Quarterly News
A Landlord's Self-Help Centre Publication

Provincial Election:

Ontario PC Party Majority

Ontario voters turned out at the polls in record numbers on June 7th and sent a message - Ontario wanted a change and elected the Progressive Conservative Party with a clear mandate, winning 76 seats to form a majority government.

Ontario election:	
PC	76
NDP	40
Liberal	7
Greens	1
Other	3

The NDP captured 40 seats and the close race many pollsters and pundits had predicted did not materialize. The NDP has vowed to keep the pressure on the government and remind Doug Ford that the government of Ontario should be for all the people.

Mike Schreiner, the leader of the Green Party of Ontario and local candidate in the riding of Guelph, was elected and made history as the first time member of the Green Party to be elected to the Ontario Legislative Assembly.

The Liberals held on to just 7 seats and now fail to meet the threshold for recognized party status. According to the standing orders of the legislature, eight seats are required to be recognized however, the government can lower the number of seats required and this has been done in the past. The loss of recognized party status is significant as the status dictates how debate is supposed to proceed, defines the powers of the various parties, and defines setting the legislative agenda, and the powers and privileges of the official Opposition and other parties. Recognized parties are also given public money to establish caucus offices and it determines the salary bonuses MPPs get for roles such as house leader, caucus chair or party whip.

Kathleen Wynne won in her riding but has resigned as leader. Ottawa South MPP John Fraser has been unanimously endorsed as interim leader by the Liberals.

What's ahead?

Premier Designate Doug Ford has announced that his cabinet's first act following the swearing-in of his government will be to cancel Ontario's current cap-and-trade scheme, and challenge the federal government's authority to impose a carbon tax on Ontario families, individuals and small businesses. Ford said "Eliminating the carbon tax and cap-and-trade is the right thing to do and is a key component in our plan to bring your gas prices down by 10 cents per litre".

The fallout means green renovation rebates, managed by the GreenOn Fund and funded by cap-and-trade revenue, will be scrapped. The loss of cap-and-trade revenue, approximately $2.8 billion, will also impact funding for other planned projects.

The silver lining for Ontario landlords may mean they regain the ability to seek Above Guideline Increases (AGIs) for extraordinary operating costs. The right to apply for an Above Guideline Increase due to extraordinary increases in operating costs for utilities was eliminated under the *Rental Fairness Act, 2017* (Bill 126), to mitigate the impact of carbon costs on tenants. Extraordinary operating cost is defined as an increase greater than the rent increase guideline and plus 50% of the guideline.

October 22, 2018 is the date for municipal elections - please vote! Municipal governments are responsible for policies, programs and services at the local level such as by-law enforcement, building permits, fire services, water supply and distribution, waste management, licensing - including landlord licensing, the short-term rental bylaws and can implement new programs such as a vacant home tax. Your vote is important!

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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UPDATE: Residential Tenancy Agreement (Standard Form of Lease)

The new Ontario Standard Form of Lease is now **mandatory** for all written tenancy agreements entered into as of April 30, 2018. Landlord's Self-Help Centre's Blog[1] has more information about who these changes impact and how, and the Ministry of Housing has published their standard lease guide which can be found at https://files.ontario.ca/standard_lease_guide_-_english/Standard%20Lease%20Guide%20-%20ENGLISH.PDF

In response to this, the Landlord and Tenant Board has also revised Form **N9 Tenant's Notice to End the Tenancy** to include an additional exception for tenants who wish to end their tenancy because:

- the tenancy agreement was entered into on or after April 30, 2018,
- the landlord was required to use the Residential Tenancy Agreement (Standard Form of Lease) form but did not,
- the tenant demanded in writing that the landlord give them this form, and
  - more than 21 days have passed since the tenant made their demand, and the landlord has not provided the form, **or**
  - the landlord provided the form less than 30 days ago but it was not signed by the tenant.[1]

While the standard lease uses easy-to-understand language and includes mandatory clauses that cannot be changed or removed, landlords are still finding some of the sections to be unclear or confusing. If you are having trouble determining what to include in each section please review our sample for guidance, https://www.landlordselfhelp.com/media/Standard-Lease-Sample.pdf or seek advice from a legal service provider.

Landlords are encouraged to add additional terms to Section 15 of the Standard Form of Lease which addresses situations and/or unique terms specific to their tenancy.

Examples include:

- The tenant agrees to promptly inform the Landlord or Landlord's agent, in writing, of any damage to the premises or maintenance concerns that come up;
- The tenant agrees not to smoke or vape tobacco or recreational cannabis (marijuana) inside the rental unit or in common areas of the building;
- The tenant agrees not to cultivate (grow) marijuana plants inside their unit;
- The tenant agrees to take due precautions against freezing of water or waste pipes and stoppage of the same in and around the premises. If water pipes become clogged by reason of the tenant's neglect or recklessness, the tenant shall repair the same at his/her own expense as well as pay for all damage caused;
- The tenant agrees to allow the landlord to enter the rented premises after giving proper written notice for the purpose of taking pictures (inside and outside the rental unit) to advertise the unit for rent or sale.

These are just a few of the terms you may wish to incorporate into your tenancy agreement. However, it is important to remember that terms which are illegal or inconsistent with the law will not be enforced at the Landlord and Tenant Board and the parties will not be able to rely on them.

For more information and to obtain a copy of the Standard Form of Lease, please visit http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?OpenForm&ACT=RDR&TAB=PROFILE&SRCH=&ENV=WWE&TIT=2229E&NO=047-2229E

RentSafe Survey of Small Scale Landlords

Summary Report - April 2018

Congratulations to all who invested their time to participate in the RentSafe Survey!

The purpose of this survey is to understand the views of, and challenges experienced by small-scale landlords in maintaining healthy conditions in rental housing. Topics explored through the on-line survey included landlords' knowledge and experiences in maintaining healthy rental housing, the challenges and supports they found for remediating unhealthy conditions, and their suggestions to be better supported in providing healthy housing.

LSHC partnered with RentSafe to facilitate engagement with our client community for the collection of data; link to Report: http://www.healthyenvironmentforkids.ca/resources/rentsafe-survey-small-scale-landlords-summary-report

Toronto Star challenges tribunal secrecy

Toronto Star challenged the application of the *Freedom of Information and Protection of Privacy Act* (FIPPA) with respect to tribunal hearings in which journalists are denied access to Ontario tribunal records. The Ontario Superior Court agreed and declared the provisions of FIPPA that delay or block public access to tribunal records as invalid. The province has 1 year to consider how to make its tribunal system more open and accessible.

The judge was critical of the LTB in particular, for relying on a Privacy Commissioner ruling in never releasing names (even in its dockets (hearing schedules), let alone names of problem tenants and landlords). The court even recognized "reference checks on tenants and others who come before the various tribunals are impossible to carry out" (para. 111). The decision is posted to Canlii: https://www.canlii.org/en/on/onsc/doc/2018/2018onsc2586/2018onsc2586.html

Toronto Clarifies Heat By-law

According to the Property Standards Bylaw[1] of the City of Toronto, sources of heat and air conditioning (when provided) have to be repaired and maintained as needed in a given property. Landlords must then provide heat between September 15th and June 1st at a minimum temperature of 21°C. When a source of air conditioning is available in the rental unit, landlords have to provide it from June 2nd to September 14th at a maximum temperature of 26°C.

If the outdoor temperatures are high enough that the building would be 21 degrees Celsius without the heat on, you can turn the heat off. Use your judgement when heating your building in the "shoulder season" (from September 15 to October 15 and May 1 to June 1).

https://www.toronto.ca/city-government/public-notices-bylaws/bylaw-enforcement/not-enough-heatother-vital-services/

Toronto Short-Term Rental By-law under Appeal

Toronto Council adopted a By-Law regulating the lucrative short-term rental industry in Dec. 2017. The bylaw defines short-term rental as a period no longer than 28 consecutive days in the principal residence and caps 180 days of rental for entire residence. It also defines who is permitted to rent (owner/tenant) and the type of accommodation; defines licensing, registration; and disclosure of rental data requirements and rules for advertising; and fees penalties etc.

Scheduled to become effective June 1, 2018, the By-law is now being appealed to the Local Planning Appeal Tribunal (LPAT) formerly the Ontario Municipal Board (OMB) by four parties scheduled to be heard on August 30, 2018.

Mississauga Council adopts the Adequate Heat By-law

Mississauga landlords will no longer have to follow a dated schedule to set temperatures effective June 6, 2018.

Throughout the year landlords who provide heat will be expected to do so at a temperature of least 20 degrees Celsius. Where air-conditioning is available, landlords must ensure a maximum temperature of 26 degrees Celsius is not exceeded.

This Mississauga bylaw will be reviewed every three years.

Mitigating Extreme Heat in Apartment Buildings

In May 2018, Toronto City Council passed a motion directing the Executive Director of Municipal Licensing and Standards, the Medical Office of Health, the Executive Director of Social Development, Finance and Administration, the Director of Environment and Energy, and the Chief Resilience Officer, in consultation with other appropriate divisions, to create a working group to identify strategies to address excessive indoor temperature in apartment buildings, and to report back to the Tenant Issues Committee in the fourth quarter of 2019:

Some of the recommendations that will be reviewed include:

a. Require all existing apartment buildings to provide air conditioned units or an air conditioned cool room in the building;

b. Require all new apartment buildings have air conditioning and add measures that enable passive cooling; and

c. Require all apartment buildings undergo retrofits, such as new windows, heavy-duty screens, cladding and other passive and active cooling systems to mitigate to mitigate the negative health impacts of heat on tenants.

View the entire Council motion (list of strategies) at http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.LS25.1

Laneway Suites - An affordable option for Toronto?

Second units are an important part of the City's rental housing stock. Laneway suites are one form of second unit. Similar to other second units, laneway suites are a part of complete communities and provide more opportunities for people to live in ground related housing, for residents to live close to where they work, shop, and play and, can help make the city's urban lanes more green, liveable, and safe.

Laneway suites can contribute to increasing the supply of rental housing and provide additional housing options for households at different ages and life stages.

Toronto and East York Community Council adopted "*Changing Lanes: The City of Toronto's Review of Laneway Suites - City-Initiated Official Plan Amendment and Zone Amendment - Final Report"* on June 6, 2018. The report will now go to City Council for consideration on June 27, 2018. Learn more: http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TE33.3

EnAbling Change Project

The Centre for Equal Rights in Accommodation (CERA) is updating their housing providers' guide to the AODA and developing other AODA learning tools. CERA is seeking feedback from housing providers to ensure the guide responds to your questions and concerns.

Thank you in advance for your input! Survey link: https://docs.google.com/forms/d/e/1FAIpQLSdsSdvE94xB6CMSxgs2lumdpacAEWFMIdobs9QYRJJ-9o0EKw/viewform

Self-Help TIPS

In this issue of the **Self-Help Tips** we will discuss the rules a landlord must follow when serving notices or documents to a tenant and why it is essential that these rules be followed.

The **Residential Tenancies Act** establishes rules for the delivery of various notices and documents to a tenant. Documents such as a notice to end the rental agreement, notice of rent increase or notice to enter, must be served according to the rules. Section 191 of the **RTA** outlines the process for the delivery of notices or documents by both landlords and tenants. If a notice or document is served improperly it can be deemed null and void and must be re-served.

Section 191 - The **Residential Tenancies Act** subsection 191(1) sets out the following methods of service for a notice or a document to a tenant:

- By handing it directly to the tenant;
- By handing it to an apparently adult person in the rental unit;
- By leaving it in tenant's mailbox, or place where mail is normally delivered; or
- By sending it by mail to the tenant. If a document is sent by mail, you must allow five calendar days for delivery. A notice or document sent by Xpresspost is deemed to be given by mail.

Subsection 191(1) (g) of the **Act** also permits "any other means allowed by the Rules" for giving a notice or document to a tenant. The following are other methods of service permitted for a notice or a document, pursuant to **Rule 5** of the **Landlord and Tenant Board's Rules of Practice**:

- By courier to the tenant; (deemed to be given on the next business day following the day it was given to the courier)
- If there is a fax machine where the tenant carries on business or in the residence of the tenant, by fax; (deemed to be given on the date imprinted on the fax)
- By placing it under the door of the rental unit or through a mail slot in the door;
- If serving a notice under **section 27** of the **RTA** (24 hour notice of entry), by any permitted method of service or posting it on the door of the rental unit;
- If the document is an application or was created after the application was filed, by hand delivery, mail, courier or fax to the representative for a tenant; or
- If the document is an application or was created after the application was filed, by any method directed or permitted by the Board in writing.

Note: The 24 hour notice of entry is the **only** notice that can **be posted** on the door of the rental unit.

Rule 5 further states that a notice or document not given in accordance with **subsection 191(1)** of the **RTA** or **Rule 5** shall be deemed to have been validly given if it is proven that the information in the notice or document came to the attention of the person for whom it was intended within the required time period.

Tips

- When serving a notice or document bring a witness with you.
- A landlord's application will be dismissed if the notice of termination was served improperly.
- Although not required, try to obtain the tenant's signature acknowledging receipt of the documents.
- Do not:
  - × send documents or notices by registered mail
  - × send documents by email or text message
  - × enter the rental unit in order to place the notice or document in the rental unit
  - × leave the documents with the concierge at the condo building
  - × open the tenant's locked mailbox to deliver the notices

Did You Know?

Q: I have a hearing against one of my tenants at the Landlord and Tenant Board based on damages and disturbances to other tenants. What type of evidence should I bring to the hearing?

One of the best ways to prove damages is to produce photographs of the damages. If possible photographs should be dated and time stamped. You must also have written quotes from a professional contractor. Written correspondence such as letters, emails or printed text messages between you and the tenant that are related to the issues on your application are also important to prove your case. You must have three copies of everything; a copy for yourself, a copy for the Adjudicator and a copy for the tenant. To prove that the tenant is causing disturbances, the best way is having the other tenants attend the hearing as witnesses to provide oral evidence of the disturbances.

Q: One of my tenants is moving out at the end of this month, I still have the last month's rent deposit which I understand will have to be returned to the tenant. However, I just found out that the tenant caused some damage to the property and also did not pay for her share of the utilities. Can I deduct those costs from the last month's deposit and give her back the balance?

The last month's rent deposit must be applied only to the rent for the last month that the tenant occupies the unit. It cannot be used to cover damages or unpaid utilities. These costs would have to be claimed in Small Claims Court.

Q: In addition to the rent, my tenant pays a fixed amount for cable services each month. The tenant paid his rent this month but did not pay the extra charge for cable. Can I still serve the N4 notice for nonpayment of rent?

The *Residential Tenancies Act* states that "rent" includes any consideration paid for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing that the landlord provides for the tenant in respect of the occupancy of the rental unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing. If the amount charged separately is a fixed rate that would meet the definition of rent and therefore would be included as rent when serving notice for nonpayment of rent.

Q: One of my tenants has decided to install a window air conditioner this summer, is there something I can do to prevent the tenant from doing this? I'm concerned about damage to the window and also the extra hydro usage. If I can't stop him from installing the air conditioner, can I at least charge more rent due to the increase hydro consumption?

There isn't a way to prevent the tenant from installing a window air conditioner, you can only warn the tenant that if they cause any damage they will be responsible to repair it. As for increasing the rent, the only way that can be done is if there is a clause in the tenancy agreement stating that the tenant agrees to pay an extra charge during the summer months if they obtain an air conditioner.

Q: I had a house in which I rented the top floor and I lived on the main floor. There were quite a few problems with the tenant such as late payments, ongoing disturbances and whenever I spoke to the tenant about it she was very abusive towards me. I decided to ask her to move out but I thought the easiest way would be to say that I needed the unit for my own personal use so I served her the Form N12 and paid her one month's compensation as the law requires. At first the tenant was refusing to leave as she was having difficulty finding other accommodation but eventually she moved out as per the notice. I waited a couple of months and then I rented the unit again. I have now received a Notice of Hearing from the Landlord and Tenant Board from the former tenant in which she is asking for money. Does she have the right to do this?

Yes, the former tenant can take action against you in this case. If a tenant is asked to leave based on the reason that the owner will be occupying the unit and then discovers that the owner did not move in, the tenant can file an application (Form T5) with the Landlord and Tenant Board claiming that the landlord gave notice in bad faith. The tenant has up to one year from when she moved out to file this application, once the application is filed, a hearing will be scheduled and you will have an opportunity to attend the hearing to explain why you did not move in. If the Board does find that the landlord gave the notice in bad faith and did not intend to move in, the landlord could be ordered to pay the tenant an abatement of rent, moving expenses, compensation for the increased rent that the tenant has to pay at another unit for a period of one year and/or the landlord may also have to pay a fine to the Board. The maximum fine is $25,000.

What's New?

The Cannabis Act (Bill C-45) passes Third Reading in Senate

Bill C-45 will provide a framework for the production, possession and sale of recreational marijuana for Canadians over 18 years of age.

Following second reading on March 22, 2018, Bill C-45 was referred to the Senate Committee on Social Affairs, Science and Technology. The Committee's report, with amendments, was adopted on division on May 30, 2018. At third reading, June 7th, Bill C-45 was adopted by a vote of 56 to 30, with one abstention and sent back to the House, learn more at: https://sencanada.ca/en/sencaplus/news/cannabis-act/

Bill C-45 amendments have been reviewed and vetted by the Public Safety Minister, Ralph Goodale; the Health Minister, Ginette Petitpas Taylor; and the Justice Minister, Jody Wilson-Raybould to determine the impact the proposed changes will have on their respective portfolios. Some Senate changes are minor while others are more significant.

The House of Commons voted 205 to 82 to send the Cannabis Act back to the Senate. A majority of Senate amendments will be accepted however, 13 amendments - including one that gives the power to the provinces and territories to ban home cultivation of marijuana will not, the government "respectfully disagrees".

On June 19, 2018 the Senate passed Bill C-45 by a vote of 52-29. Following Royal Assent, the Cannabis Act will be proclaimed into force on October 17, 2018.

In the meantime, Ontario landlords should prepare for this significant change. It is essential that landlords address the issue of smoking in the rental unit and the use of and cultivation of cannabis in their written tenancy agreements. A No Smoking policy is key to regulating the use of cannabis in the rental unit, learn more at https://smokefreehousingon.ca/landlords/

Vacant Home Tax in Toronto?

A Vacant Home Tax, similar to that adopted by the City of Vancouver, is being considered for Toronto as a tool intended to encourage owners to return units to the market.

The Interim Chief Financial Officer will undertake further research on a vacant home tax program and report through the Executive Committee of Toronto Council, as appropriate, following the start of the 2018 to 2022 term of City Council, http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018EX33.5/

Licensing being considered for St. Catharines landlords

St. Catharines seems to be moving toward landlord licensing, a staff report and draft Rental Housing Licensing By-law have been developed at the direction of City Council. A public consultation with local stakeholders gathering feedback has been held and a report back to Council is due June 25, 2018.

The impetus for the by-law stems from an increasing number of student rentals in residential neighbourhoods which has caused concern for housing safety, noise and quality of life. The situation is compounded by rowdy student parties causing damage to neighbourhoods, litter and disruption. The Rental Housing Licensing By-law will apply city wide to rental properties containing four and fewer rental units. Proposed licencing requirements include: bi-annual licensing fee of $500; completed application form; self-certification checklist; evidence of ownership; proof of insurance; parking plan; fire information; floor plans; site sketch and electrical safety code compliance evidence.

Owner occupied residential dwellings with a maximum of two bedrooms occupied by tenants are exempt as well as: student residence/dormitory operated by a University or College; apartment building with five or more units; hotel, inn or bed and breakfast; and other units governed under legislation specified in the by-law.

Landlord licensing follows action taken in other municipalities including Barrie, North Bay, London, Waterloo, and Thorold. The St. Catharines by-law is harmonized with the Thorold by-law, which came into force January 1, 2018, to ensure consistency in by-law content, process, enforcement, fines, and implementation. For more information visit: https://www.stcatharines.ca/en/buildin/draft-rental-housing- licencing-by-law.asp

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