Quarterly News
A Landlord's Self-Help Centre Publication

# Regulation of short-term rentals in Toronto delayed at municipal appeal level

The short term rental industry in Toronto became the focus of local officials in 2017 with the growing popularity of the short term rental of privately owned units through services like Airbnb, Flipkey, VRBO, etc. Following a comprehensive consultation process with the community and stakeholders, city staff developed new rules for short-term rentals.

The proposed short-term rental regulation was passed by Toronto City Council on Dec. 7, 2017 by a vote of 40-3 in support. Council also voted whether to prohibit the rental of secondary rentals on a short-term basis, this also passed (27 to 17) and was a disappointment for many small landlords as the owner could not rent a second suite on a short-term basis but the tenant who occupied the unit could. The by-law passed by the City of Toronto established the following:

- Only the principal residence may be rented
- Short term rentals must last no longer than 28 days; in the case of an entire residence, no more than 180 days per calendar year;
- Hosts can rent up to 3 rooms in their principle residence or the entire home
- Owners and tenants can rent; tenants must comply with the rules established under the RTA and no unauthorized subletting and cannot receive more money for short term rental than is paid for rent;
- A new zoning category created for short-term rentals; hosts required to pay a $50 registration fee;
- Toronto will maintain a central registry for anyone renting in the short-term market;
- Short term rental platforms must register with the city and pay a one-time licensing fee of $5,000 plus $1 for each night booked.

An appeal of the by-law was filed with the Ontario Municipal Board, the predecessor of the Local Planning Appeal Tribunal (LPAT), by three short-term rental operators who disagree with the new rules. A two-day hearing was scheduled to begin August 30, 2018. However, LPAT determined that five days would be a more appropriate allocation of time for the proceedings and re-scheduled the hearing, with the **consent of all parties**, to **August 29, 2019**.

Until the appeal is heard and a decision made, which could take as long as eight weeks after the hearing, Toronto's short-term rental regulation cannot be implemented or enforced. Housing advocates fear thousands of rental units typically occupied by long-term tenants units will be lost and the affordable housing crisis will worsen.

### Municipality Accommodation Tax for Hotel and Short Term Rentals

The Municipal Accommodation Tax (MAT) is a four per cent tax charged by transient accommodation providers (hotels and short term rentals). The Transient Accommodation Regulation 435/17 was passed by the Province and came into force December 13, 2017 permitting local municipalities to implement policies respecting the collection of accommodation tax.

Ottawa implemented its MAT effective January 1, 2018 and Toronto on April 1, 2018 https://www.ontariolaws.ca/regulation/170435

## In this ISSUE:



### Disclaimer

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

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# What does the new *Cannabis Act* mean for landlords?

After a lengthy period of debate and review in Parliament, the *Cannabis Act* has received Royal Assent and will come into force on October 17, 2018.

The decriminalization of the use and possession of recreational marijuana represents a significant shift in social behavior and will undoubtedly impact owners and occupants of residential rental housing.

Understandably, many landlords are asking themselves: "What are the rules for the use of cannabis?" and "How can we terminate a tenancy within this new framework?"

Before you rent out a unit, you should make it clear to all prospective tenants that any cultivation or growing of cannabis plants is prohibited throughout the residential complex. On page seven of the Ontario Standard Form of Lease, make sure to fill in the box marked "This tenancy agreement includes an attachment with additional terms that the landlord and tenant agreed to". Consider including a clause which restricts smoking or vaping marijuana, tobacco, or any other substances on the rented premises. In addition, you should add a clause to restrict cultivation of cannabis plants in the rental complex because of the potential for it to cause damage or interfere with other tenants. It is important to include this clause in your additional terms because it tells the tenant that he or she can be served with a notice to terminate the tenancy if they don't follow it.

As far as termination of the tenancy goes, not much has changed. In order to evict a tenant for growing or smoking cannabis (or marijuana), you would serve an N5 Form to Terminate a Tenancy which gives the tenant seven days to correct their behaviour, provided your tenancy agreement prohibits cultivation of marijuana on the rented premises. If the tenant has not corrected the issue within the seven-day period, then you would file the L2 Application at the Landlord and Tenant Board.

It's important to note that a tenant cannot be evicted solely because they are growing cannabis. However, if this cultivation causes damage or interferes with another tenant's reasonable enjoyment of their rental unit, then this would be grounds for eviction. In this way, growing cannabis is similar to smoking because in combination with one or all of the above elements, it could serve as a valid reason to terminate a tenancy.

As a landlord, you also have the duty to accommodate tenants up to the point of undue hardship. Consequently, if a tenant has a medical marijuana license, then you cannot stop them from growing or smoking cannabis for their own medical use. This would be considered discrimination under Ontario's *Human Rights Code* and you could face a claim against you in the Human Rights Tribunal for doing so. The same concept applies when the tenant's smoking or growing marijuana causes damage in the rental unit or interferes with other tenants. Make sure to verify whether or not your tenant has such a license before trying to evict them on this ground.

# LAST MONTH's RENT DEPOSIT: Do you know when to use it?

Confused about applying the Last Month's Rent deposit (LMR)? Here is a simplified explanation:

**What is the LMR**? Also referred to as a security deposit, the LMR is defined in Section 105(2) of the *Residential Tenancies Act* as the only rent deposit a landlord may collect. It may be collected at the beginning of a tenancy, and it is to be used only for rent (not damages or utility payments). Specifically, it is to be applied to the tenant's last month in the rental unit.

The amount of the LMR cannot be more than the amount for one rent period. For example, for a weekly tenancy, the landlord is only allowed to have one week's rent on deposit. If there is a monthly or fixed term tenancy, the landlord is only allowed to have one month's rent on deposit.

**When can the LMR be collected?** Landlords should collect the LMR on or before the day the tenant is provided with keys/access to the rental unit. If this deposit is not collected before the tenant moves into the rental unit, they do not have to pay it to the landlord until it becomes due. The same applies when a tenant promises to pay the LMR in installments throughout the tenancy and then fails to do so. The landlord cannot require the tenant to pay it until it is the last month and that rent amount becomes due.

**When can the LMR be used/applied?** The LMR is the only deposit a landlord is legally allowed to collect and it should ONLY be used for the last rent period before the tenancy terminates. [Continued on page 3]

## Purchaser requires the rental unit for own use?

Landlords selling their rental units must give the N12: Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental Unit to tenants indicating that the purchaser wants to occupy the rental unit. According to section 49 of the *Residential Tenancies Act*, the landlord and the purchaser must have a Purchase and Sale Agreement in place in order for the N12 notice to be given to the tenants. Another factor to consider is whether or not the tenancy is on a month-to-month basis since this determines when the N12 notice can be given. Unlike giving an N12 notice for landlord's own use, the landlord is **NOT** required to pay one month's compensation or offer another rental unit acceptable to the tenant.

The chart illustrates the main differences between the N12 notice for landlord's own use and purchaser's own use:

| | **Landlord's Own Use** | **Purchaser's Own Use** |
|---|---|---|
| **Applicable RTA section** | Section 48 | Section 49 |
| **Applies to** | Landlord, landlord's spouse, child, parent or caregiver for any of these individuals | Purchaser, purchaser's spouse, child, parent or caregiver for any of these individuals |
| **Termination date** | Must be 60 days | Must be 60 days |
| **Requirement under RTA section 48.1** | One month's compensation or offer another rental unit owned by the landlord | Not Required |
| **Signed Purchase and Sale Agreement** | Not Required | Required |
| **Residential complex has more than 3 residential units?** | Notice can be given | Notice cannot be given |

For more information about giving an N12 notice for landlord's own use, please refer to LSHC Quarterly News March 2018 edition. You can obtain the form from the Landlord and Tenant Board website - http://www.sjto.gov.on.ca/documents/ltb/Notices%20of%20Termination%20&%20Instructions/N12.pdf

## LAST MONTH's RENT

(Continued from page 2)

**Example #1**: The tenant is on a fixed term lease from July 1, 2017 until June 30, 2018 but wants to continue renting on a month-to-month basis afterwards. The landlord **does not** apply the LMR to the month of June 2018 because the tenant is still in the unit. Instead, the landlord would continue to hold the LMR and the tenant would be required to pay the rent for June 2018 onwards, until proper notice to end the tenancy is provided.

**Example #2**: The tenant is on a fixed term lease from July 1, 2017 until June 30, 2018 and gives proper notice (either through the N9 or N11) to end the tenancy on June 30, 2018. In this case, the landlord **does** apply the LMR to the month of June 2018 because this is the tenant's last month in the rental unit.

**Never** apply the deposit held for last week/month's rent early as it is the only security you have. If the tenant is unable to pay rent for a period, the landlord **should not** apply the LMR to that rental period, but should instead serve Form N4 for non-payment of rent.

The rent deposit is to be applied to the last rent period before the tenancy terminates.

# Self-Help TIPS

In this issue of the **Self-Help Tips** we will discuss the steps a landlord must follow when the rental property has been destroyed by a natural disaster (flood) or fire.

With the heavy rainfalls experienced recently province-wide, landlords may have many questions about the steps that should be taken to deal with the situation.

**Insurance Coverage:** Water damage is not viewed the same way by all insurance companies. Flood damage that happens as a result of weather is generally not covered by a standard homeowners' policy. Therefore, it is important for landlords to be aware of the terms of your insurance policy and know what is covered and what is not. Ensure that you have enough insurance coverage for repairing and replacing all the damages that can occur.

**Tenant Insurance:** Tenants are usually responsible for the replacement of their goods that are damaged or destroyed in a flood caused by weather or a fire. As a cautionary measure, landlords should clearly state in their tenancy agreements that the tenants are responsible for their own contents insurance.
If you do not have insurance coverage for flood damages you might want to contact the municipality or provincial government to see if there is any assistance available for you or your tenant.

**Is the Tenant Required to Vacate due to a Natural Disaster or Fire?** The actions a landlord needs to take to repair the property depends on the extent of the damages, and whether or not the rental unit has been made uninhabitable by the flood or the fire. You should talk to your insurance company to determine what repairs need to be done to the rental unit, how long the repairs will take and whether or not the tenant can remain at the property while it is being repaired.

**Frustrated Contract:** Section 19 of the RTA provides that "*The doctrine of frustration of contract and the Frustrated Contracts Act apply with respect to tenancy agreements".* A frustrated contract generally arises when an unexpected event occurs which no party to the tenancy agreement expected at the time of entering into the obligation, and the unexpected event makes continuing with the tenancy agreement impossible. These would include: a natural disaster (flood); a fire that has destroyed the property; or an order under the Public Health Act that says the property is unfit for human habitation.

In order to successfully apply the doctrine of frustration there must be serious damage that will require a prolonged period of repair.

When the **Frustrated Contracts Act** applies, the tenancy ends on the day the contract is frustrated, and it permits the tenants to recover money paid to the landlord for the remainder of the tenancy period. For example, if a unit is deemed to be uninhabitable and the contract is frustrated on July 8th, the day of the flood or the fire, the landlord would only be allowed to keep the rent paid up to the date the contract was frustrated, and would have to return the rest of the rent paid to the tenant. This includes rent paid for the period after it was frustrated and the last month's rent deposit (if one was collected).

**Proving the Rental Agreement is Frustrated:** If the landlord has no choice but to treat the rental unit as frustrated, the landlord should inform the tenant in writing and return all rent owing to the tenant. The landlord will be required to prove the condition of the rental unit if there is a dispute by the tenant and the tenant refuses to vacate. Take pictures and videos of the rental unit, contact the Public Health office or municipal authorities about the condition of the property and ask for an inspection to prove the uninhabitable conditions, and that it is unreasonable to expect anyone to be able to live in the unit. A landlord may file an **A1 Application about Whether the Act Applies** with the **LTB** if it is unclear whether the Frustrated Contracts Act applies.

## Tips

- Where bylaws allow, install a backwater or a backflow valve that allows waste water from sinks and toilets to flow out of your house which prevents a backup of sewage into your basement plumbing.
- Make sure your grading slopes away from your house.
- Install a sump pump to help prevent water from entering your basement.
- Check valves and proper sealing of basement walls and windows.
- Install smoke alarms in accordance with the Ontario Fire Code.
- Maintain smoke alarms in operating condition.

# Did You Know?

Q: I served my tenant with a Form N12 a few months ago because I needed to move back into my house. The tenant moved out according to the notice but now the former tenant has filed an application with the Landlord and Tenant Board claiming that I did not provide her with one month's compensation. The reason I did not provide it was because I discovered that the unit was damaged. Do I still have to pay her the compensation?

When a landlord serves the Form N12 to a tenant, one of the requirements is to compensate the tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant. If you haven't paid the compensation the Board will order that it be paid to the tenant. It is also considered an offence under the *Residential Tenancies Act* not to provide the compensation when evicting a tenant for this reason. The maximum fine for an offence under the Act is $25,000.

Q: I have found a new tenant to move into one of my units, one parking space is included in the rent. The tenant does not currently have a vehicle but plans to get one in the near future, in the meantime she wants a friend to use the space. Is she allowed to do this?

The *Residential Tenancies Act* does not have specific rules about parking. A tenant may allow the use of his/her parking space to another person providing that it does not interfere with the reasonable enjoyment of the premises by the other tenants or the landlord.

Q: I have just purchased a property with two existing tenants, the rents are very low and I believe there has not been a rent increase for a few years. As the new owner I plan on increasing the rent to market value and I would like to know how I can do this?

When you purchase a property with tenants in possession you assume whatever agreement they had in place with the previous owner. Therefore, when you take over as the new owner you are still not allowed to increase the rent unless it's by the allowable guideline and if the tenants have not had an increase in the past twelve months. To increase the rent you must provide the tenants with a 90 day notice on a prescribed form which is the Form N1, the guideline for 2019 is set at 1.8%. The forms can be obtained from the Landlord and Tenant Board's website at www.sjto.gov.on.ca/ltb.

Q: I have sold my rental property and the purchaser plans to move in, I understand that I can serve my tenant with the Form N12 on behalf of the purchaser but I heard that I have to also provide my tenant with one month's rent compensation. Is this correct?

The compensation that must be given to a tenant when the Form N12 is served applies only when the landlord is terminating based on the landlord or family member requiring the unit for their own personal use. This rule does not apply when the property is sold and the purchaser plans to move in. The only requirements in this case is to serve the tenants with the Form N12 based on purchaser's own use and providing 60 days notice to the end of the rental period or term. After serving the N12 you should follow-up with an application to the Landlord and Tenant Board to obtain an order to terminate the tenancy. The forms required to apply to the Board is the Form L2, a Certificate of Service and an Affidavit sworn by the purchaser that they plan to move in to the property.

Q: Can you tell me what the landlord's responsibility is for installing a ramp, a tenant of mine has obtained a scooter and has requested that I install a ramp for her to access the rental unit. Is this my responsibility?

Under the Human Rights Code landlords have a legal duty to accommodate tenants who have special needs due to a disability. If a ramp is required in order for the individual to enter the building such as in your case then you will have to accommodate the tenant and install one. Here is a link where you can learn more about the Human Rights Code and how it applies to rental housing, www.landlordselfhelp.com/human_rights/HR_Book_final2012.pdf

Q: I recently appeared at a hearing at the Landlord and Tenant Board because my tenant filed an application against me claiming that I failed to maintain the property and entered the unit illegally. The Board ruled in the tenant's favour and awarded the tenant a rent abatement and also that I pay a fine for the illegal entry. How do I pay the fine and what are the consequences if I don't pay it?

Fines issued by the Landlord and Tenant Board must be paid to the Minister of Finance. The consequences of failing to pay a fine can result in the Board refusing to allow any application subsequently filed by the landlord; staying or discontinuing an application already filed by the landlord; or delay issuing an order or discontinue an application if a hearing has taken place.

# What's New?

## 2019 Rent Increase Guideline: 1.8%

The Province has announced the 2019 rent guideline, which applies to increases taken between January 1, 2019 and December 31, 2019 at 1.8% - the same amount prescribed for 2018!

The annual guideline is determined by a formula which averages the Ontario Consumer Price Index over the preceding 12 month period of June to May.

Landlords must give 90 days' notice and use the prescribed Form N1 – Notice of Rent Increase from the Landlord and Tenant Board http://www.sjto.gov.on.ca/documents/ltb/Notices%20of%20Rent%20Increase%20&%20Instructions/N1.pdf

**UPDATE:**

## Landlord Licensing in St. Catharines

The vote on the proposed Rental Housing Licensing Bylaw for landlords of four and fewer units expected in July was postponed by city council due to the strong response to the consultation process.

The Mayor's Office has organized a 20 member working group to produce a consolidated comment paper for city staff. City staff will then prepare a report for council based on their examination and analysis which will outline several options for council consideration, including alternative solutions to a rental housing licensing by-law. The staff report is expected in the first quarter of 2019.

The LANDLORD LEARNING and NETWORKING FORUM is October 25 and will provide an evening of learning and networking for small landlords –

https://landlord-forum-2018.eventbrite.ca

Pre-registration required – Seating is limited

## ResilientTO

*Resilience is the ability to survive, adapt, and thrive in the face of any challenge.*

The new ResilientTO program aims to help prepare the people, communities, businesses, and institutions of Toronto to be resilient in the face of key challenges such as flooding, heatwaves, blizzards and cold snaps and stresses such as poverty and inequality, access to housing, aging infrastructures to be key challenges through the development of Toronto's first Resilience Strategy.

ResilientTO would like to hear stories from the community of resilience, to learn more please visit https://www.resilienttoronto.ca.

## Laneway Suites

**Approved for Toronto and East York District**

**Changing Lanes** paved the way for laneway suites to officially become part of the housing landscape in the Toronto and East York district. You will find *"Changing Lanes: The City of Toronto's Review of Laneway Suites – City –Initiated Office Plan Amendment and Zone Amendment – Final Report"* https://www.toronto.ca/legdocs/mmis/2018/te/bgrd/backgroundfile-114992.pdf

On June 28, 2018 Toronto Council adopted amendments to the Official Plan and Zoning By-law 569-2013 permitting laneway suites in R zones located in the area of Toronto and East York Community Councils boundaries. Owners interested in creating a laneway suite can direct their questions about building permit applications to Toronto Building Staff at 416-397-5330.

Laneway suites are self-contained residential units located on the same lot as a detached house or townhouse, and are generally located at the rear of the yard next to a laneway. Laneway suites provide new rental housing opportunities. They offer another option for owners to leverage the investment in their home to generate an income.

Changing public policy to level the housing playing field and balance the rights of tenants and landlords would positively impact the interest in creating new rental units. Policies that protect small landlords from potential financial hardship as a result of renting are needed to encourage more owners to create rental housing opportunities such as laneway suites and secondary suites in established communities.

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