

STEINMAN & LERNER
BARRISTERS & SOLICITORS

52 FINCH AVENUE WEST
NORTH YORK, ONTARIO, CANADA
M2N 2H2

STAN STEINMAN
BARRY J. LERNER

RESIDENTIAL TENANCIES

The *Residential Tenancies Act, 2006* (the “Act”) became law on January 31, 2007 and governs residential tenancies in Ontario. The purpose of this presentation is to provide you with a very brief outline of what is involved in residential tenancy law but it is not meant to be a complete or exhaustive text on all legal rights and obligations which may arise between a landlord and tenant. **Please consult with a lawyer as may be required.**

Purpose of the Act

The specific purposes of the Act are “to provide protection for residential tenants from unlawful increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes...”. This stated purposes may be used by the Landlord and Tenant Board and the courts in interpreting the law in favour of tenants.

Landlord and Tenant Board

All issues between landlords and tenants and all adjudications of rights between them are dealt with by the Landlord and Tenant Board (the “Board”) instead of the courts. The Board is an independent body and its members are appointed by the provincial government. The Board’s website is found at: <http://www.ltb.gov.on.ca/>. The website contains all required forms and useful information about landlord and tenant rights and the Board’s procedures.

Tenancy Agreement (Lease)

- A landlord must comply with the *Human Rights Code* and its regulations and in particular O/Reg. 290/98. While a landlord may request credit references and rental history information and consent to conduct a credit check from a prospective tenant, the landlord may select or refuse a prospective tenant only on the basis of financial information obtained, but may not refuse accommodation based on the usual criteria in the code including, race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap or the receipt of public assistance
- The lease need not be on a particular form but must set out the legal name and the address of the landlord, must be signed by both landlord and tenant and a copy must be given to the tenant. Until the landlord complies the tenant has no legal obligation to pay

any rent. In addition, a landlord must provide written information as to the rights and responsibilities of tenants, the role of the Landlord and Tenant Board and how a tenant may contact the Board. That information must be in the form prescribed by the Board from time to time. You can download the current form from the Board's website by following this link: http://www.ltb.gov.on.ca/en/Key_Information/STEL02_111600.html

- As is the case with previous legislation:
 - a tenancy commences when the tenant is entitled to occupy the unit, whether or not he or she actually occupies;
 - “No pet” provisions in a lease are void (unless the premises are part of a condominium which prohibits or restricts pets);
 - Provisions which provide for accelerated or additional rent in the event of any default in payment by a tenant are void; and,
 - Where a tenant defaults under a lease a landlord has an obligation to mitigate damages by making reasonable efforts to re-let the premises.
- If the “spouse” of a tenant chooses to do so, he or she can remain in the rental unit if the tenant dies or abandons the unit. The spouse becomes the tenant.

Landlord Responsibilities

- A landlord has the following obligations to tenants:
 - Responsibility for maintaining and repairing the rental unit and the entire residential complex and particular for ensuring that the same are fit for habitation and in full compliance with all health, safety, housing and maintenance standards. It does not matter that the tenant may have been aware of a state of non-repair at the time the tenancy agreement was made.
 - Not to withhold any vital service from a tenant. Vital services are defined as hot and cold water, fuel, electricity, natural gas, and, from September 1st to June 15th in every year, heat. A landlord cannot indirectly withhold these services by refusing to pay a supplier and having the supplier discontinue service.
 - Not to interfere with the reasonable enjoyment of the unit or the residential complex by the tenant or members of the tenant's household and not to harass or obstruct a tenant.
 - Not to change locks to the unit or to the building without giving tenants replacement keys.
 - Not to enter a rental unit without written notice except in case of emergency or by agreement of the tenant. **In addition**, a landlord may enter a unit, with notice, to show prospective tenants where tenancy has been terminated either by agreement of the parties or on giving notice to the tenant. A landlord may also enter to show the unit to a potential purchaser of the unit or residential complex. Entry must be between the hours of 8 am to 8 pm only and the landlord must inform, or make a reasonable effort to inform, the tenant of his intention to enter. **In addition**, a

landlord may enter on giving 24 hours notice for purposes of carrying out repairs or permitting architect, engineer, mortgagee or insurer inspections.

- A tenant (or former tenant) may apply to the Board for an order regarding improper withholding of vital services, harassment, unreasonable entry, alteration of locking systems, etc. The Board may give any number of orders including termination of the tenancy, abatement of rent, reimbursement of tenant cost of repairs, payment for repair or replacement of damaged or lost property.
- A tenant (or former tenant) may also apply to the Board where the landlord, in the course of doing any work, has substantially interfered with the tenant's reasonable enjoyment of the unit or complex. No rent abatement will be ordered if: the landlord gave 60 days notice of the work, or shorter in case of emergency; the notice described the nature of the work, expected impact on tenants and the length of time the work was expected to take; the notice was reasonably accurate when given; the landlord gave an updated notice as circumstances changed; the work was necessary in terms of preserving the integrity of the building or was required to comply with municipal codes or was required to preserve the mechanical systems or was to provide for access to handicapped persons; was carried out in accordance with municipal anti-noise by-laws; and, was reasonable.
- The Landlord and Tenant Board may issue an Order Prohibiting Rent Increase ("OPRI") which prohibits a landlord from giving a notice of rent increase or collecting increased rents until repair work has been completed. If the unit becomes vacant a new tenant must be given notice of an OPRI.

Tenant Responsibilities

- In addition to being required to pay rent in a timely manner, tenants are responsible for cleanliness of their unit and for repairs for damages that the tenant, or persons the tenant permits into the complex, may cause.
- A tenant may not change locks without consent of the landlord and the landlord has the right to apply to the Board for an order that the tenant provide keys or pay the landlord the cost of changing the locking system back.

Termination of Tenancy

- A tenancy can only be terminated with the procedures established under the Act. Unless a legal reason exists for termination, a tenant enjoys *security of tenure* and cannot be required to leave the unit. The fact that a lease has a termination date is irrelevant.
- A landlord may terminate a tenancy for fault reasons, such as non-payment of rent, damage or destruction to the unit or residential complex, causing disturbance to other tenants or the landlord, operating an illegal business in the unit or committing certain criminal offences in or in relation to the unit.
- In addition to terminating a tenancy for cause, a landlord may terminate a tenancy because the landlord requires the premises for his or her personal occupation or that of

his or her spouse, child or parent of the landlord or spouse or for a caregiver for the landlord, spouse, child or parent.

- Likewise a landlord may give notice to terminate the tenancy where he or she has sold a building containing not more than three units or a unit in a condominium so that the purchaser, purchaser's spouse, child, parent or caregiver can occupy a unit.
- A tenant, or former tenant, has up to a year after termination of a tenancy to apply to the Board for an order based on a "bad faith application". For example where a landlord has obtained termination of a tenancy based on a representation that a relative would occupy the unit and instead such person does not occupy the unit but it is rented to a new tenant, the former tenant may apply to the Board which may make an order requiring the landlord to pay damages and an administrative fine of up to \$10,000.00.

Fast Track Eviction

- A landlord can obtain speedy possession of a unit in some circumstances:
 - By giving a 10 day notice of termination if a tenant or other person wilfully causes undue damage or uses the unit or complex in a manner inconsistent with use as a residential premises and who causes or can reasonably be expected to cause significantly greater damage than the usual standard for terminating a tenancy ("*undue damage*").
 - Where a landlord lives in the building and it contains three or fewer residential units, the landlord can also apply for an expedited eviction if the conduct of a tenant or other person substantially interferes with the reasonable enjoyment of the building for all usual purposes or substantially interferes with some other lawful right, privilege or interest of the landlord. There is no definition of the terms of this particular section. The Board has ruled that there is a three part test: First, a landlord must establish that the tenant uses the rental unit or complex in a manner that is inconsistent with use as residential premises. Second, he or she must establish that the inconsistent use caused or can reasonably be expected to cause damage. Third, he or she must establish that the amount of damage is significantly greater than the amount that would be required to give the Tenant a notice to terminate the tenancy for damage under subsections 62(1) or 63(1)(a) of the Act.
- A landlord can also give a 10 day notice of termination where a tenant or other person is involved in drug production, trafficking or possession for the purpose of trafficking.
- In the above noted instances the tenant does not have to be given an opportunity to remedy the situation, such as by repairing or replacing damaged property and stopping the conduct complained of. An application may be made to the Board for an early termination, even before the 10 day period ends in appropriate circumstances. Again, there is no definition or guidelines for the foregoing.

- Subject to the Board's power to postpone enforcement of an eviction order, where it makes a finding based on either of the above noted instances, the Board must request the sheriff to expedite enforcement of an eviction order.

Eviction Procedure

Notice

- For non-payment of rent a tenant is entitled to notice and 14 days to bring the arrears up to date and then an application can be made to the Board. To get the time started, a landlord must serve a notice to the tenant about the arrears (using Form N4). If the tenant does not pay, the Landlord can then apply to the Board for an eviction order and an order for payment of arrears of rent (using Form L1). If the Board orders the tenancy to be terminated the form of the order must include the specifics of the amount of rent in arrears and the amount of daily compensation and costs and also must inform the tenant and the landlord that the order will be void if the tenant pays the amounts indicated. Some amount of time is usually given.
- For "fault" reasons (damage, disturbance to others etc.), the tenant is entitled to varying periods of notice usually ten or twenty days with a right to remedy the conduct complained of.
- For "not at fault" reasons (landlord requires for personal use, renovation, sale to buyer who wished to occupy) tenants are given a longer time to vacate.

Process

- In all cases, a notice must be prepared in the proper form and served on the tenant in the proper manner. A certificate of service must be prepared. After the notice is served, presuming the conduct complained of is not remedied, an Application to the Landlord and Tenant Board must be prepared, filed with the Board and properly served on the Tenant. A certificate of service must be prepared and filed with the Board.
- There are no default orders. Each Application must be heard by the Board.
- At a hearing, a tenant may make a claim against the landlord on the basis of any issue that he or she could have brought in a separate tenant's application such as non-repair of the unit or building, harassment, changing of locks and other similar issues. The tenant is not required to give advance notice of such claim. It is strongly recommended that landlords exercise their right of inspection of the unit, with proper notice, just before the hearing date so that if a non-repair issue is raised the landlord will have some evidence as to the state of repair. In considering such applications, the Board must consider when the complaint was first raised and may decide that no prior complaint is evidence that the current complaint is not valid. A landlord should keep a file on each tenant and should file all repair requests or complaints and the history of resolution of same. This file should be brought to each hearing against a tenant for non-payment of rent or otherwise. Furthermore, the building superintendent or other staff should be available to attend at the hearing. It has been suggested that such people need not attend at the outset and that the Board would, or should, grant a brief adjournment to allow such persons to attend if

the issue is raised. The Board can make the order it would have made had the tenant actually brought an application. This would include abatement of rent, postponement of rent increases etc.

- Any eviction order based on non-payment is void if the tenant pays what is owing before the order is enforced by way of a Sheriff's attendance. A tenant has the right to pay the amount to the Board and obtain a notice from the Board acknowledging that the eviction order is void. A tenant has a right to pay the landlord in whole or part to the landlord and the remainder to the Board and to make a motion to the Board, without notice to the landlord, for an order that the full amount has been paid and the eviction order is void. A landlord then has 10 days after the order is issued to have that order set aside on the basis that payment has not been made and the tenant's affidavit is wrong. Obviously, this can result in delays and further costs when dealing with problem tenants. Prior to instructing the Sheriff to evict a tenant, a landlord must check with the Board to see if any payment was made to it.
- At any time up to the actual time of the eviction the tenant may make a motion to the Board, on notice to the landlord, to set aside the order by paying amounts owing under the Board's eviction order. This is a one time only remedy and the tenant cannot do this if he or she has previously made a motion any time during the tenant's occupation of the subject premises.
- At a hearing the Board must consider the factors outlined in the Act for refusing to evict namely whether or not a landlord is in serious breach of its responsibilities, the application is brought because a tenant has complained to government or has otherwise attempted to secure or enforce his or her rights or is a member of or is organizing a tenants' association or where the application is brought because of children residing on the premises but there is no overcrowding. The Board cannot issue an eviction order unless it concludes that none of the factors apply.
- When a tenant abandons the unit without giving proper notice of termination and without an agreement to terminate between the parties or without the landlord having given notice the Board can determine and fix arrears of rent based on the notice period that should have been given by the tenant.
- Where a landlord evicts a tenant or the tenancy is terminated the landlord must give a tenant 72 hours to recover personal property and must make it available between 8:00 a.m. and 8:00 p.m. If the tenant has abandoned the premises, the landlord must hold the tenant's possessions for 30 days from the time he or she obtains an order terminating the tenancy on the basis of abandonment or 30 days from the date on which the landlord gives the tenant and Board notice of intention to dispose of the goods. If there are unsanitary or hazardous substances, these can be removed immediately. The goods can be removed from the apartment to a storage area. Thereafter a landlord may sell or keep or otherwise dispose of the contents of the rental unit. Landlords are cautioned to inventory the unit carefully, and to take photographs or video recordings of the condition of the unit and tenant possessions at the time of eviction or abandonment. Tenants frequently sue for improper disposition of their valuables and may claim exaggerated values for same.

Further Board Authority

- In addition to a landlord or tenant serving Applications and relevant documents on the other party, the Board must notify respondents when an application has been made, unless exempted by regulations.
- The Board has the authority to permit payment of money to the Board so that if a tenant raises an issue (as noted above, either separately or as part of a dispute to the landlord's application) as to a landlord's breach of obligations under lease the Board may allow the tenant to pay rent to the Board itself to be held until the matter is determined.
- If a landlord has commenced an application based on non-payment of rent and comes to an agreement with the tenant as to payment the Board may make an order regarding payment based on the parties' written agreement, but cannot make an order terminating the tenancy. The application will have to be reopened in the event the agreement is not honoured.

Rent Control

- There continues to be no rent control between tenancies. The only exception is where the Board has issued an OPRI (an order prohibiting a rent increase where there are outstanding repair items). In such a case although a landlord may negotiate a higher rent, he or she cannot collect that rent so long as the OPRI remains in effect. As noted above, a landlord must give the new tenant a copy of any such order.
- Rent can only be increased in accordance with the Act and only once in any given year. Ninety days written notice must be given. The amount of the annual rent increase will be the percentage change from year to year in the Consumer Price Index for Ontario, as reported by Statistics Canada for the end of May in each year. The actual amount will be determined by the government and published annually in the *Ontario Gazette* and is also available on the Board's website. The 2013 permitted increase was 2.5% but the 2014 increase is only 0.8%.
- Procedures for obtaining rent increases above the guidelines are now made much more complicated. The Act provides for information that must be furnished to tenants when applying for increases based on capital expenditures. The list of eligible capital expenditures is now prescribed in the Act. Rent increases that cover the cost of eligible capital expenditures are limited to a total of 9% based on 3% per year for 3 years duration. Such rent increases are not permanent. They can be charged only during the "useful life" of the capital item, as prescribed in the Regulations and ranging from between 5 to 25 years. The particulars will be detailed in the Order allowing the rent increase. After that time, the rents must be reduced to the guideline amounts, but only for those tenants who occupied their units at the time the increase was first granted.
- Above the guideline increases will be allowed only for "extraordinary" and "significant" capital expenses with a minimum benefit of five years and will not be allowed for routine or ordinary maintenance items (such as elevator servicing, cleaning and janitorial services, appliance or grounds-keeping) and will not be allowed for "substantially

cosmetic” work or work done to enhance the luxury or prestige of a residential complex. The terms “extraordinary” and “significant” are not defined in the Act or Regulations and it will be necessary to see how the Board and Courts develop the jurisprudence in this regard.

- For utility costs or municipal taxes, above the guideline increases will be allowed based on a prescribed amount which has not yet been set but may be prescribed as the increase in CPI plus 50%. There will be no cap and the full amount of the increase can be recovered. Again, these increases are not permanent. The landlord must advise tenants of decreases in these costs over the following five years and must decrease rents by the amount of the decrease in these costs.
- As is the case with applications to terminate tenancies, tenants may oppose applications for above the guideline increases by raising issues they could have raised in tenant applications for non-repair, harassment etc. and the Board, will hear the evidence, determine the merits of the complaints and may issue an OPRI preventing the above guideline increase until the items complained of are remedied.

Other Rent Rules

- A landlord can continue to require a rent deposit the equivalent to 1 month rental and can ask that this be increased as rent increases. The landlord must continue to pay interest on the last month rent deposit matching the rate of the annual rent increase as permitted under the guidelines (2.5% in 2013 and 0.8% in 2014). The landlord can deduct the interest payable to a tenant so as to keep the rent deposit equal to the one month’s rent.
- Landlords cannot demand post-dated cheques from tenants nor can landlords require pre-authorized chequing arrangements to be made. If a tenant agrees the landlord can accept post-dated cheques.
- Landlords are permitted to offer rent discounts without affecting amount of the lawful rent. This can include up to 3 months rent free in any 12 month period, a discount of up to 2% of rent for payment on or before a due date or other amounts that may be prescribed from time to time. All such discounts must be in accordance with the conditions prescribed under the Act from time to time.

Utility Costs

- An entirely new part of the Act allows for apportionment of utility costs. If a landlord installs a smart meter the landlord may terminate his or her obligation to provide electricity to the rental unit without consent of the tenant on giving 12 months notice (or other period as prescribed by the regulations) and on reducing rent accordingly. The reduction is as prescribed in the Regulations. These deal with what information the landlord must provide to the tenant in connection with electricity consumption.
- For buildings with 6 units or less, a landlord may elect, without the consent of the tenants, to apportion all utility costs between the tenants and reduce rents accordingly. The Regulations set out the methods by which this can be done and the calculations of rent reductions.