



A Landlord's Self-Help Centre Publication

Housing and the 2021 Federal Election

Housing was a hot button issue during in the recent federal election campaign. Regulating foreign investment was one of the issues that seemed to resonate across all political parties with each outlining some measure of regulation in their individual party platforms.

The election resulted in a Liberal minority government with 159 seats, while 119 seats were won by the Conservatives, the NDP secured 25; seats; the BQ with 33 seats; and Green Party with 2 seats.

The Liberal platform included numerous housing related commitments which were intended to build on previous achievements and successes. The campaign included measures aimed at getting more buyers into the housing market, including "The Homebuyers Bill of Rights" and creating new housing opportunities in partnership with provinces and municipalities through a variety of programs and funds which will specifically target the needs of for the middle class. Several housing commitments that relate to the small landlord community include:

- Create an anti-flipping tax on residential properties, this new tax on residential properties will require they be held for 12 months and is intended to reduce speculation and cool the market.
- Regulate Foreign buyers in the housing market by banning the purchase of non-recreational residential property for the next two years, unless for future employment or immigration. Work with provinces and municipalities to regulate the role of foreign buyers to ensure housing is available for Canadians.
- Extend the national vacant home tax scheduled to begin January 1, 2022, to include foreign-owned tax to vacant urban land.
- Review tax treatment of large corporate owners; implement policies that curb excessive profits **while protecting small independent landlords**; review down payment requirements for investment properties.
- Introduce a new Multigenerational Home Renovation tax credit to help families add a secondary unit to their home for immediate or extended family member. Families may claim a 15 per cent tax credit up to \$50,000 in renovation and construction costs.
- A commitment to stop "renoviction" and protect renters. Landlords will be required to disclose the rent received pre and post renovation on their tax filings. A surtax will be imposed if the rent increase is found to be excessive.

Read the 2021 Federal Liberal Platform at <https://liberal.ca/wp-content/uploads/sites/292/2021/09/Platform-Forward-For-Everyone.pdf>

2021 AGM and Landlord Learning Forum – October 14th

Notice has been given that a meeting of the members of Landlord's Self-Help Centre has been called and will be held via Zoom on Thursday, October 14, 2021 at 6:00 pm.

The AGM will be held in conjunction with the Landlord Learning Forum with aim of providing members with educational presentations that highlight regulatory reform that impacts the rental housing market; identify new and emerging trends; and explaining potential common pitfalls. We are pleased to offer an **UPDATE: Landlord and Tenant Board** delivered by Associate Chair Karen Restoule; and **Bill 184: What's New** - a panel discussion that will focus on recent provisions proclaimed in force Sept. 1, 2021. Please visit <https://landlordselfhelp.com/2021-agm/> for details and registration link.

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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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When do you file with Small Claims Court?

With the proclamation of a slew of provisions from Bill 184, came more changes effective September 1, 2021. One of the big changes is that landlords can file applications at the Landlord and Tenant Board against former tenants. However, some confusion still exists and further clarification is needed.

Scenario #1: The tenant vacated the rental unit *before September 1, 2021*

If the tenant has vacated the rental unit **before September 1, 2021** and the landlord did not file an application with the Landlord and Tenant Board before the tenant vacated, the landlord will have to determine the tenant's new residential address or place of work and file a claim with Small Claims Court.

Scenario #2: The tenant vacated the rental unit *on or after September 1, 2021*

If the tenant vacated the rental unit **on or after September 1, 2021** and the landlord did not already file an application with the Landlord and Tenant Board before the tenant left, they can now file the new *L10: Application to Collect Money a Former Tenant Owes* with the Landlord and Tenant Board (<https://tribunalsontario.ca/ltb/forms/>).

The L10 application can be filed against a former tenant to collect:¹

- Rent arrears and/or compensation that you believe the former tenant owes you,
- An amount for charges related to NSF cheques the former tenant gave you,
- Costs you believe the former tenant owes you for unpaid utility bills,
- Money you believe the former tenant owes you for damaging the rental unit,
- Costs that you incurred because the former tenant or someone else visiting or living in the rental unit substantially interfered with your reasonable enjoyment or lawful right, privilege or interest.

The landlord has up to one year (365 days) after the tenant moved out to file this application, and will have to determine the tenant's current residential address. Unlike other arrears applications, the landlord will have to deliver a copy of the L10 and Notice of Hearing to the former tenant at least 30 days before the scheduled hearing date. Landlord and Tenant Board's Interpretation Guideline 11 provides additional information and can be found at <https://tribunalsontario.ca/documents/ltb/Interpretation%20Guidelines/11%20-%20Rent%20Arrears.html>

¹ <https://tribunalsontario.ca/ltb/forms/> L10 Application

How should you prepare for your VIRTUAL Landlord and Tenant Board hearing?

Building on the changes caused by COVID-19, the Landlord and Tenant Board has developed a Digital-first approach that is meant "to meet the diverse needs of Ontarians and enhance the quality of dispute resolution services." So, virtual hearings are here to stay!

Make sure your paperwork is in order

When preparing for your hearing day, it is important that all of your documentation and evidence is in order. Contact a legal service provider if you require legal advice before your Landlord and Tenant Board hearing.

The Landlord and Tenant Board rules, practice directions and guidelines (<https://tribunalsontario.ca/ltb/rules-practice-directions-guidelines/>) are helpful to review as they can assist you in understanding how the Adjudicators decide specific issues in an application. Past decisions from the Landlord and Tenant Board can be found on the canlii website (<https://www.canlii.org/en/>).

Read the Landlord and Tenant Board instructions carefully

The Notice of Hearing documentation will be sent to the applicant and respondent with information and instructions. It is important to follow these instructions, if there is any confusion, contact the Landlord and Tenant Board as soon as possible.

It is also important to make sure all the required documents and your evidence is submitted to the LTB by the appropriate deadlines so that you are not disadvantaged during the hearing.

Test the platform, observe

If you are nervous about having your hearing over Zoom,

you can observe other LTB hearings to get a sense of what you will expect on your hearing day. Contact the LTB by email at LTB@ontario.ca in advance of your hearing day to request links for observation of other LTB hearings.

Ontario Human Rights Code

The *Ontario Human Rights Code* prohibits discriminatory acts against peoples based on protected grounds and social areas. If a *Human Rights Code* issue is present, the Landlord and Tenant Board is obligated to address it.

In some cases, video, telephone or written hearings may not be appropriate formats for one or more of the parties involved. If a party requires accommodation under the *Ontario Human Rights Code* they must notify the Landlord and Tenant Board as soon as possible.

During the hearing

Hearings at the Landlord and Tenant Board are scheduled in time blocks, and depending on your start time you may need to dedicate the entire day for your hearing. Make sure to follow the instructions provided to you by the Board, and log in at the instructed time on the day of your hearing. (Watch the *Landlord and Tenant Board Hearings: Technical Requirements* module for more information about connecting <https://landlordselfhelp.com/landlord-learning-modules/>)

Self-Help TIPS

In this issue of the Self-Help Tips we will discuss recent changes for landlords when filing for eviction based on an N12 or N13. On September 1, 2021 new amendments to the Residential Tenancies Act, 2006 came into force because of Bill 184-Protecting Tenants and Strengthening Community Housing Act, and there are new changes to consider when filing an N12 and N13 application.

Landlord's Own Use (Section 48(1)) - The Residential Tenancies Act (RTA) allows the landlord to give notice of termination to a tenant if the landlord, in good faith, requires possession of the rental unit for a **period of at least one year** for residential occupation by himself/herself, a spouse or a child or parent of the landlord or the landlord's spouse; or for a person who will provide care services to the landlord, the landlord's spouse or a child or parent of the landlord or the landlord's spouse. The notice that must be given is a Form N12. The termination date specified in the notice must be at least 60 days after the notice is given and must be the day the rental period ends or the end of the term if there is a fixed term.

Compensation-When a landlord serves an N12 notice to a tenant under section 48 of the RTA, the landlord is required to give the tenant one month's rent as compensation, or offer the tenant another rental unit acceptable to the tenant. The compensation must be given by the termination date on the notice.

Application - A landlord may apply to the LTB by filing an L2 application for an eviction order as soon as the notice has been given to the tenant, but not later than 30 days after the termination date in the notice. The landlord is also required to file a sworn affidavit or a declaration by the person who personally requires the rental unit.

Effective September 1, 2021, when filing an application for landlord's own use, the declaration or affidavit must be submitted along with the application. The LTB will not accept the application without the affidavit or declaration.

Purchaser's Own Use (Section 49)

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 must be given to the tenant is a form N12. The termination date specified in the notice must be at least 60 days after the notice is given and must be the day the rental period ends or the end of the term if there is a fixed term.

Compensation-When a landlord serves an N12 notice to a tenant under section 49 of the RTA, the landlord is required to give the tenant one month's rent as compensation, or offer the tenant another rental unit acceptable to the tenant. The compensation must be given by the termination date on the notice and paid by the landlord giving the notice.

Application- A landlord may apply to the LTB by filing an L2 application for an eviction order as soon as the notice has been given to the tenant, but not later than 30 days after the termination date in the notice. The landlord is also required to file a sworn affidavit or a declaration by the person (purchaser) who personally requires the rental unit.

Effective September 1, 2021, when filing an application for purchaser's own use, the declaration or affidavit must be submitted along with the application. The LTB will not accept the application without the affidavit or declaration.

Demolition, Conversion or Repairs (Section 50(1))

If the landlord requires possession of the rental unit to:

- a) demolish it;
- b) convert it to use for a purpose other than residential premises; or
- c) perform repairs or renovations that they require a building permit and vacant possession of the rental unit;

The notice that must be given to the tenant is a form N13. The termination date specified in the notice must be at least 120 days after the notice is given and must be the day the rental period ends or the end of the term if there is a fixed term.

Section 52 of the Residential Tenancies Act requires the landlord to provide compensation to the tenant under certain conditions.

For more information visit

<https://www.ontario.ca/laws/statute/06r17#BK73>.

Note: Effective September 1, 2021- A landlord filing an L2 eviction application based on an N12 or an N13, must provide details about all previous N12 or N13 notices given to any tenant for any rental unit in the last 2 years- (RTA s. 71.1 (3)).

For more information on eviction for Personal Use, Demolition, Repairs and Conversion visit the LTB Interpretation Guideline 12 <https://tribunalsontario.ca/documents/ltb/Interpretation%20Guidelines/12%20-%20Eviction%20for%20Personal%20Use.html>

Tips

- There are serious consequences if a landlord gives a notice of termination in bad faith. As of **September 1, 2021** when a tenant files a T5 Application for bad faith they can now request that the LTB order a landlord to pay them up to 12 months' rent in compensation along with many other provisions.
- Giving notice in bad faith is also considered an Offence under the Act and if found guilty a landlord can be fined up to \$50,000 for individuals and up to \$250,000 for corporations.

Did You Know?

Q: Recently I had to enter a rental unit to show the unit to a prospective buyer, I gave the tenant a 24 hour written notice stating I would be entering around 7 pm., however I got delayed and when I arrived at the unit it was past 8:00 pm. The tenant was not home at the time but I still entered the unit with the prospective buyer and did the showing. The tenant is now telling me that it was illegal for me to show the unit because it was past 8 pm. Is that true?

The tenant is correct in this case. It is considered an offence under the *Residential Tenancies Act* if the landlord enters the rental unit outside of the allowable times which is 8am to 8pm even if proper notice to enter had been given. On the other hand it is also an offence for a tenant to stop the landlord from entering the unit when a proper notice has been given.

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Q: One of my tenants moved out a few months ago owing me rent and utilities, I heard that there have been some changes to the law recently that allows landlords to file an application with the Landlord and Tenant Board even if the tenant has already moved out. Is that true?

One of the new provisions under the *Protecting Tenants and Strengthening Community Housing Act, 2020* (Bill 184) is that landlords can now file an application (Form L10) with the Landlord and Tenant Board if the tenant has moved out owing arrears of rent; unpaid utilities; damages; or expenses incurred as a result of the tenant's conduct with the Landlord and Tenant Board for up to one year after the tenant has moved out. This provision took effect on September 1st, 2021. Please note: If your tenant moved out before Sep. 1st 2021, you would not be able to file with the Landlord and Tenant Board, you will have to file a claim in Small Claims Court.

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Q: I understand there is a rent freeze for 2021, when can I give notice of rent increase to my tenants for 2022? Can I give notice now or do I have to wait until January 1st 2022 to give the notice?

The rent increase guideline for 2022 is set at 1.2%. The rent can be increased if it's been 12 months since the last increase or since the tenancy began. Therefore a notice of rent increase (Form N1) can be served 90 days prior to take effect on January 1st, 2022.

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Q: I have gone through the eviction procedure and got an Order from the Landlord and Tenant Board to evict the tenant. I filed the Order with the Sheriff and they scheduled for the eviction to take place, however when the Sheriff came to perform the eviction they refused to enforce the eviction because my Order did not specify the exact rental unit. I did not state that it was the upper level. What is my recourse now? Can I ask to amend the Order or do I have to start all over again?

Unfortunately, you will have to start the process all over again. There is no process in place to amend the Order and all the other documents filed prior to obtaining the Order.

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Q: I asked a tenant to move out about 7 months ago because my daughter was going to move in, the tenant was reluctant to move out but eventually he did move out. My daughter did move in but because of her job she has to relocate now and I will have to re-rent the unit. I am concerned that my former tenant may find out that she is not living there. What can the former tenant do at this point?

Your daughter would have to occupy the unit as her primary residence for at least one year. If she did not, and the tenant finds out, the tenant could file an application against you on the basis that you may have given notice in bad faith. As of September 1, 2021, a bad faith order from the LTB against the landlord may include: an order to pay the former tenant an amount of increased rent for up to 1 year, an amount of up to 12 months' rent charged to the former tenant, an amount for reasonable out-of-pocket expenses, an administrative fine not exceeding the greater of \$10,000 and the monetary jurisdiction of the Small Claims Court, and other penalties as deemed appropriate by the adjudicator.

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Q: I have a hearing scheduled with the Landlord and Tenant Board based on non-payment of rent but my tenant has moved out in the meantime. Do I still have to attend the hearing?

If you wish to obtain an order for the arrears of rent you should still attend the hearing and make sure to complete the L1/L9 Update form in which you would state that the tenant has moved out and update the amount owing to the date the tenant vacated. An Advance Resolution Request Form should be filed with the Landlord and Tenant Board to inform that the tenant has vacated and the landlord is seeking an order for rent arrears only.

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2022 Notice of Rent Increase

One of the hot topics among the small landlord community in recent weeks has been increasing the rent. Landlords are eager to get their notices served and be positioned for a rent increase early in 2022.

Landlords, please be reminded that the annual guideline, the amount by which you may increase the rent (without having to make application for approval to the Landlord and Tenant Board) is 1.2% effective January 1, 2022.

The 2021 rent freeze will have effectively changed the rent increase anniversary date for many tenancy agreements, the legislation permits rent may be increased once every twelve months, 12 months since the last increase or 12 months since the tenant moved in. By January 2022, landlords who last increased rent in January 2020 will have waited 24 months.

Notice of Rent Increase - Landlords are required to give a minimum 90 days' written notice of a proposed rent increase and they must give notice in the prescribed form. You will find the prescribed Landlord and Tenant Board form N1 and instructions at <https://tribunalsontario.ca/ltb/forms/#landlord-forms>.

Landlords must also follow the rules for the proper delivery of the form N1 to the tenant. Note: You **cannot** deliver the N1 notice by posting it on the door of the tenant's rental unit.

The 1.2% guideline takes effect January 1, 2022.

Important updates from the LTB

As new legislative changes became effective on September 1, 2021 pursuant to Bill 184, *Protecting Tenants and Strengthening Communities Housing Act*, the Landlord and Tenant Board had to update their website's technical capabilities. However, they were not able to fully update the website. As a result, the revised L2: Application to End a Tenancy and Evict a Tenant or Collect Money will only be available in fillable PDF format until the launch of the new Tribunals Ontario Portal later this fall.

Please be advised that you are currently not able to e-File a L2 application based on an N12: Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental Unit or N13: Notice to End your Tenancy Because the Landlord Wants to Demolish the Rental Unit, Repair it or Convert it to Another Use, or when claiming costs relating to substantial interference or utilities. In these cases, you must use the PDF form and submit it by fax, mail or courier.

To find the LTB's fax, mail and courier information, please visit <https://tribunalsontario.ca/ltb/contact/>

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Selling a rental property?

Selling a rental property that includes a rental unit and tenant occupied can be challenging. There are a variety of tenancy related hurdles that can derail the sale of a rental property beginning with showings to prospective buyers and uncooperative tenants who refuse access.

Let's assume you have reached the point of negotiating an Agreement of Purchase and Sale and the purchaser require vacant possession of the property on closing day. This calls for careful consideration, calculation and even negotiation ...

Would the purchaser agree to a closing date six months into the future? A hearing at the Landlord and Tenant Board can take as long as six months to be heard.

If you enter into a Purchase and Sale Agreement and agree to give the Form N12 to the tenant, s. 49 of the *Residential Tenancies Act* requires that the landlord compensate the tenant in an amount equal to one month's rent. This means you are obligated to pay the compensation, not the purchaser. The compensation must be paid to the tenant by the termination date on the N12.

There are two better options for the landlord: If you have to deliver vacant possession on closing, convince the tenant to sign Form N11 Agreement to Terminate. This is a mutual agreement to end the tenancy. However, financial incentive such as offering to pay for moving costs or the first month's rent is often needed to secure the tenant's agreement. The landlord can then make application to the LTB and obtain a termination order ex parte; or The landlord can sell the property with the tenant in possession and leave the responsibility of giving the N12 notice and filing application with the Landlord and Tenant Board for the purchaser take on. This means you do not commit to vacant possession.

Several new provisions aimed at protecting tenants from landlords who act in bad faith came in force on Sept. 1, 2021. Join the 2021 AGM-Landlord Learning Forum on Oct. 14th as our panel discusses the new N12/N13 provisions pursuant to Bill 184 – visit <https://landlordselfhelp.com/2021-agm/> for program details.

DISCLAIMER

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