobacco and cannabis. The presentation makes the distinction between recreational cannabis and medical cannabis use. You will find the presentation, which was delivered by Claudia Pedrero of Iler Campbell at <https://landlordselfhelp.com/media/Smoke-Free-Policies.pdf>

Unfortunately, the LTB Mediator who was scheduled to present Early Bird Workshop at the Forum was unable to attend due to a personal emergency. LSHC is working to schedule a presentation dedicated to the LTB Mediation topic in 2019.

How are we doing?

Share your feedback about the Newsletter,
<https://www.surveymonkey.com/r/lshcnews>

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