

## Ending a tenancy for Landlord's Own Use?

On September 1, 2017, the rules changed for all small landlords in Ontario who give notice for the termination of a residential tenancy because they require the unit for their own use, or for the use of an immediate family member, defined as owner's parent, spouse, child, and spouse's parent or child.

Landlords continue to be required to give their tenant at least 60 days' written notice to the end of the term or rent period using the Landlord and Tenant Board Form N12. Be sure you are using the current form N12, updated on September 1, 2017, and found online at:

<http://www.sjto.gov.on.ca/documents/ltb/Notices%20of%20Termination%20&%20Instructions/N12.pdf>

Old N12 forms can be used for 30 days and will no longer be valid after September 30, 2017.

**What does end of term mean?** If the rent is paid monthly and due on the first of the month, the end of term is the last day of the month. If the tenancy is a fixed term tenancy, such as a one year lease, the termination date on the Form N12 must coincide with the last day of the lease.

**What's changed?** Effective September 1, 2017, amendments to the *Residential Tenancies Act, 2006* (RTA) now require the following:

- Landlords are required to pay the tenant one month's rent compensation or offer the tenant an acceptable alternate rental unit when terminating a tenancy based on own use;
- The landlord or immediate family member requiring the rental unit must occupy the unit for a minimum of twelve months;
- Landlords giving this notice must be an individual who owns the rental unit in whole or in part;
- It is now an offence under the RTA for a landlord to knowingly end a tenancy by giving notice in bad faith. A conviction for this offence can result in a fine of up to \$25,000 for an individual;
- 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 steps to convert the rental unit, or the building containing the rental unit, to use for a purpose other than residential premises.

**What is compensation and when must it be paid?** Section 48.1 of the RTA requires that compensation equal to one month's rent be paid to the tenant prior to the termination date specified on the N12 notice. Landlords may file an application with the LTB to obtain an order terminating the tenancy pursuant to the notice prior to the termination date. Landlords are encouraged to file their L2 application prior to the termination date to ensure the payment of compensation to the tenant becomes part of the LTB order.

**What is bad faith?** Bad faith occurs when a landlord gives a tenant a Form N12 notice for own use as a way to end the tenancy because of other issues. This means the landlord or their immediate family member does not have a genuine intention to move into the unit for the purposes of living there themselves. If a landlord is found by the Board to have acted in bad faith, the landlord could be ordered to pay the following:

- All or any portion of any increased rent that the former tenant has incurred or will incur for a one year period after vacating the rental unit;
- Reasonable out-of-pocket moving, storage and other like expenses that the former tenant has incurred or will incur;
- An abatement of rent;
- An order that the landlord pay a fine to the Board;
- Any other order that the Board considers appropriate.

### Why have these changes been made?

The changes are intended to increase protection for tenants and discourage landlords from unlawfully evicting tenants, whether to convert to a short-term rental or re-rent at a higher rate. The changes represent one component of the province's Fair Housing Plan, a sixteen point action plan intended to make housing more accessible.

Visit the LTB website for updated forms at: <http://www.sjto.gov.on.ca/ltb/forms/>

### In this ISSUE:



Legalization of Recreational Marijuana . . . . .	2
Increasing the Rent . . . . .	2
Vacant Home Tax . . . . .	3
Landlord Learning and Networking Forum . . . . .	3
Self-Help Tips . . . . .	4
Did You Know? . . . . .	5
RHEU Disclosure Policy . . . . .	6
CREA: Home sales down 15.3% since March . . . . .	6

### Disclaimer

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## Legalization of Recreational Marijuana

Bill C-45, the "*Cannabis Act*", was introduced by the federal government on April 13, 2017. If passed, this will mean that the possession, production and sale of non-medical cannabis (marijuana) is likely to become legalized and regulated in Canada by July, 2018.

While regulations for medical marijuana in Canada came into effect on August 24, 2016, the government now plans to allow recreational marijuana users to grow a maximum of four plants per household.

Since the introduction of this legislation, the Ontario Legalization of Cannabis Secretariat and the Ministry of Community Safety and Correctional Services have been in close collaboration. Comprehensive meetings have been held with key stakeholders to discuss the concerns of public safety, along with the possible challenges with enforcement. Landlord's Self-Help Centre attended home cultivation consultation to address concerns on behalf of the small landlord community.

### What does this mean for small landlords?

Currently, "the possession of marijuana for recreational use remains illegal (although individuals with licenses issued by Health Canada are authorized to access mail-order products from licensed producers, register to produce a limited amount for themselves, or designate someone to produce it for them)."<sup>1</sup> With this legislation, provinces will be given the authority to control certain aspects of legalization and regulation for this drug.

The *Smoke-Free Ontario Act* currently "bans smoking of tobacco [and marijuana] in common areas in apartment buildings and condominiums" and can be used by landlords as a tool to prevent "the impact of second-hand smoke to other tenants."<sup>2</sup> Once the *Cannabis Act* is passed, further amendments are expected to include all marijuana smoke.

Landlords in Ontario can decide if they want to impose smoking restrictions for new tenants renting out their units. These restrictions should be clearly documented in a tenancy agreement and explicitly state that the tenant is not allowed to smoke cigarettes or marijuana on the property or in the rental unit.

Potential issues for landlords may include:

- Mold developing due to the moisture required to grow the plants
- Security issues if the tenant is growing and harvesting a large supply
- Health concerns for other tenants living in the same building
- Illegal acts if the tenant decides to ignore the four plant limit and grows more in the rental unit
- Insurance implications such as denial of coverage or increased premiums
- More maintenance of the rental unit due to the specific growing environment marijuana plants require
- Increased utility costs

This list is not exhaustive, and landlords may face other difficulties with tenants growing and smoking marijuana in the rental unit. A notice for an illegal act will likely only be served in a limited number of circumstances, such as if the tenant is underage.

Until the *Cannabis Act* comes into effect, residential landlords are encouraged to keep educating themselves about marijuana's legal status so that tenants who are using, growing and selling this drug illegally can be properly dealt with through the Landlord and Tenant Board.

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1 <https://www.lexology.com/library/detail.aspx?g=9b453560-b44b-476a-bb65-3e995eedc48d>

2 <https://www.lexology.com/library/detail.aspx?g=9b453560-b44b-476a-bb65-3e995eedc48d>

## Increasing the Rent

The rules which govern annual rent increases significantly changed on April 20, 2017.

Before April 20, 2017, landlords in Ontario had the ability to increase the rent by any amount, provided their rental units had one of the following characteristics outlined in section 6 (2) of the *Residential Tenancies Act*:

- a) it was not occupied for any purpose before June 17, 1998;
- b) it is a rental unit no part of which has been previously rented since July 29, 1975; or
- c) no part of the building, mobile home park or land lease community was occupied for residential purposes before November 1, 1991. 2006, c. 17, s. 6 (2).

Landlords who served the Landlord and Tenant Board form N2: Notice of Rent Increase - Unit Partially Exempt with at least 90 days' notice before April 20<sup>th</sup>, were able to continue with the increase as long as the notice was completed and served properly. However, the government of Ontario passed the *Rental Fairness Act, 2017*, which removed this exemption. This means that section 6 (2) of the Act is no longer applicable, and those rental units are now subject to the annual Rent Increase Guideline.

After April 20, 2017, landlords who are subject to the *Residential Tenancies Act* can only increase the rent by the Rent Increase Guideline of the current year. They must then serve the Landlord and Tenant Board form N1: Notice of Rent Increase with at least 90 days' notice to their tenants.

The Rent Increase Guideline changes every year and is determined using a formula defined in the Regulations which averages the Ontario Consumer Price Index over a twelve month period in the preceding May to April.

For 2017, landlords can increase the rent by 1.5% using form N1. Landlords who serve notice to increase the rent in 2018 (January 1 to December 31) can raise the rent by 1.8% provided they serve the proper form, N1 Notice of Rent Increase, give 90 days, and take only one increase every twelve months.

For more information as to how the Rent Increase Guideline is calculated, please visit:

[http://www.sito.gov.on.ca/documents/ltb/Brochures/2018%20Rent%20Increase%20Guideline%20\(EN\).html](http://www.sito.gov.on.ca/documents/ltb/Brochures/2018%20Rent%20Increase%20Guideline%20(EN).html)

## Toronto considers a Vacant Home Tax

As part of the Ontario Fair Housing Plan (2017) which aims to reduce housing affordability issues in the province, the government of Ontario has passed legislation which permits the City of Toronto to implement a tax on vacant homes.

The Vancouver model for vacant home tax aims to decrease the number of vacant homes by motivating owners to occupy their properties, rent them to decrease the shortage of rental housing, or sell them.

Imposing the Empty Homes Tax on Vancouver property owners who leave their properties vacant will create a new revenue stream to fund housing affordability projects in Vancouver.

Toronto is currently working on the introduction of a similar tax. The *Implementing a Vacant Home Tax in Toronto Report* was presented to City Council in July to outline

the potential benefits and challenges the tax would create for home owners in Toronto. The research behind the report mainly focuses on the tax on vacant homes implemented by the City of Vancouver on January 1, 2017.

The Vancouver Empty Homes Tax requires all home owners to file an *Annual Mandatory Declaration* providing occupancy information. If the property is the principal residence of the owner, family member, or friend and occupied for six months of the year; or the property has been rented for at least six months of the current year in periods of 30 days or more, it is not subject to the Empty Homes Tax. Several exemptions to the tax have also been established, these include:

- It is not the owner's principal residence but was occupied for at least 180 days of the year because the owner works in the City of Vancouver;
- The owner or the tenant is receiving long-term, in-patient, medical or supportive care;
- The registered owner is deceased and a grant of probate or administration is pending;
- Legal ownership of property changed during the year;
- The property is undergoing extensive renovations, is under construction or re-development and permits have been issued;
- The property is subject to a strata by-law restricting the number of rental units;
- The property is under court order prohibiting occupancy;
- The property's use is limited to vehicle parking, or the shape, size or other aspect of the property precludes the ability to construct a residential building.

The benefits to the tax include increasing the availability of housing in the rental market; the re-sale market; and creating a source of tax revenue to sustain city projects seeking to reduce housing affordability issues. The potential challenges the city



would face when implementing the tax are varied. One of them pertains to the procedure of identifying which homes are vacant every year and therefore subject to the tax. Another challenge would be the creation of a regulatory body in charge of managing the administrative aspects of the tax system.

When comparing the regulatory environment governing residential tenancies in British Columbia to that in place in Ontario, there is a significant difference in public policy. In BC, provincial policies clearly protect the rights of the property owner, while in Ontario the legislative framework is intended to "protect renters" as stated in the Ontario Fair Housing Plan and illustrated by current and previous legislation which protect tenants.

In addition, there are many properties in Toronto which contain rental units such as a second suite in the basement, upper level of the home or in a separate structure such as a coach house or converted garage which have intentionally been left vacant by the owner. It is not uncommon for small landlords who have had bitter, stressful and/or financially draining experiences renting to opt out and remove their unit from the market. Since the report refers to "residential units" as the target of the Vacant Homes Tax, it is essential that a clear and concise definition of precisely what a "residential unit" is, be provided to ensure it does not unwittingly include properties with vacant rental units.

For information about the public consultation, visit <https://www1.toronto.ca/wps/portal/contentonly?vgnextoid=e40bee998c7cd510VgnVCM10000071d60f89RCRD>

### Landlord Learning and Networking Forum

**Save the date: Oct. 5<sup>th</sup>**

The Landlord Learning and Networking Forum is an annual event organized by Landlord's Self-Help Centre.

The Forum provides the small landlord community with a learning event that not only provides the opportunity for face-to-face networking with landlord peers and a variety of organizations and service providers that work with landlords, but also an opportunity to learn about the changing operating environment impacting all housing providers through educational presentations which highlight the information small landlords need to know.

Join us for the 2017 Landlord Learning and Networking Forum in Toronto on October 5<sup>th</sup>. Complete program details can be found <https://landlord-learning-forum-2017.eventbrite.ca>.

Members, please register early to reserve your seat! Public registration opens Sept. 20<sup>th</sup>.

# Self-Help TIPS

In this issue of the **Self-Help Tips** we will discuss the importance of a written tenancy agreement and outline the main clauses a landlord should include.

## Does a rental agreement have to be in writing?

Currently, the *Residential Tenancies Act* states that a tenancy agreement can be written, oral or implied. A written tenancy agreement is often called a lease and it creates a record of the things agreed upon by the landlord(s) and tenant(s). Landlords are allowed to draft their own tenancy agreements or use various types of tenancy agreement forms.

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. This standard lease will be developed by the Minister of Housing, and will still allow the landlord(s) and tenant(s) the option of including additional clauses. Having a standard lease will reduce disputes about tenancy agreements and serve as an educational tool for landlords and tenants. Once this requirement is in place, the standard lease form will be mandatory when a new tenancy is created and when existing tenancies are renewed.

## Written Tenancy Agreement

A written tenancy agreement allows both parties to clearly define and document the duties and responsibilities of one another. If a dispute arises, a written agreement may help to resolve the issues.

A rental agreement can be 'periodic' or for a 'fixed term'. A 'periodic' rental agreement is a rental agreement without a fixed term, for example, a month to month agreement. A 'fixed term' rental agreement is where the tenant agrees to occupy the rental unit for a specific period of time, usually a one-year period.



Once a written tenancy agreement is entered into, and has been signed by both the landlord(s) and tenant(s), the landlord must provide the tenant with a copy within 21 days.

## Conditions in a Rental Agreement

Landlords should try to clarify certain matters in their tenancy agreements. Before renting out a unit, landlords should consider all property-specific concerns and establish their rights in each matter using the tenancy agreement.

Section 4 of the RTA states that if a rental agreement contains a provision that conflicts with the Act or the regulations, the Act will prevail over the clauses in a rental agreement. Therefore clauses contained in a rental agreement that conflict with the RTA are not binding or enforceable. Some clauses in a lease are preventative clauses which may only act as an incentive, but may not necessarily be easy to enforce, for example, "no pet" clauses or limiting the number of occupants.

## What a written rental agreement should include:

- must state the legal name and address of the landlord;
- state the tenant(s) legal name(s);
- the date the tenancy begins;
- information about the last month's rent deposit, the rent amount, when the rent is due and how it is to be paid by the tenant;
- outline the tenant's and the landlord's responsibilities pertaining to snow removal, garbage removal, maintaining the lawn etc.;
- what services are included in the rent or whether extra charges must be paid for any services for example, heat, hydro, parking, laundry facilities, etc.;
- reserve the right to enter the rental unit for any other reason not specified in the RTA;
- include a clause requiring the tenant to provide you with written notification of any maintenance issues;
- that the tenants provide you with a written request for your approval when assigning or subletting the rental unit;
- that the tenant is responsible to obtain their own tenant insurance;
- any reasonable special clauses you may wish to add for example, a "No Smoking" clause if you wish that your tenant refrain from smoking in the rental unit; and
- confirm that the tenant received a copy of the brochure **Information for New Tenants** with the tenancy agreement.

## Tips

- A landlord should not sign the lease before giving it to the tenant. This will ensure that the tenant will return the lease.
- Do not insert a clause allowing the tenant the option to renew. The option to renew should be agreed upon by both parties.
- It is illegal to require the tenant to pay for any maintenance costs. A landlord is responsible to maintain the rental unit.
- Both landlord(s) and tenant(s) need to initial any changes made to the lease.
- Once signed, make sure the tenant receives a copy of the lease within 21 days.

# Did You Know?

*Q: I purchased a property and inherited the tenants that have been living in the rental unit for several years. They have not yet paid me any rent and apparently they also owed rent to the previous owner. I am going to serve them a notice of nonpayment of rent (Form N4) but I'm wondering whether I can include all the arrears owing to the previous owner as well as to myself. How can I proceed in this case?*

In this case you would only be able to claim for the arrears owing from the date you took possession of the property. The previous owner would have to file a claim in Small Claims Court for the arrears owed to him.



*Q: I recently served a notice of termination (Form N12) to my tenant because I plan to move in. The tenant was not home at the time so I gave it to her 13 year old daughter and later the tenant confirmed that she did receive it. Can I still proceed or will it be a problem because I gave the notice to the daughter?*

Serving a notice or document to a minor is not one of the acceptable methods of service under the Residential Tenancies Act even if the tenant acknowledges receiving it. In this case the notice would have to be re-served.



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

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



*Q: I attended a hearing at the Landlord and Tenant Board based on nonpayment of rent. I just received the Order from the Board which includes some errors in the calculations of the arrears owing. How do I get it corrected, would I need to file a request to review?*

If the errors on the order are just clerical errors (i.e., a calculation error or incorrect dates) you would not file a request to review, you would instead file a Request to Amend an Order. The request must be made within 30 days of the date the order was issued. The Board member who made the decision will consider your request and if there is a clerical error the correction is made and an Amended Order is issued which replaces the original order. This is done without holding a hearing, however in some cases the member may deny the request to amend the order; ask for written submissions from the parties to help with the member's decision or hold a hearing to decide if the request to amend the order should be granted or denied.



*Q: I have been renting a condo unit to a tenant for a few months, she is currently in arrears of rent and I have served her the Form N4. I believe she has moved out but I can't say for certain because she did not tell me she was leaving. There are no keys used for entry to the unit, as it is a Smart lock which has a key pad entry and wireless locking system. How do I determine that the tenant has moved out?*

The most important factor in determining that a tenant is no longer in possession of the rental unit is when the tenant returns the keys of the unit to the landlord. In this scenario it can be a challenge for the landlord to determine whether the tenant has actually given up possession of the unit when there are no keys to be returned to the landlord. The landlord would have to give a 24 hour written notice to inspect the unit under the assumption that the tenant is still living there. If there are still any belongings left behind and the tenant did not give any written confirmation that she was leaving the landlord cannot take possession of the unit and would have to obtain possession by filing an application with the Landlord and Tenant Board for an order terminating the tenancy.



*Q: I have a question about filing with the Sheriff. I obtained an order from the Landlord and Tenant Board for the tenant to vacate the premises at the end of the month. Am I able to pre-book the eviction by the Sheriff so that the Sheriff can evict the tenant on the day specified in the order?*

Generally a landlord cannot pre-book the enforcement of an order with the Sheriff's office until after the date specified in the order. However, depending on the circumstances the Board may make an exception and order that the eviction be expedited and that the landlord be allowed to file with the Sheriff's office as soon as they receive the order.



*Q: I understand that if a tenant dies the tenancy is terminated 30 days after the death of the tenant. My tenant died on the 15th of this month and the executor is asking for the last month's rent back. Is the last month's rent used just for the 30 days after the death of the tenant, or is it used to cover the following month starting from the first of the month?*

When a tenant dies and there are no other tenants of the rental unit, the tenancy terminates 30 days after the death of the tenant. In your situation the tenancy would end on the 15th of the following month, therefore you would only be entitled to the rent up to the 15th and would have to return the remainder of the rent to the executor of the estate.



# What's New?

## RHEU Public Disclosure Policy

The Ministry of Housing has recently informed LSHC that it intends to publicly disclose some convictions it secures under the *Residential Tenancies Act* (RTA). This change is in keeping with other ministries and the province's approach to an open and transparent government.

The Rental Housing Enforcement Unit is responsible for monitoring RTA compliance, investigating alleged offences, and initiating prosecution. The Ministry will publish conviction information for corporate landlords - only business/corporate names will be made public on the Ontario.ca website and provided to community media outlets. Conviction information of repeat offenders will be published; this will include corporations, individual landlords and tenants. It is expected that publishing the names of repeat offenders will serve as a disincentive from committing the same offence.

The RHEU will apply the publication policy to new cases it receives starting August 1, 2017 and anticipates publication of convictions would likely begin in late 2017 or early 2018.

For information about the Rental Housing Enforcement Unit, visit <http://www.mah.gov.on.ca/Page142.aspx>.

## CREA: Home sales down 15.3% since March



The Greater Golden Horseshoe (GGH) real estate market is beginning to level off following policy changes introduced by the province to cool down the southern Ontario market.

According to the Canadian Real Estate Association, the number of homes sold in Greater Toronto decreased 40.7 per cent in July 2017 compared to July 2016. Home sales dropped 15.3 per cent in April, May, June and July following the introduction of Ontario's Fair Housing Plan. The shift in the Greater Toronto region led to the largest decline in national sales in seven years.

Several media outlets recently reported purchasers have attempted to re-negotiate their Agreements of Purchase and Sale with vendors prior to closing with some asking for vendor take-back mortgages. Realtors are predicting September will be a stronger month provided there is not an influx of new listings, as was the case in the spring.

The province is also reviewing the rules for real estate agents as prescribed pursuant to the *Real Estate and Business Brokers Act* (REBBA), another measure outlined in the Ontario Fair Housing Plan intended to better protect consumers. The government has proposed changes to the rules and penalties and completed a public consultation in July 2017 among which included a proposal to ban double-ended deals, with some exceptions, where an agent represents both buyer and seller.

## Could there be radon in your home?

Radon is a naturally occurring radioactive gas that is produced by the breakdown of uranium in the ground. It moves through the soil and escapes into the air or seeps into building structures, through cracks in the foundation walls and floors, or any gaps around pipes in homes or commercial buildings.

Radon is not a health concern when it leaks into the outdoor air as it is diluted to a low concentration. However, high levels pose a serious health risk. Radon is the second leading cause of lung cancer after smoking; approximately 16% of lung cancers are radon-induced.

Almost all homes have some traces of radon, however the levels can vary. When radon is contained in a poorly ventilated space such as a basement, high levels can sometimes be found. Energy efficiency measures can also lead to increased level as homes become more air tight where radon is contained.

You can test for radon in your home by hiring a professional or purchasing a do-it-yourself kit:

- If hiring a radon measurement professional, Health Canada recommends that the contractor be certified. To find a certified contractor visit <http://c-nrpp.ca/find-a-professional/>
- You can purchase a do-it-yourself radon test kit. The kits range from \$25 to \$75. For advice, and where to buy a test kit, visit: <http://www.TakeActionOnRadon.ca/test>.

If you are self-testing, a longer-term test device is recommended as it will be more accurate and provide a better estimate of average exposure. A minimum of 3 months is required. **If the radon level is above the Canadian guideline level of 200 Bq/m<sup>3</sup>, TAKE ACTION!**

For more information about radon, visit LSHC's Blog at [www.landlordselfhelp.com](http://www.landlordselfhelp.com). You'll find detailed information regarding RentSafe at <http://www.cela.ca/rentsafe>. Use the search option for links to information on radon.

The federal government website also offers a variety of radon information, visit <https://www.canada.ca/en/health-canada/services/environmental-workplace-health/reports-publications/radiation/radon-your-home-health-canada-2009.html>

November is a great time to start a radon test for your home, as it is best to test during the colder months.

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