

Regulating Short-Term Rentals?

Business is booming in the home sharing industry for companies like Airbnb, FlipKey, VRBO and Zeus Living. However, unregulated short-term rentals are having an impact on both the hospitality industry and the residential rental market.

The popular California based Airbnb home sharing service was founded in 2008 and, according to their website, "... is a trusted community marketplace for people to list, discover, and book unique accommodations around the world — online or from a mobile phone or tablet." The site boasts more than 3,000,000 listings worldwide and estimates more than 150,000,000 guests use the service. There are approximately 8,600 Airbnb hosts listed in Toronto who, according to a CBC Toronto report published in January 2017, use the income earned from renting to pay bills or afford their first mortgage.

Short-term rentals are having an impact on both the traditional residential rental market as well as the hospitality industry. The Greater Toronto Hotel Association claims home-sharing is in direct competition with hotels, and have the advantage of not paying HST or corporate taxes, operating in residential neighbourhoods, and the ability to rent at reduced rates. The Greater Toronto Hotel Association wants home-sharing to be regulated.

Home-sharing is affecting neighbourhoods, City Councillors and bylaw enforcement officers can attest to the growing problem caused by short-term rentals with regard to homes that are used as party houses. The owner of a Willowdale house was recently fined \$10,000 for a bylaw infraction related to zoning for the blatant disregard for the community and the city as they continued to rent the property for periods of less than seven days after being told to stop. The owner of properties on Bleecker St. was also charged for a bylaw infraction related to short-term rentals. If rented as a tourist home, the bylaw requires the home be the principle residence of the owner and it was not.

The traditional long-term rental industry, including private landlords and the condo market, is also being affected by short-term rentals. Housing experts are raising the alarm that the loss of residential rental units to the lucrative short-term rental market will adversely impact the supply of rental accommodation and put more pressure on the already tight rental market.

Condo owners, occupants and managers commonly encounter owners and/or tenants that are leveraging their suite to earn additional income by renting it like a hotel room, often in direct conflict with condo bylaws, the rules by which each and every owner are bound. There have been numerous media reports of home-sharing guests that have been barred from entering condo buildings as well as those who trash the unit.

Entrepreneurial tenants are also cashing in on the popularity of home sharing and earning extra money by renting their unit. The landlord is often not informed and does not know who is occupying the property. Moreover, the *Residential Tenancies Act, 2006* prohibits a tenant from collecting more rent for their rental unit than they are paying, and opens the door for the landlord to seek termination of the tenancy.

The City of Toronto has launched a consultation on short-term rentals. Short-term rentals may occur in houses, townhouses, second suites, condominiums and rental apartments. Public input will be collected through an online survey; at public meetings; from stakeholders; and through direct submissions. Learn more about the process at: <http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=deb7415ca6b69510VgnVCM10000071d60f89RCRD>. Municipal Licensing and Standards is expected to have a report/proposal by June 2017 which could include a hotel tax for short-term rentals, changes to zoning bylaws, or licensing for short-term rental hosts.

On the provincial side, the Ministry of Finance held a consultation meeting with stakeholders in the fall of 2016 with no follow-up to date. The Minister of Housing is poised to introduce amendments to the *Residential Tenancies Act* which may tackle the short-term rental issues and provide owners with the tools they need to better manage their rental agreements.

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The Risk of Serving Multiple Notices

Experiencing various difficulties with a tenancy can be frustrating for landlords as they may not know how to effectively address the issues at hand. In too many cases, landlords resort to serving their tenants multiple Landlord and Tenant Board (LTB) notices in the hope that at least one of them will legally end the tenancy. For this reason, it is important to make sure you are taking the proper steps and issuing the appropriate notices necessary to deal with the issues.



For instance, a landlord may face issues with a tenant related to disturbances, smoking contrary to a clause in the lease agreement, and non-payment of rent. The landlord then decides to serve an N5 dealing with the first two issues and an N4 dealing with rent arrears. However, the landlord may believe that in order to secure termination of the tenancy, it would be helpful to serve a N12 for own use of the rental unit by the landlord. What the landlord is not aware of is that combining an N5 notice with an N12 notice may threaten the actual issue that the landlord is facing. If the landlord legitimately requires the rental unit for own use, having previously served an N5 notice could result in the dismissal of the N12 application based on the principle of bad faith.

In addition, serving tenants multiple LTB notices may lead to claims of harassment. LTB notices contain important information notifying the tenants of their options and how their landlords may proceed in any given circumstance. It is not necessary for the landlord to continue serving notices when the tenant may not have corrected and voided the previous one. For this reason, it is important to refrain from serving multiple notices. However, serving an amended notice would not constitute harassment. Landlords have to be extremely careful when completing notices as it is essential to have the correct information in order to proceed. If the landlord has to serve an amended notice due to errors found in the previous one, this would most likely not be considered harassment.

Landlord's Self-Help Centre stresses the importance for landlords to obtain legal advice before serving their tenants any LTB notices. Obtaining legal advice may prevent landlords from having a legitimate application dismissed or facing harassment allegations by their tenants. You can contact LSHC at 416-504-5190 or toll-free 1-800-730-3218, or by email to info@landlordselfhelp.com

Contributed by Diana Padierna

Diana is a paralegal student participating in LSHC's Paralegal Student Co-op Program

Electricity Rates

The Provincial Government is rolling out its *Ontario's Fair Hydro Plan* which aims to reduce electricity bills by an average of 25% for residential consumers and small businesses beginning in the summer of 2017.

The Government is committing to hold increases to the rate of inflation for four years and promoting additional savings for eligible rural communities and people with low incomes.

Learn more about the plan at: <https://www.ontario.ca/page/ontario-os-fair-hydro-plan>

Bill 95 - Protecting Vulnerable Energy Consumers Act, 2017

The Ontario Legislature has passed the government proposed Bill 95 to protect vulnerable consumers from having utilities shut off during the winter. It was supported by all parties, passing Third Reading and receiving Royal Assent in a single day.

The *Protecting Vulnerable Energy Consumers Act, 2017* will amend the *Ontario Energy Board Act, 1998* and give the Ontario Energy Board the power to make rules and licence conditions respecting the periods during which gas or electricity may not be disconnected from low-volume consumers.

Will Rent Guideline Exemptions be Eliminated?

Legislated annual guideline rent increase exemptions for newer rental properties have been in place for many years and the argument for retaining the exemption has always been to encourage the construction of new rental properties. Despite the exemption, there has been little large-scale purpose built rental housing constructed in the last 30 years or so. However, the exemption has had a significant impact on condo rentals. An unintended consequence of the condominium boom has left the secondary rental housing market flush with condo rental units purchased by investors and speculators.

Many of the new condo units are exempt from the rent increase guideline, according to the *Residential Tenancies Act*, these include rental units where:

- *The rental unit was not occupied for any purpose before June 17, 1998 - meaning it is either in a new building (condominium) built since 1998, or an older building with a new unit or never occupied, for residential use 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.

Peter Tabuns, NDP, and MPP for Toronto-Danforth, has brought forward a Private Member's Bill which proposes the removal of the exemption from the annual rent increase guideline for rental units currently exempt.

Bill 106, the *Rent Protection for All Tenants Act, 2017*, passed First Reading on March 20, 2017. If passed into law, the removal of the guideline exemption would mean all new rental housing construction, including condo, second suites, houses, etc., would be subject to the annual rent increase guideline. The guideline is determined by averaging the Consumer Price Index for Ontario over the 12-month period that ends at the end of May of the previous calendar year. However, when the unit becomes vacant the rent could be increased to realign with market levels and becomes subject to the guideline once again when re-occupied by a tenant.

According to the Globe and Mail, Premier Kathleen Wynne has said her government is working on a "comprehensive set of plans," to deal with rising home prices in the Greater Toronto and Hamilton Area (GTHA), as well as rising rental rates.

What is invisible, odourless, tasteless and the leading cause of lung cancer in non-smokers?

Radon! It is a radioactive gas found naturally in the environment that is produced by the deterioration of uranium found in soil, rock or water. Approximately 13% of lung cancer deaths in Ontario are due to Radon.

Radon moves through the soil and escapes into the air or seeps into building structures, such as homes or commercial buildings. When radon leaks into the outdoor air, it is diluted to a low concentration and does not become a health concern. However, if the soil contains uranium, radon gas can seep through cracks in the foundation walls and floors, or any gaps that are found around pipes in a home or commercial buildings. When radon is contained in a poorly ventilated space such as a basement, high levels can sometimes be found due to the closeness to the source.

Almost all homes have some traces of radon, but the levels can vary. There are many factors that affect the amount of radon that enters a home, such as:

- Soil Characteristics
- Foundation Condition
- Construction Type
- Occupant Lifestyle
- Weather

Symptoms and Health Risks - The only known health risk of exposure to Radon is an increased threat of developing lung cancer. For smokers, radon is the second leading cause of lung cancer. The risk of developing lung cancer depends on the average radon concentration in the building, the length of time a person is exposed, and their smoking habits.

Testing - In 2009, Health Canada conducted a two-year study of radon concentrations in homes across Canada.³ This study found that:

- Approximately 7% of homes have high levels of radon
- Radon levels vary significantly across the country
- There are no areas of the country that are 'radon free,' but there are areas of the country where high levels of indoor radon are more prevalent

The current Canadian guideline for radon in indoor air for dwellings is 200 Becquerels per cubic metre (200 Bq/m³). This was reduced from 800 Bq/m³ based on new information about potential health risks. A Becquerel means one radioactive disintegration per second.

To provide a realistic estimate of the radon exposure, all measurements should be taken in the lowest lived-in area of the home that is occupied for more than 4 hours a day. Typically, a three-month test represents a person's annual average exposure and can be used to determine if a home's radon concentration exceeds the Canadian guideline level of 200 Bq/m³.

There are two options for testing a house for radon: one is to purchase a do-it-yourself radon test kit, and the other is to hire a radon measurement professional. A Radon Test kit can range from \$25 to \$75, and can be purchased from your local Best Buy or Home Depot. If you want to hire a contractor, Health Canada recommends that the contractor be certified. To find a certified contractor or radon test kit, please visit the following links:

<http://c-nrpp.ca/find-a-professional/> or
<https://www.takeactiononradon.ca/test/ontario>

Reduction Method - If the radon levels in your home are too high, the cost for radon reduction depends on the size and design of a home, and the work that is needed. The average radon remediation process, completed by a certified contractor typically costs anywhere from \$500 to \$3000.

The most common and effective radon reduction method is Active Sub-Slab Depressurization. A hole is drilled in to your basement floor and a pipe is installed with a fan that draws the radon gas from under your house and pushes it outside.

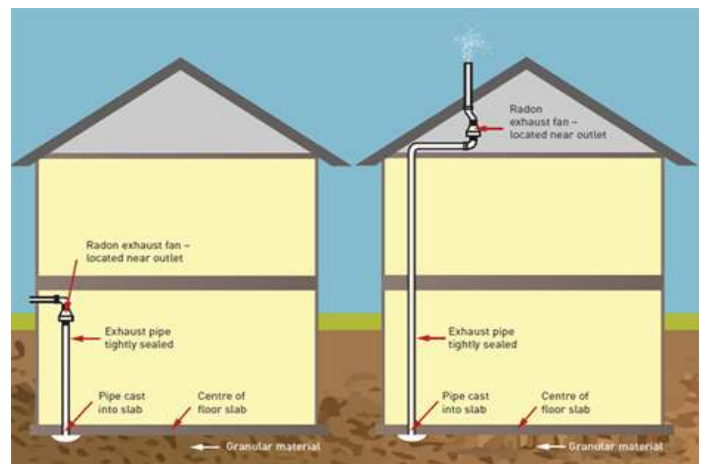


Diagram Courtesy of Health Canada

For more detailed information on Radon, please visit
<http://www.hc-sc.gc.ca/ewh-semt/radiation/radon/index-eng.php>

Save on Energy - Home Assistance Program

The IESO (Independent Electricity Systems Operator) and local hydro companies have joined together to help homeowners and tenants in Ontario improve energy efficiency.

The Home Assistance Program (HAP) provides a range of tools for income eligible homeowners, residents and tenants to make energy upgrades and begins with a visit from a Home Assistance Expert to conduct a detailed energy assessment and give advice on how to save more energy.

Free upgrades under the Home Assistance Program could include: Energy-saving light bulbs; ENERGY STAR® refrigerator; ENERGY STAR® freezers, dehumidifier, window air-conditioner; home insulation and draft proofing; low-flow

showerheads; programmable thermostats; power bars; and faucet aerators.

Homes that are less than 6400 sq. ft. and no more than 3 storeys high are eligible, and include second suites; duplex, triplex, townhouse, detached or semi-detached houses.

You can learn more about the program and how to apply at <https://saveonenergy.ca/Consumer/Programs/Home-Assistance-Program.aspx> The Home Assistance program is offered through your local hydro company and may not be offered in all areas. Call your local hydro company for information on availability.

Self-Help TIPS

In this issue of the **Self-Help Tips** we will try to clarify the rules and procedures involved in filing a **Request to Review an Order**.

Request to Review an Order

The parties to an application at the Landlord and Tenant Board (LTB) have an opportunity to **request a review of the order** if they are not satisfied with the Board's decision.

The review is not a second chance to present your case; and the reason to request the review must meet the Board's criteria. It is very difficult to be granted a review of the order. Only a final order or an interim order which makes a **final decision** about a party's right may be reviewed.

Who may request a review of an order - Any party and any person directly affected by an order of the Board may file a Request to Review with the Ontario Landlord and Tenant Board. Only one request to review an order can be made by a party. A different party may also request a review of the same order for different reasons.

Where the Board considers it appropriate, it may review an order on its own initiative. This commonly happens where the Board becomes aware that a party was not properly served with notice of hearing and could not reasonably participate in the proceeding. A serious error review will only be initiated by the Board in exceptional circumstances.

Time for Review - A party affected by the order has **30 days** from the date the order is issued or amended to file a request for review.

Reasons to Request a Review of an Order - Rule 29.2 of the Ontario Landlord and Tenant Board Rules of Practice states that the Landlord and Tenant Board will only review a final order if,

- the order contains a serious error,
- a serious error occurred in the proceeding, or
- a party was not reasonably able to participate in the proceeding.

Interpretation Guideline 8 sets out in detail the Board's view as to what constitutes "serious error." The Guideline specifically includes errors of jurisdiction and error in law amongst "serious errors".

Request form - Requests for reviews should be on the Board approved form. The "**Request to Review an Order**" form is available at www.sjto.ca/ltb. On the form you must describe in detail:

- the alleged **serious error** and /or explain why you were not **reasonably able to participate** in the hearing;
- if you require the order stayed (stopped) while the review is decided and provide the reasons for the stay; and
- what you want the Board to do if the review is successful.

Provide Clear Details - You must provide clear details on why the order should be reviewed, why you believe the error is a serious error, and the remedy you are requesting. You will only be allowed to file **one** request to review an order or decision; therefore your request should contain information that is sufficient to convince a Member that there may be a serious error. If your request to review an order is denied you will not be able to file another.

The fee for filing a request to review is **\$55.00**. The fee may be refunded if the review is granted.

Preliminary Review - The preliminary review is the first stage of the review process. The preliminary review is usually conducted by a Vice-Chair who may assign it to a senior LTB Member. Another Vice-Chair, or the Associate Chair will normally carry out the preliminary review of a Vice-Chair's order. The preliminary review will be based on the contents of the request and the order. The reviewing adjudicator may request reasons for the order from the original hearing Member.

The request may be dismissed at this point if all the required information is not provided, if the request does not provide enough detail in its support, or if it does not meet the grounds for review pursuant to Rule 29.2.

Decision - If the request is **dismissed**, the Board will issue an order, but is not required to provide reasons for its decision. If the request is **approved**, the Board will issue a notice of hearing to all parties.

Stay of the Order - At this stage it will also be decided whether the original order should be stayed while the review hearing is conducted. The Board will order a stay if it is satisfied a party will suffer harm that cannot be undone if the order is enforced.

Review Hearing - The Board will consider the parties' positions and make a decision on the request to review. The request may be dismissed, the Board may decide to re-hear some or all of the application, or ask the parties for additional evidence on a particular issue.

The Board will usually make its decision of the request to review immediately and the re-hearing will follow the same day. Witnesses and all relevant evidence should be brought to the review hearing.

Tips

- The request to review needs to contain information or arguments that are strong enough for an adjudicator to reasonably conclude that there may have been an error in the Order or in the proceeding that needs to be addressed.
- If you intend to request a review of an order you should ask for the Member to issue written reasons for the order as soon as possible after the order is issued and also obtain a recording of the hearing.
- Ensure that you understand what a "serious error" is as defined under Guideline 8 - Review of an Order.
- Be prepared and research your rights and responsibilities and present the "best" evidence you feel supports your application at the initial hearing. A Request to Review an Order is not an opportunity for a landlord to have their matter heard a second time.

Did You Know?

Q: I recently became a new landlord of a duplex. The existing tenants do not pay for any utilities it is all included in the rent. I would like to ask them to start paying for their gas and hydro. Can I do that as the new owner?

As the new owner you have assumed the tenants and also the terms and conditions of their rental agreements. If the tenants currently have a service included in their rent, the landlord cannot require the tenants to start paying for this service. However, if the tenants agree to pay for the gas and hydro separately, the *Residential Tenancies Act* does allow this as long as the landlord then decreases the rent to compensate for the removal of the services that were previously included in the rent.

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Q: My tenants pay rent plus utilities, I give them the bill each month and they pay me. Now they have stopped paying the utilities and have just been paying the rent. Can I apply a portion of the rental payment to the utilities owing and give them a notice for nonpayment of rent?

Unless the tenant specifically designates the payment to go towards the utilities owing, the landlord cannot apply it to the utilities it would have to be for the rent. The only option in this case is to serve the tenant with the Form N5 to seek termination of the tenancy based on the reason that it is interfering with the landlord's lawful right.

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Q: I have just served a tenant with a Form N4 because he is not paying his rent. I'm not sure what the next step would be, I have been told that I need to complete a Certificate of Service. What is this form and was I supposed to serve it to the tenant?

The Certificate of Service is a form proving service of any notice served to the tenant. It states what was served to the tenant, when it was served and how it was served. The person who served the notice to the tenant must sign the Certificate of Service. This form is not given to the tenant it is submitted only at the time of filing an application with the Landlord and Tenant Board based on the notice served.

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Q: Is there a standard form that must be used when giving notice to enter the rental unit and how do I serve this notice to the tenant?

There is no prescribed form for this type of notice. It is acceptable to draft up your own notice either hand-written or typed as long as it contains all the pertinent information which includes the reason for entry, the day of entry and a time of entry between the hours of 8:00 a.m. and 8:00 p.m. This notice can be handed to the tenant; placed in the tenant's mailbox or where mail is normally delivered; sliding it under the tenant's door; handing it to an apparently adult person; by facsimile to the residence or place of business; by courier or mail with an additional five days added or by posting it on the tenant's door. Please note that the notice to enter is the only notice that may be posted on the door. If you are serving any other document do not post it on the door.

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Q: I am attending a hearing at the Landlord and Tenant Board based on a T6 application filed by my tenant. I understand that it's based on maintenance issues. What are the consequences for a landlord based on this type of application?

A tenant has the right to file this application with the Landlord and Tenant Board if after informing the landlord of the problem the landlord does not comply with his/her maintenance obligations. A tenant can ask the Board to order the following:

- order the landlord to do the required maintenance or repair;
- grant a rent abatement which allows the tenant to withhold all or a part of the rent normally paid to the landlord, or order the landlord to pay the abatement directly to the tenant to compensate for the neglected maintenance or repair;
- order the landlord to compensate the tenant for any repair or replacement costs he or she incurred for damage or destruction to the tenant's personal property that was caused by the neglected maintenance or repair;
- order the landlord to pay other reasonable out of pocket expenses the tenant has incurred or will incur as a result of the non-repair;
- order the landlord to repay the tenant for the costs incurred in doing repairs which the landlord was responsible to do;
- authorize the tenant to do needed repairs, and order the landlord to repay these costs to the tenant; and
- order the termination of the tenancy.

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Q: I have a lease agreement with students in which their parents signed on as guarantors. Now the tenants have defaulted in the rent and I am going to issue a notice of nonpayment of rent. Do I name the parents also on the notice since they are the guarantors?

You cannot name the guarantors on the notice of nonpayment of rent as they are not considered tenants. The Landlord and Tenant Board will not issue an order against guarantors because they are not tenants. The only way to proceed in this case is to terminate the tenancy based on nonpayment of rent and then file a claim in Small Claims Court against the guarantors if you cannot collect from the tenants.

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Q: My tenant just came to pay the rent for this month and I noticed it was not the full amount. I asked her why and she said I owed her interest on the last month's rent deposit. Is she allowed to deduct anything from the rent?

Yes, in this case the tenant is permitted to deduct the amount of the interest payment from the rent if the landlord has failed to pay the interest when it was due. The interest on the last month's rent must be paid annually to the tenant.

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What's New?

Legal Challenge Launched to End Secrecy at Ontario Tribunals

Legal challenge launched by the Toronto Star to “end the secrecy” in provincial tribunals and make any documents that are filed as part of a case or complaint available to the public.

Ontario tribunals and boards are administrative bodies responsible for adjudicating a broad range of issues in many areas of law. There are 235 administrative tribunals in Ontario which include the Social Benefits Tribunal, Child and Family Services Review Panel; Criminal Injuries Compensation Board; and the Human Rights Tribunal of Ontario (HRTO). Of course, small landlords will be familiar with the Landlord and Tenant Board (LTB), the authority for residential landlord and tenant disputes, and the Human Rights Tribunal of Ontario (HRTO).

Documents and evidence are available to the public in the court system, however the same is not true of Ontario tribunals. In fact, the *Freedom of Information and Privacy Protection Act* (FIPPA) specifically protects the information contained in the records of 16 tribunals (including the Landlord and Tenant Board) by ensuring they are not automatically available to the public. If someone wants access to information filed with a tribunal, they must file a Freedom of Information (FOI) Request to gain access to records.

As recently as 2002, the Ontario Rental Housing Tribunal (the predecessor to the Landlord and Tenant Board), compiled and distributed custom reports to commercial clients containing names and addresses of all tenants whose landlords had filed applications. On the occasion the Tribunal declined to prepare such reports, a request under the Freedom of Information and Protection Privacy Act was filed. On the appeal of that request, it was determined that personal information of tenants (names, addresses, and facts such as rent arrears) was contained in the report. This information is regarded as personal information under s. 21 of the FIPPA and is generally prohibited from disclosure. Decisions made by the Landlord and Tenant Board are published however, the names of the parties are redacted.

RentSafe Survey of Small Landlords

Landlord’s Self-Help Centre has distributed a survey link to the small landlord community on behalf of RentSafe, www.healthyenvironmentforkids.ca/collections/rentsafe

RentSafe is a collaborative initiative that fosters action across multiple sectors towards healthy rental housing conditions in Ontario. Survey development was led by the Centre for Environmental Health Equity at Queen’s University, an active RentSafe partner, in collaboration with Landlord’s Self-Help Centre and the Canadian Partnerships for Children’s Health and Environment (CPCHE).

Understanding the perspectives and concerns of housing providers, including small-scale landlords, is essential to the RentSafe initiative and its efforts to foster action across multiple sectors for positive change. We invite you to share your experiences and views through this anonymous survey to help build this broader understanding.

Interested in the RentSafe survey? Just click on the link below. From there, you will be able to read more about the survey and decide if you wish to participate.

<http://queensu.fluidsurveys.com/surveys/carlos-sanchez/rentsafe-small-scale-landlords-survey/> .

By participating in the 15 minute survey, you will have an option to be entered into a \$100 Visa gift card lottery.

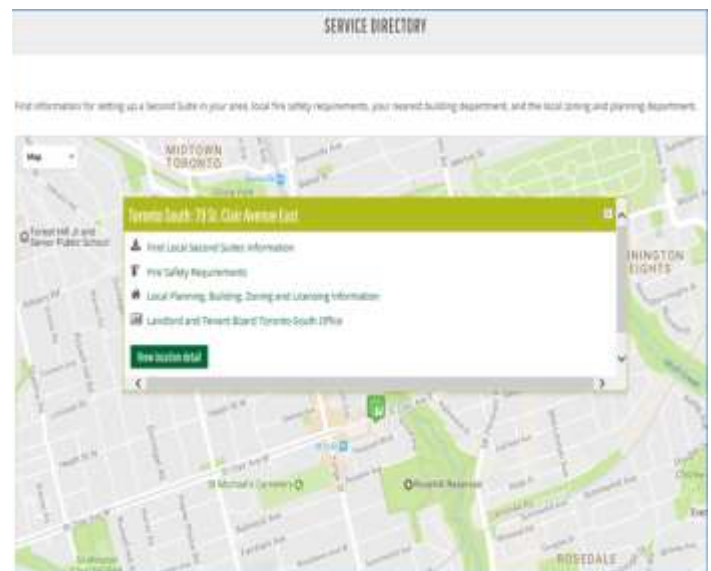
www.landlordselfhelp.com

Second Suites in Ontario Project

Landlord’s Self-Help Centre is pleased to announce the launch of the new Second Suites website, www.secondsuites.info. The redesigned website provides information and learning tools for Ontario homeowners who are currently operating an authorized Second Suite in their home or have an interest in creating and operating one.

The website offers three guides for download: *Financial Considerations: An Information Guide for Homeowners Thinking About Adding a Second Suite*; *Creating a Second Suite: An Information Guide for Homeowners*; and *Operating Guide: An Information Guide for Second Suite Owners*. The guides have been developed as a learning tool to support current landlords of Second Suites and anyone thinking of becoming one.

The site also includes links to current and archived research information and social media feeds to keep Second Suite landlords well informed. An interactive service directory in the form of a map provides the listings for all Ontario municipalities. Simply search for your municipality to find links to local resources for: Second Suite information, Fire Safety Requirements, Local Planning, Building, Zoning and Licensing Information, and Landlord and Tenant Board or Service Ontario locations.



www.secondsuites.info

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