



Selling a Rental Property

What should a landlord know before listing a rental property for sale?

Selling a rental property with tenants in possession can be a challenge. Before the landlord lists the property for sale, the landlord should ensure that he/she fully understands the tenant's rights and the landlord's obligations and responsibilities respecting privacy provisions, security of tenure and under what circumstances a tenancy agreement may be terminated when the property has sold.

The *Residential Tenancies Act*, which is the law that governs most residential tenancy agreements in Ontario, addresses several issues related to tenancies and the sale of a rental property. They include:

- Entering the rental unit for the purpose of showing to a prospective purchaser;
- Gaining access to the rental unit for the purpose of appraisal, insurance, etc.;
- Termination of a tenancy agreement for the occupation of the purchaser; and
- Penalties for bad faith terminations where the purchaser did not require possession.

What are the rules for entering a rental unit to show it to a prospective purchaser?

The *Residential Tenancies Act* has established specific guidelines for entering a rental unit to show the premises to a **potential purchaser**.

The *Residential Tenancies Act* allows the landlord, a broker or a salesperson registered under the *Real Estate and Business Brokers Act, 2002* to enter a rental unit to allow a potential purchaser to view the rental unit after giving the tenant written notice at least 24 hours before the time of entry. The notice must specify the reason for entry; the day of entry; and a time of entry, which must be between the hours of 8:00 a.m. and 8:00 p.m. (i.e. 2-4 pm). A window of time allows the landlord to have room in case of a delay due to traffic, etc.

Does the landlord have to attend with the potential purchaser?

The *Residential Tenancies Act*, section 27(2), provides that the landlord is not required to be present during the showing as long as a) the showing is conducted by a broker or salesperson registered under the *Real Estate and Business Brokers Act, 2002* and b) the landlord has provided written authorization for the broker or salesperson to show the rental unit.

What happens if an appraiser or insurer needs to inspect the premises?

The landlord also has the right to enter the rented premises to allow a potential mortgagee or insurer of the property to view the rental unit. The notice provisions for entering the tenant's rental unit for this reason are as specified earlier, 24-hour written notice that specifies the reason for entry, the day of entry and a time of entry between the hours of 8 a.m. and 8 p.m.

Other than handing the notice to the tenant, how can a landlord deliver the written notice to enter the premises?

The landlord may give a 24-hour written notice of entry to the tenant by:

- a) placing it in the tenant's mail box or where mail is ordinarily delivered;
- b) sliding it under the tenant's door;
- c) by handing it to an apparently adult person;
- d) posting it on the tenant's door;
- e) by facsimile to the residence or place of business;
- f) by courier or mail with additional time added; or
- g) by email if the tenant has consented in writing to service by email.

Note: Only the notice of entry may be posted on the door or sent by email. If you must serve any other document to a tenant do not post it on the door or send it by email.

Is a landlord allowed to terminate a tenancy agreement when a property is sold?

While case precedents enabled landlords to terminate tenancy agreements on the basis of a purchaser's need to occupy the property in the past, the procedure for termination and provisions for access were not formalized until the *Tenant Protection Act* was enacted in June 1998. The *Residential Tenancies Act* continues this practice and recognizes an additional need.

Once the landlord has an executed agreement of purchase and sale, the landlord may issue a notice of termination on behalf of the purchaser. The law clearly defines the reason for which a tenancy may be terminated when a property is sold, namely, for the purchaser's own use. Effective July 21, 2020, the landlord is required to give the tenant one month's rent as compensation, or offer the tenant another acceptable unit if serving the N12 notice on behalf of the purchaser. The compensation must be given before the termination date on the notice.

For more information about the agreement of purchase and sale, please review the Agreement of Purchase and Sale section in the Landlord and Tenant Board Interpretation Guideline 12 to ensure that your agreement is valid. <https://tribunalsontario.ca/lrb/rules-practice-directions-guidelines/>

From September 1, 2021 onwards, when filing an application for purchaser's own use, the landlord will be required to disclose in the L2 application to the Landlord and Tenant Board whether they have previously given a N12 or N13 notice within two (2) years of this application for the same or different rental unit. Failure to comply with this requirement will result in the refusal of the application.

What does "purchaser's own use" mean?

The reason for termination is similar to landlord's own use and it means that if the premises are required for residential occupation by the purchaser; the purchaser's spouse; a child or parent of the purchaser or the purchaser's spouse; or a person who provides or will provide care

services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the building where the rental unit is located, a notice may be given. The purchaser will be required to provide an affidavit or declaration (if they are pursuing the own use application) which states their intention of residing in the rental unit. The affidavit or declaration must be submitted to the Landlord and Tenant Board along with the application.

Can a notice be given if the purchaser plans to live in the house?

The *Residential Tenancies Act* recognizes the purchaser's intent to occupy a rental unit when a rental property is sold and accepts this as a valid reason for termination of a tenancy under certain circumstances:

- the property must contain three or fewer residential units;
- the landlord/vendor has entered into an Agreement of Purchase and Sale to sell the residential complex; and
- the purchaser must, in good faith, require possession of the complex or a unit for the residential occupation of himself, the purchaser's spouse; a child or parent of the purchaser or purchaser's spouse; or a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the building where the rental unit is located.

The tenant's lease doesn't expire for another six months. The purchaser wants to occupy the premises, what can she do?

If there is a written fixed term tenancy (lease), the purchaser must honour that agreement as the tenant is entitled to continue the tenancy until the expiration of that agreement, unless agreed otherwise. The purchaser can ask if the tenant is willing to terminate early and, if so, enter into an Agreement to Terminate a Tenancy (Form N11).

What if the purchaser does not intend to occupy the premises but wants to find his own tenants?

The purchaser would **not** have a valid reason to terminate the tenancy. The tenancy would continue under the same terms and conditions as originally established by the landlord/vendor unless the purchaser intended to occupy the premises himself or required the premises for the occupation of his spouse or a child or parent of one of them.

The **Residential Tenancies Act Fact Sheets** are intended to help landlords learn and understand their rights and responsibilities. They are not intended as legal advice but rather as general information.

