



A Landlord's Self-Help Centre Publication

## COVID-19 and Residential Tenancies in Ontario

The events of recent weeks with regard to novel coronavirus or COVID-19 have left many of us reeling and unprepared for the fallout that seems to be part and parcel of a pandemic and living in a jurisdiction that has declared a state of emergency.

There have been changes at the Landlord and Tenant Board which initially began with the suspension of in-person services including counter service at all LTB offices and in-person hearings. The removal of in-person services was announced at the same time many other public service organizations, including LSHC, suspended the delivery of in-person service.

The next change came when the Province took the unprecedented step of securing a court order which suspends the execution of all writs of possession (eviction orders) and LTB hearings for eviction orders during the 2019 novel coronavirus (COVID-19) pandemic and ancillary relief. The order directs:

*THIS COURT ORDERS that, during the suspension of regular court operations by the Chief Justice, the eviction of residents from their homes, pursuant to eviction orders issued by the Landlord and Tenant Board or writs of possession, are suspended unless the court orders otherwise upon leave being granted to a party by the court pursuant to the court's procedures for urgent motions.*

Read the order at <https://www.ontariocourts.ca/scj/chief-justice-court-order-susp-resid-evict/>

The suspension of LTB hearings for termination and enforcement of eviction orders was followed by a campaign calling for a RENT STRIKE during COVID-19 which proliferated social media channels and quickly gained momentum. The Premier and the Ministry of Municipal Affairs and Housing confirmed that rent will have to be paid, if you are in crisis and must choose between putting food on the table and paying rent, put food on the table, otherwise pay the rent was the message from Premier Ford. Provincial and municipal politicians encouraged landlords and tenants to communicate with one another and, where the tenant was facing financial difficulty and unable to pay the rent, for landlords to be flexible and work out a payment plan or agreement.

If the rent has not been paid, contact your tenant and offer to work with them to develop a payment schedule (a sample letter <https://landlordselfhelp.com/media/members-only/COVID-19-Tenant-Letter.pdf>). Where the tenant is amenable to working out payment terms, we suggest using the LTB Payment Agreement form to model the plan, <http://www.sjto.gov.on.ca/lrb/forms/>. Please note, the agreement is not related to an active L1 Application and therefore cannot be enforced at the LTB. If the tenant flatly refuses to engage and participate in payment schedule, landlords may issue the N4 - Notice to End your Tenancy Early for Non-payment of Rent <https://landlordselfhelp.com/landlord-learning-modules/>. While the L1 Application may be filed with the LTB electronically, a hearing will not be scheduled until the suspension order is lifted.

Relief plans and programs have been announced by various levels of government include:

- Ontario Energy Board (OEB) has extended the disconnection ban for residential customers and small businesses until July 1, 2020 <https://www.oeb.ca/sites/default/files/dec-order-Lic-Amd-Disconnection-Ban-2020030319.pdf>
- Electricity - Time of Use (TOU) Off Peak rates applied for next 45 days, effective March 24, 2020 <https://news.ontario.ca/opo/en/2020/03/ontario-providing-electricity-relief-to-families-small-businesses-and-farms-during-covid-19.html>
- Mortgage support and deferral information - [https://www.canada.ca/en/department-finance/economic-response-plan/covid19-individuals.html#mortgage\\_support](https://www.canada.ca/en/department-finance/economic-response-plan/covid19-individuals.html#mortgage_support)
- City of Toronto deferral of invoices (taxes, water, etc.) for 60 days - <https://www.toronto.ca/home/covid-19/economic-support-recovery/economic-support-recovery-for-individuals-families/>
- Federal Benefits - <https://www.ckbw.ca/2020/03/22/need-help-heres-how-to-apply-for-ei-covid-19-related-benefits/>
- What to do if you're facing financial hardship - <https://www.canada.ca/en/financial-consumer-agency/services/covid-19-managing-financial-health.html#oc2>
- Support for individuals - <https://www.canada.ca/en/department-finance/economic-response-plan/covid19-individuals.html>
- LSHC has produced a Fact Sheet to help you navigate COVID-19 and residential tenancy issues - <https://landlordselfhelp.com/media/RTA-Factsheet-2020-COVID-19.pdf>

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# Bill 184 - Protecting Tenants and Strengthening Community Housing Act, 2020

On March 12, 2020, the Province introduced long-awaited amendments to the *Residential Tenancies Act* prior to MPPs unanimously passing a motion to temporarily suspend the Legislature as a health protection measure.

The Minister of Municipal Affairs and Housing, Steve Clark, introduced Bill 184, *Protecting Tenants and Strengthening Community Housing Act, 2020*. The Minister's introductory remarks noted that the proposed amendments, if passed, "would strengthen protection for tenants while making it easier to be a landlord" and "would achieve a balance for all parties in the rental market".

The Minister also stated that the changes would streamline the Landlord and Tenant Board processes and make it easier to resolve certain disputes. It would shift many disputes from the courts to the LTB, making it easier to recover costs like unpaid utility bills and allow landlords to recover costs caused by tenant behavior.

So, what will Bill 184 mean for landlords? While the media release focused on legislative enhancements for tenants, the Bill does include several provisions that seem to represent positive changes for landlords, these include:

- **Section 82** - Currently, when a landlord files an application with the Landlord and Tenant Board (LTB) based on nonpayment of rent, the tenant can attend the hearing and raise any new issue, without advance notice, to argue or justify why they have defaulted in the rent. This is commonly referred to as trial by ambush and when it happens the landlord is unprepared to present evidence or witnesses to counter the tenant's claim. Often, the landlord must request an adjournment to prepare and gather evidence, thereby prolonging the termination process.

Bill 184 proposes to amend section 82 to require that tenants give landlords advance written notice of their intent to raise the issue at the hearing, or provides an explanation satisfactory to the Board explaining why the requirements could not be met.

- **Section 87 and 89** - For many years LSHC has lobbied for legislative amendments that would allow a landlord to file an application at the LTB for unpaid rent, damages or utilities up to one year after the tenant vacates the rental unit, the same right tenants have.

Bill 184 proposes to amend sections 87 and 89 of the RTA to permit landlords to seek "remedies" and make applications for rent arrears, utility arrears, and damage for up to one year after the tenant has given up possession of the unit.

- **Section 88.1** - The Bill also proposes to expand the definition of damages by adding a new provision that would allow the landlord to apply to the LTB for compensation for out-of-pocket expenses due to a tenant's interference with the reasonable enjoyment of the residential complex or with another lawful right, privilege or interest of the landlord (i.e. false fire alarm calls, parking in a fire lane) and will be subject to the requirements set out in section 189.0.1

- **Section 88.2** - Bill 184 also proposes to create a new provision that would allow landlords to

apply to recover costs for unpaid utilities, a source of frustration and confusion for many years.

Under the new section 88.2, a landlord may seek compensation for a tenant's unpaid utility costs. The application must be made while the tenant is in possession of the unit or no later than one year after the tenant or former tenant ceased to be in possession of the unit.

- **Section 189.0.1** - A new provision would be added under Bill 184 to provide that if, at the time a landlord makes any of the applications described above, and the tenant or former tenant is no longer in possession, **the landlord must give the tenant or former tenant a copy of the application and a copy of any notice of hearing issued by the Board and must, in specified circumstances, file with the Board a certificate of service on the tenant or former tenant.**

The service requirement for the proposed provisions which allow landlords to file with the LTB up to one year after a tenant gives up possession of the rental unit will be the challenge for many small landlords. The requirement to serve the former tenant will present a challenge for landlords as they often lose track of the tenant after they vacate the premises unless they have employment information and are able to use that address for service.

- **Section 136.1** - In LSHC's submission for the Housing Supply Action Plan Consultation, we made the point that annual guideline rent increases do not adequately compensate landlords for increasing costs. We suggested revisiting the formula used to determine the guideline and removing the 2.5% cap on the annual guideline. Bill 184 tackles the issue of rent increases, however not in the way you might expect.

Bill 184 proposes to create a new section, 136.1, to clarify that where the landlord fails to give the tenant

proper notice, and the tenant has paid the increased rent for 12 consecutive months and has not disputed it, the rent is deemed lawful. To repeat, the rent increase is deemed lawful if the tenant has paid the increased rent for 12 consecutive months and has not disputed the rent increase.

The rent increase is deemed not to be void if the tenant paid the rent increase in respect of each rental period for at least 12 consecutive months, provided the tenant has not, within one year after the date the increase is first charged, made an application in which the validity of the rent increase is in issue.

- **Section 194 (1)** - Bill 184 proposes to re-enact subsection 194 (1) with respect to mediation or other dispute resolution processes. Currently, the Board may attempt to mediate a settlement of any matter that is the subject of an application or agreed upon by the parties if the parties consent to the mediation

The re-enactment of subsection 194 (1) provides that the Board may attempt to settle any matter through mediation or another dispute resolution process, at the discretion of the LTB, advanced mediation or negotiation may be offered if the parties consent to participating in the mediation or other dispute resolution process.

- **Section 206** - Bill 184 proposes to amend section 206 to allow pre-hearing repayment agreements to include a provision that would allow a landlord to make an application under section 78 for an eviction order if the tenant fails to comply with one or more of the terms specified in the order. Currently, the landlord must re-open the application if the tenant fails to comply with the agreement terms.

- **Streamline Administration** - Bill 184 also proposes to streamline administrative requirements through amendments to Regulation and legislation (sections 11, 241.1 and 137) by making the following changes,
  - removing the requirement for landlords to provide a new tenant with the tenant information pamphlet when provided in standard lease form;
  - removing the requirement for landlords to disclose information about energy efficiency and past electricity consumption to new tenants; and
  - create regulation-making authority to allow for a transition period following the release of a standard lease update.

In the spirit of balance, Bill 184 also proposes several amendments which enhance tenant protection and bound to be unpopular among landlords:

**LTB Will Consider Landlord's Previous Action** - Bill 184 proposed to amend section 73 to allow the LTB to consider information regarding previous activity of the landlord with respect to termination based on no-fault eviction notices (N12 and N13).

**Require Landlord Affidavit for No-Fault Applications at Time of Filing** – Bill 184 would create section 71.1 that would now require landlords to file an affidavit in support of the landlord's or purchaser's own use of the rental unit at the time the application is filed rather than at the hearing.

**Renovations and First Refusal Right** - Bill 184 proposes to increase protection for tenants with respect to the right of first refusal when notice is given for extensive repairs or renovations (N13). Section 57.1 (2) would be amended to increase the period of time a tenant has to file an application with the LTB when the landlord fails to provide first right of refusal from one year to two years.

**Tenant Compensation Increased for Bad Faith Evictions** - Bill 184 proposes amendments to section 57 (3) that would allow the LTB to order a landlord to pay the former tenant compensation of up to 12 months' if the landlord acted in bad faith or did not provide the first right of refusal. The compensation would be **in addition** to the current rules which permit the LTB to order a maximum monetary jurisdiction of \$35,000.

**Expand Requirement Compensation for Renovations or Repair to All Rental Properties** - Landlords of buildings with five or less rental units have been exempt from the requirement to pay three months' rent compensation to tenants for renovations. Bill 184 would amend sections 52 and 54 to remove the exemption and require properties of all sizes to provide compensation however, landlords of buildings with five and units would provide **one month's rent as compensation**.

**Tenant Compensation for Purchaser's Own Use Termination** - Bill 184 proposes a new section, 49.1, that will require purchasers to provide tenants one month's rent as compensation when the purchaser gives notice of their own use.

**Maximum Fines Increase** - Amendment to section 238 would increase maximum fines from \$25,000 to \$50,000 for individuals, and from \$100,000 to \$250,000 for corporations.

**Better Enforcement of RTA Offences** - Bill 184 proposes amendments to several sections to deem electronic documents admissible (s.240); provide a discoverability limitation period for certain unlawful fees and deposits (s. 239); and provide power for investigators to obtain production documents (s. 231.1).

It is important to remember that Bill 184 is proposed legislation at this stage and has not been passed into law. The amendments proposed under Bill 184 may be revised or removed as the draft legislation progresses through the legislative process.

# Self-Help TIPS

**The Residential Tenancies Act (RTA)** provides the Board with provisions that must be considered when granting an eviction order. In this edition of the **Self-Help Tips** we will focus on strategies to avoid delays at a hearing before the Landlord and Tenant Board and the proposed changes to **Section 82** of the **RTA**.

All applications filed with the Landlord and Tenant Board go to a hearing or mediation. The following two provisions of the **Residential Tenancies Act, Sections 82 and 83** often cause delays in hearings, through more adjournments, and more relief from granting evictions. Section 82(1) addresses tenant issues in an application for non-payment of rent and states

At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act.<sup>1</sup>

Therefore, **Section 82** of the **Residential Tenancies Act** permits the tenant to raise any issue that could be the subject of a tenant application under the Act and allows an adjudicator to order remedies on tenants' claims during a landlord's application for arrears or eviction due to arrears.

Section 83(1) addresses the Board's power when deciding whether or not to order an eviction and notes that

Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

- (a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or
- (b) order that the enforcement of the eviction order be postponed for a period of time.<sup>2</sup>

In addition, **Subsection 83(2)** of the **Residential Tenancies Act**, makes it **mandatory** that the Board shall not grant an eviction unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection 83(1).

## **New Bill 184**

**Bill 184** is proposing a significant change to **Section 82** of the **RTA**. If passed, when a tenant raises issues regarding disrepair or other breaches of responsibility by their landlords at a hearing of an application under section 59, Bill 184 allows a member to refuse to hear evidence unless the tenant meets the following requirements:

- (a) The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
  - (b) The notice shall be given within the time set out in the Rules.
  - (c) The notice shall be given in writing and shall comply with the Rules or
  - (d) Provide an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out.
- If passed this could be the end to trial by ambush.

## **Tenant's Motion to set aside Eviction Order- Subsection 74(11)**

Once the landlord obtains an eviction order for arrears, the tenant may still make a motion to the Board under subsection 74(11) of the Act, on notice to the landlord, to set aside the eviction order if after the order becomes enforceable but before it is executed, the tenant pays the amount required to the Board. In other words, the tenant has until the Sheriff gives vacant possession to the Landlord to pay all the arrears plus the costs and void the order. However, the tenant is only entitled to make this motion once during the period of the tenancy agreement with the landlord.

<sup>1</sup> *Residential Tenancies Act, 2006* <https://www.ontario.ca/laws/statute/06r17#BK108>

<sup>2</sup> *Residential Tenancies Act, 2006* <https://www.ontario.ca/laws/statute/06r17#BK108>

## Tips

- At a hearing for arrears a tenant may now bring up any maintenance issues, therefore a landlord should be prepared and address any maintenance problems prior to the hearing.
- The Act gives the landlord the right to enter to inspect the rental unit. Prior to your hearing it is suggested that you serve the tenant with a 24-hour written notice for entry into the rental unit to perform a maintenance inspection.
- Repair any maintenance problems and complete an inspection report and have the tenant sign it.
- If the new amendments of Bill 184 are passed, landlords will have the opportunity before the hearing to know what the tenant is disputing and allow for any necessary repairs to be completed before the hearing.

# Did You Know?

***Q: One of my former tenants has contacted me recently asking for a receipt for the rent they paid me during the time they lived in my rental unit. Am I still obligated to provide them with a receipt even after they have moved out?***

Under Section 109 (1) of the *Residential Tenancies Act*, a landlord has to provide free of charge to a tenant or former tenant, on request, a receipt for the payment of any rent, rent deposit, arrears of rent or any other amount paid to the landlord. There is an added provision under Section 109(2) which states that a former tenant can only request a receipt within 12 months after the tenancy terminated.



***Q: I am renting out one room in my house and the tenant pays rent on a weekly basis. I now require the room for my family and myself and will be giving the tenant a notice to terminate for landlord's own use. Since it's a weekly tenancy how much notice am I required to give the tenant in this case?***

Even though the tenant is paying rent on a weekly basis the notice period for this particular reason must still be 60 days to the end of the rental period. The Form N12 must be served in this case and you must ensure that the termination date ends on the last day before a new rental period begins. For example, if the tenant is supposed to pay the rent every Saturday, the notice of termination would have to end on a Friday.



***Q: I have a tenant that has been living in one of my units for a few years. I have not increased his rent at all during this time. However, there is a clause in the lease that states that if he brings in additional people to live with him the rent will increase by \$200. I recently discovered that he has another person living with him and I told him that in this case he would have to pay more rent as stated in the tenancy agreement. He refuses to pay the increase and he is telling me that it's illegal to charge more rent because of the extra person. Is this true? How is he allowed to have an extra person at the same rent?***

This would be considered an illegal rent increase even if the tenant agreed to it. The *Residential Tenancies Act* states that a provision in a tenancy agreement that is inconsistent with the Act or regulations is void. The agreement you made with the tenant to increase the rent based on an extra person moving in does not comply with the provisions of the Act regarding rent increases and therefore would be an illegal rent increase.



***Q: I have decided to sell my rental property, I've been having ongoing issues with the tenant and I don't want to be a landlord anymore. I have a realtor and he has been bringing people in to view the property but every time there is a showing the tenant insists on being present and then proceeds to talk to the potential buyers and points out certain deficiencies in the house although they are minor. He is making it very difficult for me to sell my house. Can I ask him not to be there during the showings?***

Legally you cannot ask that the tenant not be in the unit while there are showings, it is the tenant's choice. However, the tenant cannot interfere with the showings. If the tenant continues to do this during each showing then you may have grounds to issue the tenant a Form N5 based on the reason that he is interfering with your lawful right to sell the property.



***Q: One of my tenants has told me that she wishes to sublet her apartment because she will be away for a few months on a work assignment. She asked for my consent and I have agreed but I'm not sure how a sublet works, should I be collecting rent from the new person, the subtenant?***

A sublet is when a tenant will be away for a certain period of time but plans to return to the unit. The tenant gives another person the right to occupy the rental unit for a specific period of time. There must be a sub tenancy agreement between the tenant and the subtenant which must end on a specific date, and must be before the end of the tenant's rental term or rental period. The rent must still be paid to you by the original tenant, you should not accept any rent from the subtenant. The original tenant remains responsible for the condition of the rental unit and the payment of rent.



***Q: I entered into a lease agreement with my tenants a few months ago, he is telling me now that some of the lease clauses are contrary to the Residential Tenancies Act and therefore the lease is invalid. Is this correct?***

All of the RTA provisions will still apply to a landlord and tenant even if certain terms of the lease agreement are contrary to the Act. If there is a contradiction in the lease, the rights and obligations set out in the Residential Tenancies Act will supersede whatever is in the agreement. This means that any part of the agreement is contrary is not enforceable, although the rest of the agreement is still valid.



# What's New?

## How to end a tenancy if you live in a building that contains 3 or less residential units\*?

Ending a tenancy in Ontario can be difficult as landlords must have a legal ground that falls under one of the provisions in the Residential Tenancies Act. Legal grounds include arrears, damages and substantial interference. To learn more about all the legal grounds to end a tenancy, review our RTA fact sheet entitled Ending a Tenancy Agreement at <https://landlordselfhelp.com/media/Ending-a-Tenancy.pdf>.

However, in the particular case of substantial interference with the landlord's reasonable enjoyment or the landlord's lawful right, privilege or interest, it can be even more difficult to go through an eviction process for a landlord that is directly affected by the tenant's interference. Landlords who live in their house while renting out their basements are the most common case in this type of scenario. Substantial interference commonly includes:

- Noise disturbances such as loud gatherings and fighting
- Having guests coming and going at all times of the day and night
- Smoking or smudging
- Parking too many cars or parking in the wrong spot
- Leaving entrance doors unlocked
- Verbal or physical harassment

As a landlord living in the same building that has 3 or less residential units, you should know that you may serve the Landlord and Tenant Board form N7- Notice to End your Tenancy for Causing Serious Problems in the Rental Unit or Residential Complex under reason 4 instead of using reason 1 under form N5- Notice to End your Tenancy for Interfering with Others, Damage or Overcrowding.

When serving the tenant with an N7, the landlord can file the form with the Landlord and Tenant Board to schedule a hearing immediately after the notice is provided to the tenant. In contrast, when serving the tenant with an N5, the landlord has to wait a period of 7 days (known as the correction period) before it can be filed with the Board. If you have detailed notes about ongoing incidents where the tenant has substantially interfered with your reasonable enjoyment and/or rights, you should consider giving the N7 notice.

\*The building must be owned by the landlord.

Contact a legal service provider for more information; visit <http://www.sjto.gov.on.ca/ltb/forms/> to obtain the LTB forms.

### LTB Fee Increase

Tribunals Ontario announced a 6% increase in filing fees for several tribunals including the Landlord and Tenant Board that was scheduled to take effect on April 1, 2020 and has now been postponed to July 1, 2020 due to COVID-19.

The increase will apply to filing fees and includes a full list of applications typically filed by landlords. Fees will increase to \$201 on April 1, 2020, unless using the e-file option, the filing fee will increase to \$186 <http://www.sjto.gov.on.ca/tribunals-ontario-fee-increases/>.

## STUDENT RENTALS: What should landlords know?

**Legal Unit** - Section 20(1) of the Residential Tenancies Act, 2006, states that, *A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.*

This includes making sure the unit is legally allowed to be used as a student rental or rooming house. Landlords are encouraged to check with their local municipal bylaws before an agreement is signed and a tenancy is entered into. It is very important to make sure that you are legally allowed to operate your unit as a student rental, whether renting to a group or renting out rooms in a rooming house.

**Standard Form Lease** - A reminder that as of April 30, 2018, any written tenancy agreements entered into must be done using Ontario's Residential Tenancy Agreement (Standard Form Lease). This document can be found on the Ministry of Municipal 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>. More information is included in Landlord's Self-Help Centre's fact sheet at <https://landlordselfhelp.com/media/2018-Residential-Tenancy-Agreement-Standard-Form-of-Lease.pdf>

**Tenant rights when dealing with disputes** - When issues arise during the course of a tenancy, it is very important for the landlord to know and understand what type of tenancy you have in order to take the appropriate steps to resolving the issue.

- Joint tenants- are tenants who sign a lease together and agree to rent a unit as a group (i.e. four tenants rent an entire house together).
- Tenants in common- are tenants who sign their own separate leases and are responsible for the rental of a specific room in the house.

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