



Quarterly News

2024 Rent Increase Guideline

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Landlord's Self Help Centre

15th Floor- 55 University Ave
Toronto, Ontario, M5J 2H7

Tel: 416-504-5190
Toll free: 1-800-730-3218
info@landlordselfhelp.com

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The Ontario government has determined that the 2024 Rent Increase Guideline is 2.5%. This percentage is the maximum that the government can determine as per section 120 (2) of the *Residential Tenancies Act*. Starting January 1st, 2024, residential landlords can increase their lawful rent by 2.5% after providing proper legal notice of rent increase. The guideline is the maximum a landlord can increase most tenant's rent without the approval of the LTB. The cap does not apply to rental units first occupied after Nov. 15, 2018 for residential use. For more information on the Rent increase Guideline please visit-

<https://www.ontario.ca/page/residential-rent-increases>

Notice of Rent Increase form: As per section 116 of the RTA, proper legal notice means that residential landlords must use the form approved by the Landlord and Tenant Board, which may be either the N1 or N2 (exempt units) notice. This 90 days' written notice must be given to the tenant before the intended effective date.

Remember: Residential landlords can only increase the rent once every 12 months.

Example: If a landlord is serving a notice of rent increase (N1 or N2) to be effective on April 1st, 2024, the landlord must give it to the tenant prior to January 1st, 2024. Landlords must also consider the method of service that will be used in order to give the notice to the tenant because this may increase the 90 days' notice period required.

To find the N1 and N2 notices, visit <https://tribunalsontario.ca/lrb/forms/>

For more information about which form you should give to your tenant, contact a legal service provider.

New Minister of Municipal Affairs and Housing

The government of Ontario received the resignation of Steve Clark, previous Minister of Municipal Affairs and Housing after facing controversy over the Greenbelt land for development. On August 9th, 2023, Ontario's auditor general produced a report where it was noted that the result of the process of selecting developers for the Greenbelt land favoured certain developers over others. As a result, Premier Doug Ford appointed Paul Calandra as the new Minister of Municipal Affairs and Housing since September 5th, 2023.

For more information about this cabinet change, visit <https://www.cbc.ca/news/canada/toronto/new-ontario-housing->

N12 Notice: Bad Faith Evictions

Bad Faith Applications – Based on Form N12

Due to several factors, including Landlord and Tenant Board (LTB) delays and increased mortgage rates, many landlords are opting to take back their rental unit for their own use or sell the property altogether. If a landlord requires the rental property for their own use or sell to someone planning to move into the rental unit, a landlord has to follow proper procedure and serve existing tenant with LTB Form N12 notice. It is very important to not only complete the N12 properly (*view LSHC module on how to complete an N12 notice at <https://landlordselfhelp.com/landlord-learning-modules/>*), but understand the requirements under the form N12. Failure to meet these conditions and comply with these stipulations will be considered an act of “bad faith” on the landlord’s part, which can result in the former tenant filing a T5 application.

What is a “Bad Faith” Application?

With so many landlords choosing to serve the N12 notice, we are seeing an increased number of T5/Bad Faith applications being filed. Landlords are often surprised, when a former tenant files a T5 application against them on the basis that an N12 was served in Bad Faith. In many instances, the landlord may have been sincere with serving the N12 to the tenant (now former tenant), and may have a valid reason why stipulations under the N12 were not upheld. However, it is imperative to know that, once the conditions were breached, the T5 application has a high chance of success at the LTB.

Be mindful that it is an offence under the RTA for a landlord to knowingly end a tenancy by giving notice in bad faith. Section 57 (s.57) of the *Residential Tenancies Act* (RTA) sets out remedies available to a former tenant should the LTB determine that a landlord served a notice in bad faith. Remedies are as follows:

- An order that the landlord pay to the former tenant 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.
- An order that the landlord pay a specified sum to the former tenant as general compensation in an amount not exceeding the equivalent of 12 months of the last rent charged to the former tenant.
- An order that the landlord pay a specified sum to the former tenant for reasonable out-of-pocket moving, storage and other like expenses that the former tenant has incurred or will incur.
- An order for an abatement of rent.
- Any other order that the Board considers appropriate.
- An order that the landlord pay to the Board an administrative fine of up to \$50,000.

*It should be noted that these fines are expected to be increased on a day to be named by proclamation of the Lieutenant Governor on Bill 97, Section 238. 1 (s.238 (1)). Upon proclamation the \$50,000 fine will be amended to a \$100,000 fine.

In order for a landlord to avoid having a T5 application being filed or being successful, a landlord must ensure that:

- The person expected to move into the rental occupies the rental unit within a reasonable time after the former tenant vacated the rental unit.
- That person occupies the unit for a MINIMUM of one (1) year, after the unit is vacated by the former tenant.

Before deciding to serve a tenant with N12 notice, a landlord should ensure that they are able to meet the above conditions. Though there may be a valid reason why the person expected to move into the unit did not do so in a timely manner, or a reasonable explanation why that person did not stay the minimum one (1) year in the unit after moving in, it does not negate the fact that those conditions were breached, the ramifications are clearly set out. Therefore, if there’s any doubt that these conditions not may be met, a landlord should avoid serving N12 notice altogether.

Ultimately, should a T5 application be brought against you, the decision on whether N12 notice was served in Bad Faith will be left to an Adjudicator at the LTB, after carefully weighing the evidence that was presented at a hearing.

How to End a Tenancy

In Ontario, it is common for a landlord and tenant to enter into a fixed term tenancy. However, it is important to be aware that a tenancy does not automatically terminate at the end of a lease. Rather, once a lease agreement ends, the tenancy automatically renews as a month-to-month tenancy, and continues with the original terms of the lease. This is important for landlords to know, to ensure they do not assume the tenants will leave at the end of the lease term. This can be described as security of tenure, as per Part V, s. 27 of the *Residential Tenancies Act, 2006*, which states that “a tenancy may only be terminated in accordance with the Act”. A Landlord may terminate a tenancy either by notice, or by agreement.

Termination of Tenancy by Notice

A Landlord may terminate a tenancy by serving the tenant with proper notice. The specific notice will depend on the reason for terminating the tenancy. For example:

- N4 Notice is given when the tenant is not paying rent,
- N5 Notice is given if the tenant substantially interferes with the reasonable enjoyment of the residential complex or another lawful right, privilege or interest of the landlord or another tenant, causes damages or overcrowding in the rental property, and
- N12 Notice can be given to end your tenancy because the landlord, a purchaser or a family member requires the rental unit etc.

These notices are available to be downloaded from the Landlord and Tenant Board’s website at <https://tribunalsontario.ca/lrb/forms/>

These notices must be prepared and served on the tenant in accordance with the *Act*. If the notice is not served in accordance with the *Act*, or, if there are any fatal errors on the notice it may result in the notice being void and unenforceable. It is important to note that only serving a notice will not automatically terminate a tenancy by the specified termination date. If a tenant does not agree with what is in the notice, they do not have to move out of the unit. This means the landlord would be required to apply for an eviction and attend a hearing seeking an order issued by the Landlord and Tenant Board.

Agreement to Terminate Tenancy

A tenancy can be terminated at any time during the tenancy, if both the landlord and tenant agree to terminate the tenancy on a specific date. If the landlord and the tenant agree to terminate the tenancy, a form N11- Agreement to end the Tenancy should be signed. The reason for signing this form is to ensure that the landlord has a remedy should the tenant not vacate on the day that was agreed upon. If a tenant advises a landlord that they are going to vacate the unit on a specified date, and fail to do so, the landlord would not have any recourse against the tenant. However, if the parties sign an N11, the landlord can then file an L3 application with the LTB, and obtain an Order terminating the tenancy. The landlord must take action within 30 days of the stated termination date on the notice or the notice becomes void.

Tenant’s Notice to end the Tenancy

A tenant can also terminate the tenancy by providing the landlord with a form N9 -Tenant’s Notice to End the Tenancy. A tenant must give 28 days’ notice for a daily or weekly tenant and for all other types of tenancies, a tenant is required to give 60 days to the end of the rental period or term. If the tenant fails to vacate the premises according to the notice the landlord must take action within 30 days of the stated termination date or the notice becomes void. The landlord may then file the L3 application with the LTB to obtain an order terminating the tenancy.

For additional information and resources on terminating a tenancy, please visit our website at www.landlordselfhelp.com

Maintenance during the Fall and Winter

What are the Landlord's Maintenance Responsibilities During the Fall and Winter Seasons?

According to the *Residential Tenancies Act, 2006* section 20(1) a landlord is responsible for providing and maintaining a rental in a good state of repair and fit for living and complies with health, safety, housing and maintenance standards. This is especially relevant during the fall and winter season, as the risk or concerns for safety at the rental property increase due to weather conditions. For example, a landlord must make clear and safe walkways, driveways or pathways by raking leaves during the fall, shoveling snow and salting paths so no ice or slippery patches are present during the winter. *Please review your municipality bylaws to find out when you are expected to shovel the snow.*

If landlords are responsible for providing heating during the cold season, a landlord must keep the temperature of each room in a rental unit at least 20°C from September 1st to June 15th except for locker rooms and garages (O. Reg. 516/06 s 4). **Please note:** dates and temperatures may vary where local municipalities have established bylaws for heat, please contact your municipality for details.

It is also important for landlords to remember to replace the furnace filter at least once a year or as frequently as recommended by an expert.

In Ontario, landlords must also follow the *Fire Code*. This includes providing and maintaining smoke and carbon monoxide alarms in the rental unit. Landlords must replace batteries and ensure they work correctly if these alarms stop working. It is recommended for landlords to inspect these alarms and replace batteries at least once a year. If your rental unit has to comply with the availability of fire extinguishers, then they are also the landlord's responsibility to maintain and ensure they are working properly. *For more information about the requirements under the Fire Code, contact the local fire department.*

For more information regarding heating and maintenance, please refer to the following resource:

Landlord and Tenant Board Brochure on Maintenance and Repairs, which can be found at [https://tribunalsontario.ca/documents/lrb/Brochures/Maintenance%20and%20Repairs%20\(EN\).pdf](https://tribunalsontario.ca/documents/lrb/Brochures/Maintenance%20and%20Repairs%20(EN).pdf).

To learn about entering the rental unit to provide maintenance, please refer LSHC's RTA Fact Sheet entitled Entering the Rental Unit at <https://landlordselfhelp.com/media/RTA-Entering-Unit-REV2021.pdf>.

*Contributed by Tanya Raveendran.
Tanya is a paralegal student participating in
LSHC's Paralegal Student Placement Program.*

How does PIPEDA Affect Residential Tenancies in Ontario?

The **Personal Information Protection and Electronic Documents Act** (PIPEDA) is a federal law that recognizes individual privacy rights and organizations' needs to collect, use and disclose personal information. To ensure that landlords follow PIPEDA, the Office of the Privacy Commissioner of Canada has outlined tips for common privacy dilemmas in the residential housing sector.

For additional information on PIPEDA and privacy in the rental housing sector, visit the Office of the Privacy Commissioner of Canada's website at https://www.priv.gc.ca/en/privacy-topics/landlords-and-tenants/02_05_d_66_tips/

*Contributed by Maria Vella.
Maria is a paralegal student participating in
LSHC's Paralegal Student Placement Program.*

Did You Know?

Q: I rented a house to a tenant, our agreement states that he is responsible to maintain the lawn as well as shoveling the snow in the wintertime. He has been doing these tasks for some time but he has just informed me that he will not do it any longer as he has found out it is not his responsibility. Can he do this?

The tenant's only responsibility is to maintain the rental property in a state of cleanliness and not cause any damages to the property. The responsibility of clearing the snow and cutting grass is the property owner's. Regardless of what's stated in the lease agreement, the onus remains on the landlord should a tenant refuse.

Q: I have been renting a house to a tenant for several years but I have decided to sell the property. I haven't made any improvements in the house for quite sometime, so I plan to do some minor upgrades before putting the house on the market. Which notice can I serve my tenant to move out so that I can do the upgrades?

There is actually no notice of termination that can be served based on what you have described. You can try to speak to your tenant and explain what you plan to do, but there is no notice that you can serve your tenant for this particular reason.

Q: I have a couple renting one of my units, both are named on the lease. They have informed me that they are separating and that the husband is moving out. The remaining tenant wants to stay but is asking me if I can reduce the rent. Am I obligated to reduce the rent in this case?

You are under no obligation to reduce the rent in this case. However, there is nothing preventing the tenant from bringing in another person to help pay the rent.

Q: I rent out a four-plex, the tenants each have a designated parking space. It has come to my attention that one of my tenants is renting out

his parking space to another person who does not live on the premises. The other tenants are complaining because this person comes on to the property with his friends who are often very disruptive to the other tenants who live there. What can I do in this situation?

The first thing to do is to speak with your tenant and bring this to his attention, if things don't improve then you may have to serve your tenant a notice, a Form N5 in this case. This notice has to provide specific details including dates and times of each incident. You would also have to speak with other tenants and ask if they would be willing to go to a hearing as witnesses at the Landlord and Tenant Board if necessary.

Q: I live on the property and I rent a small apartment to a tenant, who lives in the basement. The tenant is supposed to share the kitchen facilities with myself, however he never comes upstairs to cook or have meals. I'm aware that if it's shared accommodation such as shared kitchen and/or bathroom then the tenancy does not fall under the Act, but I'm wondering if that is still the case if the tenant refuses to share?

You may have to file an application (Form A1) with the Landlord and Tenant Board for a determination on whether the tenancy is exempt from the *Residential Tenancies Act*. It will be up to an adjudicator to make a ruling on the matter based on both parties' testimony.

Q: I purchased a property with several units and all the existing tenants are continuing their tenancies. Apparently they have all paid a last month's rent deposit to the current owner. What happens to that deposit? Do I have to collect a new deposit from them when I take possession?

If the tenants have paid a last month's rent deposit to the current owner, that deposit is supposed to be transferred to the new owner when the property is sold. As the new owner, you cannot collect another deposit from the tenants.

LTB Updates

- **Resolving Matters Without a Hearing:** The Landlord and Tenant Board has removed the Advance Resolution Request (ARR) form and replaced it with two new forms. One form is **Request to Withdraw an Application**, which can be used by the applicant if he or she does not want to continue with the application. The second form is **Request for a Discontinuance Order Without a Hearing** which can be used to discontinue an L1 application for arrears if the tenant has paid the arrears and filing fee in full. These two forms can be found in the **Forms for Landlords section** in the Landlord and Tenant Board website. **Current ARR forms will be accepted until September 30th, 2023.**
- **Issues a Tenant Intends to Raise at a Rent Arrears Hearing:** This form has been updated to include the L10 applications where former tenants are allowed to bring up issues that occurred during their tenancy.
- **Video Conference User Feedback Survey:** The Landlord and Tenant Board is conducting a survey on proceedings held on Zoom. This survey is available at the end of your hearing where you can provide your feedback on technical issues you may have encountered in order to attend the hearing.
- **Improved Timelines:** The Landlord and Tenant Board has indicated that due to the new implementations to speed up their processing times, L1 and L9 applications are being scheduled within 5 months from when they are filed and written orders are being issued within 60 days from the hearing date.
- **Adjudicator Recruitment:** The Landlord and Tenant Board has indicated that effective July 16th, 2023, there are 46 full-time and 49 part-time adjudicators. They are also working on hiring 37 more. The process of hiring an adjudicator takes about 4 months as the Attorney General and the Lieutenant Governor are involved in this process. It then takes about 6 months for a new adjudicator to complete their training.
- **Adjudicative Case Conferences (ACCs): Effective July 2023, the Landlord and Tenant Board is sending a Notice of Adjudicative Case Conference to deal with older T2 and T6 tenant applications.** An adjudicator will meet with the parties to try to resolve the issues in the application or schedule a hearing for a later date. If the tenant does not attend, the application will be dismissed. If the landlord does not attend, the adjudicator will consider the tenant's evidence and make a final decision on this application.

LSHC's 2023 Annual General Meeting

The Landlord's Self-Help Centre's 2023 Annual General Meeting will be held on Wednesday, October 25th, 2023 for **LSHC members only via Zoom.**

LSHC's 2023 Landlord Learning Forum

The Landlord's Self-Help Centre's 2023 **Landlord Learning Forum** will be an online event held on Wednesday, October 11th, 2023 at 5:00 pm. **Our speakers are: Jane Dean, Sharda Sankar Bickramsingh and Harry Fine.**

This is live webinar, so please ensure you register to attend using the link below:

<https://landlordselfhelp.com/2023-landlord-learning-forum>

LSHC Upcoming Holiday Closures!

LSHC is closed on the following dates:

November 8-9th -The LSHC staff is attending their GTA and Specialty Community Legal Clinics Annual Training Conference.

November 13th for Remembrance Day - Our regular business hours resume on Tuesday, November 14th at 9:00 am.

December 25th, 2023 to January 1st, 2024 for the Winter Holidays- Our regular business hours resume on Tuesday, January 2nd at 9:00 am.

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