

## **N12 - Termination of Tenancy for Landlord's Own Use**

LSHC is providing additional information regarding N12 - Termination of Tenancy for Landlord's Own Use to clarify information presented at the 2018 Landlord Learning and Networking Forum. We regret that the N12 presentation at the Forum seemed to raise more questions rather than answers and resulted in some confusion respecting the legislation and how it is applied.

A landlord may initiate action to end a tenancy agreement when the rental unit is required for the occupancy of the landlord and/or the landlord's immediate family, or for the occupancy of a care giver who will provide care services to the landlord or a member of the landlord's immediate family, who is living in the same building or complex. The landlord will be required to provide written intention that the landlord or landlord's family will reside in the unit for at least one year.

Immediate family is defined as the landlord, landlord's spouse, child, parent, spouse's child, and spouse's parent.

Only individual landlords can give the N12 Notice for landlord's own use. If the property is registered under the name of a corporation, a notice for landlord's own use **cannot** be given.

If ending a tenancy for the reason of landlord's own use, the landlord must give the tenant a minimum 60 days' notice to the end of the rental term or period. If rent is due on the first of the month, the landlord must give a minimum 60 days' notice terminating on the day before rent is due. If the tenant has a fixed term tenancy agreement or a lease, the landlord must honour the term of the lease and cannot give notice to terminate prior to the expiration of the tenancy.

The landlord must also compensate the tenant in an amount equal to one month's rent, to be paid prior to the termination date on the N12 Notice or offer the tenant another rental unit that is acceptable to them.

A landlord may also issue the N12 notice when the property, containing no more than three (3) rental units, is being sold and the landlord has entered into an agreement of purchase and sale of the complex, and the person buying the building needs the rental unit for:

- their own use
- the use of an immediate family member
- the use of a person who will provide care services to the landlord or a member of the landlord's immediate family, who is living in the same building or complex

**Termination of Tenancy for Landlord's Own Use** - Landlords giving the N12: Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental Unit to tenants which indicate that the owner and/or immediate family members require the rental unit are now required to pay one month's compensation or offer another rental unit acceptable to the tenants.

The compensation requirement came into effect on September 1, 2017 pursuant to Bill 124 - the Rental Fairness Act, 2017, which amended the Residential Tenancies Act. Section 48.1 of the Residential Tenancies Act states the following:

*“A landlord shall compensate a tenant in an amount equal to one month’s rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48.”*

It does not matter if the tenancy is a fixed term or month-to-month basis, this requirement must be fulfilled. The payment of compensation is required only when a landlord or the landlord’s immediate family member is taking possession of the rental unit. If a landlord is selling the rental unit and the purchaser requires possession to move in, the payment of one month’s compensation or the offer another rental unit acceptable to the tenant **does not apply**.

One month’s compensation must be a monetary amount equal to one month’s rent and must be paid to the tenant on or before the termination date indicated in the N12 notice. For example, if the N12 termination date is April 30th and the tenant pays the rent amount of \$1,000 dollars per month, the landlord then must pay the tenant \$1,000 dollars on or before April 30th. The payment of compensation is extremely important as the Landlord and Tenant Board may delay or dismiss the N12 application if the landlord failed to pay the one month’s compensation to the tenant on or before the termination date.

The landlord has two options according to section 48.1: either pay the compensation or offer another rental unit acceptable to the tenant. If the landlord chooses to offer another rental unit instead of paying one month’s compensation, the tenant must find the rental unit acceptable. To avoid potential disputes, LSHC suggests landlords file their N12 notices with the Landlord and Tenant Board as soon as the notices are given to the tenants. Filing the N12 notice and scheduling a hearing as soon as possible may resolve the issue of whether or not the landlord has satisfied the requirement in section 48.1 of the Residential Tenancies Act.

### **Termination of Tenancy for Purchaser’s Own Use**

Landlords selling their rental units must give the N12: Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental Unit to tenants indicating that the purchaser wants to occupy the rental unit.

According to section 49 of the Residential Tenancies Act, the landlord and the purchaser must have a Purchase and Sale Agreement in place in order for the N12 notice to be given to the tenants. Another factor to consider is whether or not the tenancy is on a month-to-month basis since this determines when the N12 notice can be given.

Unlike giving an N12 notice for landlord's own use, the landlord is NOT required to pay one month's compensation or offer another rental unit acceptable to the tenant when terminating for the purchaser's own use.

The following chart illustrates the main differences between giving an N12 notice for landlord's own use and purchaser's own use:

	<b>Landlord's Own Use</b>	<b>Purchaser's Own Use</b>
Applicable RTA section	Section 48	Section 49
Applies to	Landlord, landlord's spouse, child, parent or caregiver for any of these	Purchaser, purchaser's spouse, child, parent or caregiver for any of these
Termination date	Must be 60 days	Must be 60 days
Requirement under RTA section 48.1	One month's compensation or offer another rental unit owned by the landlord	Not Required
Signed Purchase and Sale Agreement	Not Required	Required
Residential complex has more than 3 residential units	Notice can be given	Notice cannot be given

It should also be noted that a tenant may terminate the tenancy earlier than the date specified in the notice to terminate given by the landlord. The tenant must give at least 10 days written notice of their intention to vacate.

Landlords can apply to the Landlord and Tenant Board immediately after giving the notice to the tenant. Landlords must apply to the Landlord and Tenant Board within 30 days of the termination date specified on the notice. If applying later than 30 days, the application will not be accepted as the notice has expired.

It is important to note that a tenant does not have to give up possession of the rental unit until they are ordered to do so by the Landlord and Tenant Board. If a landlord is seeking termination based on the reason of Landlord's Own Use, the landlord will have to apply to the Landlord and Tenant Board and schedule a hearing to obtain an order. The LTB Member or Adjudicator must be convinced that the application is bone fide and that the landlord is acting in good faith before issuing an eviction order.

### **Bad Faith**

The Residential Tenancies Act was amended pursuant to Bill 124, the Rental Fairness Act, 2017, to include new provisions for bad faith.

Bad faith is presumed, unless proven otherwise on a balance of probabilities, that the landlord gave notice in bad faith if at any time within one year after the former tenant vacates the rental unit, they:

- advertise the rental unit for rent;

- enter into a tenancy agreement with someone other than the former tenant;
- advertise the rental unit, or the building containing the rental unit, for sale;
- demolish the rental unit, or the building containing the rental unit; or
- take any steps to convert the rental unit, or the building containing the rental unit, to a use for a purpose other than rental residential premises.

The Board may make an order for the following if the former tenant files a T5: Tenant Application- Landlord Gave a Notice of Termination in Bad Faith:

- a) If a landlord is found to have acted in bad faith, an order may be issued by the Landlord and Tenant Board for the landlord to pay the former tenant for,
  - i. 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; and
  - ii. reasonable out-of-pocket moving, storage and other like expenses that the former tenant has incurred or will incur.
- b) An order for abatement of rent.
- c) An order that the landlord pay to the Board an administrative fine not exceeding the greater of \$25,000 and the monetary jurisdiction of the Small Claims Court.
- d) Any other order the Board considers appropriate.