Operating a Second Suite

Landlord's Self-Help Centre has developed the **Operating Guide: An Information Guide for Second Suite Landlords** as one of three educational guides for the Second Suites in Ontario project. The other two guides include **Creating a Second Suite: An Information Guide for Homeowners**, and **Financial Considerations: An Information Guide for Homeowners Thinking About Adding a Second Suite**. In order to comprehensively understand what is involved with Second Suites in Ontario, it is suggested that all three educational guides are reviewed by homeowners interested in becoming landlords.

The **Operating Guide** is aimed at helping homeowners understand what it means to operate a Second Suite in Ontario. It provides landlords with a road map for their rental business, and includes detailed information about the *Residential Tenancies Act,* 2006 and how it governs the landlord and tenant relationship. Information related to finding a tenant, tenancy agreements, rights and responsibilities of landlords, ending a tenancy and the Landlord and Tenant Board is also included.

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Second Suites in Ontario

"… second units are an important tool in contributing to the supply of private sector affordable housing choices. They are widely recognized as one of the most affordable forms of rental housing. Second units help optimize the use of the existing housing stock and infrastructure, all the while providing an income stream for homeowners, particularly younger and older homeowners, who may respectively have a greater need for income to help finance and/or remain in their homes."

Chris Ballard,
Former Minister of Housing

Second Suites are a vital component of Ontario's rental housing landscape, as they represent an estimated 38%[1] of rental housing stock in the Greater Toronto Area and 32%[2] across the province. The number of Second Suites in the city of Toronto is estimated to be between 74,988 and 102,263.[3]

Second Suites are self-contained residential units which include a private kitchen, bathroom facilities, sleeping areas and a separate entrance. They are generally permitted in single detached, semi-detached and row houses as well as in ancillary structures and are often found in communities, close to shopping centers, schools and transit. Also known as secondary units, accessory units, basement apartments and/or in-law suites, Second Suites are regarded as affordable housing, because the rent tends to be 10 to 15% less than rent charged for traditional multi-unit residential rental properties.

Some suites were created during the short-lived legislation called the *Residents Rights Act,* 1994, which permitted homeowners province-wide the right to create a Second Suite rental unit in detached, semi-detached, row houses and in ancillary structures, subject to prescribed planning standards. Although the legislation was repealed on May 22, 1996, Second Suites created in accordance with the Act became grandparented and were permitted as long as they complied with health, safety, housing and maintenance standards. Second Suites may have been allowed under previous legislation and

[1] Current and Projected Size and Scope of Ontario's Secondary Rental Housing Market report by Vink Consultants
[2] *Ibid*
[3] Secondary Suites: A Methodological Approach to Estimate their Prevalence within the City of Toronto by Jeremy Kloet

homeowners are encouraged to consult with their municipality to determine what rules may have governed in the past and what may be grandparented.

The Government of Ontario passed the *Strong Communities through Affordable Housing Act*, 2011 to promote the creation of Second Suites province-wide through amendments to the *Planning Act*.

Planning Act amendments came into force on January 1, 2012 and facilitate the creation of Second Suites by requiring Ontario municipalities to:

- Establish official plan policies and zoning bylaw provisions allowing Second Suites in detached, semi-detached and row houses, as well as in ancillary structures.

The amendments also:

- Remove the ability to appeal the establishment of these official plan policies and zoning bylaw provisions, except where included in five-year updates of municipal official plans.

- Provide the Minister of Municipal Affairs and Housing the authority to make regulations authorizing the use of and prescribing standards for Second Suites.

In 2016, the Province released an update to the Long-Term Affordable Housing Strategy with the introduction of the *Promoting Affordable Housing Act,* 2016 which amends the *Development Charges Act, 1997* and gives the authority to amend regulations and exempt second units in new homes from development charges.

The Province also plans to hold a public consultation on potential changes to the Building Code. These changes would seek to amend Regulation 332/12, and work "to improve the affordability of second units in newly constructed houses while still meeting safety standards of both the Building Code and Fire Code." If successful, the new construction requirements would result in lower construction costs and allow for greater flexibility.

The origin of the Second Suite "as of right" policy in Toronto

In Toronto, the Mayor's Action Task Force on Homelessness published the report "Taking Responsibility for Homelessness: An Action Plan for Toronto," which was the incentive for a Second Suite "as of right" policy, that City Council narrowly passed in 1999. The bylaw was later appealed to the Ontario Municipal Board and the change was eventually approved, with amendments, as Toronto Bylaw No. 493-2000 in July 2000.

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So, you want to be a landlord…

The decision to become a landlord is an important one and should be made only after fully researching and gaining a complete understanding of what it means to be a landlord in Ontario.

Being a landlord involves much more than collecting rent, as it brings with it many financial and legal responsibilities and sometimes ethical dilemmas. As well, a landlord must give up some degree of control as to what goes on in the rental unit of the landlord's own house. For example, a landlord cannot:

- Direct what or when a tenant cooks.
- Impose limits on a tenant's use of water and electricity.
- Ask a tenant's overnight or permanent guest to leave.
- Control whether a pet is brought into the rental unit (with some exceptions).

Renting is a business, whether renting one unit or ten units. As with any business, it is important to fully understand the legal commitment being made, the obligations assumed and the risks involved.

Landlords, their properties and rental relationships are subject to an onerous regulatory environment governed by many laws and regulations, all of which impact landlords, their property and their rental relationship. Some of these include the following:

Residential Tenancies Act (RTA)	*Ontario Electrical Safety Code*
Rental Fairness Act	*condominium bylaws*
Ontario Human Rights Code	municipal zoning and property standards bylaws
Fire Code	*Income Tax Act*
Fire Protection and Prevention Act	*Personal Information Protection and Electronic Documents Act*
Ontario Building Code	*Frustrated Contracts Act*
Cannabis Act	

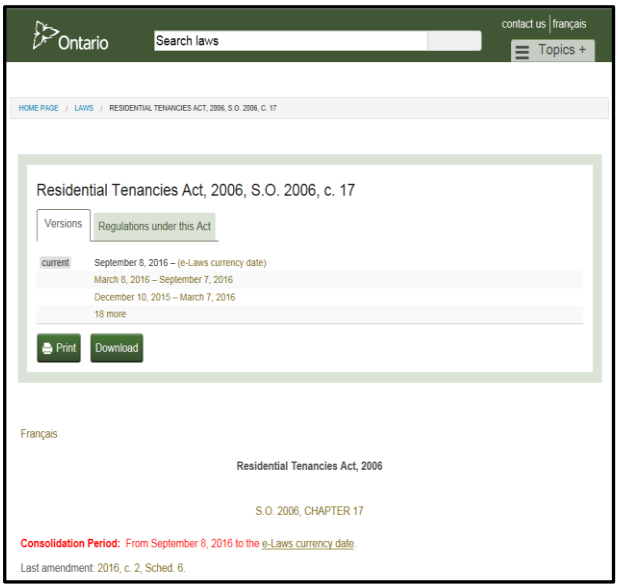
The Residential Tenancies Act, 2006

In Ontario, virtually all residential rental relationships are governed by the *Residential Tenancies Act,* 2006 (RTA) unless exempt, as described in Section 5 of the RTA. The RTA came into effect on January 31, 2007, replacing the *Tenant Protection Act*.

The ***Residential Tenancies Act*** provides protection for residential tenants from unlawful rent increases and unlawful evictions; establishes a framework for the regulation of residential rents; balances the rights and responsibilities of residential landlords and tenants; and provides for adjudication and other processes to informally resolve disputes.

The RTA establishes the rules for all aspects of the residential rental relationship, including rules related to:

- Rents (and rent deposits)
- Sublets and assignments
- Tenancy agreements
- Responsibilities of landlords
- Responsibilities of tenants
- Security of tenure
- Terminating tenancies



In addition to establishing the framework of rights and responsibilities for residential landlords and tenants, the RTA also established the Landlord and Tenant Board. The Landlord and Tenant Board is an independent agency operating at arm's length from the government. The Board adjudicates all disputes between landlords and tenants in respect of matters governed by the RTA, including eviction proceedings, maintenance of rental premises and rental increases above the prescribed annual guideline.

The *Residential Tenancies Act* also contains a provision that states the RTA will override any other act that may conflict with it, except for the *Ontario Human Rights Code*.

The Rental Fairness Act, 2017

In the spring of 2017, the Provincial Government introduced Ontario's Fair Housing Plan. The plan is a comprehensive strategy consisting of sixteen measures which are intended to help more people find affordable homes, increase supply, protect buyers and renters, and bring stability to the real estate market.

Ontario's Fair Housing Plan specifically refers to "Actions to Protect Renters," which include:

- Expanding rent control to all private rental units in Ontario
- Strengthening the *Residential Tenancies Act* to further protect tenants and ensure predictability for landlords

On April 24, 2017, the Minister of Housing introduced Bill 124, the ***Rental Fairness Act,* 2017**, which proposed amendments to the *Residential Tenancies Act, 2006*. The legislation is one of several bills which stem from Ontario's Fair Housing Plan. Bill 124 was passed into law in a matter of six weeks and amendments have been incorporated into the RTA.

Highlights of the changes include:

- Rental units previously exempt from the annual rent increase guideline due to date-based exemptions are now subject to the annual increase guideline;
- Landlords who give notice for own use will be required to pay to the tenant one month rent as compensation or offer them another unit that is acceptable to them, and will now be subject to new onerous rules regarding bad faith terminations;
- Landlords can no longer seek above guideline rent increases based on extraordinary increases in the cost of utilities (in keeping with the Climate Change Action Plan);
- The rules for capital expenditure based on above guideline rent increases will be tightened;
- A new standard lease form will be created and required;
- Notices of termination for second breach within six months will be clarified;
- Pay and stay provisions at the Landlord and Tenant Board will be clarified;
- Affidavit requirements will change; and
- Landlords are prohibited from pursuing former tenants for unauthorized charges.

The above list is not a definitive list of changes, for more information please review Bill 124 at http://www.ontla.on.ca/bills/bills-files/41_Parliament/Session2/b124ra_e.pdf

What is the Landlord and Tenant Board?

The **Landlord and Tenant Board** is a quasi-judicial agency that determines issues and rules on disputes that arise between residential landlords and tenants.

The Board has eight regional offices (three in the GTA) that provide a full range of services, including processing applications, providing general information to the public, making referrals, distributing printed material and forms, conducting mediation, and holding hearings. In areas where there is no regional office, applications to the Board may be filed at any Service Ontario location. Staff at Service Ontario locations cannot provide landlords with information about the law; they can only accept documents and forward them to the Board.

Landlords can access information about the *Residential Tenancies Act* (RTA) on the Landlord and Tenant Board website as well as download applications to the Board or the forms needed to issue a notice.

Facts about the Landlord and Tenant Board:

- The Board is one of eight adjudicative tribunals that form Social Justice Tribunals Ontario, a group that aims to provide Ontarians with accessible and fair dispute resolution.
- The Board consists of approximately 40 members across Ontario and is led by one member as the Associate Chair and seven Regional Vice Chairs.
- The members are not judges but do have the authority to conduct hearings and rules on applications.
- The members have been selected from the community to serve a specific term or period of time.
- The Board is required to report annually on its operation, business plans, service levels and performance to the Minister of Housing.

Ontario Human Rights Code

The ***Ontario Human Rights Code*** is a provincial law that assures equal rights and opportunities for all people. The foundations of the Code are established by international law, the United Nations' Universal Declaration of Human Rights, and the Canadian Charter of Rights and Freedoms.

Residential rental relationships are significantly impacted by the *Human Rights Code*, because housing accommodation is one of the five key social areas in which the Code assures protection from discrimination. Additionally, Section 10(1) of the Code purposely defines disability in a broad way to allow for protection against discrimination from this constantly evolving concept.

The Ontario Human Rights Commission published the "Policy on Human Rights and Rental Housing" in October 2009 to provide guidance on interpreting the provisions of the Code with respect to the right to equal treatment without discrimination and to outline how it applies when renting a unit. The policy discusses how housing rights apply when renting a unit, and addresses the following:

- Procedures for selecting and evicting tenants
- Rules and regulations related to occupancy
- Repairs and use of related services and facilities
- General enjoyment of the premises

The Commission subsequently published the "Policy on Preventing Discrimination Based on Mental Health Disabilities and Addictions" in June 2014. This policy assists landlords in developing a better understanding of mental health and substance use issues, including how to properly respond to concerns related to a tenant's mental health and/or substance use.

It is important to note that the *Human Rights Code* has primacy or priority over most legislation, including the RTA. If there is a conflict between provisions of the Code and a law such as the RTA, the Code must be followed first, unless an exception to this rule is specified in the law or regulation.

Cannabis Act

The *Cannabis Act* came into force on October 17, 2018, making the use of recreational cannabis (marijuana) legal in Canada. The decriminalization of the use and possession of recreational marijuana represents a significant shift in social behaviour and will undoubtedly impact owners and occupants of residential rental housing.

Before you rent out a unit, you should make it clear to all prospective tenants that any cultivation or growing of cannabis plants is prohibited throughout the residential complex. On page five of the Ontario Standard Form of Lease, make sure to include a description of the smoking rules. Consider including a clause which restricts smoking or vaping marijuana, tobacco, or any other substances on the rented premises. In addition, you should add a clause to restrict cultivation of cannabis plants in the rental complex because of the potential for it to cause damage or interfere with other tenants. It is important to include this clause in your additional terms because it tells the tenant that he or she can be served with a notice to terminate the tenancy if they don't follow it.

It is important to note that a tenant cannot be evicted solely because they are smoking or growing cannabis. However, if this cultivation causes damage or interferes with another tenant's reasonable enjoyment of their rental unit, then this would be grounds for eviction.

As a landlord, you also have the duty to accommodate tenants up to the point of undue hardship. Consequently, if a tenant has a medical marijuana license, then you cannot stop them from growing or smoking cannabis for their medical use. This would be considered discrimination under Ontario's *Human Rights Code* and you could face a claim against you in the Human Rights Tribunal for doing so. Make sure to verify whether or not your tenant has such a license before trying to evict them on this ground.

Security of Tenure

When becoming a landlord, the first thing to understand is that the law provides the tenant with a broad range of rights. It is essential for landlords to learn, understand and respect these tenant rights.

Landlords cannot terminate a tenancy simply because they no longer want a particular person as a tenant. All tenants have **security of tenure**, which means a tenancy agreement cannot be terminated by a landlord unless termination is sought for one of the reasons as under the *Residential Tenancies Act*. If the tenant lives up to their responsibilities as established under the RTA, the tenant is entitled to remain in possession of the rented premises. If the responsibilities are not lived up to, the landlord must be proactive and initiate action by issuing the tenant a Board-approved notice of termination to end the tenancy. Depending on the notice, it may be possible for a tenant to void a landlord's notice by correcting the action that caused the notice to be given.

A tenancy may be ended by one of the following methods:

- After the tenant provides the landlord with proper notice and vacates the unit, or after the tenant receives proper notice from the landlord to vacate.
- By mutual agreement between the landlord and the tenant.
- By order from the Landlord and Tenant Board to terminate the tenancy.

If a dispute develops between a landlord and tenant, the tenant has the right to remain in the rental unit until the matter has been resolved. The landlord must continue to provide the same facilities and services that were provided to the tenant before the dispute. If a landlord and tenant are not able to resolve a dispute, either party may apply to the Landlord and Tenant Board for a resolution.

A landlord may only regain possession of the rented premises if one of the following conditions applies:

- The tenant has voluntarily given up occupation or possession of the premises and has either vacated the rental unit after a notice of termination is given; vacated the rental unit according to a mutual agreement; or abandoned the premises.
- The tenant vacated the premises as a result of an order issued by the Landlord and Tenant Board.
- The tenant is removed from the premises by the Court Enforcement (Sheriff's) Office under the authority of an eviction order from the Landlord and Tenant Board.

Setting the Rent

The first question any would-be landlord asks is "How much rent can I charge?" Before a tenancy commences, the landlord and tenant can negotiate what the starting rent will be. When a new unit is being put on the market for the first time, a landlord is able to charge whatever rent the market will bear. Similarly, when the rental unit becomes vacant, the landlord can set a new rent. All matters relating to rent—including rent increases, rent decreases, and lawful rent—are governed by the *Residential Tenancies Act*.

Vacancy Decontrol

Rent controls have been in place in Ontario since 1977. Current legislation includes a provision for **vacancy decontrol**, which is when the rental unit becomes vacant and the landlord can set a new rent. Not only can landlords re-think the amount of rent they would like to charge, but landlords can also alter what is included in the rent by adding or removing services or amenities that may have been included in the past. In order to set a new rent, the unit must be vacated and a new tenancy agreement entered into with a new tenant.

When setting the rent for a new tenancy, landlords may charge what the market will bear. It is best for landlords to conduct research to analyze and determine the amount charged for other units in the area that are comparable in character, size, location, features and amenities.

Setting the rent for a new tenancy is an important step, since future rent increases for the tenancy will be governed by this amount and the RTA rules for rent increases. For example, if new rent is set well below the market rate, a landlord may not be able to adjust the rent to reflect market rates after the tenancy has commenced. The landlord may be limited to an increase that is in line with inflation.

What to Include in the Rent

Landlords have the right to set a new base rent every time the rental unit turns over (when a rental unit becomes vacant and a new tenant moves in). The landlord may decide which amenities, services and facilities may be included or excluded from the rent.

Common amenities, services and facilities to be considered include the following:

- Refrigerator
- Stove
- Microwave
- Dishwasher
- Electricity
- Heat
- Cable/Internet
- Water
- Air conditioner
- Parking space
- Laundry facilities

Tips on setting the rent:

- Although rents are variable and depend on different factors including amenities, location etc., keep in mind that rents for Second Suites are often lower than in other conventional apartments (generally 10-15%).
- Landlords should conduct research (e.g., online or newspaper advertisements) to find out the rent for units in the same area with similar facilities and services.
- Factor in some room to negotiate. This will ensure some flexibility when discussing the rent with an applicant.
- Consider the potential for costs, keeping in mind the tenant can have additional people stay with them as short term visitors or for extended periods of time.
- If there are no follow-up calls after placing an advertisement, that may be an indication that the rent may be set too high.

Including the Cost of Electricity in the Rent

Landlords are encouraged to carefully consider their plan for providing electricity to the rental unit. In today's market, with smart meters and time-of-use rates, a landlord who provides electricity would have no control over electricity consumption or the cost of it, and there would be no incentive for a tenant to conserve energy if the rent includes electricity.

Tenants who are required to pay electricity costs may pay directly to the distributor or suite meter provider. Utilities are not considered to be rent, and the newer provisions of the *Residential Tenancies Act* state that the Landlord and Tenant Board will not consider applications that involve disputes related to utilities.

To eliminate the challenge of collecting a separate charge for utilities, landlords are encouraged to install separate suite meters and arrange for the tenant to be billed directly. Under the RTA, electricity is a "vital service," which landlords are prohibited from interfering with the supply of, even if electricity is part of the rent and the tenant does not pay rent. However, a contract between a tenant and a utility provider is not

subject to the RTA. A utility company may cut off the service if the tenant has not paid the utility bill.

If the tenant will be required to pay for electricity separately, the landlord has an obligation to provide information about the cost of electricity for the rental unit. Along with the rental application, landlords must provide prospective tenants with the *Information to Prospective Tenant About Suite Meters or Meters* form from the Landlord and Tenant Board. This form provides prospective tenants with information about the approximate electricity costs for the Second Suites over the last twelve months. It also provides refrigerator information, date of manufacture and efficiency.

Where the landlord provides a refrigerator for the rental unit, the refrigerator must be one that is manufactured on or after January 1, 1994. Also, when a landlord replaces a refrigerator in a rental unit, the replacement refrigerator must be one that is manufactured on or after December 31, 2002.

Lawful Rent

Lawful rent is the rent first charged to the tenant plus any increases that are allowed under the RTA. Once a landlord and tenant agree on the rent for a rental unit, it cannot be increased until at least 12 months have passed since the start of the tenancy or since the last rent increase.

Understanding lawful rent:
If the landlord advertises and accepts Tenant A as the new tenant, and both parties agree that the rent for a unit will be $800/month, this is the lawful rent for the unit. The rent cannot be increased unless 12 months have passed since Tenant A's tenancy began.

The landlord may increase the rent by providing the required 90 days' written notice on the LTB Form N1 to coincide with the anniversary of when the tenancy commenced. If rent is increased in accordance with these rules, the increased rent amount becomes the new lawful rent.

When Tenant A ends their tenancy by giving notice and vacating the rental unit, the landlord is free to set a new base rent for the incoming tenant. The new rent for the incoming tenant will become the new lawful rent for the unit under the new tenancy agreement.

Increasing the rent above the guideline amount without the Landlord and Tenant Board's approval or increasing the rent prior to the end of 12 months would be an illegal rent increase. The tenant can file Form T1 claiming that the landlord illegally increased the rent. If found guilty, the landlord would be responsible for paying back the illegal rent amount collected, the tenant's $50 filing fee and any other costs the adjudicator deems to be appropriate in the circumstances.

Q & A

The rent I'm charging my tenant currently includes electricity. Is it possible to have the tenant pay for their own usage?

The tenant has to agree to the change before the landlord can cease to provide the service and reduce the rent accordingly. If the tenant does not want to change the terms of the agreement, then there is nothing the landlord can do until the tenancy has ended and the tenant has moved out. At that time, the landlord can set a new rent and have the new tenant set up their own account with the public utility company.

My tenant is responsible for paying for heat, but has failed to pay. Am I responsible to pay for heat if the tenant's payment is done directly with the provider?

If the utility accounts are in the tenant's name and the tenant defaults, the landlord will not be held responsible. The utility companies have to collect from the person who is named on the account. In this case, the tenant will receive a warning from the utility company before being disconnected. However, if the account is in the homeowner's name, the amount owing may be added to the taxes for the property.

I'm a new homeowner who has taken possession of a rental property. Can I increase the tenant's rent?

When you purchase a property with tenants in possession, you assume whatever agreement they have in place with the previous owner. Therefore when you take over as the new owner, you are not allowed to increase the rent unless it's in accordance with the RTA rules and if the tenants have not had an increase in the past 12 months. To increase the rent, you must give the tenants a 90-day notice on Form N1.

Does renting a Second Suite make me a landlord and subject to Ontario tenancy laws?

You are considered a landlord whether you are renting one unit or multiple units, therefore you would be subject to Ontario tenancy laws. The *Residential Tenancies Act* is the current legislation governing landlord and tenant relationships in Ontario.

This is the first time I've rented my Second Suite. How much can I charge?

When renting out a unit, the landlord is able to charge whatever rent amount the market will bear. To get an idea of market rents, research the rent amounts for other rental units in your area that offer similar features and amenities.

My rental agreement states that my tenant is entitled to a parking spot when they first move in, if it will be used for their personal vehicle. My current tenant began renting a year ago and didn't have a car so was never given a parking spot. Can I rent this spot to someone else?

If the lease allows your tenant one parking space with the rental of the unit, the tenant gets a space regardless of whether the tenant has a car. It's not advisable to rent out the parking spot to other tenants without first offering some permanent reduction in rent.

Even though the tenant doesn't pay for the parking spot, since the rental of the unit includes access to one space, taking it away is considered a reduction of services according to the *Residential Tenancies Act*.

Can I charge more rent if the tenant has acquired a roommate?

It's fairly common for a tenant to split the costs of rent by bringing in a roommate, guest or "under tenant." The *Residential Tenancies Act* includes no remedy for a landlord in such cases, because it does not consider it to be unlawful. As long as local municipal bylaws on occupancy standards are respected, a landlord can't raise the rent to reflect the additional utility use and wear and tear on the rental unit. Nor can the landlord prevent the tenant from having a roommate.

Finding a Tenant

From a sign in the window to an online ad, there are many different ways to find a tenant. Landlords should consider using a variety of different approaches to promote the vacancy to as many people as possible.

Landlords should be aware of the *Ontario Human Rights Code*, as it ensures the right to equal treatment without discrimination when renting a unit. The Code provides that a person cannot be refused an apartment, harassed by a housing provider or other tenants, or otherwise treated unfairly on one or more of the following grounds:

race, colour or ethnic background	family status
religious beliefs or practices	marital status, including those with a same-sex partner
ancestry, including individuals of Aboriginal descent	disability
place of origin	sexual orientation
citizenship, including refugee status	age, including individuals who are 16 or 17 years old and no longer living with their parents

sex (including pregnancy and gender identity)	receipt of public assistance

Tenants and potential tenants are also protected from discrimination if they are a friend or relative of someone identified above.

Creating an Advertisement

A good rental ad not only attracts attention but also serves as the first level of screening. By giving as many details as possible, people will be less likely to call if the unit does not meet their needs. Ads for rental units often need to be short and to the point, so writing a concise ad will allow landlords to include all the essential information.

Landlords should always keep an open mind when dealing with prospective tenants. It is discriminatory to make assumptions about who might want to live in the unit and to describe the unit in ways that would exclude certain people.

The screening process begins after interested applicants have submitted their rental applications, not when advertising the rental unit. Vacancy ads often contain language that excludes certain people or groups, some discreetly while others openly discriminate.

Language that discreetly discriminates	**Language that openly discriminates**
Ideal for quiet couple	Adult building
Suitable for single professional	Must provide proof of employment
Perfect for female student	Must have working income
Suits mature individual or couple	No Ontario Disability Support Program recipients
Great for working folks or students	Seeking mature couple

Whether using traditional print media or an online ad, landlords should describe the rental unit and amenities and avoid describing the ideal tenant. At the very least, the ad should include the nearest intersection, the number of bedrooms, the rent, whether

utilities are included and the date available. Additional information related to facilities and amenities (e.g., parking, access to laundry) can also be included.

Sample advertisement:

> **Dufferin/Bloor** – 1 bdrm apt in smoke-free house; $875 incl; new appliances and newly updated; access to yard; shared laundry; parking. Available Oct 1; call Bob 416-555-8479 after 5 pm.

Where to Advertise

online listings	Online rental ads posted on websites like Kijiji, Craigslist, viewit.ca, rentboard.ca and gottarent.com may be a very effective way of reaching a very large audience.
newspapers	Newspapers are another way to advertise for a tenant. There are a number of different types of papers ranging from large dailies to smaller specialty newspapers (e.g., community/local newspapers), some of which focus on a particular geographic area, while others serve different cultural or language groups.
rental papers	Rental papers only publish listings rental properties and are released on a weekly basis. Besides giving a description, it is sometimes possible to include a picture of the building for an additional fee.
online newspapers	All the major newspapers have websites with a classified section. Some list the same classified ads as the print newspapers, while others have separate listings for their website. Online ads are beneficial, as they can reach people outside the local area who are thinking of relocating, and new ads are posted frequently. The Internet, however, is still not available to everyone and this may limit the number of people who see the ad.
Housing Help Centres	Housing Help Centres are nonprofit organizations that provide free services to tenants and landlords. Housing Help Centre staff assists prospective tenants in finding reasonably priced apartments, and landlords can list their Second Suites for free. The ads can be very detailed, which can save both the landlord

	and prospective tenant the frustration of a wasted trip or phone call. Housing Help Centres can also provide assistance after the unit is rented by helping to mediate disputes between landlords and tenants as well as providing landlords with information and referrals. To find a local Housing Help Centre, contact Ontario 211 or the Housing Help Association of Ontario.
signs	Signs are cheap and easy to create. However, they only reach people who walk or drive by. The landlord may also get some unwanted knocks on the door, even if there is a phone number on the sign. A sign can be useful if the house is in an area that has a high volume of pedestrian traffic and is popular with renters, such as near a university or college.
student listings	Most universities and colleges have housing registries. Some will list apartments for free, while others charge a fee. If the rental property is near a college or university and there is a vacancy for September or January, the Second Suite will be popular with students. When renting to students, remember that they often do not stay in one place for more than one or two years and may not stay for the summer. For information on posting a listing, contact the university and ask for the Student Housing Service or Registry Department.

Tenant Screening

Landlords should remember that renting is a business, and screening prospective tenants is an important step to help landlords protect their business by reducing risks. All landlords should implement a screening process to assess the prospective tenant's ability to meet their responsibilities and obligations as established under the *Residential Tenancies Act*.

Landlords should look for the tenant who shows the least risk—someone who is likely to pay rent and pay it on time, not cause damage or disturbance, not impair safety or commit an illegal act. However, while searching for this low-risk tenant, landlords must continue to be mindful of the *Ontario Human Rights Code* and exercise caution to ensure that they are not discriminating against prospective tenants during their search.

"In selecting prospective tenants, landlords may use, in the manner prescribed under the Human Rights Code, income information, credit checks, credit references, rental history, guarantees, or other similar business practices as may be prescribed in the regulations made under the Human Rights Code."

Section 10, Residential Tenancies Act

The *Ontario Human Rights Code* allows landlords to request a prospective tenant to provide credit references, rental history information and permission to conduct credit checks. Landlords may use any of this information alone or in combination to accept or refuse a prospective tenant.

The use of income information is more complicated. Landlords may request income information as long as they also ask for credit references, rental history information and permission to conduct credit checks. If this information is given, a landlord must consider it as well as the income information when accepting or refusing a prospective tenant.

A landlord may use income information alone to accept or refuse a prospective tenant *only* if that is all the prospective tenant provides after the landlord has requested the other information.

In situations where a prospective tenant has poor credit history, weak rental history or no rental references, it may be necessary for landlords to ask the applicant to have a guarantor to ensure the prospective tenant meets his or her obligations if the tenancy goes ahead. Landlords cannot ask for guarantors simply because the applicant is a newcomer to Canada, receives public assistance or is a member of any other *Ontario Human Rights Code*-protected group.

Landlords have the right to ask for a guarantor or a co-signer from a prospective tenant and may also require a deposit to hold a unit for a prospective tenant. The deposit would then become part of last month's rent should the landlord accept that person as their tenant.

Rental Applications

To help in the screening process, landlords should use a rental application form and require each prospective tenant to complete it. A rental application allows the landlord to obtain uniform, specific information from each prospective tenant to assist in deciding whether the candidate is a reasonable risk. An application form generally requires prospective tenants to provide information about their financial institution, source(s) of income, income, rental history and references.

The rental application form must contain a clause that authorizes the landlord to use credit-related information once the prospective tenant has signed the form. The form must also contain a clause that clearly states that the tenant gives the landlord permission to use the information that the tenant provides in order to:

- Obtain a consumer report.
- Contact employers, previous landlords and references.
- Enforce the terms of the tenancy agreement that may be subsequently entered into with the applicant.
- Reasonably use the information otherwise to assess the rental application.

After collecting all the necessary information, the landlord can proceed through the following steps:

1. Verifying the information	The landlord should verify that the information collected from a tenant is accurate. To begin with, the landlord should confirm employment, references and previous landlords by calling the contact names given. It is a good practice to crosscheck the names, addresses and telephone numbers in the telephone book or on the Internet to ensure that they are current and accurate. Sometimes a prospective tenant cannot provide all the information that the rental application asks for. For instance, a newcomer to Canada or a person getting their first apartment will not be able to provide contact information for previous landlords. In this case, the landlord may wish to consider a candidate with no rental history differently from one who has a bad rental history.

2. Conducting a credit check	Conducting a credit check can be more difficult. Credit checks often involve gaining access to records at the credit bureau, which can be difficult unless the landlord is a member of the credit bureau or hires a company that specializes in doing credit checks.
3. Making a decision	After reviewing all the information, the landlord must decide whether to accept or refuse the prospective tenant. The landlord should remember to take into account the legal requirements discussed above as well as the *Ontario Human Rights Code* when making a decision.

Landlords need to fully research the rental history of all prospective tenants and make sure this is completed before approving the prospective tenant and providing access to the rental unit.

Q & A

My tenant didn't have children at the time of moving in, but over the years has had two kids. Since this is my house and I prefer adults, can I tell my tenant that I don't want to rent to a tenant with children?

Regardless of whether the unit is part of your home, the tenant is protected by both the *Residential Tenancies Act* (RTA) and the *Ontario Human Rights Code*, and these rights are protected whether the tenant is renting a unit in someone's home, an apartment building, a condominium or a whole house. Therefore it is a breach of the *Ontario Human Rights Code* to rent a unit and demand that there be no children allowed.

What kind of resources should I be familiar with when renting to a tenant with a disability?

A Landlord's Reference Guide to Human Rights in Rental Housing provides information on the landlord's duty to accommodate a tenant with a disability. Other than a duty to accommodate, the RTA and *Ontario Human Rights Code* protect the same basic rights of all tenants, regardless of whether they have a disability or not.

Do I have the right to screen prospective tenants?

When selecting tenants, the *Residential Tenancies Act* gives landlords the right to use income information, credit checks, credit references, rental history, guarantees or other similar business practices as prescribed in the regulations made under the *Ontario Human Rights Code*. Use a pre-printed rental application to ensure you are collecting the same information from all prospective tenants.

What considerations are prohibited when reviewing a potential tenant?

Every person has the right to equal treatment with respect to the occupancy of accommodation. You cannot discriminate on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance.

Do I have to follow the guidelines under the Residential Tenancies Act and the Ontario Human Rights Code for selecting a tenant?

You must follow the guidelines for selecting a tenant established by the Residential Tenancies Act and the Ontario Human Rights Code. If you do not follow these guidelines, you may end up discriminating against prospective tenants. Any prospective tenants who think that you have discriminated against them can file a complaint with the Human Rights Tribunal of Ontario.

Tenancy Agreements

A **tenancy agreement** is defined by the *Residential Tenancies Act* as "a written, oral or implied agreement between a tenant and a landlord for the occupancy of a rental unit."

Why does the Landlord need a Written Tenancy Agreement?

Small-scale landlords often forego the formality of a written tenancy agreement and opt instead for a firm handshake to seal the deal, generally to their disadvantage. Landlords are strongly encouraged to document the terms of the tenancy by way of a written agreement, signed by the landlord and the tenant, *before* the tenancy begins.

Although the law does not require a written tenancy agreement, using one is recommended, since the tenancy agreement will define certain responsibilities of both the landlord and tenant and enables the landlord to reserve certain rights. A tenancy agreement cannot require a tenant or landlord to opt out of the rights provided by the RTA.

Note: Written tenancy agreements entered into between residential landlords and tenants **on or after April 30, 2018**, must be documented on the Ministry of Housing's Residential Tenancy Agreement (Standard Form of Lease). To obtain a copy, please visit http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?OpenForm&ACT=RDR&TAB=PROFILE&SRCH=&ENV=WWE&TIT=2229E&NO=047-2229E

In addition to the release of the Standard Form of Lease, the Ministry of Housing will provide guidebooks in 21 different languages. These guides will provide more information about the Standard Form of Lease and include examples of illegal and legal clauses which may be used in the additional terms section.

Landlords are also responsible for maintaining rent records for annual rent increases and defending a possible challenge to the lawfulness of the rent. Stating the agreed upon rent in the tenancy agreement provides this documentation.

Rules for Written Tenancy Agreements

Ontario landlords entering into a written residential tenancy agreement **on or after April 30, 2018** are required to use the Residential Tenancy Agreement (Standard Form of Lease) developed by the Ministry of Housing.

Important things to consider:

- If landlords do not use the Standard Form of Lease when entering into a written tenancy agreement **on or after** April 30, 2018, they will have 21 days to provide one to the tenant after the tenant makes a written request.

- If the landlord does not provide the tenant with a Standard Form of Lease within 21 days after the written request was made, the tenant is allowed to
    - withhold one month's rent, or
    - give the landlord a 60 days' notice to end their tenancy early.

- After the tenant withholds rent, the landlord has 30 days to provide the tenant with the Standard Form of Lease. If the landlord does not do this, the tenant does not have to repay that month's rent. **Note:** the tenant is only allowed to withhold one month's rent, and is expected to continue paying their rent for the rest of their tenancy.

- If the landlord provides the tenant with a Standard Lease Form within 21 days of the written request, but the tenant does not agree with the terms, the tenant can give the landlord 60 days' notice to end their tenancy early. However, this notice cannot be given later than 30 days after the landlord provided a copy of the standard lease. The end date, or termination date, on the notice must be the end of a rental period.

- If a monthly or fixed-term tenancy agreement was signed **before** April 30, 2018, and it renews to a month-to-month **after** April 30, 2018, the tenant cannot ask for a Standard Form of Lease unless both parties agree and new terms are negotiated on or after April 30, 2018.

<u>For example</u>
(assumption that rent is due on the 1st of the month)

May 15, 2018
- Landlord and tenant enter into an informal 1 page written lease

June 1, 2018
- Tenant makes a written request for a Standard Form of Lease. Landlord has until June 22 to provide the tenant with one.

June 22, 2018 (Landlord **provided** Standard Form of Lease)
- If the landlord provided the Standard Form of Lease but the tenant doesn't agree with the terms, the tenant can give 60 days' notice to end the tenancy for August 31, 2018, or September 30, 2018. The tenant has until July 22 (30 days after the landlord provided a copy of the written lease) to provide this notice.

June 22, 2018 (Landlord **did not provide** Standard Form of Lease)
- The Tenant is able to withhold rent for July.

OR
- The tenant can provide the landlord with a 60 days' notice to end their tenancy for August 31, 2018.

July 31, 2018
- The 30 day deadline for the landlord to provide the tenant with a copy of a Standard Form of Lease once they withheld the rent. If the landlord still hasn't provided it, the tenant doesn't have to pay the rent for this month.

Information to Include in a Tenancy Agreement

A tenancy agreement generally defines who is responsible for what. The following table shows what information is commonly included in a tenancy agreement:

GENERAL INFORMATION	
contact information	The name, address and phone number of the landlord and tenant. As well as the landlord's agent, if there is one.
facilities or services included	Facilities or services included, such as parking. If parking is included, also indicate location, number of parking spots, and whether there is any extra charge for additional spots.
rent	The amount, due date and payment method (Note: a landlord cannot require postdated cheques).
rent deposit	The amount paid for last month's rent deposit.
interest on last month's rent deposit	Payment of annual interest on last month's rent deposit at the rate equal to the annual rent increase guideline.
utilities	Who pays for which utilities and how the utilities are to be paid.
limitations on use	A clause defining the use of the rental unit to residential use.
length of the agreement	Whether it is a fixed term or month-to-month agreement.
non-smoking	As the landlord of private housing, it is fully within the rights of landlords of private housing to designate all or part of the building as non-smoking, including individual units, balconies or the entire property.

LANDLORD'S RESPONSIBILITIES	
general responsibilities	The landlord's responsibility for repairs, maintenance, quiet enjoyment and damage.

utilities	The landlord's responsibility to provide and not interfere with vital services (heat, hydro, and water) unless the rental agreement states that utilities are the tenant's responsibility and this is properly documented in the tenancy agreement.
abandoned property	The landlord's responsibility concerning abandoned property.

TENANT'S RESPONSIBILITIES	
general responsibilities	An outline of the tenant's general responsibilities, such as paying rent, keeping the rental unit in an ordinary state of cleanliness, repairing any damage caused willfully or as a result of negligence, etc.
notice of termination	Procedure for the tenant to give notice of termination.
insurance	Requirement for the tenant to obtain contents and liability insurance and to provide the landlord with proof.
utilities	Responsibility of the tenant to pay directly for their own utility costs if applicable.
guests	The tenant is also responsible for the actions of any guests or roommates they allow into the rental unit.

A landlord may also wish to include additional provisions (ensuring they do not conflict with the RTA) or any rights a landlord may wish to reserve. The following are examples of additional provisions:

- The tenant agrees to promptly inform the Landlord or Landlord's agent, in writing, of any damage to the premises or maintenance concerns that come up;
- The tenant agrees not to smoke or vape tobacco or recreational cannabis (marijuana) inside the rental unit or in common areas of the building;
- The tenant agrees not to cultivate (grow) marijuana plants inside their rental unit;

- The tenant agrees to take due precautions against freezing of water or waste pipes and stoppage of the same in and around the premises. If water pipes become clogged by reason of the Tenant's neglect or recklessness, the Tenant shall repair the same at his/her own expense as well as pay for all damage caused;

- The tenant agrees to allow the landlord to enter the rented premises after giving proper written notice for the purpose of taking pictures (inside and outside the rental unit) to advertise the unit for rent or sale.

Important requirements for a tenancy agreement:

- The RTA requires that every tenancy agreement entered into on or after June 17, 1998 includes the legal name and address of the landlord for the purpose of the tenant in paying rent and giving notices or documents under the RTA.

- If there is a written tenancy agreement, the landlord is required to provide the tenant with a copy of the tenancy agreement within 21 days after the tenant signs it and returns it to the landlord.

- As of April 30, 2018, Ontario landlords entering into a written residential tenancy agreement are required to use the Residential Tenancy Agreement (Standard Form of Lease) developed by the Ministry of Housing.*

- If it is a verbal tenancy agreement, the RTA also requires the landlord to give the tenant written notice of the landlord's legal name and address to be used for giving notices and documents within 21 days after the tenancy begins.

If the landlord fails to comply with these requirements, the tenant's obligation to pay rent is suspended until the landlord has complied, and in some cases rent may be considered forfeited altogether.*

Information for New Tenants

Landlords are required to provide new tenants with a brochure entitled "Information for New Tenants," which contains information relating to the rights and responsibilities of landlords and tenants, the role of the Landlord and Tenant Board, and how to contact

the Board. The brochure can be obtained at any Board office or on the Landlord and Tenant Board website.

Fixed-Term Tenancy Agreement

A **fixed-term tenancy agreement** is when a landlord and tenant make a commitment for possession of the rental unit for a specific term (generally one year, although the term may be longer or shorter). It is essential that landlords realize that when they enter into a fixed-term tenancy agreement (or a lease), it may only be terminated before the final date of the term if the tenant fails to live up to specific obligations, or if the landlord and tenant mutually agree to an earlier termination.

Finally, landlords must understand that if they enter into a fixed-term tenancy agreement and it expires, the tenant does not have to vacate the unit. A tenant has security of tenure and is not required to vacate the rented premises unless the landlord issues a notice of termination for reasons defined by the RTA and obtains an order from the Landlord and Tenant Board directing the tenant to vacate the premises.

Conflicts With the Law

Landlords should be aware that if any provision of their tenancy agreement is in conflict with the RTA or other law, that provision of the tenancy agreement cannot be enforced. An example is the inclusion of a "no pets clause" in the agreement. Since the RTA allows tenants to have pets, any provision prohibiting pets is in conflict with the law and the clause is not enforceable. Under certain circumstances, however, a landlord may proceed to terminate a tenancy if a tenant's pet is of a breed that is inherently dangerous or causing damage, an allergic reaction or other disturbance.

Another common example would be if a landlord included a clause such as "the tenant agrees to accept the condition that the unit is in" and then used this as a defense when the tenant complains to the municipality that the rental unit does not comply with regulatory requirements.

Termination Agreements

An agreement to terminate a tenancy is not enforceable if the agreement to terminate was either:

- A condition of entering into the tenancy agreement.
- Created at the time the tenancy agreement came into effect.

Mitigation

Under the RTA, if a landlord or tenant were to have a claim against the other, each party is obliged to take steps to minimize the other person's loss. A common example of this principle is a situation where a tenant has signed a tenancy agreement for one year but vacated after six months. A tenant is responsible for complying with the RTA when terminating a fixed term tenancy. If a tenant vacates a rental unit before the end of a fixed term, a landlord may pursue the tenant for lost rent for the period from the vacate date to the last day of the lease agreement in Small Claims Court.

However, if the tenant vacated the rental unit after being given a notice of termination by the landlord, the tenant only owes rent up until the termination date on the notice or the day they vacated the rental unit, whichever is later. The landlord is not entitled to go after a tenant for lost rent if the tenant left after a notice of termination was given by the landlord.

The landlord must make an effort to re-rent the premises to **minimize their losses**, and should thoroughly document their efforts to re-rent as they will be taken into consideration at a hearing.

Rent Deposit

The landlord is entitled to require the tenant to pay a deposit for the last month's rent. The deposit for the last month's rent must be paid *before* the tenancy starts. The last month's rent deposit is not a damage deposit; it is to be applied as rent for the last month of the tenancy.

A landlord is required to pay the tenant **interest** (https://landlordselfhelp.com/annual-rent-increase-guideline/) on the deposit annually at a rate equal to the annual rent increase guideline released under the RTA. If a landlord fails to pay interest when due, the tenant is allowed to deduct the amount of interest from a future rent payment.

If a landlord has given a tenant a notice of rent increase in accordance with the RTA, the landlord is also allowed to ask the tenant to top-up the last month's rent deposit by an amount equal to the permitted rent increase in order to ensure the deposit reflects the increased rate of rent.

For example, a landlord who collected $500 for last month's rent deposit on January 1, 2015 would owe interest to the tenant on January 1, 2016. The guideline increase for 2016 is what determines the interest amount owing. For 2016, the guideline increase amount is 2%, so the landlord would owe 2% (or $10 of $500) to the tenant as interest on the last month's rent deposit.

However, if the landlord properly served the tenant a completed Form N1 indicating that a rent increase takes effect on January 1, 2016 at the 2% guideline amount, this increase would also equal $10, making the new monthly rent $510. Instead of returning the $10 interest owing to the tenant, the landlord can add it to the $500 deposit the landlord is holding for last month's rent so that it matches the current rent amount ($510). This amount would be the equivalent of the last month's rent at the increased rent level.

How Does the Landlord Obtain the Deposit?

Landlords often require a deposit with the rental application as a sign of the applicant's good faith. The deposit can be all or part of the last month's rent. Once the landlord has checked references and accepted an applicant as their tenant, the landlord can increase the required deposit to the amount equal to one rent period. This deposit can only be used by the landlord to apply to the final rental period of the tenancy.

If a landlord has not collected the full last month's rent deposit on or before the date that the tenant takes possession of the rental unit and the tenant subsequently refuses to pay it, the landlord is not entitled to collect the rest of the last month's rent deposit until it becomes due. However, if the tenancy agreement requires the deposit in advance of the tenancy commencing, the landlord is not obligated to give the prospective tenant possession of the rental unit.

Other Fees and Deposits

Other deposits, such as a damage deposit, are strictly prohibited by the RTA. However, under specific circumstances, a landlord is permitted to charge replacement or refundable deposits. Charges for certain administrative costs are also permitted. These charges may include the following:

- Payment for additional keys or key cards requested by the tenant, no greater than the direct cost.
- Payment for replacement keys or key cards, no greater than the direct replacement cost, unless the replacement is required because the landlord (on his or her own initiative) changed the locks.
- Payment of a refundable key or key card deposit, no greater than the expected direct replacement cost.
- Payment of charges incurred by the landlord from a financial institution for depositing a non-sufficient funds (NSF) cheque from the tenant.
- Payment of an administration fee, no greater than $20, for an NSF cheque.
- Payment for a tenant's court or Landlord and Tenant Board application fees.

Postdated Cheques

Landlords are not permitted to require a tenant to provide postdated cheques or any form of automatic debiting for the payment of rent.

Q & A

Does the tenant have to move out at the end of the lease?

Tenants have security of tenure, which means they do not have to move unless the landlord provides proper notice to the tenant that the tenancy is to be terminated for one of the grounds provided for in the Residential Tenancies Act. While the initial term of the tenancy agreement may indicate a fixed term – such as one year - it has the

potential to develop into a longer-term tenancy unless grounds exist to terminate, the tenant gives notice, or both tenant and landlord mutually agree to end the tenancy.

Can I terminate a tenancy to allow a family member to occupy the Second Suite?

The notice period to terminate the tenancy for this reason is 60 days, and the last day of the tenancy must be the last day of the lease term or the last day of the rental period. The form you would use for this is Form N12. You can only terminate the tenancy if you plan to move into the unit yourself or if the unit is required for your spouse, a child, parent, parent-in-law, or a person who would be providing care to one of these family members. Other family members would not qualify. You will also have to pay the tenant one month's rent as compensation before the termination date on the N12 notice.

My unit needs work and I told my tenant through email two months ago that I need them to vacate the unit. After the repairs, I would have to raise the rent to cover the costs. Do I have to take the tenant back?

The first thing worth mentioning is that giving a notice to end a tenancy to a tenant by email is not a valid method of notice to terminate a tenancy. There are different legal notices of termination that must be used depending on the reason for termination. In order to evict a tenant based on major renovations, the first condition is that the renovations must be extensive enough to require a building permit. When this is the case, the landlord must provide the tenant with proper notice, which is Form N13. The notice period is 120 days after the notice is given and must be the day the rental period ends or the end of the term if there is a fixed term. The other condition is that when the tenant is served with this notice, the tenant has the right to return to the unit once the work is completed provided he/she advised the landlord in writing of his/her intention to return to the unit.

Once the tenant returns, the landlord will then have to apply to the Landlord and Tenant Board for approval to increase the rent based on the capital expenditures. You can obtain more information and download the forms from the Landlord and Tenant Board website.

I agreed to allow my tenant to pay their deposit for last month's rent in installments, but the tenant has defaulted. What can I do?

Unless the landlord collects the deposit prior to the tenant moving in, the tenant is not obligated to pay the deposit once they are already in possession.

I rented to someone who didn't have a job, references or credit information. To compensate, the tenant gave me the last two months' rent. The tenant gave notice to move out and is now taking me to the Board for illegal rent. What are my options for defending the tenant's application?

A landlord can only collect the last month's rent deposit. If you collect anything more than one month's rent, that would be considered an illegal deposit, even if the tenant offered. If the tenant is taking the matter to the Landlord and Tenant Board to get the deposit back, the Board will most likely order that you return it to the tenant. There is no way to argue this.

I rented to a tenant who agreed to a "no dogs" clause in the tenancy agreement. The tenant has a dog, there's damage in the unit and I'm allergic to the dog. What can I do?

Even if your tenancy agreement prohibits pets, that provision is void and not enforceable because it conflicts with the *Residential Tenancies Act*. However, if the pet causes damage, disturbances, an allergic reaction or is of a breed that is inherently dangerous, you can issue a notice of early termination on the ground that the tenant's pet is interfering with your reasonable enjoyment of your home. If you can prove that the dog causes you to have a serious allergic reaction and is causing damage, you can issue Form N5. Once served with this notice, the tenant has a seven-day period to correct the situation. If the problem is not corrected, then you can file an application with the Landlord and Tenant Board.

Can I ask the tenant for a damage deposit and post-dated cheques?

A damage deposit is illegal; you can only ask for the last month's rent deposit. A tenant may choose to pay the rent in post-dated cheques or make payments on a monthly basis, but a landlord cannot require a tenant to provide post-dated cheques.

What are a Landlord's Rights and Responsibilities?

Landlords and tenants have many rights and responsibilities that are established under the *Residential Tenancies Act* (RTA). Additional duties and responsibilities that a landlord and tenant have entered into may be defined in a written tenancy agreement. It is important to note that while a landlord and tenant may agree to certain terms in a tenancy agreement, any terms that are in conflict with the law are unenforceable.

Note: Written residential tenancy agreement entered into **on or after April 30, 2018** between a landlord and tenant must be done using the Residential Tenancy Agreement (Standard Form of Lease) developed by the Ministry of Housing.

The Rental Unit

Throughout the tenancy, a landlord is responsible for maintaining the rental unit in a good state of repair and complying with health, housing, safety and maintenance standards. A landlord cannot expect a tenant to rent the unit "as is." If there are deficiencies in the unit, it is the landlord's responsibility to ensure the unit is in a good state of repair.

In addition, the landlord is also responsible for maintaining any appliances that may have been provided as part of the tenancy agreement, such as a stove or refrigerator, and any facilities, such as laundry. If a landlord fails to maintain appliances or facilities that are part of the tenancy agreement, the tenant may seek a reduction in rent for loss of service.

If the appliances or facilities require repair as a result of damage caused by the tenant, the landlord may seek reimbursement for the cost of repair or replacement and may also seek termination of the tenancy agreement as a result of the damage.

Heat

Depending on the tenancy agreement, the landlord may be responsible for providing heat to the Second Suite, and where this is the case, the RTA establishes heat as a vital service during a prescribed time of the year. The RTA defines the heating season as

beginning on September 1 and ending on June 15. If the landlord is required to provide heat or the means to heat, the temperature of the rented premises must be maintained at 20 degrees Celsius. The requirements for each municipality may differ; it is best for the landlord to consult the local bylaws. It is an offence under the RTA for a landlord to interfere with the supply of a vital service. A landlord who is responsible for providing heat cannot cut a tenant's heat off as a way of forcing a tenant to fulfill responsibilities.

Vital Services

Where the landlord provides a **vital service**, landlords must provide tenants with vital services from the beginning of the tenancy until the day the tenant moves out. At no time during the tenancy is the landlord permitted to interfere with or cut off the supply of the services that the landlord is responsible for providing under the tenancy agreement. In fact, penalties will result if the landlord is found to have interfered with the supply of a vital service. Vital services include electricity, fuel, water (both hot and cold) and heat. The RTA requires heat to be provided from September 1 to June 15.

Who Can Stay in the Rental Unit?

Tenants have the right to have roommates, guests and overnight guests on the premises. Tenants are not required to tell their landlord when they want to have overnight guests, nor do they require the landlord's permission. The tenant is responsible for making sure that any guests brought onto the property follow the same rules as the tenant. Therefore, tenants are responsible for any damage that their guests may cause to the rental unit or property and are also responsible for ensuring their guests' behaviour does not interfere with the landlord's reasonable enjoyment of the property.

Entry by Canvassers

Landlords cannot restrict reasonable access to a Second Suite by candidates standing for election at the federal, provincial or municipal levels or their authorized representatives.

Locks

Landlords may not alter the lock on any entry door to the rental unit without giving their tenant a replacement key. Landlords should use caution when changing the locks and provide their tenant with written notification explaining that the locks will be changed. This notification ensures that the tenant will not misunderstand the action as an unlawful eviction.

Similarly, tenants are not permitted to change the lock on an entry door to the rental unit without the landlord's consent. If the locks have been changed by the tenant without the landlord's consent, the landlord may seek an order from the Landlord and Tenant Board requiring the tenant to provide the landlord with a replacement key or pay for the cost of changing the locks.

It is also an offence under the RTA for either a landlord or tenant to change the locks to a rental unit without providing a replacement key to the other party. If a landlord or tenant changes the lock and does not provide a replacement key, the other party may contact the Rental Housing Enforcement Unit of the Ministry of Housing.

Entering the Rental Unit

It is essential that landlords have a clear understanding of the rules that address when they may and may not enter the rental unit. These rules are established by the RTA and the requirements are specific. If a landlord fails to comply with the notice requirements, the tenant may take legal action against the landlord.

Entry Without Notice

Situations where a landlord may enter a Second Suite without notice:

Emergencies	Landlords may enter the rental unit without notice in cases of emergency. While the term "emergency" is not defined in the RTA, landlords are expected to use their common sense and good judgment. For example, water or smoke coming from the Second Suite would be considered an emergency.

Consent	A landlord may also enter the rental unit if the tenant consents to the entry at the time of entry. There is no need to provide the tenant with a notice for entering the unit if the tenant agrees.
Housekeeping	Some tenancy agreements require landlords to clean the rental unit at regular times. In these cases, landlords are not required to provide written notice and may enter at the times specified in the tenancy agreement. If the agreement requires the landlord to clean the unit but does not specify the time, the landlord may enter the unit between the hours of 8 a.m. and 8 p.m.
Showing the rental unit	The landlord has the right to enter the rental unit to show the unit to prospective tenants if all the following conditions are met: • The landlord and the tenant have agreed that the tenancy will be terminated or one of the two parties has given a proper notice of termination. • The landlord enters the unit between the hours of 8 a.m. and 8 p.m. • Before entering, the landlord informs the tenant or makes a reasonable effort to inform the tenant of the intention to enter the premises.

Entry With Notice

A landlord must provide the tenant with at least 24-hours' written notice before entering the unit. The RTA now allows for notice to be provided by way of email notice if the landlord has received written consent from the tenant. The best way to document this would be for the tenant to complete and sign the new Landlord and Tenant Board form Consent to Service by Email. Landlords should also be aware that the tenant can withdraw this consent, in writing, at any time.

If the tenant does not agree to service of the notice by email, the landlord will have to follow the other service rules and provide the tenant a notice on paper. Section 191 (2) of the RTA states that "a notice or document not given in accordance with these rules may be considered validly delivered if it can be proven that the contents came to the attention of the person for whom it was intended within the required time period."

The notice must specify the reason for entering and the date and time the rental unit will be entered. Landlords are permitted to enter the rented premises during the hours of 8 a.m. and 8 p.m.; however, the time of entry should be specified and limited to a two- to three-hour window.
Landlords may enter a Second Suite for the following reasons:

- To carry out a repair or replacement, or to do work in the rental unit, such as changing the batteries in the carbon monoxide alarm and smoke detectors.
- To allow a potential mortgagee or insurer to view the rental unit.
- To allow a potential purchaser to view the rental unit.
- To carry out an inspection of the rental unit if:
    - The inspection is for the purpose of determining whether the unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligation under Subsection 20 (1) or Section 161 of the *Residential Tenancies Act*.
    - It is reasonable to carry out the inspection.
- For any other reasonable reason for entry that was specified in the tenancy agreement.

Note: Once a tenant has moved into a rental unit, the landlord will not be able to give a 24 hour written notice to enter for the purpose of taking pictures to advertise the unit for sale or rent. This should only be done if the landlord has obtained written consent of the tenant.

Subletting and Assignment

All landlords should understand the difference between subletting and assignment.

Subletting

The **sublet** of a rental unit occurs when the original tenant gives another person the right to occupy the unit but retains the right to reoccupy the rental unit at some future date. When a rental unit is sublet, the original tenant continues to be responsible for paying the rent and meeting the obligations of the tenancy agreement.

Assignment

The **assignment** of a rental unit occurs when the original tenant transfers the rental unit and all rights and responsibilities in the tenancy agreement to another person. When a unit is assigned, the original tenant is no longer responsible for the rent or the condition of the rental unit. Landlords should document this assignment and transfer of responsibilities in an addendum. An **addendum** is something added to the original lease and should be written documentation indicating the change in tenant after a certain date.

The rest of the terms and conditions in the original tenancy agreement stay the same.

Important information about assignments:

- All tenants, regardless of the type of tenancy, have the right to assign the rental unit with the landlord's consent.
- The assignment of the rental unit must be done with the landlord's consent. If a tenant assigns a rental unit without first obtaining consent, the landlord may seek an order from the LTB to evict the **unauthorized occupant.** An order must be sought within 60 days of discovering the unauthorized occupancy.
- Landlords must not arbitrarily or unreasonably withhold consent of a rental unit to a potential assignee.
- Once a landlord has given consent to assign the rental unit to someone, the landlord may not later refuse consent.
- Landlords may only charge the reasonable out-of-pocket expenses (ex. Screening fees, rental advertisements) incurred in giving consent to the assignment or consent to a specific assignee.
- Within 30 days after a request is made for an assignment, a tenant has the right to give 30 days' notice (28 days for a weekly tenant) to terminate the tenancy if at least one of the following conditions applies:
    - The landlord refused to give general consent to an assignment of the rental unit. A **general request** involves the broad approval by the landlord to allow the tenant to assign the rental unit.
    - The landlord did not respond to the general request within seven days.
    - The landlord did not respond to the specific request within seven days after the request was made. A **specific request** involves approval by the landlord for the assignment of the tenancy to a specific individual.

Duty to Accommodate

Under the *Ontario Human Rights Code*, landlords have a **duty to accommodate** tenants with a disability; however, the responsibility of obtaining appropriate accommodation is to be shared between the landlord and tenant.

Tenants must show that they have made reasonable efforts to access resources available to them to assist with their accommodation. If the tenant is still unable to obtain the resources required, it is the tenant's duty to inform the landlord of the needs related to the *Human Rights Code* that require accommodation.

Landlords are expected to accommodate tenants with disabilities to the point of undue hardship. That means landlords are obligated to provide the resources requested, unless they can prove that the costs are too high and outside their reach; outside sources of funding are not available for the type of request made by the tenant; and the accommodation of the tenant's request would put the health and safety requirements of the building at risk.

For more information on a landlord's duty to accommodate, consult the "Landlord's Reference Guide to Human Rights in Rental Housing" available on the Landlord's Self-Help Centre website.

Pets

Generally, a landlord cannot prohibit a tenant from having a pet or use the presence of a pet as a reason for the termination of the tenancy agreement, in spite of any agreement that may exist between the landlord and tenant. The *Residential Tenancies Act* allows tenants to have pets, however, Section 76 of the Act permits a landlord to apply to the Landlord and Tenant Board for an order terminating the tenancy based on the presence, control or behaviour of an animal in or about the rented premises. Landlords may issue a notice if any of the following conditions apply:

- The past behavior of an animal of that species has substantially interfered with the reasonable enjoyment of the residential complex.
- The presence of an animal of that species has caused the landlord or another tenant to suffer a serious allergic reaction.

- The presence of an animal of that species or breed is **inherently dangerous** to the safety of the landlord or the other tenants.

Damage

The tenant is responsible for repairing any damage that was caused by willful or negligent conduct of the tenant, a guest or another person permitted on the premises by the tenant. Landlords are encouraged to take pictures of the rental unit before it is rented. If a tenant causes damages, the landlord will be able to use these pictures as part of their evidence to document the extent of the damage.

Cleaning

The tenant is responsible for the ordinary cleanliness of the rental unit, unless the tenancy agreement requires the landlord to clean the premises.

Harassment

Tenants and landlords have a mutual responsibility not to harass, obstruct, coerce, threaten or interfere with the other party.

Reasonable Enjoyment

It is the landlord's responsibility to ensure that all tenants have reasonable enjoyment of the premises they are renting. Tenants, likewise, are responsible for ensuring the landlord's reasonable enjoyment. If the conduct or behaviour of a tenant interferes with that of another tenant or the landlord, the landlord must take steps to correct the situation. A landlord's failure to provide tenants with reasonable enjoyment may result in a tenant seeking compensation.

Smoke-Free Housing

For landlords interested in operating a smoke-free rental unit, the easiest way to go smoke-free is to start smoke-free. If the building is empty (either because it is new or

newly renovated), a landlord can declare it 100% smoke-free from the beginning and have all new tenants sign a lease that includes the no-smoking policy. As part of the policy, the landlord will need to decide if there will be a smoke-free buffer zone around doorways, operable windows and air intakes or if the entire property will be non-smoking.

Landlords who wish to have a smoke-free policy should advertise the units as non-smoking, include the policy in the lease and be sure to post ample signage reminding tenants of the rules. If there is a waiting list, future tenants will need to be informed of the policy too.

If a landlord would like to introduce a no-smoking policy and the building has existing tenants, unless tenants agree to sign an addendum to their leases, the landlord will have to gradually go smoke-free through attrition. In other words, if there are current tenants who smoke and are not supportive of the policy, their ability to smoke would be grandfathered and therefore permitted to continue as long as they live in the building. If the tenant has a lease and it expires, the landlord cannot require the existing tenant to sign a new lease containing the no-smoking policy, as per Section 38 (1) of the *Residential Tenancies Act*.

If a tenancy agreement for a fixed term ends and has not been renewed or terminated, the landlord and tenant shall be deemed to have renewed it as a monthly tenancy agreement containing the same terms and conditions that are in the expired tenancy agreement.

All new tenants will sign a lease that includes the no-smoking policy. As existing tenants move out, their units can be cleaned up and declared non-smoking too. Through this process, eventually, the entire building will be smoke-free.

If need be, no-smoking policies can be enforced at the Landlord and Tenant Board using grounds including reasonable enjoyment (Section 64, *Residential Tenancies Act*).

Prompt Rental Payments

Landlords have the right to receive rental payments on the date the rent is due, as established in the tenancy agreement. If a tenant fails to pay the rent lawfully owing under a tenancy agreement, the landlord may give the tenant a notice of termination.

Rent Receipts

Landlords are required to provide tenants and former tenants with rent receipts upon request. However, it is good business practice for landlords to provide receipts for any rent payments received from the tenant and to do so promptly.

Annual Rent Increases

Landlords are entitled to annual rent increases in accordance with the provisions established under the RTA, provided proper written notice is given to the tenant using the current approved Landlord and Tenant Board form.

Last Month's Rent

Landlords are entitled to require the tenant to increase the deposit for last month's rent by the amount the rent has increased.

Landlords are required to pay the tenant interest on the last month's rent deposit at the same rate as the annual rent increase guideline. Interest must be paid annually. If a landlord fails to pay interest as required, the tenant may deduct the interest from a future rental payment. See the example provided under the section "Rent Deposit."

Proper Notice from the Tenant

Landlords have the right to receive a written notice from the tenant that complies with the requirements of the RTA if the tenant chooses to give a notice of termination.

Increasing the Rent

Annual Rent Increases

The landlord is permitted to increase the rent as long as 12 months have passed since the day the rental unit was first rented to the same tenant, or the date of the last rent

increase to the same tenant. Tenants who have been renting a unit for 12 months or longer may have their rent increased by the annual guideline amount without the landlord having to seek approval from the Landlord and Tenant Board. Landlords who wish to increase the rent must provide 90 days' written notice using the prescribed Form N1 (or N2 where appropriate).

Giving Notice of Rent Increase

The *Residential Tenancies Act* requires the landlord to give the tenant 90 days' written notice of rent increase. The notice of rent increase must be on a form approved by the Landlord and Tenant Board and must be delivered by fax, mail, personal delivery or by leaving it where mail is ordinarily collected, in the mail box or by sliding it under the door. Landlords cannot deliver the notice by posting it on the tenant's door.

Annual Rent Increase Guideline

The *Rental Fairness Act, 2017*, removed the rent increase exemptions previously allowed under section 6(2) of the RTA. Most residential rental units in Ontario are rent controlled, and landlords can only increase the rent once every 12 months by the allowable guideline amount.

Each year, the landlord is entitled to increase the rent by the statutory rent increase guideline. The **annual rent increase guideline** is determined according to Section 120 (2) of the *Residential Tenancies Act*, which averages the monthly Ontario consumer price index over a 12-month period concluding at the end of May of the previous calendar year and is capped at the annual maximum of 2.5%. The guideline for rent increases taking effect on or after January 1 is announced by August 31 of the previous year.

If a landlord has expenses that would justify a higher increase, the landlord may seek approval for a rent increase above the statutory guideline by filing the appropriate application with the Landlord and Tenant Board.

Rent Increase Above the Guideline: November 15, 2018 Exemption

In 2018, the Province passed legislation, Bill 57- *Restoring Trust, Transparency and Accountability Act, 2018*, which amends the Residential Tenancies Act, 2006 (RTA) to include an exemption from rental control for new residential rental units.

Section 6.1 of the RTA provides details of the rent control exemption and refers to two types of rental units:

1. A building, mobile home park or land leased community, no part of which was occupied for residential purposes on or before November 15, 2018; and

2. Rental units located in detached, semi-detached and row houses which meet and are subject to specific requirements.

The exemption for new rental units located in detached houses, semi-detached houses or row houses, not occupied for residential purposes on or before Nov. 15, 2018, are subject to the following:

- The detached, semi-detached or row house contained not more than two residential units on or any time before November 15, 2018;

- The residential unit has its own bathroom and kitchen facilities; has one or more exterior and interior entrances; at each entrance the unit has a door equipped so it can be secured from the inside of the unit; and at least one door is capable of being locked from the outside;

- The owner, or one of the owners, lived in another residential unit in the house; or the house was unfinished space immediately before the rental unit became a residential unit.

See section 6.1 of the *Residential Tenancies Act, 2006*, for more information.

Application to Increase the Rent Above the Guideline

Where a landlord has a significant increase in costs, an above guideline rent increase may be sought. Landlords must get approval from the Landlord and Tenant Board before they can charge an increase above the guideline.

Applications to the Board can be made for eligible capital expenditures (e.g., a roof replacement), extraordinary increases in operating costs (e.g., municipal taxes and charges), or for security services operating costs. The above guideline increase for the capital expenditures component is capped at 3% above the guideline for a maximum of 3 years.

The *Rental Fairness Act,* 2017, also removed the ability for landlords to apply to the LTB for an above guideline rent increase because of increasing utility costs.

Above guideline rent increase (AGI) versus vacancy decontrol

Due to the complexity of the AGI application process and the great amount of detailed information required by the Board from applicants, most small landlords will find this option to be too expensive since it would usually require them to hire a paralegal or rent control consultant. Because such costs would likely be greater than the expected benefits, it is usually better to wait until the unit is vacant and then charge a fair market rent for the new tenant coming in.

Agreements to Increase the Rent

The RTA allows a landlord and a tenant to agree to increase the rent charged to the tenant for a rental unit above the guideline if one of the following two conditions apply:

- The landlord has carried out or promises to carry out a specified **capital expenditure** in exchange for the rent increase.

- The landlord has provided or promises to provide a new or **additional service** in exchange for the rent increase.

Criteria for an agreement to increase rent:

- The agreement must be in writing using the Landlord and Tenant Board Form N10: Agreement to increase rent above the guideline, available from the Board office or on the Landlord and Tenant Board website.
- The highest increase that can be agreed to is 3% above the rate published annually as the Annual Rent Increase Guideline.
- The tenant has the right to cancel the agreement by giving written notice to the landlord within five days after signing it.
- The agreement may not come into effect sooner than six days after signing.
- A landlord and tenant can only agree to increase the rent if at least 12 months have passed since the beginning of the tenancy agreement or the tenant's last rent increase.

Note: An agreement to increase the rent is void if it has been entered into as a result of coercion or as a result of a false, incomplete, or misleading representation by the landlord.

If the landlord has served the tenant with a 90 days' notice of rent increase before the agreement to increase was entered into, the 90 days' notice becomes void when the agreement to increase takes effect if the notice of rent increase is to take effect on or after the day the agreement to increase takes effect.

The RTA also allows a landlord to increase the rent charged *at any time* if both parties agree that the landlord will add either of the following to the tenant's occupancy of the rental unit:

- A parking space.
- A prescribed service, facility, privilege, accommodation or thing:

- Cable television
- An air conditioner
- Extra electricity for an air conditioner
- Extra electricity for a washer or dryer in the unit
- Blockheater plug-ins
- Lockers or storage space
- Heat
- Electricity
- Water or sewage services
- Floor space

While there is no Board-approved form available for this type of agreement, it is strongly suggested that landlords obtain this consent in writing.

Decrease of Services

The RTA also gives a landlord and tenant the ability to agree on a rent decrease where both the landlord and tenant agree that parking or a prescribed service, facility, privilege, accommodation or thing will no longer be provided to the tenant.

If a landlord took away a service or amenity that was provided without proper compensation to the tenant, the tenant may file an application with the LTB. The tenant has 12 months from when the service or facility was discontinued to file the application.

Note: An agreement for decrease of services is void if it has been entered into as a result of coercion or as a result of a false, incomplete or misleading representation by the landlord.

Rent Reduction

Tenants have the right to apply to the Board to have their rent reduced as a result of a reduction in services or taxes, or for the return of money collected illegally. Tenants who believe they have been charged an unlawful rent may apply to the Landlord and Tenant Board for a rebate of illegal rents paid by the tenant prior to the date of the application.

If an application is filed and proper documentation is lacking, the Board may consider the rent charged to the tenant at the beginning of the tenancy (together with any lawful increases that may have occurred during the tenancy) to be the lawful rent. To avoid illegal rent collection, claims and lost increases, it is important for landlords to properly complete and serve the approved Landlord and Tenant Board Form N1.

Automatic Rent Reduction

The *Residential Tenancies Act* contains a provision that allows tenants to reduce their rent when the property taxes for their residential rental building have decreased compared to the previous year. If the property tax decreases by more than 2.49%, a tenant's rent can be automatically reduced by an amount that is prescribed by a regulation to the RTA.

Only rental properties containing seven or more units receive a notice from the municipality to inform both landlords and tenants of an automatic rent decrease.

Note: The City of Toronto provides notice to landlords and tenants of all sized rental properties to inform them of the automatic rent reduction.

A landlord who disagrees with the percentage determined by the municipality has the option of filing an application with the Landlord and Tenant Board to seek a variance or change.

Rents do not automatically increase if municipal property taxes increase. Landlords must apply to the Landlord and Tenant Board for a rent increase above the guideline to obtain approval to pass on the additional costs.

Q & A

What establishes the annual guideline and how is it determined?
The RTA establishes the formula that is used to calculate the annual rent increase guideline. The annual rent increase guideline is based on the Ontario Consumer Price Index and is announced by the Ministry of Housing by August 31st of the previous year.

Since I didn't increase the rent last year, can I add two years' worth of increases this year?

Rent increases that are not taken for a particular year are forfeited. Landlords are not able to backtrack and recover increases not taken the previous year. Even though you didn't increase the rent last year, you can only increase the rent by this year's guideline amount. You can find a link to the current guideline amount on the Landlord's Self-Help Centre website.

If my tenant and I entered into an agreement to increase the rent for the addition of a parking space, am I allowed to increase the rent by the rent increase guideline?

You are entitled to give notice and increase the rent by the guideline amount even if you and the tenant agreed to an increase as the result of a new parking space or any of the prescribed services.

I applied for an increase above the guideline but was unsuccessful. What happens to the increased rent that the tenant paid in the interim?

When you are seeking a rent increase above the rent increase guideline, the RTA permits a tenant to either pay just the existing lawful rent or pay the amount you are seeking. If the tenant paid the amount you sought in your application and that application was not approved, you would owe the tenant a refund.

Similarly, had the tenant chosen to pay only the existing lawful rent and you were successful in your application for an above guideline increase, the tenant would owe you. The tenant would be required to pay the increased amount (above the guideline) once the Landlord and Tenant Board issues its order.

A parking space is included in the rent amount for my unit. The tenant no longer has a car and they want to give back the parking spot in exchange for a reduction in their monthly rent. How do I proceed?

If you agree to a rent reduction in exchange for the return of the parking space, make sure the change is recorded in writing. If you do not agree with the tenant's request, the tenancy agreement remains unchanged and the tenant would keep the parking spot to be used for his or her guests.

How Can I Resolve Conflicts?

Although neither landlord nor tenant wants conflict, conflicts do occur from time to time. There are ways, however, to resolve conflicts as well as reduce the chances of them occurring.

Reducing the Chance of Conflict

The best way to avoid the stress of a conflict is to prevent one from occurring in the first place. This can be done through clear communication and by understanding the laws that govern landlord and tenant relations.

The following are ways a landlord can prevent a conflict from occurring:

Using a written tenancy agreement	A tenancy agreement clearly sets out important parts of the lease from the beginning. It provides a reference for both parties to refer to if there are questions or difficulties later on. If entering into a written tenancy agreement **on or after** April 30, 2018, the landlord must make sure to use the Standard Form of Lease developed by the Ministry of Housing, and provide a copy to the tenant within the 21 day time period.
Learning the law	By understanding the laws that govern rental housing in Ontario, the *Residential Tenancies Act* and the *Ontario Human Rights Code*, a landlord may be able to reduce the chances of conflict. Landlords can contact the Landlord's Self-Help Centre or a Housing Help Centre to find out about education events and workshops, as well as gain access to helpful resources. In addition to its adjudicative role, the Landlord and Tenant Board

	also provides information to landlords and tenants about their rights and responsibilities under the RTA.
Following legal procedures	When the RTA sets out a legal procedure for something (e.g., a rent increase or entering a unit for repairs), the landlord must follow it. Although it may seem like more work, it will save time and reduce conflict in the long run. For more information on legal procedures, contact the Landlord's Self-Help Centre or the Landlord and Tenant Board.
Addressing concerns before they grow	When an issue arises, landlords should speak with their tenant as soon as possible, explain the problem as the landlord sees it and suggest a way the problem could be resolved.
Responding quickly	Landlords may not be able to solve a problem immediately or in the way the tenant wants. The tenant may have a different view of the problem or wish to solve it another way. By listening to and negotiating with the tenant, the landlord may be able to come to a solution that works for both parties.
Remaining calm	Trying to solve a problem when either person is angry does not work. If the landlord or tenant is upset, the two parties should wait until tempers have cooled down before reconvening.
Putting it in writing	Writing things down is another way to reduce misunderstandings. Landlords are advised to keep copies of any written documentation that they send to their tenant. Any agreement that a landlord and tenant reaches after signing the tenancy agreement should also be put in writing; this includes solutions to concerns that either party brings forward. If a landlord has a serious concern, providing a written notice to the tenant prior to any discussion would be a good idea. The landlord should also give the tenant a written explanation of the problem if it continues after the initial discussion.
Clarifying the situation	Sometimes two people can come away from a meeting with a very different understanding of the situation. If there is a chance of a misunderstanding, landlords should speak with their tenant to clarify the situation.

When A Problem Seems Unsolvable

It is not always possible for a landlord and tenant to come to a solution by themselves, which is why a third party may prove helpful. The following agencies can help mediate conflicts between landlords and tenants.

Conflict Mediation

Mediation is a form of conflict resolution provided by a conflict mediation service, which may be provided by a number of different organizations. The services aim to come up with a win-win solution for all parties involved in a conflict, and services are provided free of charge. When there is a landlord and tenant conflict, either person may request mediation and participation is completely voluntary.

Conflict mediation requires a mediator to act as an objective third party, meaning the mediator does not take sides or impose solutions. Mediators are often volunteers who have received intensive training in conflict mediation.

Resolving a dispute through mediation may be better than going through the legal system or having the tenant leave. A landlord may end up saving on legal and filing fees, not to mention the money that would have been spent fixing up and advertising the apartment; the loss of revenue from not having a tenant during the interim; and the time and energy of showing and screening tenants again.

It is best to use conflict mediation early in the dispute to increase the chance of a successful resolution. Conflict mediation programs do not get involved if the dispute is already before the Landlord and Tenant Board. To find the closest conflict mediation services office, contact Ontario 211.

Housing Help Centres

Mediation between landlords and tenants is one of the many services that Housing Help Centres provide. Mediation is facilitated by a housing worker who has experience with and knowledge of rental housing issues. As with conflict mediation programs, it is best to approach a Housing Help Centre early in a conflict. Note that each Housing Help Centre may have different requirements for getting involved in mediation between

landlords and tenants, and many require the landlord to have listed the unit with the centre when it was vacant. As with all Housing Help Centre services, registering a unit and mediation are free. To find the closest Housing Help Centre, contact Ontario 211 or visit the Housing Help Association of Ontario website.

Landlord and Tenant Board

The Landlord and Tenant Board offers a mediation program, and if all parties agree to seek its services, the Board will appoint a mediator to assist the landlord and tenant in coming to a resolution. Mediation is offered as an option to resolve disputes before a hearing is held, and agreements reached during mediation may be turned into a consent order. Conflict mediation tends to have a good success rate. The Social Justice Tribunals' Annual Report for 2015-2016 states that where both parties were in attendance, approximately 34% of cases were successfully resolved through mediation at the Landlord and Tenant Board.

The Board also conducts case management hearings for tenant applications regarding tenant rights and maintenance. Case management hearings allow the parties to mutually agree to a resolution of some or all of the issues, work out an agreed set of facts, and receive direction that will benefit them at the hearing.

Landlords should be aware that the majority of the cases that go to the Board are heard by an adjudicator who will issue a legally binding decision. For more information about the mediation program, contact the Landlord and Tenant Board.

Q & A

My tenant is having too many parties, which disrupt the neighbours and result in too many cars being parked on the street. Will I get into trouble since I'm the owner of the house? What can I do?

When a tenant is disturbing the neighbours and interfering with their enjoyment, it would be best to address the concerns in writing. Provide the tenant with a letter to inform him or her of the complaints received and ask the tenant to be mindful of his or her actions.

If the behavior and complaints continue, the landlord can serve that tenant with a legal notice (Form N5). Form N5 is a 20-day notice in which the landlord has to describe the problems in detail and when they occurred. The tenant will then have seven days to correct the situation, otherwise the landlord can file an application with the Landlord and Tenant Board to go to a hearing and seek termination of the tenancy. Form N5 can be obtained from the Landlord and Tenant Board website.

My tenancy agreement allows the tenant to use one of two parking spots behind the house. The tenant's friends, however, always park in the other spot if I'm not home. I have spoken with my tenant twice about this, but my tenant's friends keep parking there. What can I do?

Since you have already spoken with your tenant, you should put your complaint in writing, provide a copy to the tenant and keep a copy for yourself. Remind your tenant that he or she has to follow the tenancy agreement and is responsible for making sure any guests do not interfere with you or the other tenants. If the behavior and complaints continue, the landlord can serve that tenant with a legal notice (Form N5: Notice to Terminate a Tenancy Early).

I thought when my tenants moved in that we had an agreement over the sorting of garbage and recycling. In the past six months, however, we have constantly clashed over this issue. They are good tenants in all other respects, and I do not want to have to lose them over this. How can we solve this problem?

A conflict mediation program may help solve this disagreement. Conflict mediation tries to find a solution that both parties agree with. Speak with your tenants to see if they are willing to try conflict mediation. Both you and your tenant must want to use the conflict mediation for it to work. Neither party should feel forced to agree to it. If you and your tenants both agree, call the conflict resolution program in your area.

My tenant has not paid rent, so I've applied to the Board to terminate the tenancy. Is this an issue that the Board can help mediate? If the tenant pays me the rest of the rent, I would be willing to have the tenant stay.

The Landlord and Tenant Board has a mediation program that can be used if you and your tenant both agree. A mediator will assist you and your tenant to come to an agreement, which could involve a plan for the repayment of arrears. Before using the

mediation program, both you and your tenant should seek advice from a legal service provider, as Board-mediated agreements are binding and enforceable by the Board.

Terminating a Tenancy

Sometimes it is not possible to resolve problems through mediation or otherwise. The landlord or tenant then has the option of ending the rental relationship by terminating the tenancy agreement. Specific rules and guidelines respecting the termination of a tenancy agreement have been established under the *Residential Tenancies Act*. These rules govern the termination of tenancy agreements in all types of residential rental accommodation subject to the RTA.

Termination by Mutual Agreement

Mutual agreement is often used when both the landlord and the tenant recognize their differences and wish to end the rental relationship as amicably as possible. In situations where both the landlord and tenant are in agreement, the tenancy agreement may be terminated by mutual consent without the involvement of lawyers, paralegals, agents or the Landlord and Tenant Board.

The **agreement to terminate** is a simply worded written agreement between the landlord and tenant that specifies the parties have agreed to terminate the rental agreement. The agreement to terminate the tenancy should be in writing and should include the following information:

- The names of the landlord and tenant who signed the tenancy agreement.
- The rental unit (description of unit, address and municipality), including the date the agreement was signed; the date the tenant will vacate the premises; and the signatures of both the landlord and tenant.

Landlords and tenants may use Form N11 from the Landlord and Tenant Board to formalize their agreement. An agreement to terminate is void and cannot be enforced if either of the following conditions apply:

- It is entered into at the time the tenancy agreement is entered into.
- It is a condition of entering into a tenancy agreement.

If the tenant fails to vacate the premises as agreed, the landlord must take action. The landlord may enforce the agreement to terminate by filing an application with the Landlord and Tenant Board for an order terminating the tenancy and evicting the tenant. The agreement to terminate remains valid for only 30 days after the termination date, so if the landlord wants the tenancy to be terminated, it is important that the landlord takes action within that time period.

Termination by Tenant

There are two methods which may be used by a tenant to terminate a tenancy.

The first and most common method of termination requires the tenant to simply give the landlord written notice to end their tenancy agreement. The RTA requires the notice to terminate to coincide with the end of the rental period of term.

In the case of a daily or weekly tenancy, the tenant is required to give 28 days' notice to the end of the rental period or term. For all other types of tenancies, tenants are required to give 60 days' notice coinciding with the end of the rental period or term. The RTA requires that a notice of termination be on Form N9 and specify or include the following:

- The name(s) of the tenant(s) who are giving the notice.
- The rental unit for which the notice is given.
- The date on which the tenancy is to terminate.
- The signature of the person giving the notice or their agent.

If the tenant fails to vacate the premises according to the notice, the landlord must take action no later than 30 days of the stated termination date or the notice becomes void. However, the landlord can take action as soon as the notice is provided from the tenant.

A tenant's notice to terminate the tenancy is void should either of the following conditions apply:

- It is entered into at the time the tenancy agreement is entered into.
- It is a condition of entering into a tenancy agreement.

The second method of termination is the result of a recent amendment to the RTA which permits a rental agreement to be ended by the tenant on 28 days written notice in situations involving sexual or domestic violence or abuse.

As of September 8, 2016, tenants or a child living with a tenant who is suffering from sexual or domestic violence or abuse are entitled to end their tenancy with 28 days' notice to their landlord. A Tenant's Statement About Sexual or Domestic Violence and Abuse or "a copy of a restraining order or peace bond issued by a court within the last 90 days that orders the alleged abuser not to contact [the tenant or the child] and/or not to enter the rental unit", must be provided with their termination notice, Form N15.

After receiving the tenant's notice, if there is a joint tenancy, it continues in the name(s) of the remaining tenant(s). If the tenant was the sole occupant, the landlord cannot identify the unit in any advertisement or show the unit to prospective tenants until the tenant moves out.
If the notice is provided by all tenants living in the rental unit and they do not leave by the termination date, the landlord may apply to the Landlord and Tenant Board for eviction. However, "if the tenant(s) do not move out by the termination date and this notice was given by some but not all of the tenants of the unit, the notice becomes void and the landlord cannot apply to evict the tenant(s) listed in this notice."

The landlord may share this information with their superintendent or property manager, but MUST otherwise keep the information strictly confidential unless the law requires it to be shared with individuals investigating the situation.

It is an offence for tenants to misuse this notice, and for landlords to breach confidentiality, fines of up to $25,000 may be imposed.

Termination by Landlord

There are several reasons that a landlord may issue a notice to terminate the tenancy agreement. When a landlord issues a notice to terminate a tenancy agreement, the notice to the tenant must be on a form approved by the Landlord and Tenant Board and must include all the following information, as specified under the RTA:

- The name(s) of the landlord(s) and tenant(s).

- The rental unit for which the notice is given.
- The date on which the tenancy is to terminate.
- The signature of the person giving the notice or their agent.
- The reasons and details respecting the termination.

And inform that:

- If the tenant vacates the rental unit in accordance with the notice, the tenancy terminates on the date set out in the notice.
- If the tenant does not vacate the rental unit, the landlord may apply to the Landlord and Tenant Board for an order terminating the tenancy and evicting the tenant.
- The tenant is entitled to dispute the application if the landlord applies to the Board for an order.

There are two types of termination notices:

- Early termination, which may occur at any time during the tenancy and is generally the result of the tenant's conduct.
- End of term termination, which must coincide with the expiration of the fixed-term agreement or if not fixed term, the end of the rental period.

The Grounds to Terminate Early

The *Residential Tenancies Act* gives landlords the opportunity to terminate a tenancy early for several reasons:

nonpayment of rent	The tenant fails to pay rent lawfully owing under a tenancy agreement. The notice may not be effective earlier than the seventh day for a daily or weekly tenancy, or the 14th day for all other types of tenancy agreements. The notice must also specify the amount of rent overdue and advise that the tenant may avoid termination by paying the rent before the notice becomes effective.

illegal act	The tenant commits an illegal act or carries on an illegal trade, business or occupation, or permits a person to do so in the rental unit or house. The termination date on the notice must not be earlier than the 20th day after it is given, or the 10th day in cases involving the production of or trafficking an illegal drug, or possession of an illegal drug for the purposes of trafficking. The notice must set out the grounds for termination.
undue damage	The tenant or a person whom the tenant permits in the house willfully or negligently causes undue damage to the rental unit or house. The termination date on the notice must not be earlier than the 20th day after the notice is given; must set out the reasons for termination; and must require the tenant to pay the reasonable costs of repairs or require the repairs to be made within seven days. The notice becomes void if the tenant complies within seven days.
undue damage, shorter notice period	The landlord may give a shorter notice if the tenant or a person whom the tenant permits in the house willfully causes undue damage to the rental unit or house, or uses the unit or house in a manner inconsistent with its use as a residential premise, which caused or can reasonably be expected to cause damage. The notice must not be dated for earlier than the 10th day after the notice is given and set out the reasons for termination. The tenant cannot void this type of termination notice by repairing the damage. The landlord may apply to the Board for an eviction order immediately after serving the notice.
reasonable enjoyment	The conduct of a tenant, another occupant of the rental unit or a person permitted in the house by the tenant is such that it substantially interferes with the reasonable enjoyment of the premises or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant. The notice cannot be effective earlier than 20 days after the notice is given; must set out detailed reasons (with times and dates for each occurrence) for termination; and must require the tenant to stop the activity or conduct, or correct the omission set out in the notice, within seven days. The notice becomes void if the tenant complies within seven days.

reasonable enjoyment of landlord in small building	If the landlord resides in a house containing no more than three residential units, the landlord can issue a shorter notice if the conduct of a tenant, another occupant of the rental unit or a person permitted in the house by the tenant is such that it substantially interferes with the reasonable enjoyment of the premises or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant. The termination date on the notice must not be earlier than the 10th day after the notice is given and must set out detailed reasons (with times and dates for each occurrence) for termination. The tenant is not given the opportunity to correct the problem. The landlord may apply to the Board for an eviction order immediately after serving the notice.
impairing safety	If an act or omission of the tenant, another occupant of the rental unit, or a person permitted in the house by the tenant seriously impaired the safety of any person, and the act or omission occurs in the house. The termination date on the notice must not be earlier than the 10th day after notice is given and must set out detailed reasons (with times and dates for each occurrence) for termination.
overcrowding	When the number of people occupying the rental unit on a continuing basis contravenes the number permitted by health, safety or housing standards. The termination date specified on the notice must not be earlier than the 20th day after notice is given; must set out the details or the reasons for termination; and must require the tenant to reduce the number of persons occupying the rental unit to comply with health, safety and housing standards within seven days. The notice becomes void if the tenant complies within seven days.

In cases involving damage, disturbances and overcrowding where the tenant has complied with the notice and corrected the problem within seven days, a further violation within six months permits the landlord to issue a second notice and seek termination without providing the tenant with a further opportunity to comply.

The Grounds to Terminate at the End of a Rental Period or Term

The RTA has established several grounds for termination of a tenancy agreement that may be used at the end of the tenancy agreement, provided the termination date coincides with the end of the term or rental period.

The **end of the term** relates to tenancy agreements that establish a fixed term, such as a lease agreement.

The **rental period** relates to the period the rent covers such as the first of the month to the 31st; the 15th of the month to the 14th of the following month; or in the case of a weekly rental, from a Wednesday to the following Tuesday.

The following table outlines the reasons for termination for which notice must be given to correspond with the end of the rental period or term.

Landlord's Own Use	A notice of termination may be issued if the landlord, in good faith, requires possession of the rental unit for residential occupation for the following parties: • The landlord • The landlord's spouse • Child or parent (of the landlord or landlord's spouse) • A caregiver for the landlord, landlord's spouse, or a child or parent of the landlord or the landlord's spouse. The person receiving care must reside or will reside in the house in which the rental unit is located. The landlord must provide at least 60 days' notice and the termination date must be the last day of the rental period or term. Landlords who serve the tenant with a notice for own use must also pay the tenant one month's rent as compensation before the termination date on the notice.

	A tenant who has received a notice of termination based on the reason that the landlord requires possession of the premises for their own occupation may give notice to terminate the tenancy earlier than the date set out in the notice. The tenant must give at least 10 days' written notice of their intention to vacate prior to the termination date specified in the notice. **Note:** Corporations cannot use the N12 notice to end a tenancy for landlord's own use.
Demolition, Conversion or Repairs	A notice of termination of a tenancy may be given if the landlord requires possession of the rental unit for any of the following reasons: • To demolish it. • To convert the unit to use for a purpose other than residential premises. • To perform repairs or renovations that are so extensive that the landlord requires a building permit and vacant possession of the rental unit. The termination date specified in the notice of termination must be at least 120 days after the notice is given and must be the day the rental period ends or the end of the term if there is a fixed term. The notice, when given for repairs or renovations, must inform the tenant whether he or she wishes to exercise the right of first refusal to occupy the premises after the work is completed. The tenant must give the landlord notice, in writing, of the fact before vacating the unit. The **right of first refusal** allows a tenant the option to move back into the unit once the repairs or renovations have been completed. Landlords must be aware that if a tenant exercises this right, the terms in the original tenancy agreement would continue as they were. Changes cannot be made unless both parties are in agreement. Any increases made to the rent amounts for the renovated or repaired unit would be illegal increases. A tenant who receives a notice of termination for demolition, conversion or repairs may at any time before the termination date, specified in the landlord's notice, give the landlord a notice to vacate sooner. The effective date of the tenant's notice must

	be at least 10 days after the tenant's written notice is given.
Persistent Late Rental Payments	The landlord may issue a notice of termination in situations where the tenant has persistently failed to pay rent on the date it becomes due and payable. The notice must be given at least 28 days in advance to terminate a daily or weekly tenancy and 60 days to terminate all other types of tenancies ending on the last day of the rental period or term.
Purchaser Personally Requires the Unit	Another reason for termination is if the property is being sold and the purchaser requires possession of the premises for his or her occupation; the occupation of his or her spouse; a child or parent of the purchaser or purchaser's spouse; or for a caregiver for any of the aforementioned people, if the person receiving the care services resides or will reside in the house in which the rental unit is located. The vendor of a house containing no more than three residential units may, on behalf of the purchaser, give notice to terminate the tenancy. For this to occur, the landlord must have entered into an agreement of purchase and sale to sell the house and one of the following applies: • The purchaser in good faith requires possession of the house or a unit in it for residential occupation by the purchaser, the purchaser's spouse, or a child or parent of either the purchaser or purchaser's spouse. • A person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of one of them, if the person receiving the care services resides or will reside in the house in which the rental unit is located.

Termination of an Unauthorized Occupancy

The landlord may apply to the Board for an eviction order if the tenant transferred the tenancy to another person without following the proper procedure for assigning or subletting established by the RTA. The landlord may apply for an order evicting the unauthorized person no later than 60 days after the landlord discovered the unauthorized occupancy.

Overholding Subtenant

Where the premises have been sublet and the subtenant continues to occupy the rental unit after the end of the subtenancy, the landlord or tenant may apply to the Board for an order evicting the subtenant, within 60 days after the end of the subtenancy.

Q & A

When does a tenant have to move out of the rental unit?

A tenant is not required to vacate the rental unit unless the landlord has obtained an order from the Landlord and Tenant Board to terminate the tenancy agreement and evict the tenant.

Can Form N4: Notice to End a Tenancy Early for Nonpayment of Rent be served to the tenant by email, or does it have be delivered in person?

Form N4, or any other notice of termination, cannot be served by email to the tenant. The proper methods of service are the following:

- Handing the notice to the tenant.
- Leaving the notice in the tenant's mailbox or an area where mail is normally delivered.
- Placing the notice under the door of the rental unit.
- Handing the notice to an apparently adult person in the rental unit.
- Sending the notice by courier (deemed to be given on the next business day).
- Sending the notice by regular mail or Canada Post XpresspostTM (allow five days for delivery).
- Sending the notice by fax to the tenant's residence or place of business (deemed to be given on the date on the fax).

I have a tenant living in the basement on a weekly rental agreement, but I need the unit for my son. How do I give notice? Does the tenant still have to pay rent?

If you serve your tenant with Form N12: Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental Unit, the termination date indicated on the form must be at least 60 days from the time you give notice, and the termination date must coincide with the end of a rental period or the last day of a

fixed-term tenancy. So, for example, if the tenant pays rent every Monday, the termination date indicated on the Form N12 must fall on a Sunday. The tenant is required to continue paying rent while he or she remains in the rental unit. Likewise, for a monthly or fixed-term tenancy, the notice must be provided to the tenant 60 days before the end of the rental period or term.

Landlords who serve the tenant with a notice for own use must also pay the tenant one month's rent as compensation before the termination date on the notice.

My tenant on the main floor is constantly disturbing the tenant in the basement. I have tried to speak to the tenant on the main floor, but the behavior has not changed. What can I do?

When a tenant is disturbing another tenant in the house, the landlord can serve that tenant with a legal notice (Form N5: Notice to Terminate a Tenancy Early). This is a 20-day notice on which the landlord has to describe, in detail, the problems and when they occurred. The tenant will then have seven days to correct the situation, otherwise the landlord can file an application with the Landlord and Tenant Board to go to a hearing and seek termination of the tenancy. Form N5 can be obtained from the Landlord and Tenant Board website.

I've given the tenant a notice to terminate the tenancy for non-payment of rent. In the meantime, the tenant stopped reimbursing me for their electricity costs. Can I discontinue paying the bill and let the electricity provider turn the electricity off until the tenant leaves?

No, you must continue to provide the same facilities and services that were part of the tenancy agreement, even if you have given a notice of termination. You have a responsibility to provide the tenant with vital services that were part of the tenancy agreement from the beginning of the tenancy until the day the tenant moves out. That means you cannot allow vital services such as electricity to be turned off. In order to recover your costs from the tenant's failure to comply with the utility arrangement in the tenancy agreement, you will have to sue the tenant in Small Claims Court.

What is the most effective way to terminate a tenancy?

If the tenant is in agreement, the most effective way to terminate a tenancy is for both the landlord and tenant to sign Form N11: Agreement to End the Tenancy. Any

termination date can be used. In some cases, however, the tenant might not sign this agreement without some form of compensation from the landlord (e.g., one or more month's rent).

Is it true that a tenant can't be asked to move out in the winter months?

This is not true. Provided you have a valid reason for the termination, a notice to terminate may be issued anytime. A tenant, however, does not have to vacate the premises until an order has been issued by the Landlord and Tenant Board. If a tenant continues to occupy a rental unit after the Landlord and Tenant Board has issued an order, the order will have to be enforced by the Court Enforcement (Sheriff's) Office.

Landlord and Tenant Board

Landlord Applications

There are several reasons the landlord may file an application to the Board. Possible reasons include:

The tenant has:

- abandoned the premises and the landlord wishes to dispose of the tenant's property.
- appeared to have abandoned the rented premises.
- changed the locks without the landlord's consent.
- failed to vacate the premises as mutually agreed upon with the landlord.
- failed to comply with a termination notice issued by the landlord.
- failed to comply with the terms of the mediated settlement or previous order of the Board.
- failed to vacate the premises according to his or her notice of termination.

The landlord:

- has discovered an unauthorized occupant of a rental unit (the application must be filed within 60 days of discovery).
- is seeking compensation for rent owing, damage caused to the rental unit or house, or money owing as a result of an overholding tenant.

- is seeking an order for a rent increase above the guideline, or to vary the rent reduction.
- requires an eviction order for an overholding subtenant (the application must be filed within 60 days of expiration of the sublet agreement).
- wishes to determine whether the RTA applies to a particular rental situation.

Filing an Application

The fee for filing an application with the Board depends on the type of application filed.

- If the application requests termination of the tenancy agreement and an eviction order, the cost is $190 ($175 for applications that can be filed on the LTB website).
- The cost to file an application to vary the amount of a rent reduction is $50.
- The cost for an application for a rent increase above the guideline starts at $220 for the first ten units, + $10.00 for each additional unit to a maximum of $1,000.

A complete list of filing fees can be found on the Landlord and Tenant Board website.

The Board staff will issue a notice of hearing once the necessary documents have been filed and the fees paid. The **notice of hearing** is a document produced by the Board to provide the tenant and the landlord with notice that a hearing has been scheduled. The notice specifies the date, time and location of the hearing. The Board will serve the notice of hearing together with the application on all parties within the time period set out in the rules of practice.

The notice of hearing packages are usually sent by mail from the Board, however there are three exceptions:

- Parties filing an application at the Board in-person will be provided with their package by the clerk instead of by mail.
- Parties participating in “bulk filing”, filing three or more applications at once, will have the option of visiting the Board in-person to pick up their notice of hearing packages.
- If a party to an application has a representative, the notice of hearing package will be sent to their representative.

Can the Tenant and Landlord Enter into a Settlement?

If a landlord and tenant can reach an agreement, it is advisable to involve the Board's mediators. A **settlement** that is mediated by the Board may include terms that contradict the legislation. It is only under these circumstances that the landlord and tenant may agree to terms outside of the legislation. The Board is permitted to attempt to mediate a settlement of any matter that is the subject of an application if the parties consent. A hearing will be held if the parties are unable to reach a settlement.

Will a Hearing be Held?

Once an application is filed with the Landlord and Tenant Board, a hearing will be scheduled to consider the application. The Board's hearing rooms are similar to a courtroom, with an adjudicator's desk, applicant and respondent tables, one witness table and seats for the public. The proceedings are supposed to be informal and witnesses are not always required to swear or affirm an oath. Hearings are audiotaped and a clerk is not usually present; as well, two security guards watch over the proceedings. The adjudicator has the authority to hear the application on the date of the hearing and make a decision on the same day. In some instances, the adjudicator may not immediately release his or her decision but may reserve their order for a later date.

What Happens After the Hearing?

After the hearing, the Board adjudicator will prepare an order and mail it to the parties listed on the application, together with the reasons for the decision. An order based on arrears of rent allows the tenant to void the order by paying all the arrears and the costs before the eviction order becomes enforceable.

All parties have the right to request a review of the order or file an appeal to the Divisional Court. These requests must be made within 30 days of the date of the order.

How does the Landlord Recover Possession?

Before applying for an eviction through the Sheriff, a landlord must file an application with the Landlord and Tenant Board to obtain an order terminating the tenancy.

A **termination order** is an order from the Landlord and Tenant Board that indicates an end date for a tenancy. If the landlord is successful with an application to end a tenancy, the landlord will receive an order to terminate the tenancy and permission to file for eviction with the Court Enforcement (Sheriff's) Office if the tenant does not move out by the termination date on the order.

If a tenant does not comply with the order or vacate the unit by this date, the landlord has to take steps to enforce the Landlord and Tenant Board order. The enforcement of the order is done through the eviction process. If an eviction is required, it may not be effective earlier than the termination date on the notice of termination or, in the case of an arrears order, on the 11th day after the order is issued.

The landlord is required to visit the Court Enforcement (Sheriff's) Office at the Superior Court of Justice to schedule the eviction and pay the necessary fees for the eviction. The landlord will be required to follow instructions provided by the Court Enforcement (Sheriff's) Office. An eviction must be scheduled within six months of the date the order to terminate is carried out by the Sheriff.

Can the Tenant Have the Eviction Stopped?

After the order becomes enforceable, but before it is executed through the Sheriff, the RTA allows a tenant to make a motion to the Board to stop or "set aside" the eviction order if the tenant does both of the following actions:

- Pays an amount to the Board.
- Files a sworn affidavit stating that the amount paid to the Board, together with any amounts previously paid to the landlord, is at least the sum owing for rent arrears, additional rent or compensation owing, amounts for NSF cheque charges or the landlord's administration charges, and, if ordered by the Board, Sheriff's fees.

This type of motion can only be granted once in any given tenancy agreement.

What Happens When a Request is Made for the Review of an Order?

A party to an order or any Board member may request a review of an order. The request to review an order must be made in writing and filed within 30 days after the order is issued. There is a $55 filing fee to request a review of an order. Requests to review an order are made for two reasons: either the order contained a serious error, or the party was not reasonably able to participate in the proceedings.

The Board will review the request and may decide to do one of the following:

- Deny the request without a hearing.
- Question the requesting party to clarify the basis of the request.
- Decide whether all or some of the issues raised in the request should be considered in the review.

If the Board finds that there was a serious error in the proceeding or in the order, the Board will hear the application again either from the beginning or address specified issues. However, if the Board does not find a serious error in the order and denies the request to review, the order remains unchanged.

Note: The party that initially made the request cannot request another review for the same order; only one request can be made.

What is the Process for Appeal?

Any person who is affected by an order issued by the Board may appeal the order to the Divisional Court, if they believe the order contains an error in law. The appeal must be filed within 30 days of the order being issued. Landlords should be advised that the appeal process is costly and lengthy, and requires the assistance of a lawyer. The Guide to Fees in Divisional Court Appeals and Guide to Appeals in Divisional Court, published by the Attorney General's Office may provide more information.

Q & A

How and where are documents filed with the Landlord and Tenant Board?

Documents that must be filed with the Board may be filed in person, by mail or by fax. Electronic filing is allowed for certain applications, through the LTB's e-file option. You may file the documents at any Board or Service Ontario location. If a hearing is held, it will be at a location within the same area as the rental unit.

What happens when an application is filed with the Landlord and Tenant Board?

The Board will schedule a hearing to listen to what the landlord and the tenant have to say, and to consider any evidence they have to present (this process is covered in detail on the Landlord and Tenant Board website). This hearing may be an oral hearing, electronic hearing or written hearing.

For most applications, an oral hearing is scheduled. In an oral hearing, the parties appear in person before the adjudicator. Each party presents any evidence they have and they tell the adjudicator about the situation.

Sometimes the Board will schedule an electronic hearing, in which case the parties often file written evidence before the hearing and then tell the adjudicator about the situation over the telephone or by video conference.

If the Board schedules a written hearing, the parties will provide information about the situation by filing written documents by the deadlines set out in the notice of hearing. The member uses these documents to make their decision.

When an application to the Landlord and Tenant Board is required, how long is the termination process?

It is difficult to predict how long the process will take, because the issues involved in each case vary, but generally the termination process takes eight to twelve weeks. Landlords are encouraged to act quickly and respond immediately to situations that arise during a tenancy. For example, if rent is due on the first of the month and it has not been paid, the landlord should serve Form N4 for non-payment of rent as early as

the second of that month. Landlords should be aware that failure to address issues as soon as they arise may only contribute to extending the termination of a tenancy.

Do I need to hire a lawyer or a paralegal?

A lawyer or paralegal is not required to file documents or for a hearing. The decision to retain the services of a lawyer or paralegal is entirely up to you.

Tenant Belongings

Following an Eviction Order or Notice of Termination

The *Residential Tenancies Act* states that where a tenant has vacated a rental unit under certain circumstances and has left belongings in the unit, the landlord is permitted to sell the belongings, retain them for his or her own use, or otherwise dispose of the abandoned property. These circumstances include the following:

- As a result of a notice of termination given by the landlord or tenant.
- By agreement with the landlord to terminate the tenancy.
- Following an order of the Landlord and Tenant Board terminating the tenancy or evicting the tenant.

Where the tenant has been evicted pursuant to an order of the Board, the landlord must wait a 72-hour period following the eviction before selling, retaining or disposing of the property. The landlord must make the evicted tenant's property available to be retrieved at the rental unit or at a location close to the rental unit, between the hours of 8 a.m. to 8 p.m.

Abandonment

The RTA states that if the landlord believes that the tenant has left belongings and abandoned the unit, the landlord can do one of the following:

- Apply to the Landlord and Tenant Board for an order terminating the tenancy.

- Give notice to the tenant and to the Board of the intention to dispose of the belongings.

The RTA states that if the tenant has abandoned the unit, the landlord may dispose of any unsafe or unhygienic items immediately. The landlord must wait a period of 30 days after obtaining the order from the Board before selling, retaining or disposing of other items. The tenant may contact the landlord any time within the 30-day period to retrieve the belongings, and the landlord must make the tenant's belongings available to the tenant at a reasonable time and at a place close to the unit.

The RTA permits the landlord to require the tenant to pay any outstanding rent plus any reasonable out-of-pocket expenses incurred by the landlord for moving and storage costs before the tenant is allowed to retrieve the belongings. The RTA further requires that if within six months of the tenant's abandonment the tenant claims any of the property that has been sold, the landlord must pay to the tenant the amount of the proceeds of the sale, after deducting the amount of any arrears of rent owing and the landlord's reasonable out-of-pocket expenses for moving, storing, securing or selling the property.

Death of a Tenant

If a tenant dies and there are no other tenants in the unit, the tenancy is deemed to be terminated 30 days after the death of the tenant. The RTA clarifies the landlord's responsibilities in the event of a tenant's death:

- The landlord must preserve any property of the tenant who has died other than property that is unsafe or unhygienic.
- The landlord must provide reasonable access to the rental unit to allow the executor of the estate or family member to remove the tenant's property.
- The landlord is permitted to sell, retain for his or her own use, or dispose of the property once 30 days have passed from the day the tenant died.

The RTA states that if, within six months of the tenant's death, the executor or administrator of the tenant's estate or a family member claims any of the property that the landlord has sold, the landlord must pay to the estate the amount of the proceeds from the sale, after deducting the landlord's reasonable out of pocket expenses for moving, storing, securing or selling the property and any arrears of rent owing.

Where the landlord has retained the belongings for the landlord's own use, if the executor or administrator of the tenant's estate or a family member claims the property within a six-month period following the tenant's death, the landlord must return the property to the tenant's estate.

Q & A

How do I determine if the tenant has abandoned the premises?

The Landlord and Tenant Board has established several indicators to help you determine whether the tenant has abandoned the rental unit:

- Did the tenant tell you that he or she was planning to move out?
- Did someone tell you they saw the tenant moving his or her belongings out?
- After providing proper 24-hours' written notice to the tenant, has the landlord discovered that the tenant removed his or her furniture or belongings?
- Is the mail piling up because it is not being collected on a regular basis?
- Is the rent in arrears?

If the answer to one or more of these questions is yes, then this may be an indication that the tenant has abandoned the rental unit. Determining whether a tenant has abandoned the premises can be difficult. If you are unsure about whether the tenant has abandoned the premises, you can file an application with the Board to obtain an order.

Is there a fee to file a notice of intention with the Board?

If you are simply filing a letter advising the Board of your intention to dispose of abandoned belongings, there is no fee required.

Offences and Penalties

In addition to establishing the framework for landlord and tenant relations in residential properties across Ontario, the *Residential Tenancies Act* also defines more than 48 offences which apply to residential tenancies. The maximum penalty for offences is also set out by the legislation.

Offences can be committed by a variety of people involved in rental situations, including a landlord, a tenant, a subtenant, a person who acts on behalf of a landlord (such as a superintendent, caretaker, property manager or agent), a tenant's agent, a non-profit housing co-operative or a member of a non-profit housing co-operative.

Offences can be committed even if a person is not aware that what they did was against the law. An attempt to commit any of the offences is itself an offence.

The *Residential Tenancies Act* offers two regulatory entities to pursue a complaint:

- Apply to the Landlord and Tenant Board; or
- Report an offence to the Rental Housing Enforcement Unit.

These are two separate processes. The Rental Housing Enforcement Unit is not part of the Board. Filing an application with the Board does not inform the Rental Housing Enforcement Unit of the offence. Reporting an offence to the Rental Housing Enforcement Unit does not make the Board aware that you wish to file an application.

If you feel you are owed money, you should apply to the Board whether or not you report the offence. It is the Board that can order payment of any money owed to you.

The Rental Housing Enforcement Unit (formerly called Investigation and Enforcement Unit) is separate from the Landlord and Tenant Board and deals only with enforcement of offences. The Unit takes complaints from landlords and tenants for offences committed under the *Residential Tenancies Act*, 2006.

If you report an offence, the Rental Housing Enforcement Unit will look into your complaint whether or not you apply to the Board. You do not have to pay a fee to report an offence to RHEU.

For most, but not all offences, the Rental Housing Enforcement Unit's first step is to discuss the issue with the parties and attempt to have the alleged offender comply with the requirements of the *Residential Tenancies Act*. A letter outlining the complaint and explaining the action required to correct the problem is mailed to the alleged offender. The maximum penalties set out by the legislation are also outlined in this letter. If a party refuses or fails to comply with the Rental Housing Enforcement Unit's request, the case may be referred for further investigation. Investigations can lead to the initiation of prosecution proceedings at the Ontario Court of Justice.

It is important for landlords and tenants, especially those who are new to the rental housing market, to become familiar with the offences under the Act. Knowing your responsibilities can help you avoid committing an offence. The following are offences commonly reported to the RHEU regarding landlords:

- Disconnecting or interfering with a vital service that the landlord is required to supply to tenants (such as heat, electricity, fuel, gas or water)
- Failing to provide rent receipts to tenants who request them
- Illegally evicting a tenant without following the eviction process
- Failing to make a tenant's belongings available within 72 hours of eviction
- Collecting unlawful security deposits
- Altering the locking system for a rental unit or residential complex without living the tenant replacement keys
- Providing false or misleading information in documents filed with the Landlord and Tenant Board

The RHEU also receives complaints regarding tenants, the following are those most often reported:

- Interfering with or trying to stop a landlord from entering a rental unit when proper notice has been provided
- Altering the locking system in a rental unit without first receiving the landlord's consent
- Providing false or misleading information in documents file with the Landlord and Tenant Board

Penalties

If convicted of an offence under the Act, the penalty is a fine of up to $25,000 for an individual and up to $100,000 for a corporation.

For more information about offences under the *Residential Tenancies Act* or the Rental Housing Investigation Unit, please visit http://www.mah.gov.on.ca/Page1175.aspx or contact the RHEU by calling 416-585-7214 or toll-free 1-888-772-9277.

Glossary

Addendum	Additional written documentation to record changes to a tenancy agreement after a certain date.
Additional Service	Something that was not included in the original tenancy agreement that is added during the tenancy (i.e. parking space, additional facility, etc.).
Agreement to Terminate	A written agreement between the landlord and tenant that indicates the parties have agreed to end the tenancy on a specific date.
Annual Rent Increase Guideline	Determined by Section 120 (2) of the *Residential Tenancies Act*, which averages the monthly Ontario consumer price index over a 12-month period concluding at the end of May of the previous calendar year and is capped at the annual maximum of 2.5%.
Assignment	Occurs when the original tenant transfers the rental unit and all rights and responsibilities in the tenancy agreement to another person.
Capital Expenditure	According to Ont. Reg. 516/16, it includes expenses for extraordinary or significant renovation, repair, replacement or new addition, the expected benefit of which extends for at least five years but does not include work that is routine or ordinary, or purely for cosmetic purposes. See Ont. Reg. 516/06 for more information.
End of the Term	Relates to tenancy agreements that establish a fixed term, such as a lease agreement.

Duty to Accommodate	*Ontario Human Rights Code* requirement that landlords must accommodate tenants with a disability to the point of undue hardship.
Fixed-term Tenancy Agreement	When a landlord and tenant make a commitment for possession of the rental unit for a specific term (generally one year, although the term may be longer or shorter).
General Request (In Reference to an Assignment)	When the tenant asks for permission to assign the remainder of the tenancy to someone else.
Inherently Dangerous	See the *Dog Owner's Liability Act*, R.S.O 1990 for more information.
Interest	An amount payable to the tenant annually on the depot deposit held by the landlord. The interest rate is equal to the annual guideline increase amount.
Lawful Rent	The rent first charged to the tenant plus any increases that are allowed under the *Residential Tenancies Act.*
Mediation	A form of conflict resolution provided by a conflict mediation service, which may be provided by a number of different organizations. The services aim to come up with a win-win solution for all parties involved in a conflict, and services are provided free of charge.
Minimize Losses (RTA s. 16)	Taking reasonable steps to re-rent the unit to lessen the losses suffered by a landlord when a tenant vacates a rental unit without proper notice.
Mutual Agreement	Both the landlord and tenant come to an agreement regarding an issue.

Notice of Hearing	A document produced by the Board to provide the tenant and the landlord with notice that a hearing has been scheduled. The notice specifies the date, time and location of the hearing.
Ontario Human Rights Code	Provincial law that assures equal rights and opportunities for all people.
Provision	A clause in a legal document, such as the RTA, which explains/outlines how something will be dealt with or interpreted.
***Rental Fairness Act*, 2017**	This Act stems from Ontario's Fair Housing Plan and makes amendments to the RTA.
Rental Period	Relates to the period the rent covers such as the first of the month to the 31st; the 15th of the month to the 14th of the following month; or in the case of a weekly rental, from a Wednesday to the following Tuesday.
Right of First Refusal	Allows a tenant the option to move back into the unit once the repairs or renovations have been completed. If a tenant exercises this right, the terms in the original tenancy agreement would continue as they were.
Security of Tenure	A tenant does not have to move out of the rental unit at the end of the term. Tenancy agreements continue on a month-to-month (or week-to-week) basis unless termination is sought for one of the reasons under the *Residential Tenancies Act*.
Settlement	An official agreement reached between a landlord and a tenant, which is usually the result of mediation at the Landlord and Tenant Board.
Specific Request (In Reference to an Assignment)	When the tenant asks for permission to assign the remainder of the tenancy to a specific individual.

Sublet	Occurs when the original tenant gives another person the right to occupy the unit but keeps the right to reoccupy the rental unit at some future date.
Tenancy Agreement	An agreement between a landlord and tenant which can be oral, implied, or written, and outlines the terms and conditions of the tenancy (i.e. when rent is due and how much it is, and if the tenancy is month-to-month or for a fixed-term).
Termination Order	An order from the Landlord and Tenant Board that indicates an end date for a tenancy.
Landlord and Tenant Board	The LTB is a quasi-judicial agency that adjudicates all disputes between landlords and tenants with respect to matters overseen by the RTA.
***Residential Tenancies Act*, 2006**	The governing legislation which established rules for all aspects of the residential rental relationship in Ontario.
Unauthorized Occupant	Someone who is transferred the right of the rental unit by the tenant without the landlord's permission.
Vacancy Decontrol	When the tenant moves out and the rental unit becomes vacant, the landlord can set a new rent.
Vital Service (RTA s.2(1))	Hot or cold water, fuel, electricity, gas or, during the part of each year prescribed by the regulations, heat.