

More Homes, More Choice: Housing Supply Action Plan

The Ministry of Municipal Affairs and Housing has released its “*More Homes, More Choice: Ontario’s Housing Supply Action Plan*” [<https://files.ontario.ca/mmah-housing-supply-action-plan-21may2019.pdf>] which follows a consultation process launched in Nov 2018 spanning several weeks and attracting more than 2000 submissions from the public, stakeholders, and experts. The Housing Supply Action Plan lays the foundation for the future and provides a blueprint for Ontario’s Five-Point Plan:

1. **Speed:** Red tape and paperwork can add years to a construction project. We will maintain Ontario’s strong environmental protections, while making the development approvals process faster.
2. **Cost:** Layers of permits, government approvals and charges by municipalities add to the cost of building new homes. We will make costs more predictable, to encourage developers to build more housing.
3. **Mix:** We’ll make it easier to build different types of housing – from detached houses and townhomes to mid-rise rental apartments, second units and family-sized condos. We need a variety.
4. **Rent:** There are more people looking for homes than there are places to rent. We will protect tenants and make it easier to build rental housing.
5. **Innovation:** This means everything from new housing designs and materials to creative approaches to home-ownership and more. We’ll encourage more innovation and creativity in Ontario’s housing sector and make sure the government isn’t standing in the way.

What does the Action Plan have to offer for small landlords?

- New residential rental units are exempt from rent control to encourage new construction.
- Proposed *Planning Act* changes that would authorize additional units in the primary dwelling and ancillary building or structure will make it easier for owners of detached, semi-detached and row house to create residential units above garages, in basements and in laneways.
- The Province would give homeowners a user-friendly checklist to help them build legal second units recognizing that homeowners may not be fully aware of the rules for creating a basement apartment or converting another space in the house to rent it out. LSHC published three guides for homeowners in Ontario who are considering creating a Second Suite during a 2015-16 joint project with Municipal Affairs and Housing and the City of Toronto – these guides can be found at www.secondsuites.info.
- The government is working with Tribunals Ontario to address shortages of adjudicators at the Landlord and Tenant Board. There have been a number of recent appointments and recruitment is underway to fill adjudicator vacancies and address wait times of more than two months.

Long delays continue at the Landlord and Tenant Board

Delays at the LTB routinely occur and should be anticipated. The SJTO posted notice of recruitment for three adjudicators in Oct 2018, and a notice to the public was subsequently posted acknowledging LTB service delays and to advise that the LTB is working with government to improve services and address adjudicator vacancies.

Careful planning is needed for time sensitive applications such as purchaser’s own use. It is recommended that a LTB order be obtained before closing on a purchase. If purchaser’s own use is required, consider a longer closing due to LTB backlog.

Application adjourned? Landlords should expect a delay of 4 to 8 weeks before next hearing date if the case is adjourned.

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Renting Is a Business: Know the Basics!

Although residential tenancies in Ontario are regulated by various legislation which makes it almost impossible to know it all, it is important to be aware of fundamentals of renting. Landlords need to have basic knowledge about laws such as the *Residential Tenancies Act*, the Landlord and Tenant Board forms and processes to minimize any potential legal disputes that may arise during the tenancy. From legalizing your rental unit, screening a potential tenant to attending an LTB hearing and evicting a tenant, every process may involve significant paper work, time and financial resources that you may not have considered yet.

The following are some points to consider about renting:

- **Before renting your unit, find out if it is a legal unit!** You may have to apply for municipal permits and renovate your rental unit in order to comply with the necessary bylaws and zoning regulations.
- **You have the right to thoroughly screen any potential tenant!** Ensure that you collect relevant information about a potential tenant and verify it before accepting the tenant. For more information about screening a tenant, review our RTA Fact Sheet Before you Rent at <https://landlordselfhelp.com/rta-fact-sheets/> or watch our Landlord Learning Video Finding a Tenant at <https://landlordselfhelp.com/landlord-learning-tips/>
- **Once a tenancy starts and issues arise, address them in a timely manner!** Failing to address an issue with your tenant as soon as the problem occurs does not benefit you as a landlord. When addressing the problem, you should do it in writing and keep a copy for your records.
- **Know when to serve a notice of eviction!** Every notice of eviction deals with a different issue and has a prescribed notice period. Read the forms before you give them to your tenant.
- **Most LTB applications and proceedings take significant time!** Going through the LTB procedures takes time as they may include serving the tenant with a notice of eviction, filing an application with the LTB, waiting for a hearing to be scheduled, or an order to be issued, filing the order with sheriff, etc.

Important Resources: Inform and educate yourself with these:

- ✓ Residential Tenancies Act, 2006 at <https://www.ontario.ca/laws/statute/06r17> where you can review the entire legislation.
- ✓ Landlord and Tenant Board at <http://www.sjto.gov.on.ca/ltb/> where you can review the LTB's forms, processes, rules, practice directions and interpretation guidelines.
- ✓ Landlord's Self-Help Centre at <https://landlordselfhelp.com/> where you can find videos, podcasts, newsletters, fact sheets, frequently asked questions, etc.
- ✓ Second Suites by Landlord's Self-Help Centre at <http://www.secondsuites.info/> where you can learn about legalizing your rental unit.

Toronto Landlord Fined \$48,000 for Violations under the RTA

795 College Inc. has been fined \$48,000 for violations to the *Residential Tenancies Act* which included three counts of failing to afford a tenant a first right of refusal. The maximum fine for each offence/count is \$100,000 for corporations and \$25,000 for individuals. The court also imposed a 25 per cent victim fine surcharge of \$12,000 which is required under the Provincial Offences Act.

The Landlord and Tenant Board previously ordered \$75,000 in administrative fines against 795 College Inc., these were comprised of \$25,000 for each of three tenancies and the maximum amount permitted.

The charges under the Provincial Offences Act stem from the termination of three residential tenancies on the basis of extensive renovations which were rented to new tenants when the renovations were completed. Contrary to the *Residential Tenancies Act* provision for the first right of refusal (section 53) is triggered when a tenant informs the landlord in writing prior to vacating the unit that they wish to exercise the first right of refusal to occupy the rental unit as a tenant when the repairs or renovations are completed. The right to re-occupy the rental provides that the rent charged can be no more than what the landlord could have lawfully charged if the tenancy had not been interrupted. In the 795 College Inc. case, the units were re-rented for three times the rent paid by the previous tenants.

Residential housing providers, including small landlords, operate in a highly regulated environment and are governed by numerous rules and regulations of which they should be familiar, including:

- Residential Tenancies Act
- LTB Rules, Practice Directions, and Interpretation Guidelines
- Ontario Human Rights Code
- Ontario Regulation 213/07 Fire Code
- Fire Protection and Prevention Act
- Ontario Building Code
- Frustrated Contracts Act
- Income Tax Act
- Personal Information Protection and Electronic Documents Act (PIPEDA)
- Ontario Electrical Safety Code
- Municipal zoning and property standards bylaws
- Condominium Act
- Statutory Powers Procedure Act

Is your rent increase legal?

Despite what you may have been told by a friend, colleague, or family member, there are very specific ways that a landlord is legally allowed to increase the rent. It is beneficial for landlords to educate themselves in order to prevent illegal rent increases and unintended negative financial consequences in the future.

Entering into a new lease agreement does not necessarily mean the rent can be increased by any amount the parties agree to. Below are a few scenarios:

Scenario #1: The tenant was originally on a fixed-term lease but it has ended and the tenant has been living in the rental unit on a monthly basis or wants to enter into another fixed-term lease. If the landlord and tenant decide to sign another fixed-term agreement (making sure to use the new Standard Form Lease

<https://landlordselfhelp.com/standard-form-of-lease/>), this does not create a new tenancy. Instead it is simply a renewal of the fixed-term contract for the existing tenant.

Scenario #2: There was a joint tenancy between Tenant A and Tenant B, but now Tenant B is leaving and Tenant C is moving in. If the landlord and tenants (A & C) decide to sign a new tenancy agreement (monthly or fixed-term), making sure to use the new Standard Form Lease <https://landlordselfhelp.com/standard-form-of-lease/>, this does not create a new tenancy. It is a continuation of the existing tenancy relationship with Tenant A, the only difference is now Tenant C is in the rental unit instead of Tenant B.

Scenario #3: The rental unit has been sold but the purchaser is keeping the tenants. When a rental unit is purchased and the tenancy is assumed with the property, the only thing that changes is the legal name and address of the landlord. If the new landlord and existing tenant decide to sign a new tenancy agreement to readdress the terms and conditions of the tenancy this is ok, but must be done using the Standard Form Lease <https://landlordselfhelp.com/standard-form-of-lease/>. However, a new tenancy is not created, and a new rent amount cannot be set unless 12 months have passed since the last lawful rent increase.

Legal option for scenario #1, #2 and #3: In either of these scenarios, the rent can only be increased using the Landlord and Tenant Board's Form N1/N2 and following the specific rules attached to this process. Visit the Landlord and Tenant Board's website for more information http://www.sjto.gov.on.ca/documents/lrb/Notices%20of%20Rent%20Increase%20%20Instructions/N1%20instructions_final_Nov30_2015.pdf

Note: Even if the landlord and tenant agree to increase the rent above the Annual Rent Increase Guideline amount (<https://landlordselfhelp.com/annual-rent-increase-guideline/>), and they put this agreement in writing, unless this agreed increase follows the rules set out in sections 121 or 123 of the *Residential Tenancies Act, 2006*, it is still illegal and the landlord may be faced with negative financial consequences.

Scenario #4: If the tenancy ends and the tenant moves out of the unit, a landlord can charge a new tenant any amount of rent they wish. This means that a brand new tenancy agreement is formed (making sure to use the new Standard Form Lease <https://landlordselfhelp.com/standard-form-of-lease/>) and the parties can agree on their own new terms and conditions.

Legal option for scenario #4: Under the *Residential Tenancies Act, 2006 (RTA)*, vacancy de-control allows the landlord to establish a new rent amount with the new tenant each time the rental unit becomes available. This is one way the landlord can raise the rent to reflect current market levels.

The law does not allow the parties to contract outside the RTA. If a tenant willingly starts paying an illegally increased rent amount, they can file a **T1- Tenant Application for a Rebate of Money the Landlord Owes** anytime within the 12 months of this happening. The Landlord and Tenant Board will likely order the landlord to reimburse the tenant all the extra money collected and the landlord may also be fined for knowingly increasing the rent amount illegally.

If a landlord is not sure whether they can legally increase the rent, or how much they can increase the rent, they should visit www.landlordselfhelp.com or www.sjto.cs/ltb for more information about lawful rent increases.

If you were not aware of these rules and come to realize you have increased the rent illegally, write a letter to your tenant explaining the misunderstanding and refund the illegally collected rent (by cheque or in a way where it is properly documented). Then, if the rent has not been lawfully increased within the past 12 months, you can provide the tenant with the proper **N1-Notice of Rent Increase** with 90 day notice, and increase the rent by the amount allowed under the Annual Rent Increase Guideline <https://landlordselfhelp.com/annual-rent-increase-guideline/>. Use form **N2-Notice of Rent Increase (Unit Partially Exempt)** if your rental unit falls within the new exemption rules which can be found at <https://landlordselfhelp.com/annual-rent-increase-guideline/>.

Small Landlords Targeted for Licensing Pilot Project in Hamilton

Landlords of properties containing 6 and fewer rental units which are located in Hamilton's Wards 1 and 8 are now the subject of a two-year licensing pilot project which came into effect on January 1, 2019.

McMaster University and Mohawk College are located in Wards 1 and 8 along with roughly 1,500 to 2,000 rental units. McMaster's Student Union claim students are forced to rent units that are unsafe.

Landlords argue licensing is not a solution, it increases bureaucracy and operating costs and will discourage owners from renting thereby reducing already low vacancies further. Landlords implored Council to utilize existing policies, bylaws and regulations as enforcement tools rather than licensing.

The 2 year pilot project requires small landlords, 6 and fewer units, to pay a \$200 annual licensing fee and provide proof of up-to-date electrical and fire safety inspections.

Self-Help TIPS

In this issue of the **Self-Help Tips** we will discuss the importance of understanding the tenant's rights and the landlord's obligations and responsibilities when selling a rental property.

Security of Tenancy

A landlord cannot terminate a rental agreement simply because they are selling a rental property. All tenants have security of tenancy, which means a tenancy agreement cannot be terminated by a landlord unless a valid reason, as defined under the *Residential Tenancies Act*, exists. The Act clearly defines the reason for which a tenancy may be terminated when a property is sold. If the purchaser does not have a valid reason to terminate the tenancy, it would continue under the same terms and conditions as the original agreement with the landlord/seller.

Terminating the Tenancy

The *Residential Tenancies Act* includes provisions for the termination of a tenancy agreement by a landlord on behalf of a purchaser when the purchaser,

- in good faith, requires possession of the rental unit for the residential occupation of himself, the purchaser's spouse, a child or parent of the purchaser or purchaser's spouse;
- in good faith, requires possession for a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the building where the rental unit is located.

A landlord can only terminate a tenancy based on these reasons under the following circumstances:

- the landlord has an executed agreement of purchase and sale; and
- the property contains three or fewer residential units;

The notice that a Landlord/seller would serve on behalf of the purchaser is a Form N12 – Notice to Terminate a Tenancy at End of Term or Rental Period. The notice must be dated a minimum of 60 days from when it is given and the termination date must end at the end of the term or rental period.

Fixed term tenancy- If the tenant has a written fixed term agreement (lease) in place, the purchaser must honour that agreement. The tenancy cannot be terminated for these reasons until the end of the lease term. The only way to terminate the agreement early is if the tenant agrees, in which case an Agreement to Terminate a Tenancy (Form N11) should be signed by both parties.

Filing an Application with the Board

A landlord should take into consideration the length of time that it will take to evict the tenant. After serving the N12 notice for purchaser's own use, a landlord should file a L2 application soon after with the Landlord and Tenant Board to terminate the tenancy and evict the tenant. The Board is presently scheduling hearing dates ranging from six to eight weeks away. Therefore, you should ensure your closing date is set to allow you enough time to go through the eviction process.

Affidavit or Declaration -The landlord /seller must obtain and file with the Board a declaration or affidavit sworn by the person who personally requires the rental unit, certifying that the person in good faith requires the rental unit for his or her own personal use.

Bad Faith - Landlord/seller must ensure that the purchaser, family member or caregiver intends to occupy the unit before serving a notice of termination to the tenant. There are serious consequences if a landlord gives a notice of termination in bad faith. These may include being ordered to pay a fine to the Landlord and Tenant Board, a rent abatement and compensation to the tenant. Giving notice in bad faith is also considered an Offence under the Act and if found guilty a landlord can be fined up to \$25,000.

Tips

- Do not promise vacant possession to the purchaser and give notice to the tenants and believe the tenants will vacate because the property has been sold. File an application with the LTB to terminate and evict the tenant immediately after serving N12.
- If the tenant has a lease for a fixed term and the purchaser requires vacant possession try N11-Agreement to Terminate a Tenancy.
- Protect yourself from the tenant filing a bad faith application against you prior to serving an N12 by obtaining a sworn affidavit from the purchaser that he/she personally requires the rental unit in good faith for his/her personal use.
- Do not promise vacant possession in the purchase and sale agreement unless you are prepared to follow all the steps, and have enough time to do so. Failure to provide vacant possession may result in the purchaser suing you for breach of contract.

Did You Know?

Q: I rented an apartment to a tenant a year ago, at the time we signed the lease the tenant said he would only be staying for one year. At that point we also signed the Form N11 – Agreement to Terminate a Tenancy because I wanted to make sure that the tenant would leave at the end of the lease. The year is now over and the tenant refuses to leave. How do I proceed to get him evicted as I have already rented the unit to someone else?

Unfortunately at this point you don't have much recourse to evict the tenant. The Form N11 that was signed at the same time as the lease agreement is not enforceable. An agreement to terminate can only be signed when the tenant is already in possession of the unit.

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Q: One of my tenants is always paying the rent late and I'm considering serving the Form N8 to terminate the tenancy. How do I prove that the tenant is paying the rent late?

The onus is on the landlord to document the late rental payments, this would include maintaining detailed records in the form of a log, keeping copies of any cheques returned by the tenant's financial institution due to insufficient funds, copies of receipts which should be dated on the date the rental payments were actually received and copies of N4 notices that were issued and then paid. When completing the N8 notice it is very important to include detailed information on the late payments by listing each month that the rent was late and when payment was made, if the N4 notice was given specify the date each notice was given.

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Q: I have been renting an apartment to a gentleman for about three years. I just found out that he has gotten married and the wife is now living in the unit with him. He did not inform me of this, don't I have the right to know who is living in the unit? I believe I have the right to increase the rent based on the extra person and the fact that the utilities usage will increase. How do I determine how much to increase the rent in this case?

A tenant is not required by law to inform the landlord if another person moves into their unit, they are allowed to have roommates or guests. The landlord cannot increase the rent based on the fact that other people have moved in with the tenant, the rent can be increased but only by the guideline amount and by providing the proper 90 day notice (Form N1).

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Q: I have just found out that my tenant has two other people living with him and that he is charging them rent. Is he allowed to do this?

A tenant is allowed to have roommates and even collect rent from them as long as he is not charging the roommates more than the rent that he is actually paying you.

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Q: I had a hearing at the Landlord and Tenant Board because my tenant was not paying rent. The tenant did not attend the hearing and the Board issued an order which stated that the tenant had to pay the rent arrears within eleven days and if not then he would owe rent on a per diem basis until he vacates the unit. How is the per diem compensation determined?

The per diem compensation is calculated by multiplying the monthly rent by 12 months and then dividing that sum by 365 days, the result is the daily rent. In the case of a weekly rental the per diem compensation is determined by dividing the weekly rent by 7 days.

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Q: I have sold my rental property, the purchaser plans to move in, however I have a lease with my tenant and there are still a few months left in the lease. Can I still give notice to the tenant for the purchaser to move in?

No, in this case you cannot give notice to terminate for the purchaser to move in while the lease is still in effect. The purchaser would have to assume the tenant and could only give notice for their own use at the end of the lease term.

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Q: My tenant and I mutually agreed to terminate the tenancy and we signed the Form N11 – Agreement to Terminate a Tenancy. A few days before he was supposed to move out he came to me and asked if he could stay a few more days because he could not move in to his new place. I agreed but now I'm wondering if that means that the N11 is no longer valid. Is that possible?

By allowing the tenant to stay a few more days after the termination date on the N11 form it does not necessarily mean that the N11 is no longer valid. As long as it is understood that the tenant will still have to leave according to the agreement and that the tenancy is not reinstated. The landlord has up to 30 days to enforce the N11 if the tenant refuses to vacate.

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What's New?

Ontario Tribunals:

New Access and Privacy Policy

Tribunals Ontario, which includes the Landlord and Tenant Board, has implemented a new Access and Privacy Policy to ensure “*openness and transparency in its proceedings, including public access to hearings, decisions and records.*” The new policy aligns Ontario tribunals with a decision of the Ontario Superior Court which recently clarified the *Freedom of Information and Protection of Privacy Act* (FIPPA) improperly restricted access to adjudicative records.

FIPPA provided for the protection of information at 16 tribunals, including the Landlord and Tenant Board, to ensure documents and evidence was not automatically available to the public unless a Freedom of Information Request was filed to gain access to records. The Toronto Star launched a legal challenge in 2017 to end the secrecy in provincial tribunals and make documents and evidence filed with the tribunals available to the public as they are in the court system. A new Access and Privacy Policy was developed and came into force on May 1, 2019 to align with the decision of the Ontario Superior Court. The Policy confirms most Tribunals Ontario case files are available to the public on request, and some are available at the counter for viewing and/or photocopying during office hours. The Policy also lists materials which are restricted by statutory provision or for other legal reasons, these materials would typically include personal notes, draft decisions, draft orders and communications, and mediation and settlement discussions held to facilitate the resolution or narrowing of issues in dispute are also excluded from public access.

The Tribunals Ontario new Access and Privacy Policy can be found at <http://www.sjto.gov.on.ca/documents/sjto/A21-Policy-en.html>. The Request for Records form and information about the cost <https://elto.gov.on.ca/wp-content/uploads/2019/05/Request-for-Records-Form.html>.

LTB revises Forms L4 and C4

The Landlord and Tenant Board Form *L4: Application to End a Tenancy and Evict a Tenant – Tenant Failed to Meet Conditions or a Settlement or Order* has been updated and published effective May 29, 2019. The L4 form is used by landlords to apply to the LTB to end a tenancy where a tenant has breached or failed to comply with the terms of a mediated agreement or order. In these instances, the parties have either participated in LTB mediation and an agreement was reached; or the parties attended a hearing where an order was issued specifying terms. The correct form for landlords to use is the version posted to the LTB website found at:

<http://www.sjto.gov.on.ca/documents/lbt/Landlord%20Applications%20&%20Instructions/L4.pdf>.

A corresponding change was also been made to Form C4: *Application to End the Occupancy of a Member and Evict the Member because the Member failed to Meet Conditions of a Settlement/Order* for tenancies in non-profit co-ops.

Legal Aid Funding Cuts

The Provincial Budget on April 11, 2019 included a long list of funding cuts to the justice sector. According to the Finance Minister, these reductions are expected to save \$5 billion in 2018-19 to \$4.7 billion in 2021-22.

The targets for saving included:

- Cuts to the provincial victims of crime fund by \$23m;
- Cuts to youth justice services - shutting down youth justice facilities and reducing beds in open and secure custody detention system;
- Elimination of juries for minor offences;
- Cutting back on police overtime;
- Diverting low-risk individuals from the correctional system to alternatives to incarceration; and
- Funding cuts to legal aid.

Legal Aid Ontario is a provincial funded agency that is responsible for administering programs which include: duty counsel services for criminal, family and youth courts; legal advice and representation through the certificate program; and 74 community legal clinics across the province. Legal Aid Ontario funding in the 2019-20 fiscal year has been reduced by \$133 million and further cuts are planned for the coming years.

Landlord's Self-Help Centre, together with the 73 other community legal clinics (general service and specialty) across Ontario rely on funding from Legal Aid Ontario and face significant funding cuts over the next three years. The cuts are significant and will impact service delivery. In addition, a comprehensive review of Legal Aid Ontario and community legal clinics is planned in the coming months.

Support the **Stop the Cuts to Legal Aid** campaign, sign the petition; send templated letters to the Premier, the Attorney General and your MPP; call or email to demand the cuts to legal aid be reversed <https://www.stoplegalaidcuts.ca/>

Thank you for your support and to those who have shared copies of letters, messages and meetings with to MPPs, the Premier and Attorney General.

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