

Landlord fined \$75,000 for Renovictions

The Landlord and Tenant Board (LTB) has found the owner of an 8 unit building in west Toronto showed “blatant disregard” for the provisions of the *Residential Tenancies Act*. These comments were made with respect to the termination of three tenancies in the building owned by 795 College Inc. based on reason of extensive repairs or renovation. The landlord was found to have acted in bad faith and was fined by the LTB \$25,000 per unit, the maximum amount it is permitted to order, for its conduct.

Renoviction is a term that is often used by the media when reporting on situations where a landlord has issued notice seeking termination of the tenancy for the reason of performing extensive repairs or renovations.

The *Residential Tenancies Act* includes provisions which are intended to protect the rights of the tenants to re-occupy the rental unit when vacant possession is required to perform work that is extensive (extensive to the degree that a building permit is required). When the renovation or repair work is completed, the tenants have the right to re-occupy the rental unit at the same rent paid previously as long as the tenant informs the landlord they will exercise this right by giving written notice advising they intend to move back in and keeping the landlord informed in writing any time the tenant’s address changes.

The tenants in this case anticipated a challenge at the outset, they received the prescribed 120 days’ notice, Form N13 - Notice to End your Tenancy Because the Landlord Wants to Demolish the Rental Unit, Repair it, Convert it to Another Use, in late 2016 and disputed the notices at the Landlord and Tenant Board alleging the landlord was acting in bad faith.

The LTB did not agree and ordered the tenants to vacate. The tenants who occupied three rental units informed the landlord, prior to vacating, that they intended to exercise the right to re-occupy the rental units when the work was completed. When people were seen inside the rental units, the tenants went back to the LTB and got an interim order to stop the landlord from renting the apartments. However this was too late, the renovated units were rented to new tenants who paid roughly three times more rent than the rent paid by the previous occupants.

Unfortunately, the legislation does not give the LTB the authority to restore the original tenants to possession of their former units. The LTB acknowledged the owners have shown a blatant disregard for their obligations under the *Residential Tenancies Act* and levied the maximum fine permitted under its jurisdiction, \$25,000 per unit which is payable to the LTB by April. The Adjudicator, Dale Whitmore, indicated that \$45,000 per unit would be more a appropriate fine.

The Rental Housing Enforcement Unit has also charged the landlord with three counts of *Failing to Afford a Tenant a Right of First Refusal*, an offence under the *Residential Tenancies Act*. Each offence/count carries a maximum fine of \$100,000 for corporations (\$25,000 for individuals).

The Rental Housing Enforcement Unit, formerly known as the Investigation and Enforcement Unit, is a regulatory entity in the residential rental tenancies sector in Ontario and operates separately from the Landlord and Tenant Board. The Unit takes complaints from landlords and tenants for offences committed under the Residential Tenancies Act, 2006 (the Act) and, where warranted prosecutes complaints in the Provincial Offences Court. Learn more about the Rental Housing Enforcement Unit (RHEU) at <http://www.mah.gov.on.ca/Page142.aspx> .

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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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Housing Supply Action Plan Consultation

The Province launched a public and stakeholders consultation in Dec/Jan aimed at increasing the housing supply in Ontario. This includes creating more housing and helping to make ownership and renting more affordable, and to increase choice. The Housing Supply Action Plan will address the barriers to creating more housing. The consultation included four themes, Speed, Mix, Cost, and Rent and Innovation.

LSHC's submission focused on **4. Rent: It is too hard to be a landlord in Ontario, and tenants need to be protected.**

To be sure we got it right, we first engaged the small landlord community and invited input using an online survey containing more than 40 questions. LSHC heard from more than 500 people, many openly shared their experiences – good and bad, and their ideas for change. LSHC used the information we collected along with statistical and anecdotal data we gather year round to develop the submission – it is posted at:

<https://landlordselfhelp.com/media/LR-2019-LSHC-Housing-Supply-Action-Plan-Submission-2019-01-25.pdf>

LSHC's submission included 21 recommendations addressing a variety of operational issues as well as LTB procedures and our stated goal was to create balanced legislation which establishes a fair and predictable operating environment and supports both landlord and tenants equally. We appreciate the thoughtful and insightful comments provided by the survey respondents. The data we collected will also be used to inform other initiatives.

Stakeholders, landlord and tenant representatives, were also invited to participate in a day long consultation meeting with the Ministry staff to discuss and provide input on a variety of pre-determined issues.



Photo credit: Twitter: OntarioHousing@housingON

In the photo: Minister of Municipal Affairs Steve Clark hosts a full-day Housing Supply Action Plan - Minister's Forum at Hart House on January 31, 2019. Representatives from diverse sectors shared creative ideas on how to increase the supply of housing in Ontario and to discuss the themes of the public consultation: Speed, Mix, Cost, and Rent, with a focus on Innovation.

Several media outlets have reported that the government is expected to streamline the process and the forthcoming legislation will make it easier for landlords to evict tenants by slashing waiting periods for notices and allowing private bailiffs to be used.

The Minister, Steve Clark, has commented that the government received 2,000 submissions during the consultation and they are being reviewed. The government is expected to introduce legislation in the spring.

TENANCY AGREEMENTS:

Common Misconceptions

Whether you have a written or verbal, month-to-month or fixed-term tenancy, the rules under the *Residential Tenancies Act* (RTA) and Landlord and Tenant Board (LTB) must be followed. The residential landlord and tenant law in Ontario does not require landlords and tenants to have a written tenancy agreement. If both parties agree to terms and conditions on a handshake, this is enough to form a tenancy.

Often, landlords mistakenly think that if they do not have a written tenancy agreement with their tenant, or if the lease has ended and the tenancy continues on a month-to-month basis that there is no requirement for them to follow the RTA or LTB rules. It is very important to note that this way of thinking is **incorrect**, as tenancy agreements can exist in many forms.

Section 2 of the *Residential Tenancies Act, 2006* defines a tenancy agreement as “a written, oral or implied agreement between a tenant and a landlord for occupancy of a rental unit and includes a license to occupy a rental unit”. Therefore, unless the landlord's living situation falls under one of the exemptions listed under section 5 of the *Residential Tenancies Act*, the rules for termination must be properly followed.

The common exemption “landlords” may fall into is the exemption in section 5(i), which states

Living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and where the owner, spouse, child or parent lives in the building in which the living accommodation is located

In this case, those who are in the 5(i) exemption are not required to follow the RTA or LTB rules. Instead, they are required to follow contract law.

Learn what your rights and responsibilities are before doing anything. If a landlord covered under the *Residential Tenancies Act* fails to follow the rules outlined in the law, they can face penalties up to \$25,000.

For information about the ways to end a tenancy, the following resources are available on Landlord's Self-Help Centre's website:

- Frequently Asked Questions- <https://landlordselfhelp.com/frequently-asked-questions/?faq-category=ending-a-tenancy>
- Landlord Learning Videos- <https://landlordselfhelp.com/landlord-learning-tips/>
- RTA Fact Sheets- <https://landlordselfhelp.com/media/Ending-a-Tenancy.pdf>

If you are in doubt as to whether or not you have to follow the *Residential Tenancies Act* and Landlord and Tenant Board rules, visit www.landlordselfhelp.com or file the A1: Application about Whether the Act Applies, which can be found on the Landlord and Tenant Board website at <http://www.sjto.gov.on.ca/ltb/forms/>

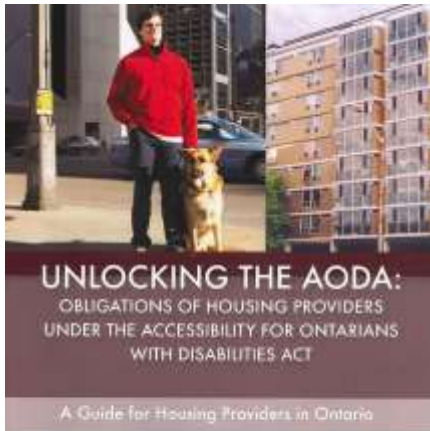
UNLOCKING THE AODA: Obligations of Housing Providers Under the Accessibility for Ontarians with Disabilities Act

LSHC partnered with CERA - Centre for Equality Rights in Accommodation to let the small landlord community know that CERA has produced updated AODA resources for housing providers.

Through An EnAbling Change partnership with the Government of Ontario, CERA has developed four training webinars for housing providers to learn about their obligations under the Accessibility for Ontarians with Disabilities Act (AODA):

- Webinar 1 - Introduction to the IASR
- Webinar 2 - IASR and the Design of Public Spaces Standard
- Webinar 3 - Creating Accessibility Policies
- Webinar 4 - Frequently Asked Questions

Visit the CERA website to download the Guide for Housing Providers in Ontario and watch the webinars <http://www.equalityrights.org.information-for-landlords>



Secondary Suites

Recent amendments to the *Residential Tenancies Act* establishing a new rent control exemption for rental units first occupied for residential purposes on or after November 15, 2018 make the idea of adding a secondary suite even more attractive.

The exemption applies to rental units in detached houses, semi-detached houses or row houses, and is subject to the following requirements:

1. The house contained not more than two residential units on or at any time before Nov. 15, 2018;
2. The residential rental unit meets the following:
 - The unit has its own bathroom and kitchen facilities.
 - The unit has one or more interior or exterior entrances.
 - At each entrance, the unit door is equipped so that it can be secured from inside the unit.
 - At least one door described above is capable of being locked from the outside of the unit.
3. The rental unit became a residential unit described in paragraph 2 after November 15, 2018.
4. One or both of the following circumstances apply:
 - At the time the unit was first occupied as a residential unit described in paragraph 2, the owner or one of the owners, as applicable, lived in another residential unit in the detached house, semi-detached house, or row house.
 - The rental unit is located in a part of the detached house, semi-detached house or row house which was unfinished space immediately before the rental unit became a residential unit as described in paragraph 2.

The rent control exemption means there is no limit on the amount landlords can increase the rent on exempt rental units, however, rent increases for sitting tenants are limited to once every 12 months and require 90 days' written notice of the rent increase using the Landlord and Tenant Board approved form (Form N2). The exemption applies to rental units in new buildings, mobile home parks and land lease communities, and additions to existing buildings, mobile home parks and land lease communities.

Visit www.secondsuites.info for information on creating and operating a second suite in Ontario.

LTB Rule Correction

In the last edition of The Quarterly News we reported changes to some Landlord and Tenant Board Rules of Procedure and Interpretation Guidelines. The changes announced by the LTB on December 15, 2018 included an error respecting methods of service.

The revised rules published by the LTB omitted the rule which permits delivery by posting on the door. This method of service is used when a landlord gives notice of entry for the tenant's premises.

On January 23, 2019, the LTB published a correction to the Rules of Procedure which stated the release on 2018-12-15 failed to include a rule permitting a landlord to serve a notice of entry by posting it on the door of the rental unit. To correct this error, new Rule 3.2 has been added effective January 23, 2019.

Secondary Suites in Toronto

Toronto City Council will consider amendments to the zoning by-law which governs secondary suites after vetted and amended by the Planning and Housing Committee. The amendment will remove many barriers which discouraged home owners from pursuing development in the past and will relax parking requirements for owners adding one secondary unit; remove the requirement that buildings be five years in age before a secondary suite can be added, this means builders can now include second suite designs in new construction which will ensure compliance with established standards; permit secondary units in townhouses; remove minimum and maximum unit sizes; permit entrances to be added in the front wall of the house; etc. The changes will align Toronto's zoning by-law with the Planning Act. Visit <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PH3> for detailed information.

Self-Help TIPS

In this issue of the **Self-Help Tips** we will discuss when and how a landlord can increase the rent according to the rules and regulations of the Residential Tenancies Act.

New Tenant - A landlord can charge a new tenant any amount of rent that they wish. Once a rental unit becomes vacant, the landlord could charge the next tenant any amount that the market can bear. This is known as vacancy decontrol.

Guideline Increase - Section 120 of the RTA - Limits the amount a landlord can increase the rent without approval from the Landlord and Tenant Board. The government is required, on an annual basis, to publish the maximum guideline amount that a landlord may increase the rent for each calendar year. The highest percentage increase that the Guideline may allow is 2.5%. The Guideline increase for 2019 is 1.8%.

Rent Increase Notice-Form N1 - Landlords are permitted to increase the rent they charge for an existing tenancy once every twelve months. When increasing the rent, landlords must provide the tenant(s) with at least **90 days** written notice of the intended increase and must use the Landlord and Tenant Board's approved form **N1- Notice of Rent Increase**.

Above Guideline Increase - A landlord can file for an above guideline rent increase application with the Board if their costs have increased due to:

- Extraordinary increases in municipal taxes and charges
- Eligible capital expenditures
- Operating costs related to security services

Rent increases for capital expenditures or security services cannot be more than 3% above the guideline each year. If the landlord justifies an increase that is more than 3% above the guideline, the increase can be taken over three years, at a rate of up to 3% above the guideline per year. For increases in the cost of municipal taxes and charges, there is no limit on the amount of rent increase that can be approved. The form that you would file with the LTB is Form **L5 - Application for a Rent Increase Above the Guideline**.*

Exemptions from rules relating to rent - The RTA was amended to create an exemption from rent control rules for newly created rental units, occupied for the first time for residential purposes after **November 15, 2018**.

These rental units are not subject to the annual rent increase guideline.

Section 6.1 of the **RTA** provides details of the amendment for this rent control exemption. The requirements of waiting 12 months between increases and providing the tenant(s) occupying these units with a 90 days written notice of an intended increase will still apply. For these rental units, the landlord must serve the tenant(s) with the LTB approved form N2 Notice of Rent Increase (Rental Unit Partially Exempt).

Agreements to Increase or Decrease Rent

Subsection 121(1) of the **RTA** allows a landlord and a tenant to agree to increase the rent charged to the tenant for a rental unit above the guideline if, (a) the landlord has carried out or promises to carry out a specified capital expenditure in exchange for the rent increase; or (b) the landlord has provided or promises to provide a new or additional service in exchange for the rent increase.

This agreement must,

- be in writing and on Form N10 (Agreement to Increase Rent Above the Guideline) that is available from the Board; and
- have an agreed increase that is not higher than 3% above the guideline.

Section 123 allows a landlord to increase the rent charged at any time if the landlord and the tenant agree that the landlord will add any of the following with respect to the tenant's occupancy of the rental unit:

1. A parking space.
2. A prescribed service, facility, privilege, accommodation or thing.

For the purpose of section 123, section 16 of the O. Reg. 516/06 sets out prescribed services, facilities, privileges, accommodations or things that apply.

<https://www.ontario.ca/laws/regulation/060516#BK17>

If the landlord and the tenant agree that the landlord shall stop providing anything referred to in subsection 123(1), the landlord is required to decrease the rent. For more information on **sections 121 and 123** refer to

<https://www.ontario.ca/laws/statute/06r17#BK185>

Tips

- Landlords should always take their annual guideline rent increase. If you don't take the annual increases you cannot go back and claim the rent increase retroactively.
- Ensure that you serve the tenant with the proper and most up to date rent increase form N1-Notice of Rent Increase or N2-Notice of Rent Increase Unit Partially Exempt or your increase will be considered void.
- Landlords should ensure they understand the Rent Rules established under the RTA before increasing the rent as an illegal rent increase is an offence under the Act and if found guilty a landlord can be fined up to \$25,000.
- With a new tenancy (new tenant) a landlord and a tenant can decide how much the rent will be for a rental unit and which services will be included in the rent (heat, hydro, parking etc.). This is when a landlord should ensure that the rent is set at an amount that will at least sustain the landlord's cost.

NOTE: Landlord's Self-Help Centre does not provide advice or assist with above guideline rent increases.

Did You Know?

Q: I have rented a house to a tenant and I'm wondering how often I can enter the property to do a maintenance inspection? I have been inspecting the property on a monthly basis but the tenant is now complaining that it's too frequent. What does the law say about this?

The law does not set out how often landlords can carry out maintenance inspections, however the landlord should make a reasonable effort to limit the frequency of entries for the purpose of carrying out an inspection of the rental unit. A tenant could have grounds to claim that the landlord is interfering with their reasonable enjoyment of the premises by entering the unit too frequently to inspect.



Q: I have a three year lease with my tenant which expires a year from now. The lease includes a clause stating that the lease can be terminated early if the landlord requires the unit back for personal use by giving 60 days' notice. Am I able to terminate the lease earlier because of this clause?

Despite the fact that this clause is in the lease you would not be able to terminate the lease earlier for the purpose of moving in. When there is a fixed term lease in place a landlord can only terminate the tenancy for the landlord's personal use at the end of the lease term.



Q: I have heard that landlords can now serve notices to tenants by email. Is this correct?

This is true but only for certain notices such as the Notice of Rent Increase, and the Notice of Entry and certain documents or submissions related to a Board application. The landlord and the tenant have to consent to service by email in writing. There is a Consent to Service by Email form that can be signed by both parties although it is not mandatory to use the form as long as the consent is in writing.



Q: My tenant and I agreed to terminate the tenancy and we both signed the Agreement to End the Tenancy (Form N11). When the time came for the tenant to move out he did not leave and because I was out of the country for a few weeks I could not do anything about his failure to leave. What is my recourse now? Can I still enforce the agreement to terminate that we signed?

You would be able to file an application with the Landlord and Tenant Board to evict the tenant as long as it's filed within 30 days from the termination date on the Form N11. If it is past the 30 days then the agreement is now null and void and the tenant can continue the tenancy.



Q: A tenant of mine is asking me for consent to sublet her rental unit because of a job transfer which will be for a few months. I have no problem with her subletting but do I have the right to screen the candidates for the sublet?

Unlike an assignment a landlord does not really have the right to screen candidates for a sublet since the original tenant is still the one responsible for the rent and anything that happens in the rental unit. In a sublet situation the landlord will not be dealing with the subtenant directly but rather with the tenant only.



Q: What is the difference between a Request to Amend an Order and a Request to Review an Order? I have a case at the Landlord and Tenant Board based on arrears and I received an Order. However, I have noticed that the amount of the arrears of rent owing is incorrect. Which form do I file to have the error corrected?

If the Order contains a clerical error which would be a typographical error, an error of calculation or similar error, a Request to Amend an Order can be filed and the Board can issue an Amended Order without having to hold a hearing. The procedure for dealing with a request to amend an order can be found in Rule 24 of the Board's Rules of Practice. On the other hand, a Request to Review an Order is based on a serious error made by the adjudicator, for example, evidence that was presented at the hearing but overlooked or not considered. When a Request to Review an Order is filed, the Board will determine if there is a serious error in the order and if so, a hearing will be scheduled.



Q: I have given my tenant a notice of rent increase in a letter, I provided 90 days' notice and asked for the guideline amount. The tenant is refusing to pay the increase, he claims it's not a legal notice. Can he refuse to pay?

Your tenant is correct, a notice of rent increase must be provided in the Board approved form which is Form N1. A letter is not considered a proper notice to increase rent and therefore is not valid.



What's New?

First-time Home Buyers

The 2019 federal budget, which was presented on March 19, 2019, included two important initiatives which support first-time home buyers:

RRSP Withdrawal Increase - First-time home buyers will now be able to withdraw \$35,000 from their savings to purchase a home, increased from previous \$25,000. People whose marriages or common-law partnerships have ended will now be eligible to borrow from their RRSP savings a second time. The amount borrowed must be paid back within 15 years.

First Time Home Buyer Incentive - A new program to help with housing affordability will receive \$1.25 billion in funding over three years. This is a shared-equity mortgage which is like an interest free loan and will reduce the amount a home buyer needs to finance, eligible amounts include 5% on the resale of an existing home and 10% on a new home.

To qualify, household income must be less than \$120,000 annually, the loan will be capped at 4 times the applicant's annual income. The shared-equity mortgage will be administered by Canada Mortgage and Housing Corporation and will eventually have to be paid back. The details of the program are not fully developed with more additional details expected to be provided in the days ahead.

Toronto Laneway Suites

The City of Toronto is exploring expansion of the By-law that permits laneway suites to include the entire network of public laneways totalling 334 kilometers. By-law 810-2018 currently applies to properties located in East York and the former City of Toronto which reflects roughly 235 kilometers of the laneway network or 74 percent of the total. The remainder of the laneway network consists of 99 kilometres.

What is a laneway suite? A laneway suite is a self-contained living accommodation for a person or persons living together as a separate single housekeeping unit, containing kitchen and bathroom facilities for the exclusive use of the occupants, and located in an ancillary building abutting to a lane.

Only one laneway suite is permitted on a lot and is subject to a variety of requirements defined by By-law 810-2018. One interesting provision relates to parking - when a laneway suite is created in an ancillary building, **no parking spaces** are required for any of the dwelling units, the laneway suite or those in the detached house, semi-detached house, townhouse, duplex, triplex or 4plex on the same lot. However, two bicycle parking spaces must be provided within the laneway suite. The by-law was passed in August 2018 and clearly identifies short-term rental as a permitted use.

There is plenty of interest in laneway suites from home owners with 53 project applications being reviewed; 18 building permit applications have been received; and 15 minor variance applications for laneway suites.

<https://www.toronto.ca/city-government/planning-development/planning-studies-initiatives/changing-lanes-the-city-of-torontos-review-of-laneway-suites/overview/>

LSHC Services and Resources

Landlord's Self-Help Centre is the unique specialty community legal clinic that operates with the mandate to assist the low income, small landlord community across the province who otherwise would not have access to legal information or summary legal advice.

In addition to frontline client service, LSHC provides public legal education, participates in community development initiatives and involves itself in law reform activities intended to improve the operating environment for small landlords. Our entire staff consists of five people.

The demand for LSHC services continues to grow, a trend we have been monitoring in recent years. While demand increases, our staffing resources do not. We continue to make our best efforts to stretch our limited resources and help as many small landlords as we can manage.

Typically, LSHC receives 100+ calls per day in addition to walk-in clients visiting the office in person. Wait times for callers has increased and now ranges anywhere from 40 minutes to an hour or more. To avoid disappointment, we remind you that LSHC does not assist in the following areas:

- Above guideline rent increases
- Mobile homes and land leases
- Head-tenant/Sub-landlord situations
- Appeals to Divisional Court
- Small Claims Court
- Commercial leases
- Care homes
- Short-term rental
- Exempt tenancies
- LSHC does not provide representation for clients and cannot assist if you have hired a lawyer or paralegal as this is a conflict and strictly prohibited.

Please visit our website for a variety of self-help learning tools and resources - www.landlordselfhelp.com

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