

LPAT Appeal of Toronto's Short Term Rental Regulation

The appeal of Toronto's Short-Term Rental Regulation By-law at the Local Planning Appeal Tribunal (LPAT) got underway on August 26, 2019.

By-law 613-2018 (<https://www.toronto.ca/legdocs/bylaws/2018/law0613.pdf>) establishes a variety of rules respecting short-term rentals, including the definition of short-term rental, the type of accommodation that may be rented on a short-term basis, and duration and frequency short-term accommodation may be rented. It also establishes requirements respecting registration, licensing, and collection of a hospitality tax.

The need for regulation intended to address issues of consumer protection, neighbourhood nuisance, noise, and housing availability and affordability, among others was identified by the City of Toronto.

The Short-term Rental By-law defines a short-term rental as: *all or part of a dwelling unit used to provide sleeping accommodation for any rental period that is less than 28 consecutive days in exchange for payment, which includes existing bed and breakfasts.* The By-law provides that a maximum of three rooms in the principle residence may be rented on a short-term basis 365 days a year; and the entire residence may be rented up to 180 days per year. The By-law prohibits owners of secondary units from renting this type of accommodation on a short-term basis however, a tenant occupant of a secondary unit is permitted (subject to provisions of the RTA) to rent their unit on a short-term basis.

Short-term rental operators/hosts will be required to register with the city and pay an annual registration fee of \$50, while short-term rental companies must pay a \$5,000 licensing fee and a booking fee of \$1 for every night booked.

In addition, operators/hosts of short-term rentals will be required to pay a four per cent hospitality tax pending enactment of the short-term rental by-law. The Municipal Accommodation Tax or MAT tax was implemented by the City of Toronto on April 1, 2018 on hotels, bed and breakfasts, and short-term rentals pending by-law enactment. A portion of the MAT tax will fund Tourism Toronto as well as municipal services such as road repair, EMS, transit, police, etc.

The appeal of Toronto's short-term rental by-law was launched by multiple parties, including Whitehall Suites, Red Maple Suites, Royal Stays, Livingsuites, IHM Ltd., Premium Suites and Westhaver Boutique Residences. These appellants are multi-unit landlords that operate numerous short-term rental properties and would be adversely impacted if the bylaw were implemented without amendment. Another party to the appeal is Toronto realtor Alex Leino. He argued that the short-term rental by-law will prevent him from using his basement suite for short-term rental when it is not used for guest accommodation for family and friends. Mr. Leino's legal fees are being paid by Airbnb.

Other parties involved in the appeal include Fairbnb Canada. Fairbnb, a coalition of tenant associations, condominium boards, the hotel industry, academics, legal clinics, and others, is arguing in favour of the regulation to prevent the loss of long term rental units, the negative impact short-term rentals are having on Toronto neighbourhoods, and creation of ghost hotels. Fairbnb has been lobbying for regulation of short-term rentals for years and called David Wachsmuth, Assistant Professor at McGill University's School of Urban Planning as an expert witness. Prof. Wachsmuth has extensively researched the impact of Airbnb on Canada's housing market.

City of Toronto staff from various divisions have also appeared at the hearing to provide details about the by-law and defend short-term rental regulation.

The LPAT appeal is expected to wrap up on Oct. 15, 2019 with closing statements.

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2020 Annual Rent Increase Guideline set at 2.2%

The government of Ontario has announced the rent increase guideline for 2020 at 2.2% - the highest rent increase since 2013. This amount applies to rent increases that will be taken between January 1st, 2020 and December 31st, 2020. The guideline amount is determined using the Ontario Consumer Price Index which is calculated by Statistics Canada. Inflation and economic conditions are measured annually in order to determine the rent increase guideline amount for the following year. It is important to note that the rent increase guideline only applies to rental properties subject to rent control. [Section 6.1 of the Residential Tenancies Act, 2006 outlines current rent control exemptions].

When increasing the rent by the prescribed rent increase guideline, landlords are not required to obtain the consent of their tenants or the approval of the Landlord and Tenant Board. To increase the rent legally, landlords must use the Form N1 - Notice of Rent Increase found on the Landlord and Tenant Board (LTB) website at <http://www.sjto.gov.on.ca/ltb/forms/>

Tenants must be served with Form N1 at least 90 days before the rent increase takes effect. Remember that the rent can be increased once every 12 months since the first year of the tenancy. Landlords should always take their annual rent increase regardless of the amount, otherwise they lose rent increases that are not taken.

In order to ensure that the N1 form is valid, landlords need to determine the date the rent will increase according to the rental period.

Example 1: If your tenant pays rent on the 1st of every month and the rent increase is to be effective on May 1st, 2020, the landlord must serve the N1 notice in January 2020 to ensure that the 90 days' notice period is given.

Example 2: If the rent is due on the 15th of every month and you serve the N1 on February 19th, 2020, the date the rent will increase is June 15th, 2020.

Please remember that landlords must serve the N1 notice following one of the approved methods of service.

Approved methods of service include handing the Form N1 notice to the tenant in person, to an adult person in the tenant's rental unit or placing the notice under the door of the rental unit. If both the landlord and tenant have signed the Consent to Service by Email form (which can also be found on the LTB website) or any other written agreement where both parties agree to service by email, landlords can send the N1 notice to their tenants via email.

Note: Review the Certificate of Service form (found on the LTB website) which lists the approved methods of service. If the N1 notice is given to the tenant by a method of service that is not listed in the form, the Form N1 will then be invalid.

Contributed by Asiya Awan, Paralegal Student

My tenant is missing...

It can be a confusing time for a landlord when a tenant has suddenly gone missing, only to find out that they have been arrested, admitted to the hospital, or are otherwise incapacitated. A tenancy does not automatically terminate when a tenant is in such a circumstance. There is no termination notice available or accepted for this reason, either. It is understandable that a landlord can feel lost in what the appropriate steps are to take. However, it is important to remember that a tenancy can only be terminated lawfully in accordance with s. 37 of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 ("The RTA").

We have some tips on how to approach this situation:

- First, the landlord should try and contact the tenant, and document their attempts to do so.
 - If successful in making contact, see if the tenant is willing to agree to end the tenancy and sign Form N11. You may have to negotiate and offer an incentive in order to help convince them to sign the form and agree to move out.
 - If you are unsuccessful in making contact, you may need to do more investigative work.
 - Try speaking with other tenants, or neighbours, to see if they know any information about the missing tenant's whereabouts.
- Second, perform an inspection of the rental unit.

- Provide proper written notice to enter the rental unit and perform an inspection to determine if the tenant moved out without providing notice. See <https://landlordselfhelp.com/media/Entering-Unit.pdf> for more information about the notice to enter.
- If you determined that the tenant has moved out without notice, removed all belongings, and left the keys, then you may have to sue in Small Claims Court for any rent that is owing.
- If belongings are in the unit, and the keys have not been returned, then the tenant is still in possession of the rental unit.
- Third, determine if rent payments are up to date.
 - If there is no rent owing, the tenancy is still in place.
 - If rent payments have stopped, then an N4 notice for non-payment of rent can be served to the tenant. See <https://landlordselfhelp.com/media/N4-TownHall-MASTER-copy.pdf> for more information.
- If the tenant has been arrested, contact the police department to see if they will provide you with any information. If an illegal act was committed on the rental property, you may be able to serve Form N6 for an illegal act.

For further information on this topic, read "Ending a Tenancy" in the *RTA Fact Sheet* section of our website at <https://landlordselfhelp.com/rta-fact-sheets/>

Contributed by Brygida Piecko, Paralegal Student

Amendments to the Cannabis Control Act do not mean automatic eviction!

On June 6, 2019, the government of Ontario amended the *Cannabis Control Act, 2017*¹ by introducing bill 108 *More Homes, More Choice, 2019*². More specifically, section 18 of the Act was amended by adding various subsections including (3.1 and 3.2) which prevent a person from entering a premises that was used in contravention of the Act, and where only police officers and emergency responders may be allowed to enter. Prior to the amendments, section 18 of the Act did not clearly state where alleged illegal cannabis sales were occurring, individuals may be prohibited from accessing the premises. The amendments to section 18 of the Act now allow police officers to remove residential tenants from their rental units if they believe the premises are being used as illegal cannabis dispensaries. This resulted in residential tenant Jeffrey Brodie being evicted by the police on July 9, 2019³. The landlord of the rental unit was charged with running an illegal cannabis dispensary there and entry into the premises was prohibited. The tenant was not allowed to remove his belongings aside from a small bag of clothes.

What does this mean for landlords?

It is important to remember that as a landlord, you still have to end the tenancy legally by following the *Residential Tenancies Act, 2006* and the Landlord and Tenant Board processes. The fact that the police are now able to remove a residential tenant under the *Cannabis Control Act* does not signify automatic eviction ending a tenancy. In order to end the tenancy legally, you may serve a notice of eviction such as an N5 for substantially interfering with the enjoyment of others or for causing damages, a Form N6 for an

illegal act or an N7 for willful damage or substantial interference with the enjoyment of others. Please review our RTA fact sheet "Ending a Tenancy" at <https://landlordselfhelp.com/media/Ending-a-Tenancy.pdf> to ensure that you understand the legal grounds for eviction of tenants.

As noted above, the landlord of the rental premises was charged for allegedly running an illegal cannabis dispensary in the rental unit although it is unclear who is at fault. However, we strongly recommend landlords conduct regular maintenance inspections to identify any potential issues at the rental unit and to commence an eviction process against the tenant if applicable as you may be held responsible for any illegal activity taking place there. Remember that you must provide legal 24 hours' notice of entry before you can enter the unit to inspect. To learn more about giving notice of entry, review our RTA fact sheet entitled *Entering the Unit* at <https://landlordselfhelp.com/media/Entering-Unit.pdf>.

Sources: ¹*Cannabis Control Act, 2017*
<https://www.ontario.ca/laws/statute/17c26#BK19>

²*More Homes, More Choice, 2019*
<https://www.ontario.ca/laws/statute/S19009#BK3>

³CBC news article: 'He was evicted after his landlord was accused of running a pot shop. Now he's fighting back' <https://www.cbc.ca/news/canada/toronto/pot-eviction-jeffrey-brodie-legal-1.5224202>

Heating Season

The *Residential Tenancies Act* establishes the heating season as September 1 to June 15 and requires that heat be provided at a temperature of 20 degrees Celsius if the tenancy agreement requires the landlord to provide heat.

However, local bylaws may differ from the provincial requirement. For example, heating temperature in the Toronto bylaw requires a minimum air temperature of 21 degrees Celsius from September 15 to June 1. Should an unseasonably warm spell occur during the "shoulder season" (from September 15 to October 15 and May 1 to June 1) and the weather outside mean the indoor temperature is 21 degrees Celsius without heat, property owners and landlords can turn the heat down or off, <https://www.toronto.ca/city-government/public-notice-bylaws/bylaw-enforcement/not-enough-heat-other-vital-services/>.

Toronto South LTB Office has moved

The Landlord and Tenant Board (LTB) Toronto South office previously located at 79 St. Clair Ave E. in Toronto has moved to the **Tribunals Ontario Mediation and Hearing Centre** located at 15 Grosvenor St. The new location offers an improved experience and will eventually house a full range of boards and tribunals.

Landlord Learning and Networking Forum

LSHC will present the 2019 Landlord Learning and Networking Forum for small landlords in conjunction with our Annual General Meeting in Toronto on Thursday, Oct. 24, 2019 in Toronto.

The Forum provides small landlords the opportunity to learn about current trends and issues; be introduced to services and programs which support housing providers; network with small landlord peers and share best practices and experiences; and to learn how to navigate commonly faced tenancy issues.

Learning presentations will include:

- Common Pitfalls for Self-Represented Parties at the LTB;
- How the Ontario Human Rights Code Impacts Tenant Selection;
- Landlord Best Practices for Tenant Screening and Selection; and
- Landlord's Own Use: What you need to know!

Due to recent funding cuts, LSHC is selling tickets for non-members wishing to attend the Forum, for details: <http://landlord-forum-2019.eventbrite.ca>

Sponsorship opportunities are also available, please visit the Sponsor information page and application at <https://landlordselfhelp.com/Sponsorship-Opportunity>

Self-Help TIPS

In this issue of the **Self-Help Tips** we provide you with tips on advertising a rental unit for a new tenant. Before renting to a tenant, we encourage you to thoroughly research the laws and regulations that will govern you and your rental property.

The Ontario Human Rights Code

When selecting a tenant, landlords should be aware of the *Ontario Human Rights Code*, as it ensures the right to equal treatment without discrimination when renting a unit. The *Ontario Human Rights Code* prohibits certain factors from being considered by a landlord when choosing a tenant. A landlord cannot refuse accommodation to a prospective tenant based on: race, colour or ethnic background; religious beliefs or practices; ancestry, including people of Aboriginal descent; place of origin; citizenship, including refugee status; sex (including pregnancy and gender identity); family status; marital status, including people with a same-sex partner; disability; sexual orientation; age, including people who are 16 or 17 years old and no longer living with their parents; and receipt of public assistance.

For more information on landlord and tenant rights and responsibilities in the rental housing sector, see the Ontario Human Rights Commission's Policy on Human Rights and Rental Housing. This policy and other OHRC information are available on-line at: www.ohrc.on.ca.

Creating an Advertisement

A rental ad should give as many details as possible. By giving as many details as possible, people will be less likely to call if the unit does not meet their needs. An ad should be short and to the point, writing a concise ad will allow landlords to include all the essential information.

Discrimination-Rental ads often contain language that is discriminatory, some discreet and perhaps unintentional while others openly discriminate. The following are samples of language that discreetly discriminate:

- Ideal for quiet couple
- Suitable for single professional
- Perfect for female student
- Suits mature individual or couple
- Great for working folks or students

Samples of language that openly discriminate:

- Adult building or Not suitable for children
- Must provide proof of employment
- Must have working income
- No ODSP
- Seeking mature couple

Rental ads should **describe the rental unit and amenities** and avoid describing the ideal tenant. The ad should list the rent, the unit size, the number of bedrooms, whether utilities are included, the date available, facilities and amenities, features of the community and nearby services.

Where to Advertise

Online listings - Online rental ads posted on websites like Kijiji, Craigslist, rentboard.ca, viewit.ca and gottarent.com are very effective ways of reaching a very large audience.

Newspapers - There are a number of different types of papers (major newspapers and community/local newspapers).

Rental papers - Rental papers only publish listings of units for rent and are released on a weekly basis. The Renters News is an example of a rental paper.

Online newspapers - All the major newspapers have websites with a classified section. Online ads are beneficial, as they can reach people outside the local areas who are thinking of relocating.

Signs - Signs are cheap and easy to create. However, they only reach people who walk or drive by.

Student listings - Most universities and colleges have housing registries. For information on posting a listing contact the university and ask for the Student Housing Service or Registry department.

Housing Help Centres - Housing Help Centres are non-profit organizations that provide free services to tenants and landlords. To find a local Housing Help Centre, contact [Ontario 211](http://Ontario211) or the [Housing Help Association of Ontario](http://HousingHelpAssociationofOntario).

Tips

- The first step in finding a tenant is creating a properly worded advertisement in compliance with the *Ontario Human Rights Code*.
- The next important step is screening a prospective tenant. While screening a prospective tenant landlords must continue to be mindful of the *Ontario Human Rights Code* and exercise caution to ensure that they are not discriminating against prospective tenants during their search.
- For more information on finding and screening a prospective tenant visit http://www.secondsuites.info/wp-content/uploads/2018/10/Oct-10-2018_Operating-Guide.pdf; and <https://landlordselfhelp.com/landlord-learning-tips/>
- For more information about the *Ontario Human Rights Code* and your responsibilities as a housing provider visit <http://www.ohrc.on.ca/en/human-rights-housing-overview-landlords-brochure>; and <http://www.ohrc.on.ca/en/writing-fair-rental-housing-ad-fact-sheet>

Did You Know?

Q: I rent a house to a family and they have not paid the rent for the past two months. I have filed an application with the Landlord and Tenant Board and a hearing has been scheduled. How should I prepare for this hearing?

At a hearing for nonpayment of rent a tenant is allowed to bring up any issues such as maintenance issues, harassment or claims of illegal rent. The law does not require tenants to let their landlord know ahead of time if they are going to raise any issues about their tenancy. In preparing for the hearing the landlord should be proactive and take steps to address any issues the tenant might bring up. For example, the landlord can give a 24 hour written notice to enter the unit to do a routine maintenance inspection to determine if there are any repairs needed, if so the landlord should deal with the problems promptly. The landlord should also gather up all documentation such as letters, rent receipts, emails or text messages regarding the arrears of rent or any other issue that may be relevant to the case. You must bring three copies of any documentation that will be presented at the hearing.



Q: I served one of my tenants with the Form N5 based on damages to the property. However, at the time that I served the notice I was still waiting to obtain a quote so I did not put in any amount on the notice, I just described what was damaged and I plan on bringing the quote to the hearing. Is that going to be a problem?

One of the requirements of the N5 notice is that it has to be very detailed and it must set out what the tenant has to do to correct and void the notice. One of the options is to pay for the cost of repairs or replacement. Therefore an amount has to be stated in the N5 otherwise the notice would not be valid.



Q: I have a lease agreement with a tenant and one of the provisions is that the tenant must pay interest on any outstanding rent. He is currently in arrears of rent but refuses to pay the interest that he agreed to as per the lease. How do I ensure that he pays me the interest, can I include it on the N4 notice?

The *Residential Tenancies Act* does not allow landlords to charge interest on unpaid rent regardless of what is stated in the lease. If the tenant is in arrears of rent, the recourse for the landlord is to serve the Form N4 but only for the actual rent owing.



Q: I have a tenant renting the basement unit of my house, he has been there for several years and I have not increased the rent at all. The utilities have increased substantially so I asked my tenant to start paying \$100 more because of the increase in utilities. He refuses to pay anything extra, how do I proceed to make him pay for these extra costs?

Generally, a landlord can only increase the rent by the percentage allowed in the year they are taking the increase and by providing the proper notice (Form N1) giving 90 days' notice. It does not make a difference if the landlord has not increased the rent for the previous years or that the tenant is paying low rent.



Q: I'm a new landlord and not too familiar with the landlord and tenant law. Recently one of my tenants stopped paying the rent so I had to serve him with a notice of nonpayment of rent (Form N4) and after 14 days I went to the Landlord and Tenant Board to file an application because the tenant did not pay the arrears. However, I was told that the Form N4 that I had served was not valid because I did not give enough days. I had given the notice on the 4th of August and the termination date was the 17th of August. What did I do wrong?

The rules for calculating a notice period is that you do not include the day that you are serving the notice, that is considered day zero, you would start counting the 14 day notice period the next day, in which case the correct termination date should have been the 18th of August. If you are serving the notice by mail, you must allow 5 days for delivery, therefore the notice period would be 19 days not including the date of mailing.



Q: I have a rental agreement which states the rent amount is \$1000 plus a fixed amount of \$150 towards utilities. This month he has not paid anything and I am preparing a notice of nonpayment of rent (Form N4), I am not certain about the amount I can state in the notice. Can I include the \$150 in this case?

Generally, utilities are not considered rent and cannot be included on a Form N4, however when the tenant is required to pay the landlord a flat rate for the utilities each month this would meet the definition of rent and therefore can be included as rent on the Form N4.



What's New?

LSHC launches Landlord Learning Modules

An incorrect notice of termination typically means the landlord has to start the termination process over and re-issue the notice. If the landlord learns their notice is defective after filing with the Landlord and Tenant Board, it often means the application is dismissed and significant time has been lost. Since the notice is the foundation of the case it is imperative that it is filled out correctly and this has proven to be a challenge for small landlords who act on their own behalf.

To help small landlord avoid errors commonly made on the notice, LSHC has created a step-by-step video guide instructing landlords on the completion of forms. The new Landlord Learning Modules will guide you to complete the N4 and N5 forms. We've also posted a Learning Module for the completion of the L1 and L2 Applications to the Landlord and Tenant Board. New modules for other forms will be added going forward,

<https://landlordselfhelp.com/landlord-learning-modules>.

LSHC will add the audio version of the Landlord Learning Modules to the Sound Advice Podcast directory which can be found at <https://landlordselfhelp.com/sound-advice-for-landlords-podcast/>.

Thank you!

LSHC would like to express our sincere appreciation to **Asiya Awan** and **Brygida Piecko**, our paralegal students who worked at the clinic over the summer covering staff vacations and assisting many clients.

London Public Nuisance By-law

London, Ontario is the site of Western University and the annual street party known as Fake Homecoming or FOCO in which thousands descend on a small community each fall and cause a weekend of mayhem.

Crowds typically swell to as many as 20,000 party-goers ending with multiple students arrested and dozens hospitalized. In 2018, the street party resulted in 134 provincial offences and a \$200,000 bill for emergency services.

Prior to this year's FOCO, London City Council reviewed and strengthened its Public Nuisance By-law in an effort to rein in the street parties. The changes mean that the parties involved will be held responsible rather than the owner of the rental property where the student host lives.

Out-of-town and absentee landlords were of particular interest when the bylaw was first considered. However, the London Property Management Association, which represents hundreds of landlords, forced revisions to the proposed rules and will use municipal bylaws as the enforcement mechanism rather than burdening the housing provider with fines or fees.

Legal Aid Funding cuts hit LSHC

In mid-June LSHC received the bad news legal clinics across Ontario had been bracing, a funding cut of mammoth proportion - 20%. A \$132,606 funding cut is bad news any time, but when it happens 4 months into the fiscal year it wreaks havoc on services, planning and staffing.

In anticipation of funding cuts LSHC had developed a contingency plan which earmarked saving strategies for funding reductions of ranging 5%, 10% and 15%. LSHC has implemented a variety of measures to contain and reduce costs including closing the office one day each month. The staff agreed to the monthly office closure and to an unpaid day off to help LSHC reduce operating costs.

LSHC was also fortunate to have "other funds" comprised of membership dues, donations and the proceeds from various fundraising initiatives available. These funds are being used to supplement the shortfall in our LAO budget this fiscal year, 2019-20.

The future of Legal Aid Ontario and the clinic system remains unknown. The Ministry of the Attorney General has undertaken a review of community legal clinics and Legal Aid Ontario. The legislation, the Legal Aid Services Act, which provides the framework for clinics and legal aid is also under review with amendments expected to be introduced this fall when the legislature returns after its lengthy recess.

The future of Legal Aid Ontario, the clinic system and stable core funding for LSHC is in doubt. LSHC's Board of Directors is working to develop a funding strategy that will allow the organization to continue assisting small landlords navigate the minefield of rules and regulations which govern residential tenancies, provide educational tools and resources to help small landlords operating within the rules, and lobby for much-needed legislative reform to improve the operating environment for small landlords and level the playing field.

Thank you for your support and the time you've taken to reach out to your MPP on our behalf.

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