

# Smoke-Free Policies

## what landlords need to know

*Landlord Self Help Centre*

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**Education**



# Overview

1. The Law – Smoking and Cannabis
2. Human rights obligations: Medical cannabis
3. Implementing Smoke-Free Policies
4. Cannabis cultivation



**Education**



# Legal information?



**Legal advice?**

# The Law - Smoking and Cannabis

# ***Smoke-Free Ontario Act, 2017***

- Came into force on October 17, 2018 replacing the *Smoke-Free Ontario Act, 1994*
- Prohibits a person from smoking or holding lighted tobacco or cannabis, or using an e-cigarette in:
  - an enclosed public place
  - common areas of apartment buildings (among other places)
  - certain public places (playgrounds, schools, hospitals, restaurant patios)

# ***The Cannabis Act (federal)***

- Bill C-45 - Decriminalized cannabis
- *Cannabis Act* (federal) - creates framework for legal production, use, and distribution, aimed at:
  - restricting access
  - deterring illicit activities
  - reducing burden on criminal system
  - increasing public awareness about health risks
  - enable legal industry to outperform illegal industry

# The *Cannabis Act* (Ontario)

- Allows adults (19 +) to:
  - possess 30 grams -dried or fresh cannabis (not yet edibles)
  - share (not sell!) 30 grams with other adults
  - buy dried or fresh cannabis/cannabis oil from authorized sellers
  - grow 4 cannabis plants /household (personal use)
  - make cannabis products (at home, personal use)



# Bill 36 - Amendment to Ontario *Cannabis Act*

Where can cannabis be used?

- many public places - the same places tobacco can be used
- private residences
- other areas (ex. designated rooms in hotels)

Landlords are permitted to further restrict cannabis smoking through lease agreements

# Human Rights Obligations

# Smoking and the *Human Rights Code*

- Right to smoke for indigenous and cultural reasons
- Smoking as an addiction - and therefore a human right??
- Medical cannabis (most common)

# NOW: medical cannabis law

- Access to Medical Cannabis for Medical Purposes Regulations (ACMPR)
  - Individuals authorized by health care practitioners using a “Medical Document” (like a prescription)
  - Patients may apply to Health Canada to grow their medical cannabis
- Previous Medical Marijuana Access Regulations to grow and possess medical cannabis -- probably all expired – if not now, soon
- Cannabis Act – leaves this framework largely unchanged

# BUT medical use protected -- Human Rights Code

- right to use medicine as prescribed – accommodating disability
- not necessarily a “right” to smoke in unit
- case-by-case – accommodation to undue hardship
- prescribed non-smoking forms – eating or tinctures

# Medicinal use of cannabis

**STEP 1:** medicinal vs. recreational use? Dr's note

**STEP 2:** smoking medical cannabis in unit?

- Dr's note with limitations and disability-related needs
  - Smoking is necessary for treatment
  - Symptoms that require use in unit

**STEP 3:** appropriate accommodation short of undue hardship

# Eviction for Smoking Medical Cannabis

- Potential grounds for eviction under RTA -
  - Substantial interference with reasonable enjoyment or lawful right, privilege or interest of landlord or another tenant
  - Serious impairment of safety (unlikely)
  - ~~Illegal act (s. 61 RTA)~~
  - Willfully causing undue damage (unlikely)
- Consider - human rights complaint



# Implementing Smoke-Free Policies



# Smoke-Free Policies



About the Smoking



Not the Smoker

# Implementing a Policy

- Add “no smoking” clause to leases
  - Define what is considered “smoking”
  - Identify where prohibition applies (ex. balconies)
- Current tenants
  - A lease is a contract and can’t be unilaterally changed
  - New policy may only apply to leases entered into after policy takes effect

# Implementing Smoke-Free Policies

- Any policy must comply with the *Human Rights Code*
- There may be situations where your policy cannot be strictly enforced
- *Residential Tenancies Act, 2006*
  - Can only terminate a lease in accordance with Act

# Eviction for recreational smoking (tobacco and cannabis)

- Potential grounds for eviction under RTA -
  - Substantial interference with reasonable enjoyment or lawful right, privilege or interest of landlord or another tenant
  - Serious impairment of safety (unlikely)
  - Willfully causing undue damage
- In absence of “no smoking clause”
  - Threshold for “substantial interference” (or any other basis) is higher

# Vapourizing

- *Smoke-Free Ontario Act, 2017* – restricts e-cigarettes
- Medical and recreational -- use vaporizers to consume
- No clear medical evidence of harm for e-cigs
- Law restricts in common areas
- Consider policies/leases that restrict use in units
  - recreational vapourizing - difficult to enforce at LTB
  - vapourizing medical cannabis - remember *Human Rights Code*



# Cannabis Cultivation

# Personal Cultivation

- Medical
  - Requires Health Canada's OK
  - Application does not require consent of "site owner"
  - Likely no human rights issue -- no case law (yet)
- Recreational
  - Up to 4 plants per residence – not transferable
  - Age 19

# No-Growing Policy?

- Can be added through additional clauses in lease
- In absence of “no growing” clause
  - Complaints based
  - Threshold for “substantial interference” (or any other basis) higher



# Implementing No-Growing Rule

- Potential grounds for eviction under RTA
  - substantial interference with reasonable enjoyment or lawful right, privilege or interest of landlord or another tenant
  - serious impairment of safety
  - illegal act (growing above legal limit)
  - willfully causing undue damage

# Resources

- Smoke Free Housing  
[http://www.smokefreehousing.ca/about\\_us.html](http://www.smokefreehousing.ca/about_us.html)
- Ontario Cannabis Act  
<https://www.ontario.ca/laws/statute/17c26#BK12>
- Federal Bill C-45 The Cannabis Act  
[http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=5276&detailPage=bills\\_detail\\_the\\_bill](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=5276&detailPage=bills_detail_the_bill)
- Ontario Human Rights Commission : [ohrc.on.ca](http://ohrc.on.ca)
- <https://www.ontario.ca/page/cannabis-legalization#section-2>
- Your lawyer
- Our blog: [ilercampbell.com](http://ilercampbell.com)

# Key points

1. Smoke of any kind can be substantial interference with reasonable enjoyment
2. Implementing smoke-free policies with current tenants? Get legal advice
3. Prescribed cannabis  $\neq$  right to smoke in unit
4. Prescribed cannabis = duty to accommodate



**Questions -**  
you likely have some!

