



Quarterly News

A Landlord's Self-Help Centre Publication

Campaign to restore the Eviction Moratorium

A campaign urging the government to reinstate the eviction moratorium is underway and MPP Suze Morrison, NDP Tenant Rights Critic, is leading the charge and pressing the government to sign an emergency order banning residential evictions for the remainder of the COVID-19 pandemic.

Morrison's Private Members' Motion which sought to reinstate the temporary moratorium on residential evictions until Ontario moved into a post pandemic recovery period and prohibits evictions for non-payment of rent for the period of the COVID-19 pandemic passed with the unanimous consent of the House on December 8, 2020. She is now calling on the Ford government to take action and sign an emergency order.

Eviction Blitz

Tenant advocates have characterized the recent hearing schedule at the LTB as an eviction blitz and have highlighted some very concerning issues respecting the manner in which applications are proceeding. It is not in the interest of either party, tenant or landlord, for applications to be processed in a manner that does not permit the parties to participate.

While the recent transition to an electronic hearing format and use of technology may be here to stay, consideration ought to be given to the parties that lack the skills and knowledge required to navigate unfamiliar technology their ability to prepare and effectively participate in electronic hearings.

If one of the parties seeks the review of an order or seeks to appeal a decision which prevented their fair participation, there will be lengthy delays in resolving the issues.

Rent Relief Program

As we navigate the second wave of the COVID-19 pandemic and face the threat of another eviction moratorium, it's time to talk about relief.

Landlords, especially small landlords, are caught in the middle of this dilemma. These small landlord housing providers are essential and desperately needed to supply affordable rental accommodation that is vital to the rental housing landscape. Small landlords are barely hanging on to their homes, some have not received rent since March 2020 or earlier.

Let's face it, most small landlords are in the business of renting because they need the money generated by rent to supplement the cost of ownership and make their mortgage payments. They have jobs and financial obligations and are facing the same economic challenges as their tenants, including layoffs and job loss. Many small landlords cannot defer their mortgage payments because they are not financially eligible for deferral and cannot afford the penalties and increased deferral costs they will face down the road.

A Rent Relief Program for the residential sector is sorely needed and would offer relief for both tenants and landlords. In March 2020, the Federation of Rental-housing Providers of Ontario (FRPO) proposed the government setup and fund the Ontario Rental Assistance Program (ORAP). Under the FRPO proposal, the time-limited program would provide interest free loans to help tenants deal with rental costs until the COVID-19 crisis passed with an option to forgive loans tied to income levels in the future and landlords would administer the application process and bear the carrying cost of the rental shortfall until the supplement is received from the government – it appears the province did not wish to move forward with the proposal.

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Disclaimer

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

Landlord's Self-Help Centre
15th Floor - 55 University Ave.
Toronto, Ontario M5J 2H7

Tel: 416-504-5190
Toll free: 1-800-730-3218
info@landlordselfhelp.com

Funding provided by:



Residential Tenancy Agreement (Standard Form Lease)

The Ontario Residential Tenancy Agreement (Standard Form Lease) has undergone some amendments and the new form is available as of December 3, 2020. These amendments were made to reflect the changes made by Bill 184- *Protecting Tenants and Strengthening Community Housing Act, 2020* and *Bill 204 - Helping Tenants and Small Businesses Act, 2020*.

During the three-month transition period from December 2020 to February 2021, the new form can be used for written tenancy agreements entered into on or after December 3, 2020. However, the use of the form will become **mandatory** as of March 1, 2021. Some of the updates include:

- Technical improvements
 - Updates to the Landlord and Tenant Board website and TTY phone number in the Appendix
 - The option for electronic signatures has been added for use in cases where the landlord and tenant consent to signing the lease electronically
- Additional information and changes that reflect the recent changes to the *Residential Tenancies Act*
 - The note about suite meters has been removed as landlords are no longer required to provide electricity usage information to prospective tenants
 - The fines for offences under the *Act* have been adjusted to the new amounts
 - Information has been added about no-fault evictions that require the landlord to pay compensation
 - The information about rent increases has been revised to include exempted units
[**Note:** these exemptions don't apply under the rent freeze for 2021]

The Standard Form Lease applies to most residential tenancies in Ontario, including single and semi-detached houses, apartment buildings, condominiums and secondary units (i.e. basement apartments). It is very important for landlords to make sure they use this mandatory document and not rely on other forms (i.e. their own hand-written agreement or realtor forms).

The new version of the form can be found on the Ministry of Affairs and Housing website 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> and on Landlord's Self-Help Centre's website at www.landlordselfhelp.com. Multi-language guides are also available and provide more information about the Standard Form Lease and include examples of legal and illegal clauses which may be used in the additional terms section.

Bill 204 - Helping Tenants and Small Businesses Act, 2020

The Province passed Bill 204 – *Helping Tenants and Small Businesses Act*, on September 30, 2020 and it received Royal Assent on October 1, 2020. The Act includes several schedules which contain amendments to various statutes, Schedule 7 contains amendments to the *Residential Tenancies Act, 2006* (RTA).

Bill 204 provides that no landlord shall increase the rent charged to a tenant during the rent freeze period, even if notice of the increase was given before the day the *Helping Tenants and Small Businesses Act, 2020* received Royal Assent.

Rent freezes will apply somewhat unevenly based on the anniversary date. For example, if the rent increase anniversary date is December, the landlord will miss the December 2021 increase but may give a notice of rent increase with an effective date of January 1, 2022. Landlords that have a January rent increase anniversary will bear the greatest impact of the freeze. All landlords could potentially increase the rent on January 1, 2022 since they must allow at least 12 months to pass since the last date of increase.

While the legislation freezes rents for most residential units in 2021, it does include the following exceptions:

- Accommodation that is described in clause 6 (1) (a) or (b);
- A rent increase that is taken in accordance with an agreement under section 121 or 123;
- An increase permitted under subsection 126 (10) or section 127 for,
 - extraordinary increases in the cost for municipal taxes and charges;
 - eligible capital expenditures;
 - operating costs for security services; and
- An increase in rent payable by an assignee under a tenancy agreement for a mobile home site or a site on which there is a land lease home in accordance with section 165.

The section 121 and 123 exception is the RTA provision that permits a landlord and a tenant to enter into an agreement to increase (or decrease) the rent when a service or facility is added (or removed).

Landlord Learning Modules

LSHC has produced a variety of learning modules providing step-by-step instruction on the correct completion of LTB forms to ensure small landlords avoid costly common mistakes.

We've recently posted Tenant Belongings (4 different scenarios); Eviction by Sheriff; Subletting a Rental Unit; and Assignment of a Rental Unit. View the full directory at <https://landlordselfhelp.com/landlord-learning-modules/>

Tribunals Ontario: Practice Direction on Hearing Format

Tribunals Ontario has issued an updated Practice Direction respecting its approach to determining the format of hearings – this is found at

<https://tribunalsontario.ca/documents/TO/Practice-Direction-on-Hearing-Formats-EN.html>

Matters will be scheduled for video, telephone or written proceedings unless a different format is required as an accommodation for an [Ontario Human Rights Code](#)-related need, or unless a party can establish that the specified hearing format will result in an unfair hearing.

There are just two exceptions to a written or electronic hearing:

- The first exception is that an in-person hearing may be provided if a party can establish that an in-person hearing is required as an accommodation for an Ontario Human Rights Code-related need.
- The second exception is where a party can establish the hearing format will result in an unfair hearing.

In recent weeks both landlord and tenant advocates have raised concern respecting the manner and the fast pace in which LTB hearings are proceeding and identified a laundry list of issues including: lost applications filed both electronically and by fax; undelivered notices of hearings; and a variety of technology issues encountered prior to and during hearings.

LTB Updates Rules and Guidelines

The recent Bill 184 amendments to *Residential Tenancies Act* (RTA) have triggered revisions to the Landlord and Tenant Board's (LTB) Rules of Procedure, Interpretation Guidelines, Practice Directions and forms.

In August 2020 the LTB held a public stakeholder consultation and, as a result of that consultation and the input received, the LTB has revised Rules of Practice and Interpretation Guidelines which become effective December 1, 2020 – updates found at <https://tribunalsontario.ca/ltb/rules-practice-directions-guidelines/>. The LTB anticipates updated forms will be available shortly.

The LTB has also announced the appointment of 30 full-time and 35 part-time adjudicators to hear LTB matters. The LTB anticipates scheduling the pending applications for nonpayment of rent, and for eviction due to nonpayment of rent that were filed up to August 31, to be heard in November and into 2021.

A summary of consultation input received by the LTB has been posted at:

https://tribunalsontario.ca/documents/lbt/consultations/LTB_Consultation_What_We_Heard_EN.pdf

Vacancy De-control An essential tool for small landlords

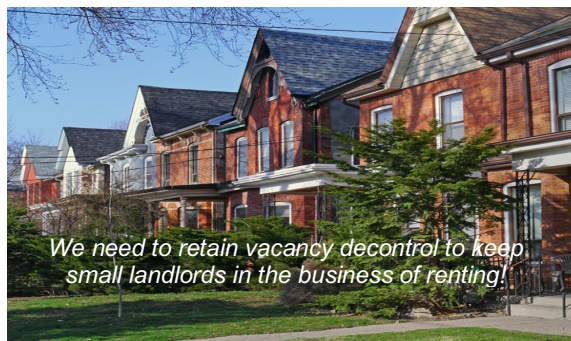
There has been a lot of talk in the media lately about ending vacancy de-control, which is a key provision of the *Residential Tenancies Act, 2006*. If you're a small landlord, the notion of losing vacancy de-control should give you cause for concern, if not outrage.

The tenant lobby is advocating the end of vacancy de-control as a measure toward ensuring rental housing in Ontario remains affordable. Small landlords provide an estimated 500,000 rental units across Ontario and vacancy de-control is an essential tool that keeps them in the rental business and their rental units in the market.

Vacancy de-control allows landlords to set a new rent when a tenancy agreement ends and the rental unit becomes vacant. This provision was implemented to allow landlords to catch up with market rents and recover from a potentially long tenancy that resulted in the rent being well-below the average. Landlords who have long term tenants tend not to take annual guideline rent increases because they want to encourage tenant retention. There is a cost to tenant turnover and most small landlords are in the rental business because they rely on the rental income to supplement the cost of ownership, meet their mortgage payments, offset the cost of maintenance, property tax, insurance, utilities, etc.

Another benefit of vacancy de-control is the flexibility for landlords to change up the amenities and include or exclude facilities and services, such as parking, laundry, storage, etc., when the rental unit turns over.

While there is an above guideline increase (AGI) process, the grounds are limited. The *Rental Fairness Act* in 2017 included amendments that allowed the government to tighten rules for AGIs based on capital expenditures and specify circumstances where otherwise eligible capital expenditures are ineligible; it also removed the provision permitting above guideline increases due to extraordinary increases in utility costs. Small landlords avoid AGIs, even when they have the requisite costs to support an application (extraordinary increases in municipal taxes and costs; eligible capital expenditures; and costs for security services), because the process is lengthy and complex, and often requires the landlord to hire a consultant specializing in this area.



Self-Help TIPS

During these unprecedented times of COVID-19, landlords have been faced with the need to negotiate rents. In order to protect the lawful rent, the rules and regulations of the *Residential Tenancies Act* (RTA) must be followed. In this issue of Self-Help Tips we discuss rent discounts and how to structure them without negatively affecting the lawful rent.

The *Residential Tenancies Act* includes a provision for discounts that are allowed without affecting the lawful rent. The prescribed conditions for section 111 are contained in sections 10 and 11 of the Ontario Regulations 516/06, both should be referenced when determining rent discounts. You find the RTA at: <https://www.ontario.ca/laws/statute/06r17#BK175>, and Ontario Regulations 516/06 at: <https://www.ontario.ca/laws/regulation/060516#BK11>

Rent discounts – The RTA, subsection 111(2.1), states the lawful rent is not affected if one of the following **discounts** is provided:

1. A discount in rent at the beginning of, or during, a tenancy that consists of up to **‘three months’** rent in any 12-month period if the discount is provided in the form of rent-free periods and meets the prescribed conditions.
2. A prescribed discount.

The following conditions, according to section 10 (1) of the Ontario Regulations, must be met for the purposes of paragraph 1 of subsection 111 (2.1) of the RTA:

1. The discount must be provided for in a written agreement.
2. If the rent is paid monthly and the discount is equal to the rent for one month or less, the entire discount must be taken during one rental period.
3. If the rent is paid monthly and the discount is equal to the rent for a period greater than one month but not more than two months, the discount equal to the rent for one month must be taken during one rental period and the balance within one other rental period.
4. If the rent is paid monthly and the discount is equal to the rent for a period greater than two months but not more than three months, the discount equal to the rent for two months must be taken for two rental periods and the balance within one other rental period.
5. If the rent is paid daily or weekly, the discount must be taken in periods that are at least one week in duration.

Section 11 of the Ontario Regulations prescribes the following conditions for the purpose of paragraph 2 of subsection 111(2.1) of the Act:

1. A discount provided for in a written agreement, if the total amount of the discount that is provided during the first eight months of the 12-month period does not exceed the rent for one month.
2. A discount provided for in a written agreement, if,
 - i. the total amount of the discount that is provided in the 12-month period does not exceed the rent for two months,
 - ii. the total amount of the discount that is provided in the first seven months of the 12-month period does not exceed the rent for one month, and
 - iii. any discount that is provided in the last five months of the 12-month period is provided in only one of those months and does not exceed the rent for one month.

For purposes of the above provisions, the **"12-month period"** means,

- the 12 months following the commencement of the tenancy;
- the following 12 months after any rent increase is taken, other than a rent increase taken under s.123 of the Act, or
- where a rent increase has been taken in past but has not been taken on the next anniversary when it could have been, the 12-month period following the most recent anniversary of the last rent increase properly taken; where no rent increase has ever been taken, the next 12 months following the anniversary of the commencement of the tenancy.

Prompt payment discount - A prompt **payment discount** in rent of up to 2 per cent of the rent that could otherwise be lawfully charged for a rental period can be offered at the beginning of or during a tenancy if it is provided for paying rent **on or before the date it is due**. A prompt payment discount can be offered in addition to the discounts described in subsections 2.1 without affecting the lawful rent and must be provided for in a written or oral agreement.

Tips

Before offering a rent discount, be sure you understand the Rent Rules established under the *Residential Tenancies Act, 2006*. A rent discount must be provided within a written agreement and applied to a 12-month period. Examples include:

1. A landlord is having a difficult time renting due to the pandemic, to attract new tenants a discount equal to one month's rent is offered during the first year of the tenancy. Options include:
 - a) The discount can be offered as a rent free discount and applied to the first month of the tenancy or
 - b) A one monthly discount can be spread evenly over the first eight months of the 12-month tenancy.
2. The tenant is requesting a rent discount to renew the tenancy for another year. The landlord agreed to a discount equal to two months' rent during the next 12 months of the tenancy, options include:
 - a) Provide the discount in a two-month rent free period during the 12 month rental agreement, or
 - b) Provide a discount equal to one month's rent during the first 7 months and the other one month's rent discount is applied to one of the last 5 months of the 12 month period.

Did You Know?

Q: I'm entering into a lease agreement with a new tenant and I am considering offering the tenant a prompt payment discount. Can you explain how that works and what can I do if the tenant does not pay the rent on time?

A landlord can offer a prompt payment discount of up to 2 per cent of the rent without affecting the lawful rent. If the tenant does not pay the rent on time then he/she must pay the full amount of the rent. If the rent is not paid in full you would be able to serve notice of nonpayment of rent using the Form N4.



Q: I am planning to serve my tenant a notice of rent increase, but what is the rent increase guideline for next year?

The Government of Ontario introduced and passed Bill 204 - *Helping Tenants and Small Businesses Act, 2020* which places a rent freeze on rent increases for 2021. The guideline for the calendar year 2021 is set at zero.



Q: I have learned that there is a rent freeze for next year, but I usually serve the notice to increase the rent December 1ST to take effect on March 1st of the following year. Since I'm serving the notice now can I still increase the rent using the guideline of 2020? If not, can the tenant and I agree to a rent increase?

No, you cannot use the 2020 guideline if the effective date of the increase is in 2021. If the tenant were to agree to an increase in rent, the law does still allow tenants and landlords to agree to a rent increase but only in exchange for an extra service or facility provided by the landlord (for example, storage facilities or parking).



Q: My rental unit is exempt from rent control because it is a new unit which was first occupied after November 15, 2018. Can I still increase the rent in this case?

No, the rent freeze applies to most rental properties such as houses, apartments, condos, care homes (including retirement homes) mobile home parks land lease communities (including units occupied for the first time for residential purposes after November 15, 2018).



Q: I have a tenant who moved in January of this year, I am aware that I have to pay interest on the last month's rent deposit after one year, what is the rate of interest I have to give my tenant in January 2021?

A landlord must pay interest annually to the tenant on the amount of the rent deposit at a rate equal to the rent increase guideline. The rate of interest on the last month's rent deposit is usually the same as the rent increase guideline. Since there is no rent increase guideline for 2021 the interest would be zero.



Q: I've had a tenant for a few years, last year I increased the rent by \$50.00 which was more than the guideline, the tenant did not object to it and has been paying the increase for more than a year. I realize that the increase was more than the allowable guideline but can the tenant still claim that the rent increase was not legal?

According to Section 135.1 of the Residential Tenancies Act it clarifies that if the rent was increased illegally but the tenant has paid the unlawful amount of rent for at least one year the rent then becomes lawful.



Q: I am the owner of a house where I'm renting out two rooms and I'm sharing the kitchen and bathroom facilities with the tenants. I understand that there is a rent freeze in 2021, but would that apply in my situation or can I still increase the rent?

Based on the fact that you are living in the same house and you share the kitchen and bathroom facilities with the tenants, the *Residential Tenancies Act* does not apply to this type of accommodation. Therefore, the rent freeze would not apply in your case.



Q: My tenant stopped paying rent a few months ago, I have served the Form N4 and also filed the L1 Application with the Landlord and Tenant Board and a hearing has been scheduled. What can I expect at this hearing so that I can prepare?

During a hearing based on arrears of rent a tenant can raise any issues such as maintenance issues, harassment or not having reasonable enjoyment of the premises. In order for the tenant to bring up these issues the tenant must provide the landlord and the Board a written detailed description of each issue at least 7 days prior to the hearing. The tenant must also give a copy of all their supporting evidence to the landlord and the Board at least 7 days before the hearing. The landlord can submit their own evidence to address the tenant's claims, such as photos, documents; letters or any other relevant evidence the landlord will be relying on. The landlord must provide this to the Board and the tenant at least 5 days before the hearing.



Toronto Council to vote on proposal for Vacant Home Tax

After two years of studies, consultations, reports and debates, Toronto is poised to put a proposed Vacant Home Tax to a vote at the December 2020 City Council meeting.

With an estimated 9,000 to 27,000 vacant homes in the city, Toronto is expecting the new tax will help boost the housing supply and raise an estimated \$66 million in new revenue beginning in 2022. Modeled on the Vancouver Vacant Home Tax, Toronto's Vacant Home Tax may be calculated at 1% of the assessed value of the home and properties will be identified either by universal declaration or self-identification.

With the goal of getting vacant units back into the market so they can be occupied, Mayor Tory has assured owners they will not be subject to the vacant home tax in a variety of circumstances. Tory said "If you want to live in your house or your condo, you will not pay this tax. If you own another house or and condo and you lease it out to somebody or there's a tenant in it, you will not pay this tax. If you're sick and have to go in the hospital or into long-term care you will not pay this tax" he said. Even if you go to Florida for half the year or have to have your house renovated for a period of time and it's vacant during the renovations, you will not pay this tax."

LSHC will make a submission to Toronto Council seeking an exemption for small landlords who own a secondary rental unit or other rental accommodation in their principal residence which they have chosen not to rent. Let's ensure that small landlords who opt not to rent a unit in their home do not become subject to the vacancy tax.

"We simply can't afford, from the housing supply perspective, to have housing accommodation for thousands of people sitting empty. You can live in it, you can rent it, but if it sits empty you will pay a tax that helps us build more affordable housing people can live in." Mayor John Tory

2020 AGM-Landlord Forum

Our thanks to all the LSHC members who took the time to attend the AGM-Landlord Forum on October 24, 2020 via Zoom. The AGM-Forum was held as an online meeting due to COVID-19 and to adhere to health and safety distancing guidelines. We apologize for any confusion regarding the registration process.

If you missed attending the live AGM and Learning Forum presentations, it's not too late - we have posted the recordings of the Bill 184 presentations provided by Jane Ferguson and Petar Guzina along with the recording of the business meeting and address from Minister Steve Clark at <https://landlordselfhelp.com/2020-agm-and-learning-forum-followup/>.

You can also share your feedback after viewing the recordings using the online evaluation <https://www.surveymonkey.com/r/2020LearningForum>

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Bill 205 - Protecting Renters from Illegal Eviction Act, 2020

Jessica Bell, MPP University-Rosedale, introduced a Private Member's Bill in the Legislature on September 22, 2020, Bill 205 - *Protecting Renters from Illegal Evictions Act, 2020*.

The Bill proposed the following with respect to personal occupation of a rental unit by the landlord, a family member of the landlord or by a person who purchases the rental unit or residential complex, or to the repair, renovation or demolition of the unit or its conversion to non-residential use:

1. Modified timeframes with respect to certain notices and applications;
2. The mandatory use of LTB approved forms when giving these types of notices;
3. With respect to repair, renovation, demolition or conversion, the landlord must provide the tenant with copies of the necessary approvals for repair, renovation, demolition or conversion;
4. Where the LTB finds the landlord gave any of these notices in bad faith, the LTB is required to impose a monetary penalty; and
5. The Board maintain a registry of these applications and provide notice of them to the Minister.

The Bill also proposed the *Legal Aid Services Act, 2020* be amended (section 4.1) to require that Legal Aid Ontario provide representation to all individuals appearing before the Landlord and Tenant Board who have received notice under the *Residential Tenancies Act, 2006* terminating the individual's tenancy for a reason unrelated to the conduct of the individual and who request such representation.

Bill 205 made it through the legislative process to Second Reading and did not survive the vote on November 16, 2020, it lost on division.

DISCLAIMER

The information included in this publication is intended to provide general information, it is not legal advice.