



A Landlord's Self-Help Centre Publication

## Province Announces 2021 Rent Freeze!

Landlords had been waiting for the Province to announce the rent increase guideline for 2021, which is required each year before the end of August. Minister of Municipal Affairs and Housing, Steve Clark, stunned landlords with the release of the following statement on August 28, 2020:

Since the very beginning of COVID-19, our government has called on landlords and tenants to come together and be reasonable with each other – and landlords and tenants across the province have shown the Ontario spirit by doing just that.

In that spirit, our government is announcing our intention to stabilize rents for Ontario's 1.6 million rental households.

Every year, the government sets out the maximum allowable rent increase for the year to come in rent-controlled units. Those increases are modest and tied to inflation – and for 2021 it would have been 1.5%. This increase is automatically published in the Gazette. But this year is not like every year.

That's why the Premier has directed the Minister of Municipal Affairs and Housing to bring forward legislation this fall to support renters across Ontario.

**The legislation would ensure that the vast majority of families do not see a rent increase next year.**

We will engage tenant and landlord groups to ensure the proposed legislation is fair and balanced.

We know that families are continuing to be impacted by COVID-19. We know landlords have worked hard to be accommodating and have made sacrifices. And we know that by continuing to work together, we will move past this extraordinary time and increase housing – so that every Ontarian can find a home that suits needs and their budget.

Most would agree that this has been a year like no other and we have all had our crosses to bear, including small landlords.

However, the reality is that small landlords are often renting a portion of their home to supplement the cost the homeownership and they rely on rental income to help make ends meet, put food on the table, pay their mortgage, pay their property tax, utilities, etc.

For months, many small landlords have gone without the rental income they count on or received partial payments and have worked with their tenants to create payment schedules or plans. For those that were able to defer mortgage payments, they will face financial penalties for doing so. For others unable to defer or renegotiate mortgages, they may be on the verge of losing their property.

Sean Jensen reacted to the news of a 2021 rent freeze and shared a comment on LSHC's Facebook page, here is a portion of his feedback on the rent freeze announcement, *"Everyone takes a hit during a pandemic. Government should at least offer to subsidize the guideline increase. Otherwise your[sic] penalizing the landlord for having done nothing except provide much needed housing."*

Bill 204 - *Helping Tenants and Small Business Act, 2020* was introduced by the Province on September 17, 2020 and confirms the rent increase guideline for 2021 will be set at zero. LSHC will continue to monitor the Bill as it progresses through the legislative process and provide you with updates.

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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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## Bill 184 Amendments to the *Residential Tenancies Act*

Bill 184, *Protecting Tenants and Strengthening Community Housing Act, 2020*, which includes numerous amendments to the *Residential Tenancies Act* (RTA), passed Third Reading in the Legislature on July 21, 2020 and received Royal Assent.

Bill 184 amendments will level the playing field ever so slightly for landlords while enhancing tenant protection through new and increased penalties for landlords who act in bad faith.

Dubbed “The Eviction Bill” by tenants and tenant advocates, Bill 184 includes amendments that are viewed as harmful to tenant rights and the supply of housing. These same reforms are supported by landlords and many of them have been sought for years, they include:

### ***Tenants now required to give notice to raise a s.82 defence at a hearing for rent arrears***

Previously, a tenant could raise new issues at a hearing for nonpayment of rent without prior notice. The unprepared landlord would be unable to effectively argue the new issue without preparation, documentation and/or witnesses, this became known as ‘trial by ambush’. Effective July 21, 2020, tenants must now comply with the s.82 notice requirement or provide a satisfactory explanation to the Board as to why they could not comply.

### ***Termination of tenancy and eviction based on agreements between landlords and tenants***

Landlords and tenants can voluntarily enter into agreements to resolve issues and disputes, such as a payment plan for rent arrears. If the tenant defaults on the terms of the agreement, the landlord can apply to the LTB, submit the agreement, and obtain a consent order under s.78 without a hearing.

### ***Illegal Rent Increases become legal after 12 months***

This amendment to s.136.1 clarifies that even a rent increase that is a null and void is nonetheless subject to the saving provisions of this section. If a tenant has paid an unlawful amount of rent for at least one year without bringing an application to the Board to complain, these sections resolve that the rent was then deemed to be lawful.

### ***Landlords can file application against former tenants at the LTB***

Levelling the playing field to allow landlords to file an application with the LTB for monies owing post-tenancy, as tenants are able to do, will now be permitted according to the amendment of s.189.01. Unpaid rent, utilities, and damage to the rental unit are routinely written off by small landlords because they either do not know the tenant’s new residential address or the likelihood of successfully recovering the monies owing is very low.

To date the following Bill 184 provisions have been proclaimed into force:

- **New Tenant Information Package** - Landlords are no longer required to provide the tenant with the Tenant Information handout as long as the Standard Form Lease is used;
- **Purchaser’s Own Use** - Compensation of one month’s rent or the offer of another acceptable rental unit when giving notice. The payment of compensation is the obligation of the landlord who gives this notice and not the purchaser;
- **Demolition or Conversion** - Compensation of one month’s rent or the offer of another acceptable unit where there are less than 5 units in the property;
- **Renovations or Repairs** - Compensation of one month’s rent or offer of another acceptable unit for where there are less than 5 units & the tenant does not give the landlord notice under section 53 - right of first refusal
- **Arrears hearings:**
  - Tenants now required to provide the landlord with advance notice of the issues they wish to raise at the hearing
  - notice to be given according to LTB 2020 Rules
  - notice shall be given in writing
- **Payment Terms** - From the period of March 17, 2020 until prescribed end date, landlords must show the LTB that they attempted to negotiate terms of payment with the tenant when filing for arrears of rent, s.83(6)
- **Illegal rent increase** not deemed void if tenant paid the increased rent for at least 12 consecutive months, unless they filed an application at the LTB within the 1 year after the amount was first charged
- **LTB can issue an order for terms of payment without a hearing** based on arrears if the parties reached a written agreement that is signed by all parties and filed with the LTB before the hearing is held, this includes arrears, NSF charges, admin charges, the filing fee and further rent owing. The s.78 provision will be included in these LTB orders in case the tenant fails to comply
- **Offences** - Individuals are now liable up to \$50,000 and corporations are liable up to \$250,000

### **Rules, Guidelines and Forms**

A public consultation launched by the Landlord and Tenant Board invited input on proposed changes to the Rules, Interpretation Guidelines and forms. The consultation closed on August 20, 2020.

**NOTE:** Notice to Terminate at End of the Term for Landlord’s or Purchaser’s Own Use (N12) and Notice to Terminate at End of the Term for Conversion, Demolition, or Repairs (N13) have been revised in accordance with Bill 184 amendments to the RTA.

## Eviction Moratorium Ends – LTB Resumes Operations

The moratorium on residential evictions in Ontario expired on July 31, 2020.

The moratorium on evictions was ordered by Superior Court Justice Geoffrey Morawetz on March 19, 2020 in response to the COVID-19 pandemic and it suspended the execution of all writs of possession to evict residents from their homes during the 2019 novel coronavirus (COVID-19) pandemic. Justice Morawetz's order was amended on July 6, 2020 to include a provision that the moratorium would be in place until the end of the calendar month in which the state of emergency, declared pursuant to section 7.0.1(1) of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, is terminated.

Just as it appeared that Sheriff's operations and Landlord and Tenant Board proceedings would resume, the Advocacy Centre for Tenants Ontario (ACTO) filed an urgent motion to extend the moratorium.

The motion sought an order to set aside the July 6, 2020 order varying the original order of Chief Justice Morawetz, dated March 19, 2020. The original order had placed a moratorium on evictions in Ontario while the July 6, 2020 order ended the moratorium on July 31, 2020. ACTO sought to have the moratorium reinstated by setting aside the July 6, 2020 order.

Justice FL Myers heard the motion on Aug. 2, 2020, the motion was dismissed and the moratorium ended on July 31, 2020. You can read the decision at <https://www.canlii.org/en/on/onsc/doc/2020/2020onsc4676/2020onsc4676.html?resultIndex=1>.

The Landlord and Tenant Board continued to accept applications throughout the state of emergency and eviction moratorium. However, only applications that were based on urgent matters (posed serious health and safety issues or involved illegal activity in the rental unit) could seek relief from the LTB, applications which did not seek termination of the tenancy, and tenant applications, were scheduled for hearings. Any applications other than the exceptions above were accepted and placed in line to be processed at a later date.

Unfortunately, many landlords misunderstood this process and thought that they were unable to serve notices or file applications until the Board "re-opened".

As of August 1, 2020, the Landlord and Tenant Board resumed regular operations and will [1]:

- Begin to issue eviction orders that are pending;
- Start to issue consent orders which are based on landlords and tenants settling their dispute through an agreement;

- Continue to hear urgent eviction matters related to health and safety that are scheduled;
- Start to schedule hearings for non-urgent evictions; and
- Conduct non-urgent eviction hearings starting in mid-August and into the fall.

Any hearings that were scheduled prior to COVID-19 and cancelled because of the pandemic are now being rescheduled. The Landlord and Tenant Board will notify all parties about the new hearing dates and formats. Landlords are able to check the status of their file on the LTB website at <http://tribunalsontario.ca/ltb/check-file-status> or you may wish to call the LTB and speak to a clerk, <http://tribunalsontario.ca/ltb/contact/>. Patience is required as wait times for the LTB have drastically increased.

In-person counter service at the LTB will continue to be closed until further notice. Hearings will be held through videoconference, by phone or in writing to reduce person to person contact and protect LTB staff and the public.

Wait times continue to be lengthy, therefore landlords are encouraged to make their best efforts to reach written settlements with their tenants when possible. This will make the process more efficient and expeditious before participating in an eviction hearing in front of an adjudicator.

New applications filed during the pandemic will also be dealt with using the alternative hearing formats. When filing applications for non-payment of rent, it is important to demonstrate that attempts have been made to reach a payment agreement to deal with the outstanding arrears. In cases where landlords have made written payment agreements, these agreements should be filed with the LTB and attached to the arrears applications by their file number.

Several landlords have let us know that the enforcement of eviction orders previously filed have been rescheduled and, in some cases, taken place. One landlord advised that they had filed with the enforcement office back on March 18 and the writ was enforced on August 18.

You can expect further changes to be implemented as Bill 184 amendments to the *Residential Tenancies Act* are proclaimed into force and integrated into Landlord and Tenant Board operations.

[1] LTB news page <http://tribunalsontario.ca/en/latest-news/#ltb>

# Self-Help TIPS

Bill 184-*Protecting Tenants and Strengthening Community Housing Act, 2020* received Royal Assent on July 21, 2020. Schedule 4 of the Bill included amendments to the *Residential Tenancies Act, 2006*, some came into force immediately and other parts are not in force until they are proclaimed by the Lieutenant Governor. Two significant amendments to the RTA will be discussed in this edition of Self-Help Tips.

**Purchaser's Own Use** - Section 49 of the *Residential Tenancies Act* includes provision for the termination of a tenancy 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.

Previously, a landlord serving the tenant a notice of termination of the tenancy on behalf of a purchaser under section 49 was not required to compensate a tenant. However, the RTA was amended by Bill 184 to include section 49.1 as of July 21, 2020,

**Section 49.1 states the following:**

(1) A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if,

- (a) the landlord gives the tenant a notice of termination of the tenancy on behalf of a purchaser under subsection 49 (1) or (2); and
- (b) the notice of termination is given on or after the day the *Protecting Tenants and Strengthening Community Housing Act, 2020* receives Royal Assent. For more information on section 49, visit <https://www.ontario.ca/laws/statute/06r17#BK70>

**Notice, demolition, conversion or repairs** - Section 50 of the RTA states the following:

- (1) A landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to,
- a) demolish it;
  - b) convert it to use for a purpose other than residential premises; or
  - c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit. 2006, c. 17, s. 50 (1)

The date for termination specified in the notice shall be at **least 120 days** after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term. 2006, c. 17, s. 50 (2).

**Section 52, 54(1) and (2) - Demolition, Conversion and Renovations** - Previously under section 52 and subsections 54

(1) and (2), a landlord was required to compensate a tenant in an amount equal to three months' rent if the landlord gives a notice of termination of the tenancy for the purposes of demolition or conversion to non-residential use or for the purpose of repairs or renovations, provided that the residential complex in which the rental unit is located contains at least five residential units.

Effective July 21, 2020 **subsections 52 (2) and 54 (3) and (4)** were added to also impose the obligation to compensate the tenant if the residential complex contains fewer than five residential units. The Landlord must compensate a tenant in an amount **equal to one month's rent** or offer the tenant another rental unit acceptable to the tenant. A tenant who gives notice under 53(2) - right of first refusal after receiving notice of termination of a tenancy under section 50 for the purpose of repairs or renovation is entitled to an amount equal to the lesser of one month's rent and the period of time the unit is under repair. Visit <https://www.ontario.ca/laws/statute/06r17#BK70>

**Compensation Payment** - If the landlord is required to compensate a tenant under section 48.1, 49.1, 52, 54 or 55, the landlord shall compensate the tenant no later than the termination date specified in the notice of termination of the tenancy given by the landlord.

## Tips

- The Notice to Terminate at End of the Term for Landlord's or Purchaser's Own Use (N12) and Notice to Terminate at End of the Term for Conversion, Demolition, or Repairs (N13) have been revised in accordance with amendments to the *Residential Tenancies Act, 2006*. Previous versions prior to July 21, 2020 are no longer valid.
- A landlord must compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord under section 48, 49 or 50. Failure to compensate the tenant will result in a dismissal of your application.
- There are serious consequences if a landlord gives a notice of termination in bad faith. These may include being ordered to pay a fine to the Landlord and Tenant Board, a rent abatement and compensation to the tenant. 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: I have sold my rental property which was being rented to a family, the purchaser is planning to move in to the property with his family. How do I proceed to ask the tenants to move out, what type of notice can I serve them?***

When a property is sold and if it contains three units or less, the present landlord can give notice to the tenants to vacate the property on behalf of the purchaser because the purchaser plans to move in. The notice to terminate must be given using the Form N12 and must be 60 days' notice ending on the last day of the term or rental period. A new rule has come into effect under Bill 184 which now requires the current landlord (vendor) to provide the tenant with one month's rent as compensation or offer the tenant another rental unit. The compensation must be given to the tenant by the termination date on the Form N12.



***Q: One of my tenants was having difficulty paying the rent because he had been laid off from his job. I gave him some time to pay what he could but he said he was moving out instead. I agreed that he could leave and we both signed the Form N11 – Agreement to Terminate. However, he did not move out and he's telling me I cannot make him leave. What can I do? I already had a new tenant ready to move in?***

Unfortunately, there is no quick process to evict a tenant even in this case where the tenant had agreed to leave. Your recourse in this case is to file the Application L3 with the Landlord and Tenant Board to obtain an eviction order. With this type of application the Landlord and Tenant Board typically does not have to hold a hearing and will issue an Order that the landlord can file with the Sheriff's office for eviction of the tenant. Keep in mind that although the hearing may not be necessary it will still take several weeks before the eviction can take place.



***Q: I have a one year lease with my tenant and it is coming up for renewal, the tenant has advised me that he wants to remain. I plan on renewing the lease but I want to re-negotiate some of the terms of the lease, such as the rental amount which is below market value and having her pay for some of the utilities which is now included in the rent? How do I go about doing this? If she refuses then I would like to ask her to leave.***

The law states that upon the expiry of a lease the landlord and the tenant can renew the lease for another term but under the same terms and conditions of the expired lease. If it's not renewed, the tenancy continues on a month to month basis and still under the same terms. The rental amount cannot be re-negotiated, it can only be increased by the allowable rent increase guideline for the year with the proper notice being given (Form N1). Also there is no grounds to terminate the tenancy based on the fact that tenant refuses to renew the lease.



***Q: I served my tenant with a Form N12 because my son will be moving in to the property. I also provided the one month compensation to the tenant. After a couple of weeks the tenant informed me that he had found another place and he would be moving out, he then gave me a Form N9 giving 10 days' notice to move out and asking for the remainder of the rent and the last month's rent deposit to be returned. Do I have to return the rent to him? I don't think it's fair that I have to return it since I gave him sixty days to move out.***

When a landlord serves the N12 notice to a tenant, the law allows the tenant to terminate their tenancy earlier by providing 10 days' notice on the proper form (Form N9). Any unused rent must be returned to the tenant.



***Q: I've been having some problems with my tenant and we have both agreed to end the tenancy. I would like to know how to go about terminating the tenancy legally. Is there a legal form that I can use?***

A landlord and a tenant can enter into a mutual agreement to terminate the tenancy at any time during the tenancy. An agreement to terminate should be in writing and include the following: the date the tenancy will end; description of the rented premises (unit and address); the date the agreement is signed; and the signature of the landlord and all tenants occupying the unit. A landlord or tenant may use the Landlord and Tenant Board Form N11. If the tenant fails to vacate the premises according to the agreement the landlord must take action within 30 days of the termination date of the agreement by filing the Application L3 with the Landlord and Tenant Board to obtain an order to evict the tenant.



## Expanding Options for Neighbourhoods The “Missing Middle”

The City is working to expand opportunities for “missing middle” housing forms in Toronto, ranging from duplexes to low-rise walk-up apartments. The term “missing middle” refers to housing types which range from duplexes to low-rise apartments, all of which can be found in many parts of Toronto today, but which are also limited in where they can be newly built.

Expanding Housing Options in Neighbourhoods is a City of Toronto initiative to facilitate more low-rise housing in residential neighbourhoods to meet the needs of our growing city. Priority projects endorsed by Council to be advanced in 2020-2021:

- permitting new types of accessory housing such as garden suites and coach houses
- allowing more residential units in forms compatible with existing houses, such as duplexes and triplexes, where they are currently not permitted
- zoning to allow more low-rise housing options on major streets

**Expanding Housing Options in Neighbourhoods** is the comprehensive report prepared by the City Planning Division and is available at, <https://www.toronto.ca/legdocs/mmis/2020/ph/bgrd/backgroundfile-148582.pdf>

## Toronto’s Short-Term Rental Bylaw

If you are operating a short term rental business, you **must register** with the City of Toronto by **December 31, 2020**, visit [toronto.ca/ShortTermRentals](https://www.toronto.ca/ShortTermRentals)

You must be a registered operator before you can short-term rent your home in Toronto and you must include a city-issued registration number in all listings and advertisements. An online registration system has been launched by the City of Toronto at <https://www.toronto.ca/community-people/housing-shelter/rental-housing-standards/short-term-rental/short-term-rental-operators-hosts/>

Your principal residence is where you live and the address you use for bills, identification, taxes and insurance. Homeowners and renters are allowed to offer a short-term rental which can be in any type of housing, for example house, apartment or condominium. Up to three bedrooms in your principal residence can be rented for an unlimited number of nights per year or the entire home can be rented for a maximum of 180 nights per year.

Short-term rentals are 28 consecutive nights or less in duration and are permitted in the operator’s principal residence only.

Secondary suites such as a basement apartment or a laneway suite, can be offered as a short-term rental as long as it is your principal residence. A landlord cannot rent a vacant secondary unit on a short-term basis.

The licensing and registration of short-term rentals is regulated under the Toronto Municipal Code, Chapter 547, and includes comprehensive registration and licensing requirements as well as the obligation to collect and remit the 4% Municipal Accommodation Tax (MAT), <https://www.toronto.ca/legdocs/municode/toronto-code-547.pdf>.

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## 2020 LSHC AGM and Landlord Learning Forum

**Save the date!**

LSHC’s 2020 Annual General Meeting and Landlord Learning Forum will be held on **October 22, 2020**, this year the program will be presented entirely online.

The 2020 AGM-Forum will include everything you’ve come to expect, minus refreshments and networking. While some program details are still in development, we are happy to share the details we have confirmed to date:

**Early Bird Presentation:** Jane Ferguson, a Toronto lawyer and Small Claims Court Judge, will explain changes under Bill 184 that will permit landlords to file applications with the LTB one year post-tenancy to recover tenancy related monies owed.

**AGM Business Meeting:** Reports from the President, Treasurer and Clinic Director provide updates on LSHC’s activities and challenges; report on financial position; and election of the 2021 Board.

**Bill 184 – The Good, the Bad and the Ugly:** Petar Guzina, a lawyer and former LTB Adjudicator, will provide a comprehensive overview of Bill 184 amendments to the RTA and outline LTB changes.

You will find the Notice to Members of Annual General Meeting posted to the Members’ Area of the website.

The 2020 AGM and Landlord Learning Forum is a **members only** event. Please visit the Members’ Area, <https://landlordselfhelp.com/members-lounge/>, for registration information and to view meeting materials and final program details.

## DISCLAIMER

The information included in this publication is intended to provide general information, it is not legal advice.