Quarterly News
A Landlord's Self-Help Centre Publication

Bill 124, *Rental Fairness Act*, 2017

This spring the Provincial Government introduced Ontario's Fair Housing Plan. The Plan is a comprehensive strategy consisting of sixteen measures which are intended to help more people find affordable homes, increase supply, protect buyers and renters, and bring stability to the real estate market.

Ontario's Fair Housing Plan specifically refers to "Actions to Protect Renters", which include:

- Expanding rent control to all private rental units in Ontario
- Strengthening the *Residential Tenancies Act* to further protect tenants and ensure predictability for landlords

On April 24, 2017, the Minister of Housing introduced Bill 124, the *Rental Fairness Act*, 2017, which proposed amendments to the *Residential Tenancies Act, 2006.* The legislation is one of several bills which stem from Ontario's Fair Housing Plan. Bill 124 was passed into law in a matter of six weeks and clearly reflects a change in direction for the Wynne government in contrast to one year ago.

Small landlords represent the secondary housing market and provide approximately 494,440 rental units. They are essential to Ontario's rental housing landscape, filling the gap created by the lack of purpose built affordable housing. It was just one year ago the small landlord community embraced the Ministry of Housing's public consultation paper, "Proposal to Encourage Small Landlords to Provide Rental Housing" as it seemed to signal a move toward re-balancing the legislation and levelling the playing field. Unfortunately, this was not to be. The government has taken a 180 degree turn and is now clearly focused on tenant protection.

With popularity tanking and an upcoming election next year, the Provincial Liberal Government has set out to protect tenants from "egregious" rent increases by expanding rent control to all private rental units in Ontario. Bill 124 removes date-based rental control exemptions, which had been touted by the Liberals for years as necessary to stimulate construction and the creation of new rental stock, effective April 24, 2017.

Legislative amendments to the *Residential Tenancies Act, 2006* (RTA) will hit Ontario's small landlord community hard and further complicate an already onerous, highly regulated operating environment for small landlords. Highlights of the changes include:

- Rental units previously exempt from the annual rent increase guideline due to date-based exemptions are now subject to the annual increase guideline - 1.5% in 2017;
- Landlords who give notice for own use will be required to pay to the tenant one month rent as compensation and will now be subject to new onerous rules regarding bad faith terminations;
- Landlords can no longer seek above guideline rent increases based on extraordinary increases in the cost of utilities (in keeping with the Climate Change Action Plan);
- The rules for capital expenditure based above guideline rent increases will be tightened;
- A new standard lease form will be created and required;
- Notices of termination for second breach within six months will be clarified;
- Pay and stay provisions at the Landlord and Tenant Board will be clarified;
- Affidavit requirements will change;
- Landlords are prohibited from pursuing former tenants for unauthorized charges;

The above is not a definitive list of changes, for more information please review Bill 124 at http://www.ontla.on.ca/bills/bills-files/41_Parliament/Session2/b124ra_e.pdf

In this issue of the Quarterly News we focus on several of the key RTA amendments; some of which became effective immediately while others have not yet been implemented.

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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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RTA Amendments: Landlord's Own Use

The *Residential Tenancies Act, 2006* (RTA) specifies the reasons or the grounds on which a landlord may give notice to a tenant. A fault ground would be a situation such as non-payment of rent or causing damage, while landlord's own use is a no-fault ground. When termination is based on a no-fault ground it does not give the tenant an option to remedy the situation and avoid termination.

One of the reasons commonly used to end a tenancy agreement is landlord's own use. The basis for termination is that the landlord or the landlord's immediate family member, being the landlord's parent, spouse or child or spouse's parent or child, requires the rental unit for their own occupation. Terminating a tenancy on the reason of landlord's own use gives the tenant the option to end the tenancy earlier than the termination date and vacating by giving 10 days notice, in writing, using the Landlord and Tenant Board form N9. The notice period is 60 days to the end of the term. If there is a fixed term tenancy agreement in place, it must be honoured and the timing of the notice would coincide with the end of term.

Whenever the Landlord's Own Use ground is given it raises the question whether the notice is given in good faith. Is the need a bone fide reason for the termination or is it being used to recover possession of the rental unit for other reasons such as a conflict with the tenant which the landlord does not want to publicly disclose; or because the landlord wishes to re-rent the unit at a higher rate.

Strengthening tenant protection was the impetus of recent RTA amendments respecting the termination of tenancies based on landlord's own use. The changes are intended to curb abuse of evictions based on landlord's own use. According to the amendments, landlords are required to meet additional requirements to terminate a tenancy for landlord's (or landlord's family member's) own use. Specifically:

- A written intention that the landlord or landlord's family will reside in the unit for at least one year
- The landlord must compensate the tenant one month's rent or offer the tenant another acceptable rental unit
- It is presumed, unless the contrary is proven on a balance of probabilities, that a landlord gave a notice of termination in bad faith, if within one year:
  a) the landlord advertises the rental unit for rent;
  b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;
  c) advertises the rental unit, or the building that contains the rental unit, for sale;
  d) demolishes the rental unit or the building containing the rental unit; or
  e) takes any step to convert the rental unit, or the building containing the rental unit, to use for a purpose other than residential premises.
- Only individual landlords, not corporations, are allowed to use this ground for eviction
- There are new remedies where a landlord evicts and fails to pay compensation.

The amendments above have not yet been proclaimed into force, this is to allow for changes to be made at the Landlord and Tenant Board.

Pay-and-Stay Clarification

The clarification of the pay-and-stay provision pursuant to section 74 of the *Residential Tenancies Act, 2006* (RTA) is a technical amendment that is intended to improve the Landlord and Tenant Board process respecting orders where monies owed have been paid.

Typically, when a landlord applies to the Landlord and Tenant Board (LTB) based on a notice for nonpayment of rent (N4) and obtains an order, the tenant can pay the amount owing and file a motion with the LTB to void the order before the eviction order becomes enforceable.

The clarification stems from situations where eviction orders were stayed as the result of a tenant's motion even though the tenant had not paid the **full amount owing**.

The clarification now requires that the LTB only accept motions seeking the stay of an eviction order which indicate the full amount of arrears have been paid (and will presumably require evidence of the same). The heightened awareness of this requirement should improve the operating environment for landlords.

New! Standard Lease Form

Another Bill 124 amendment is the requirement of a mandatory standard lease for specified types of residential tenancies. The standard lease will utilize plain language principles and allow landlords to add or incorporate clauses which are unique to their individual agreement, for example, it may include the tenant's undertaking to mow the lawn. Unique clauses which conflict with provisions of the legislation will not be enforceable.

In addition, new rules have been established regarding the standard lease delivery, and include:

- If the landlord does not provide the standard lease within 21 days of a tenant's written request, the tenant could withhold one month's rent, until the landlord provides the lease;
- If a landlord does not provide the standard lease within 30 days after the tenant has withheld rent, the tenant would no longer be liable to repay the withheld rent; and
- A tenant who has not received a standard lease could terminate the tenancy on 60 days' notice at any time.

The standard lease provision has not yet come into force. The Minister of Housing has committed to consult with stakeholders to inform the development of the form.

The government prescribed standard lease form will be required when a new tenancy is created and when existing tenancies are renewed. A lease which is currently in force for a sitting tenant will be replaced upon renewal with the standard form.

RTA Amendments: Rent Control

Expansion of Rent Control

The *Residential Tenancies Act*, 2006 (RTA) has been amended pursuant to Bill 124 to expand rent control by removing date-based exemptions which previously applied to some rental unit to ensure all private rental units are subject to the annual rent increase guideline (such as 1.5% for 2017).

Effective **April 20, 2017** pursuant to Bill 124, *An Act to amend the Residential Tenancies Act, 2006*, properties that were previously exempt from rent control and the annual rent increase guideline, based on dates, became subject to rent control. These **previously exempt** properties included situations where:

- The rental unit was not occupied for any purpose before June 17, 1998 – meaning it is either in a new building (often a condominium building) built since 1998, or an older building with a new unit or never occupied, residentially or otherwise, before June 17, 1998;
- It is a rental unit no part of which has been previously rented since July 29, 1975 – meaning only the owner has used or occupied the unit since 1975; or
- No part of the building, mobile home park or land lease community was occupied for residential purposes before November 1, 1991 – meaning the building was probably commercially used before 1991 and then was converted to residential use.

These changes came into force upon Royal Assent. The legislative changes also capture notices of rent increase given on or after April 20, 2017:

- A notice of rent increase that exceeds the guideline, given on or after April 20, 2017 but before Royal Assent, would be capped at the guideline amount once legislation is passed
- For *notices of rent increase given before April 20, 2017, the notice would still be valid* and the landlord may proceed with the rent increase as set out in the notice.

The amendments require landlords to refund any rent increases above the guideline that was served on or after April 20, 2017 and allow tenants to deduct such amounts from future rent if the landlord fails to reimburse.

Carbon Costs

The rules regarding above the guideline (AGI) rent increases to the Landlord and Tenant Board based on extraordinary increases in operating costs for utilities have changed under the *Residential Tenancies Act* pursuant to amendments contained in Bill 124 with respect to extraordinary utility costs.

Previously, landlords were permitted to seek an above guideline increase when an extraordinary increase was experienced in operating costs for utilities. Extraordinary was defined as an increase in the cost for utilities greater than the rent increase guideline plus 50% of the guideline. Under Bill 124, landlords can no longer seek above-guideline increases for this reason.

This amendment clearly indicates the importance of excluding utilities when setting the rent for a new tenant. This change is intended to "protect tenants from carbon costs". This change took effect on April 24, 2017 with amendment of Ontario Regulation 516/06 (General).

Eligible Capital Expenditure

Bill 124 has enacted amendments to the *Residential Tenancies Act, 2006 (RTA)* which allow the government to tighten rules for above guideline rent increases based on capital expenditures.

The government will create a regulation making authority to specify circumstances where otherwise eligible capital expenditures are not eligible.

Post Tenancy Fees

Bill 124 has amended the *Residential Tenancies Act* (RTA) to clarify landlords are prohibited from collecting additional rent, fees, or penalties from former tenants if the tenant vacated the rental unit in accordance with a landlord's notice.

The offence provision under the RTA, section 234(1), has been amended and now reads:

A person is guilty of an offence if the person, (l) charges or collects amounts from a tenant, a prospective tenant, a ***former tenant****, a subtenant, a potential subtenant, an assignee or a potential assignee in contravention of section 134;*

The clarification reflects established case law and need to be read in conjunction with section 134 (1.1) which states:

(1.1) No landlord shall, directly or indirectly, with respect to any rental unit, collect or require or attempt to collect or require from a former tenant of the rental unit any amount of money purporting to be rent in respect of,
(a) any period after the tenancy has terminated and the tenant has vacated the rental unit; or
(b) any period after the tenant's interest in the tenancy has terminated and the tenant has vacated the rental unit.

Another change, not yet in force, includes a further amendment to define which fees and charges landlords are prohibited from charging former tenants.

Affidavit Requirements

The rules for affidavits have been changed to simplify the Landlord and Tenant Board processes pursuant to proposals contained Bill 124.

An affidavit must be included when filing with the Landlord and Tenant Board for various situations. The amendments will allow Landlord and Tenant Board (LTB) offices to localize decision making when written statements rather than affidavits can be filed in support of applications and motions at the LTB's discretion.

Providing false or misleading information in any material filed with the LTB will continue to be an offence and subject to penalties under the RTA.

Self-Help TIPS

On a date to be proclaimed, section 68 of the RTA will be amended to simplify the Second Breach Eviction. In this issue of the Self-Help Tips, we will discuss the complicated process of the Second Breach Eviction and how it will be affected by the new amendments.

First Breach-It is important that landlords have an understanding of how a first breach works prior to discussing the upcoming legislative changes to **section 68**- further contravention within six months of a "first N5" having been given (under any of RTA ss. 62, 64 or 67).
A landlord may give a tenant notice of termination (first N5) of the tenancy if,

1. the tenant, their guest or another occupant has willfully or negligently damaged the rental unit or the residential complex (section 62);
2. the tenant, their guest or another occupant of the rental unit has substantially interfered with the reasonable enjoyment of the residential complex by the landlord or another tenant, or another lawful right, privilege or interest of the landlord or another tenant (section 64); and/or
3. the number of people living in the rental unit is more than permitted by health, safety or housing standards (section 67).

The notice of termination (first N5) must,

- specify a termination date of at least **20 days** after the notice is given to the tenant;
- set out the grounds for termination; and
- inform the tenant that they have **7 days** to correct the problem(s) stated on the N5 or move out by the termination date.

The **first N5** notice becomes **void** if the tenant corrects ALL the issues stated on the notice within **seven days** after receiving the notice. If the tenant does not correct all the issues addressed on the notice, the landlord can apply to the Landlord and Tenant Board to terminate the tenancy and evict the tenant on the eighth day after the notice is given to the tenant. If you fail to provide the proper number of days, the Landlord and Tenant Board will dismiss your case and you will have to start all over again. An N5 notice expires **30 days** after the termination date indicated on the notice.

Second Breach within Six Months
Currently, under section 68 of the RTA, if a tenant voids the N5 by correcting the problem(s) set out in the notice within seven days of receiving it, and another problem occurs within six months of the first N5 being issued, the landlord may serve the tenant a second **non-voidable** N5 notice. The first notice **must be void** before a second notice of termination can be served.

On a date to be proclaimed, section 68 of the RTA will be amended to clarify that the first notice of termination need **not be void** in order for a second, non-voidable notice of termination within six months to be given.

The amendment removes the requirement of proving that a first notice of termination has become void as a result of a tenant's compliance. Instead a landlord will simply have to wait **seven days** after the date of serving the first N5 before giving the second notice.

The termination date for the second N5 must be at least **14 days** after the notice is given and the tenant does not have an opportunity to correct the problem and void the second notice. The Landlord can apply to the Landlord and Tenant Board at any time after the second N5 is given to the tenant.

Both Notices must be Valid
Although the amendments to the RTA will simplify the Second Breach Eviction process **both** N5 Notices of Termination must be considered valid in order to obtain a termination order. It is important that the N5 notice be completed correctly. The notice must be correctly dated, properly served and contain detailed information or a member will consider it flawed and not a legally valid Notice of Termination.

Reasons for the Notice-Subsection 43(2) of the *RTA* states a notice of termination must set out reasons and details. The Divisional Court case **Ball v. Metro Capital Property** has held that reasons and details should include dates and times that the alleged conduct took place. The Divisional Court ruled that notices of termination, particularly voidable notices like the N5, are void if they lack particulars such as dates and times. The order states that “Particulars should include, dates and times of the alleged offensive conduct together with a detailed description of the alleged conduct engaged in by the tenant.” Divisional Court decisions are binding on members of the Board and must be followed.
Describe in detail what the tenant, the tenant’s guest or another occupant of the rental unit did that caused you to give the notice to the tenant. Include whether it was the tenant, another occupant of the rental unit or a guest of the tenant who caused the problem. Next to each event, state the date and time the event occurred, what happened, who was affected, etc. If it is the first N5 served to the tenant it must also provide the tenant with the necessary information that the tenant needs to void the notice. If you need additional space than what is provided on the N5, complete and attach an additional sheet of paper to the N5 notice.

Tips

- A second N5 does not need to be served if the first N5 is not corrected. Your case will not be stronger by serving a second N5.
- If a second non-voidable notice is served and the member determines that the first was an invalid notice your application will be dismissed.
- For the hearing, bring witnesses and documentation to prove all the details stated on the N5.
- The N5 eviction process is a very complicated process. Due to the technical nature of the N5 notice it usually results in many mistakes, and many applications get dismissed.

Did You Know?

Q: I served a notice of rent increase of 4 % on May 1st, 2017 to my tenants. The notice I served was the Form N2 because my property is exempt from the rent increase guideline rules, it was built after 1998. My tenants are telling me that they don't have to pay that increase and they will just pay the guideline increase. Can they do that?

In this case, the tenants are correct. Under the new Bill 124, the *Rental Fairness Act*, 2017, rent control applies to all private residential rental units including those built after 1998 and the two other date based exemptions effective April 20, 2017. Therefore if the notice of rent increase is given **on or after April 20, 2017** the tenants are not required to pay the amount set out in the notice and will only be required to pay the rent increase guideline.

Q: I had given a notice of rent increase to my tenant in March 2017, it was more than the guideline amount because my unit is exempt from rent control. Based on the new rules which eliminated the exemptions from the rent increase guideline can I still get the increase that I requested on the notice?

In this case, since the notice of rent increase was given before April 20, 2017, the notice is valid and the tenants will have to pay the amount of the increase that was set out in the notice.

Q: One of my tenants is moving out and I plan to re-rent the unit but I'm wondering if I can set a new rent or do I have to charge the same rent to the new tenant. I have heard there have been some changes in the law with regards to rent control, how does it affect a new tenant moving in?

The vacancy de-control provision has not changed under the new rules which means that landlords are still allowed to set a new rent when a tenancy ends and the rental unit becomes vacant.

Q: I have been renting my house to a tenant for a few years but due to personal circumstances I will need to move in to the house, what is the process to terminate the tenancy based on this reason?

Under the current law, if the landlord, in good faith, requires possession of the rental unit for residential occupation by himself/herself, his spouse or a child or parent, the landlord must serve the tenant with the proper notice of termination (Form N12) and must provide at least 60 days' notice terminating at the end of the rental period or term. However, there are new rules legislated under Bill 124 which, once it is proclaimed, will include additional requirements for landlords when terminating a tenancy for this particular reason. Under the new rules landlords will be required to compensate the tenant one month's rent or offer the tenant another acceptable rental unit; the landlord or the landlord's immediate family member will be required to confirm their intention to reside in the unit in writing and reside in the unit for at least one year.

Q: I have been a landlord for many years and have always used the same rental agreement that I drafted up myself. Can I still continue using this agreement?

Currently under the existing law, landlords are allowed to draft their own tenancy agreements or use various types of tenancy agreement forms. A tenancy agreement can be oral, written or implied. Under the new legislation, Bill 124, the *Rental Fairness Act*, 2017, landlords will be required to use a standard lease for specified types of residential tenancies which will be developed by the government. The standard lease will still allow the landlord and tenant to include additional clauses with certain provisions as long as they are in accordance with the law. Additional provisions are as follows: the landlord will be required to provide the tenant with a copy of the lease within 21 days; if the landlord fails to provide the lease within 21 days of a tenant's written request, the tenant could withhold one month's rent, until the landlord provides the lease; if a landlord does not provide the standard lease within 30 days after the tenant has withheld the rent, the tenant would no longer be responsible to repay the withheld rent; a tenant who has not received a standard lease could terminate the tenancy on 60 days' notice at any time.

Q: I had a tenant that was not paying rent so I had to serve her the Form N4 – Notice to End your Tenancy for Non-payment of Rent. The tenant did not pay the rent but chose to move out by the termination date without giving any notice. I want to file a claim in Small Claims Court for the rent arrears and for the additional rent owing until I found another tenant. What are my chances of claiming this from the tenant?

Currently the law states that landlords are prohibited from collecting, requiring or attempting to require or collect from a tenant or prospective tenant of a rental unit a fee, premium, commission, bonus, penalty, key deposit or other like amount of money with respect to the unit. This provision does not refer to former tenants. One of the proposed amendments under Bill 124 will clarify that landlords are also prevented from collecting additional rent, fees or penalties from former tenants if the tenant has vacated the rental unit pursuant to the landlord's notice to terminate the tenancy. In your situation you would not be able to claim any additional rent past the termination date if the tenant vacated based on your notice to terminate.

Q: My utilities have increased significantly and I am planning on applying to the Landlord and Tenant Board for an increase above the guideline based on the increase in the utilities. How do I proceed?

This is also one of the provisions that is changing under Bill 124 once it is proclaimed. Under the new rules landlords will no longer be permitted to apply for an Above Guideline Increase for extraordinary increases in operating costs due to utility costs. This is intended to mitigate the impact of Carbon Costs on Tenants and was implemented effective April 24, 2017 with the interim amendment of Ontario Regulation 516/06.

What's New?

RTA Amendment - Combining Orders and Mediated Agreements

If you have been through the Landlord and Tenant Board (LTB) process for non-payment of rent or damages, you may be familiar with the confusion around conditional orders and mediated agreements. When a landlord and tenant try to settle their issues through mediation, conditions are imposed on a tenant, and if they are not met, the landlord is able to continue terminating the tenancy on the same grounds stated in the previous application. If the parties refuse mediation and continue with a hearing they are sometimes provided with a conditional order, which denies termination of the tenancy if the tenant satisfies the order.

Section 78 of the *Residential Tenancies Act* is the provision that allows a landlord to apply to the LTB, without notice to the tenant, for permission to terminate the tenancy and evict the tenant. Section 78(3) is as follows:

Application based on previous order, mediated settlement
78 Order for payment
(3) In an application under subsection (1), the landlord may also request that the Board make an order for payment under subsection (7) if the following criteria are satisfied:
1. The landlord applied for an order for the payment of arrears of rent or compensation for repair or replacement of damaged property when the landlord made the previous application described in paragraph 1 of subsection (1).
2. A settlement mediated under section 194 or order made with respect to the previous application requires the tenant to pay rent or some or all of the arrears of rent or compensation for repair or replacement of damaged property. 2006, c. 17, s. 78 (3).

The underlined portions are the changes made by Bill 124 that will take effect once they are proclaimed. The goal is for this to help reduce costs, simplify the enforcement of the orders and increase overall efficiency.

2018 Rent Increase Guideline

The guideline rent increase for 2018 has been set at 1.8%. This is the maximum amount a landlord is allowed to increase the rent of a current tenant, on proper notice, without obtaining approval from the Landlord and Tenant Board. For more information visit: https://news.ontario.ca/mho/en/2017/06/ontario-capping-rent-increases-for-tenants-in-2018.html

Public Consultation on Toronto Short-term Rental Regulation

Toronto's Executive Committee will move to the public consultation stage on Proposed Regulations for Short-term Rentals for Airbnb style short-term rentals. The proposed regulations are intended to:

- *Amend the City's zoning bylaws to create a new land use called "short-term rental" that will be permitted in principal residences across the city;*
- *Prohibit short-term rentals that are not in a person's principal residence;*
- *License companies that facilitate short-term rental activity, like Airbnb; and*
- *Create a registry for anyone who operates a short-term rental in their home.*

The proposed zoning framework would allow short-term rentals in the principal residence of any owner or tenant as long as the property is located in residential and mixed use zones, and in all residential building types.

"Short-term Rental" is defined as any rental of a residential unit lasting up to 28 days in a row. Any rental that lasts 29 consecutive days or longer would be considered a long-term rental. This rental option may be of interest to small landlords as it is not subject to the same rules as long-term rental.

According to the proposed regulation, people could rent up to three rooms within a unit, separately; the entire dwelling unit; and lawful secondary suites. However, the dwelling unit **must** be the principal residence as short-term rental would not be permitted otherwise. This restriction is intended to limit the conversion of long-term housing to tourist rental.

Short-term rental operators would be required to register with the City and their registration number would appear in advertisements; short-term rental companies would be licensed and could only list registered short-term rentals.

Short-term rental companies would be required to report data about rental activities to the City on a quarterly basis and share details about certain listings at the request of the City, remove problem listings, and pay a licensing fee.

In addition to the proposed regulation, the implementation of a hotel and short-term rental tax is under consideration, subject to the province granting legislative authority to do so through amendment to the City of Toronto Act.

If approved, roughly 7,600 of the 11,000 properties rented in 2016 could continue to operate in their principal residence. Learn more about Toronto's short-term rental: http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=deb7415ca6b69510VgnVCM10000071d60f89RCRD

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