

## Standard Lease Form Consultation

The province is developing a new standard lease form, pursuant to Bill 124 which amended the Residential Tenancies Act, 2006.

The use of the standard lease form has not yet been proclaimed into force however, when it is in use the form will help to address and make clear various terms and conditions often found in tenancy agreements. Any written residential tenancy agreements entered into between landlords and tenants after its release must be documented using the standard lease form.

The standard lease form is expected to create a degree of uniformity across the residential rental sector by including standard provisions and information respecting clauses that should be included in current tenancy agreements. Its aim is to work to eliminate the existence of terms and conditions which may not comply with the Residential Tenancies Act.

Prescribed classes of tenancies are to be described and landlords will be required to use the standard lease form that is specific to their class of tenancy. The initial standard lease form will not apply to care homes, sites in land lease communities or mobile home parks, most social housing, or to other special tenancies as defined by the Ministry of Housing.

In addition to a general information section, the standard lease form will include mandatory sections such as:

- parties to the agreement,
- description of the rental unit,
- term or duration of the tenancy agreement,
- rent details (what is included and what is not included), and
- signatures of all parties involved.

It will also provide landlords and tenants with the option of creating other additional terms to identify rights and responsibilities specific to the rental unit or property. However, this does not mean that the parties will be allowed to agree to terms and conditions which are inconsistent with the Residential Tenancies Act.

In an attempt to prevent inconsistencies, the Ministry of Housing will also create a list of additional terms for landlords and tenants to select from. For example, if a landlord and tenant decide to include a term addressing smoking in the rental unit, and this issue is addressed in the Ministry's list, that term must be used **as is** in the additional terms section.

Other important changes that will follow from this standard lease form include a requirement that the lease be signed before the tenant's move-in date. If a written tenancy agreement is not provided to the tenant before the move-in date, the tenant can demand one. The landlord will then have 21 days to provide it. After 21 days from the date of the demand, the tenant is allowed to withhold rent until this request has been satisfied.

If the landlord does not satisfy the request within 30 days from the date the tenant withheld rent, that rent payment is forfeited and the tenant may keep the money. The tenant may also decide not to sign the tenancy agreement and instead provide notice to leave.

The Ministry of Housing invited the public to share their input to inform the development of the standard lease form last fall and has engaged industry stakeholders to participate in the consultation process, provide feedback on the content of the standard lease form and assist in the development of the additional terms.

LSHC has participated in the stakeholder consultation process by representing the interests of the small landlord client community during this process.

### In this ISSUE:



Does your termination notice include enough detail? . . . . .	2
Short-Term Rental Regulation passed for Toronto . . . . .	2
PRIVACY CONSIDERATIONS:	
Common Areas . . . . .	3
2018 Rent Increase . . . . .	3
Self-Help Tips . . . . .	4
Did You Know? . . . . .	5
Landlord Learning Videos . . . . .	6
2018 Landlord Forum . . . . .	6

### Disclaimer

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

Landlord's Self-Help Centre  
15<sup>th</sup> Floor - 55 University Ave.  
Toronto, Ontario  
M5J 2H7

Tel: 416-504-5190  
Toll free: 1-800-730-3218  
Email: info@landlordselfhelp.com

Funded by:



## Does your termination notice include enough detail?

Section 43(2) of the Residential Tenancies Act states that “if the notice is given by a landlord, it shall also set out the reasons and details respecting the termination...” However, many applications filed with the Landlord and Tenant Board by landlords are dismissed for lack of detail.

If you decide to serve your tenant with any of the following notices:

- N5- Notice to End your Tenancy For Interfering with Others, Damage or Overcrowding
- N6- Notice to End your Tenancy For Illegal Acts or Misrepresenting Income in a Rent-Geared-to-Income Rental Unit
- N7- Notice to End your Tenancy For Causing Serious Problems in the Rental Unit or Residential Complex
- N8- Notice to End your Tenancy at the End of the Term

you will notice a section called Details About the Reasons for this Notice.

It is not enough to put in the basic information with the intention of explaining it in more detail at the hearing. If this part of the notice is not filled in with as much information and detail as possible, there is a good chance the application will be dismissed and you will have to start the process over.

Best practise for landlords is to create a log or journal detailing the occurrences. For example:

### **November 15, 2017 at 3:00 am**

The tenant in unit A called to complain about loud noises from unit B. She was woken up and startled by the yelling and screaming that was happening. Her enjoyment and the enjoyment of her newborn baby was interfered with.

### **November 29, 2017 at 5:30 pm**

The tenant in unit A called to complain about cigarette smoke coming into her unit from unit B. She informed me that this is not the first time it has happened, but that she spoke with the tenant in unit B in hopes of resolving it between them. This didn't work. The building is a smoke-free building and the tenant in unit A is worried about her health and the health of her child.

Once you have collected enough detailed information about the alleged offensive conduct, you can transfer it into the detail section of the notice you intend to serve to the problem-causing tenant. You are not limited to the chart included in the notice. If you require more room than what the section provides, simply write SEE ATTACHED in the box on the notice and include any additional pages. It is important to include all relevant issues on the notice.

## Toronto City Council Passes Short-Term Rental Regulation

Toronto City Council has passed new rules to govern the growing short-term rental industry in Toronto on December 6, 2017 by a vote of 40-3. The new rules will become effective on July 1, 2018 and will restrict short-term rentals to an individual's (owner or tenant) principal residence.

The City of Toronto regulations will create a new zoning category for short-term rentals and require hosts to pay the city an annual \$50 registration fee. A central registry for anyone renting in the short-term market will be maintained by the city.

The regulations allow hosts to rent up to 3 rooms in their principal residence or the entire home, hosts are not permitted to rent secondary units. Both owners and tenants are permitted to engage in short-term rentals; tenants must comply with rules established by the Residential Tenancies Act (RTA) which include no unauthorized subletting and not making more money from short-term rentals than is paid for the actual monthly rent.

Short-term rentals must last no longer than 28 days and, in the case of an entire residence rental, no more than 180 days per calendar year.

Short-term rental platforms such as Airbnb, VRBO, Flipkey, etc. will be required to register with the city and pay a one-time licensing fee of \$5,000 plus \$1 for each night booked.

### **Secondary Units excluded from Short-Term Rentals**

Toronto Council followed the lead of Vancouver by excluding the rental of secondary units (second suites) from the short-term rental market. The exclusion of secondary units was an amendment to regulation approved by the Planning and Growth Management Committee which supported the argument that the city had to protect the estimated 70,000 secondary units rented on a long term basis.

LSHC supported the inclusion of secondary units as an approved form of short-term rental and made a written submission to Toronto City Council speaking on behalf of the small landlord community we assist [https://landlordselfhelp.com/media/LSHC\\_Toronto-City-Council\\_Item-PG28.8-Short-Term-Rental.pdf](https://landlordselfhelp.com/media/LSHC_Toronto-City-Council_Item-PG28.8-Short-Term-Rental.pdf) . LSHC has taken the position owners should have the option to decide whether to operate their rental business in a long-term or short-term market, especially in light of the changing regulatory environment and recent amendments to the *Residential Tenancies Act* which have shifted the balance of rights disproportionately further in favour of renters while eroding the rights of small landlords.

Toronto Council voted 27-17 in favour of excluding secondary units from the short-term rental market.

## PRIVACY CONSIDERATIONS: Entering Common Areas

### Should you be giving 24 hours' notice of entry when entering common areas?

According to section 27 (1) of the Residential Tenancies Act (RTA), landlords are required to provide 24 hours' written notice when they have a legal reason for entering the rental unit. However, there is confusion about how to deal with entry to common areas.

Section 2 of the RTA, states that a rental unit could be "[...] a room in a boarding house, rooming house or lodging house [...]." Therefore, when tenants only rent one bedroom, the bedroom is considered the rental unit. Facilities such as the laundry room, bathroom, kitchen and living room would then be considered common areas as per section 10 of the RTA, and Reg. 517/06. With these types of tenancies, the RTA does not clearly define whether or not landlords are required to give 24 hours' notice when entering common areas. Another unclear situation is where the tenants rent the entire house and the landlord needs to access the outside property (i.e. the backyard or driveway).

Since the RTA does not clearly outline whether landlords are required to provide notice of entry when accessing common areas and the outside property of the rental unit, it is still necessary to balance the tenant's right to privacy and the landlord's obligation to maintain or repair these areas. This is particularly important in cases where the landlord does not live in the same property as the tenant. Based on this, LSHC strongly suggests that landlords give reasonable notice in writing as a courtesy to the tenants when carrying out repairs or maintenance in common shared spaces and the outside property of the rental unit. Giving reasonable written notice may help to avoid unnecessary conflict with the tenants.

If the tenant is concerned about the landlord accessing the outside property of the rental unit, it is suggested for the landlord to provide as much written notice as possible and to keep a paper trail in an effort to avoid misunderstandings with the tenant. If a tenant is concerned about the landlord entering common shared areas, it is strongly suggested for landlords to give 24 hours' written notice and to keep a copy for their records.

In order to avoid and prevent claims made by tenants at the Landlord and Tenant Board for interference with enjoyment and/or illegal entry, LSHC recommends that landlords obtain legal advice before proceeding to ensure that the proper course of action is taken.



### 2018 Rent Increase Guideline - 1.8%

Landlords are reminded that the *Residential Tenancies Act, 2006* (RTA) was amended to remove exemptions from the annual rent increase guideline for date exempt rental units effective April 20, 2017. When preparing the notice of rent increase for 2018, please remember all rental units are now subject to the annual rent increase guideline unless the landlord is seeking an above guideline increase.

Landlords are permitted to increase the rent once every 12 months for sitting tenants provided the required 90 day Notice of Rent Increase, Form N1, has been correctly completed and served to the tenant.

For anyone who may be seeking a rent increase above the guideline, the rules have changed pursuant to Bill 124 with respect to extraordinary operating costs. Landlords are no longer permitted to seek an above guideline increase which is based on increased utility costs.

Landlords are permitted to establish a new rent and adjust, include or exclude services and amenities in the rent, only when the rental unit turns over – i.e. the tenant vacates and a new tenant moves in. Landlords should also be aware that including electricity costs in the rent can prove costly as there is no cost savings incentive for the tenant to conserve. If electricity charges are separate, the landlord is required to provide detailed information to prospective tenants regarding the costs as well as historical data.

### Winter Electricity Disconnections by Utility Provider banned in Ontario

The Ontario Energy Board (OEB) has now permanently banned the disconnection of residential electricity customers for non-payment during the winter months. The disconnection ban stems from an OEB order made on November 2, 2017 to permanently ban disconnections from November 15 to April 30 every year.

Electricity distributors cannot charge a fee to residential customer for being reconnected or returned to full service as required by the OEB's Decision and Order. If a residential customer is currently disconnected they should contact their electricity distributor. If they are unable to resolve the issue with their distributor, contact the Ontario Energy Board directly at 1-877-632-2727.

Electricity distributors also cannot use load limiters. These are sometimes installed by utility companies to restrict electricity flow to a customer and reduce the overall consumption.

Natural gas utilities also have winter disconnection policies. Natural gas customers should contact their utility to ask about the policies that apply to them.

# Self-Help TIPS

In this issue of the **Self-Help Tips** we will provide clarification about your legal rights and remedies upon discovering your tenant is renting their unit on Airbnb or other similar "sharing" site.

Airbnb websites and other similar sites facilitate the renting of residential properties to prospective short term guests. Often landlords are not informed about these arrangements and discover that their tenants are renting their units on a short term rental site by chance when they visit the unit and discover an unauthorized occupant.

**Residential Tenancies Act** - Most residential units in Ontario are subject to the Residential Tenancies Act, 2006 (RTA). It is illegal for tenants, whose tenancies are subject to the Residential Tenancies Act, to rent out their apartments on Airbnb or other short term rental sites and collect more rent for their rental unit than what they are paying their landlord. The tenant is also required, pursuant to section 2(2) of the RTA, to obtain the consent of the landlord prior to subletting their unit.

The most common grounds for evicting tenants who are treating their apartments like hotel suites are illegal act, damage, and/or substantial interference with reasonable enjoyment or lawful right.

**Subletting** - Section 2(2) of the RTA states that subletting occurs when a tenant temporarily vacates the unit and has someone else take over the use of the entire unit for a period of time. The original tenant continues to be liable to the landlord to perform all of the terms and conditions, including payment of rent, as set out in the tenancy agreement.

When a tenant is renting through a short term rental site such as Airbnb, it is considered subletting. They are authorizing another individual to occupy their rental unit for a short period of time. The short term rental contract contains an end date at which time the short term guest will vacate and the tenant resumes occupancy of the rental unit.

Section 97 of the RTA deals with subletting a rental unit and states as follows:

- A tenant must request the consent of the landlord prior to subletting a rental unit to another person. The landlord shall not arbitrarily or unreasonably withhold consent to the sublet of a rental unit to a potential subtenant.

**Landlord's lawful right, privilege or interest** - When a tenant sublets without the landlord's consent, it is a breach of a landlord's lawful right, privilege or interest and grounds for termination under Section 64 of the RTA. The landlord may serve a tenant with an N5 notice for renting out the unit on a short term rental website without consent.

The landlord's lawful right has also been affected by changing the building from an apartment to a hotel and the presence of short term rental guests also changes the "risk" in the building likely impacting insurability.

**Substantial interference with reasonable enjoyment** - Other tenants residing at the rental complex may complain about the excessive noise caused by loud parties, or by the frequency of people coming and going. A landlord may serve the tenant with an N5 notice of termination of the tenancy for substantial interference with reasonable enjoyment due to the conduct of the tenant's guest.

**Illegal Act** - Usually, a tenant rents out an apartment on a short term rental site for the purpose of making money. As the daily, weekly, or monthly amount being charged to short term rental guests often exceeds what is being charged to the tenant, the collection of that rent is illegal and contrary to the RTA. Even if the landlord gave the tenant consent to sublet the unit, it is illegal for the tenant to collect more rent than what they are paying to their landlord.

Section 134 states that it is illegal for a tenant to sublet a rental unit for any sum of money that is greater than the lawful rent for the unit. Collecting or requiring the payment of a security deposit or other deposits is also illegal under section 134((3)(b).

The "sub-tenants" who rent from the tenant, through short term rental sites, are entitled to apply to the Landlord and Tenant Board for a refund of the money that they paid that is in excess of the lawful monthly rent that was charged to the tenant. This is set out in section 135(3) which states: "A subtenant may apply to the Board for an order under subsection (1) as if the subtenant were the tenant the tenant were the landlord."

**Offence** - Tenants who sublet their apartment without the landlord's permission may also be reported to the Rental Housing Enforcement Unit of the Ministry of Housing. Depending on the results of the investigation, the tenant may be charged under the Provincial Offences Act for charging more rent than is allowed under the RTA. Offences under the RTA carry a penalty of up to \$25,000 for individuals.

## Tips

- A landlord should ensure that the tenancy agreement contains a clause limiting the use of the rental unit by tenants for residential living only. The use of the rental unit for commercial purposes or for carrying on or operating any business for which the tenant receives payment should be clearly prohibited.
- Landlords should be mindful about monitoring short-term rental websites and take action against tenants who attempt to sublet their units in this manner. Landlords will need evidence of the activity before they can take action to stop it. They need to keep copies of the ads (paper and electronic) placed by their tenant.
- Tenants may be less likely to engage in this activity if they know that their landlords prohibit it and are actively monitoring for this type of behaviour.

# Did You Know?

***Q: My tenants agreed to pay for one year lump-sum rent in advance and they signed the tenancy agreement with this condition specified. They paid three months and agreed to pay the remainder of the year but now they're telling me that they don't have to pay the rent in advance and that it's illegal. Is this true?***

Based on what you have described, there is nothing you can do at this point to have the tenants pay the rent in advance even if they had agreed to pay it all in a lump sum. Under the Residential Tenancies Act the tenants are only required to pay one month's rent in advance which is to be applied to the last month of the tenancy. As long as your tenants continue to pay the monthly rent and they don't fall into arrears, you don't have any recourse to enforce your agreement. It is actually considered an offence to collect more than one month's rent as a deposit.



***Q: I am a landlord and my tenant has agreed to pay for gas in addition to the rent. The account remains in my name, I give the tenant the bill and they pay me. In the past three months they have not been paying the gas bill. The next time they pay me the rent can I apply it to the outstanding gas bill?***

In this situation, it would be incorrect to assume that the payment made would be applied to the gas bill. Based on similar situations the Board's decisions have been that unless the tenant specifically designates the payment towards the utilities, the landlord cannot apply it to the utility it would have to be applied to the rent. In order to deal with the unpaid utilities, one option is to serve the tenant with the Form N5 based on the reason of interfering with the landlord's lawful rights, privileges or interests. However the N5 can be given only if you're seeking termination of the tenancy, the Board won't actually issue an order for payment of the utilities.



***Q: My tenants are renting a house from me and part of the agreement is that they pay their own hydro. They recently told me that they are having financial difficulties and they may not be able to pay for the hydro this winter. What happens if they don't pay, will the hydro be shut off? I sympathize with their situation but I'm also concerned about my property and possible damage to the property if there is no heat in the house.***

The provincial government recently introduced new legislation giving the Ontario Energy Board the authority to permanently ban utility companies from disconnecting hydro from residential customers for nonpayment during the winter months specifically from Nov. 15 to April 30 of the following year.



***Q: One of my tenants has not paid his rent for three months, I served the Form N4 and after fourteen days I applied to the Landlord and Tenant Board and a hearing has been scheduled. I have now learned that my tenant was arrested and is now in jail, am I allowed to take possession of the unit at this point?***

The fact that the tenant is in jail does not mean that the tenancy has been terminated, you must still continue with the process at the Landlord and Tenant Board to obtain an order terminating the tenancy based on nonpayment of rent. Taking possession of the unit without an order from the Board would be considered an illegal eviction and the landlord could be fined up to \$25,000.



***Q: I have just discovered that my tenants have brought in two other people to live with them. The rental agreement specifically states that only two people would be occupying the unit. I consider the extra people unauthorized occupants, can I file the application A2 with the Landlord and Tenant Board to evict the additional people?***

The answer to your question is no, as long as the tenants are still living in the unit they are allowed to have other people living with them even if the rental agreement stated that it would only be two people residing there. The additional people are not considered unauthorized occupants in this case and therefore cannot be asked to leave.

An unauthorized occupancy situation occurs only if the tenants move out of the rental unit and leave the other people behind without obtaining the landlord's consent to assign or sublet to them. At that point the landlord can file the A2 application to evict the unauthorized occupants.



***Q: I am a landlord and I have a rental unit which is a condo built in 2015.. The current rent is \$1500. Rents in the building are significantly higher. The tenant has been there for a year and I plan on increasing the rent but I have a question regarding rent control. Can I only increase by the rent increase guideline which is 1.8% in 2018? I know that in between tenants I can raise the rent but my question is, if this tenant decides to stay, what rights do I have to increase the rent other than the rent increase guideline? Is it possible to draft a new lease with the same tenant for a higher amount?***

As of April 20, 2017 the government eliminated the rent control exemptions for newer buildings. Rent control now applies to all private rental units and rent can only be increased by the guideline amount regardless of the age of the building. With your current tenancy there is no legal way to negotiate a new rent with a new lease unless you're providing the tenant an additional service or facility or you've done capital expenditures in which case an agreement to increase the rent can be done. There are specific rules on agreements to increase the rent which are found under Sections 121 and 123 of the Residential Tenancies Act, here is a link to the Act, <https://www.ontario.ca/laws/statute/06r17>

# What's New?

## Landlord Learning Videos

Landlord's Self-Help Centre is pleased to announce the release of a new series of Landlord Learning Videos. We have produced twenty short videos to address a broad range of issues and topics commonly faced by small landlords. The videos will explain the issues and help you navigate these specific situations:

- So, you want to be landlord!
- The Rental Unit - does it measure up?
- Fire Safety
- Maintaining the Rental Unit
- Finding a Tenant
- Ontario Human Rights Commission
- Second Suites
- What about the Rent?
- Smoking
- Bed Bugs
- Entering the Rental Unit
- Subletting and Assignment
- Ending a Tenancy
- Selling a Rental Property
- Landlord and Tenant Board
- Tenant Eviction
- Tenant Belongings
- Offences and Penalties
- Collecting Monies Owed

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

## LSHC Board of Directors

Landlord's Self-Help Centre is an incorporated non-profit organization which is governed by a ten member Board of Directors. The board is comprised of professionals and representatives from the small landlord community who have taken an interest in the affairs of LSHC and serve as volunteers. Directors are responsible for governance, policy and contributing to the strategic management cycle.

LSHC's Board recently appointed Jeremy Zinger as a Director to fill the vacancy on the board created some time ago. Jeremy brings human resource skills and expertise to the organization and as a small landlord he is acutely aware of the challenges faced by our client community. We look forward to working with Jeremy.

Another recent change within LSHC's Board of Directors is the resignation of Teresa Hunt. Teresa has served as a Director since January 2014 and recently as Chair of the Program Development Committee. We thank Teresa for her dedicated service and many contributions to LSHC and wish her well.

LSHC will soon launch a recruitment campaign to fill this recent vacancy, please monitor our website for an upcoming posting.

## 2018 Landlord Learning Forum

Landlord's Self-Help Centre was pleased with the results of the 2017 Landlord Learning and Networking Forum which was held this past October in conjunction with our Annual General Meeting. Thank you to all who attended and raised important questions and issues with our speakers and presenters. The survey results indicate you were pleased too!

Some of the feedback we collected from the evaluation surveys distributed to participants at the Forum indicated:

- 60% of respondents indicated it was the first time they attended the Landlord Learning and Networking Forum;
- 92% said they had a better understanding of the changes to the RTA pursuant to Bill 124;
- 100% found the early bird presentation on short-term rental informative and 47% have considered renting on a short-term basis;
- 83% found the Information Tables and Networking with service providers helpful; and
- The overall favourite was Jane and Harry's Bill 124 presentation.

Our thanks to all the service providers, speakers and presenters who helped make the 2017 Landlord Learning and Networking Forum a success! Please mark your calendars and save October 25th for the 2018 Forum.

## Heat Reminder

Landlords who provide heat to their tenants as part of the tenancy should be aware that they are required to ensure the premises are heated to 20 C from **September 1 to June 15**. In Toronto, the local bylaw provides that landlords who are required to supply heat do so from **Sept. 15 to June 1** at 21 C.

Landlords in Toronto should also be aware a consultation is expected in the weeks ahead to examine the heat issue which arose last fall with the late season heatwave after many landlords had shut down their air condition systems for the season and ramped up heating systems. A bylaw which establishes maximum temperature is contemplated and could very well signal a requirement for all landlords to provide air conditioning.

## Stay connected ...



[www.facebook.com/landlordselfhelp](http://www.facebook.com/landlordselfhelp)



## Disclaimer

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