REIN REAL ESTATE INVESTMENT NETWORK

Guide For Residential Landlords In Ontario

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Welcome to the Guide for Residential Landlords in the Province of Ontario (the "Guide")
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4. Rental Unit Condition Report;
5. Option to Purchase Agreement; and
6. New Government Standard Residential Lease Agreement
7. Information to give to Tenant before lease begins

The relationship between residential landlords and tenants in Ontario is governed by the Residential Tenancies Act S.O., 2006 (The "Act").

The purposes of the Act are to:

a) provide protection for residential tenants from unlawful rent increases and unlawful evictions;
b) establish a framework for the regulation of residential rents;
c) balance the rights and responsibilities of residential landlords and tenants; and
d) provide for the adjudication of disputes and for other processes to informally resolve disputes.

New Standard Form Lease

The New Government Standard Form Lease has just been released and must be used for any tenancy agreement after April 30, 2018. If the lease form is not used, the tenant can demand one and withhold up to one month's rent if it is not provided within 21 days. In addition, if the lease form is not provided within 30 days of the tenant request, or new terms are added to the form that the tenant does not agree with, they can terminate any lease by giving 60 days' notice. Still, you can consider using your old lease and there will be no penalty if the tenant does not request the new lease. This may be desirable for landlords who do not wish to change their own standard form leases. You are permitted to attach your own clauses to the new government lease, but they cannot be against the provisions of the Act, as explained below.

General Principles

You cannot contract out of the provisions of the Act. What this means is that if there is a provision in any rental agreement that violates a provision of the Act, then it is void and of no effect (Section 4 of the Act).

For example, the Act states that the maximum rent that you can ask in advance from a proposed tenant is last month's rent, and you can only use the last month's rent towards the last

month of the tenancy period (Section 106 of the Act). You can ask for the first month`s rent immediately before the tenant moves into the unit.

Pre-paid Rent now permitted but be careful

Based on the court decision in Corvers v Bumbia in 2014, it is now legal if the tenant offers to prepay rent to the Landlord as a term of the lease agreement. In that case, the tenant offered to prepay 12 month's rent in advance which the landlord accepted. The court held that since the prepaid rent was in fact offered by the tenant, it was legal. However, it is thus still important for any landlord not to advertise or otherwise request more than the first and last month's rent in advance under any lease. Even if the tenant offers up front rent, there is nothing preventing the tenant from asking for it back afterwards and if the adjudicator deems that the landlord did request it, then not only can it be ordered that all prepaid rent be refunded, the landlord could be fined up to $25,000 for requesting it.

Can the landlord ask for any other deposits or fees in advance? Under Regulation 516/06 of the Act, the landlord is permitted to charge extra for additional keys or remote entry devices or cards requested by the tenant, and refundable key/card deposits, provided that these charges are not greater than their actual costs. If the landlord changes the locks, they cannot charge for a new set of keys. If the tenant gives an NSF cheque, the landlord can charge for any bank charges they incur plus an additional amount of up to $20 as an administrative fee.

A landlord can request post dated cheques or payment by pre-authorized payments, but cannot demand them (Section 108 of the Act).

A receipt for the rent must be provided by the Landlord (Section 109 of the Act).

Landlords and their employees are not permitted to demand that the tenant buy furniture, carpeting or draperies in an apartment, or demand that they pay painting fees, damage or security deposits, locker or parking space registration fees, finder's fees, or any other application or registration fees as a condition of obtaining the rental unit (Section 134 of the Act).

If parking or locker units are not included in the rent, then the landlord is permitted to charge a separate monthly fee for those services, if the tenant wants these additional services.

The landlord is not permitted to seize the tenant's property for the purposes of paying any rent owing (Section 40 of the Act).

Let's say the landlord and tenant agree in writing that the tenant will not have pets in their unit. Even if the tenant brings a pet into the unit on the first day of the tenancy, the landlord cannot end the tenancy agreement or force the tenant to remove the pet (Section 14 of the Act). In order to remove the pet, the landlord will have to prove that this pet is either causing damage to the premises, interfering with the enjoyment of the landlord or the other tenants, or perhaps causing an allergic reaction to the other tenants or the landlord (Section 76 of the Act).

Interest on the last month's rent must be paid yearly by the landlord to the tenant at the rate established by the Ontario Consumer Price Index (Section 106 (6) of the Act). This rate is set no later than August 31 of the previous year. The rate for 2018 is 1.8%. If the amount is not paid,

the tenant may deduct the amount from the normal rental payment that is due (Section 106 (9) of the Act). It is possible for a landlord to add the interest to the amount of the last month`s rent that he is holding. As an example, if the tenant has paid $1,000 as the last month`s rent and the landlord owes the tenant $18 in interest for 2018, the landlord can choose to increase the last month`s rent to $1,018 and not pay the interest to the tenant.

The Act does not apply if the tenant is sharing a bathroom or a kitchen with the owner, or the owner's spouse, child or parent (Section 5 of the Act). What this means is that if you rented a room in your home to someone for a defined period, you can terminate this arrangement in accordance with any agreement that you have in place. This occupant can be thought of as a guest in your home, and if you want them to leave, then they must leave and cannot claim any protection of the Act and cannot ask for or demand that they be given any notice that is typically required when terminating a tenancy. If you are in a situation where a seller wants to remain on the property after closing, make sure that you are clear that they have no rights as a tenant under the Residential Tenancies Act and are merely occupying the premises as a licensee only.

If the lease agreement is in writing, a copy must be given to the tenant within 21 days after the tenant signs it (Section 12 (2) of the Act). If the agreement is not in writing, the landlord must provide the tenant with the legal name and address of the landlord to be used for giving any notices under the Act. If this information is not provided, the tenant can refuse to pay the rent until the landlord does comply (Section 12 (4) of the Act).

Landlord Obligations to Tenants

The landlord is responsible to maintain the residential complex and rental unit in a good state of repair, fit for habitation and complying with health, safety, housing and maintenance standards.

The Landlord cannot withhold any vital service that is the landlord's obligation to provide under the tenancy agreement. Vital service means hot or cold water, fuel, electricity or gas, during the part of each year (Section 2 of the Act). Questions are raised as to what happens if the tenant does not pay their utilities and the company cuts them off? Is the Landlord required to pay the bill and reconnect the service? This can occur and the landlord may have no choice but to do this and then try to terminate the tenancy for breach of conduct, to be discussed later.

A common question is what is the level of heating that a landlord is required to provide? The temperatures that must be maintained during the year are set by the municipal by-laws of the city that you happen to live in. If the landlord is not complying with this, tenants can complain to the city's building and inspections department.

For example, in the City of Toronto the temperature must be a minimum of 21C (70 Fahrenheit) from September 15 to June 1.
In Brampton and Mississauga, it is 20C (68F) from September 15 to June 1.
Hamilton is 20C (68F) from September 1 to May 31.
Barrie and Richmond Hill are 20C (68F) year round.
Oakville, Kitchener and Guelph are 21C (70F) year round.
London is 20C (68F) from 6:00 a.m. to 11:00 p.m. and 18C (65F) the rest of the day from September 15 to June 15.

The landlord cannot substantially interfere with the tenant's reasonable enjoyment of the rental unit (Section 22 of the Act). The Landlord thus cannot harass, obstruct, coerce, threaten or

interfere with a tenant. This can include removing the tenant's mail, verbally abusing the tenant, making racial comments, putting a for rent sign on the lawn when the tenancy has not yet been terminated or showing up every day at the premises for no legitimate reason. It does not include coming to the unit to ask for rent that is owed.

Can a landlord require their tenant to shovel the snow or cut the grass?

A landlord has an obligation to keep the building and the rental units in it in a good state of repair and complying with health, safety and housing standards. Tenants are responsible to keep their unit clean and to repair any damages caused by them or their guests.

It is the landlord's responsibility for snow removal and grass cutting. Under section 26 of Ontario Regulation 517, exterior common areas must be maintained by the landlord and this includes removing noxious weeds and any unsafe accumulation of ice and snow.

A tenant rented a basement apartment in a six-plex rental building in 2002. The lease contained the following clause: "Tenants are responsible for keeping their walkway and stairway clean (including snow removal)."

On January 30, 2003, the tenant slipped on the walkway leading to the basement apartments, dropped a juice bottle which lacerated her hand, and then claimed that she suffered permanent nerve damage to her left hand. She claimed that the Landlord was negligent in not clearing the snow.

The landlord's defence was that since it was her responsibility to clear the snow under the lease, he should not be responsible. When this case went to trial in January of 2009, the judge agreed that the landlord could delegate the snow removal to the tenants if they agreed so the tenant's claim was dismissed. The case then went to the Ontario Court of Appeal and in a decision dated June 29, 2009, the court ruled that since the responsibility for snow removal is the landlord's under the Act, then the landlord could not transfer this responsibility to the tenant unless there is separate consideration given. In other words, the Landlord would have been required to sign a separate agreement with the tenant whereby the landlord agreed to pay the tenant some money in exchange for the tenant agreeing to remove the snow. Without this, the clause requiring snow removal was void as it offends the provisions of the Act.

What we can learn from this decision is that if a landlord wants a tenant to shovel the snow or cut the grass, they should prepare a separate agreement that pays the tenant to do the work. It should not be part of the rental agreement. Or perhaps consider raising the rent to begin with and providing the tenant with a credit if they perform certain tasks for you, such as shoveling the snow or cutting the grass. See the maintenance schedule later in this Guide.

Landlords have an obligation to maintain the appliances if they are included in the rental agreement, in a safe operable condition. This does not mean that the landlord has to buy the tenant a new appliance if one breaks down. They must either repair it or provide the tenant with a similar working appliance.

Landlords and tenants can agree as to where and how garbage is to be disposed. In the lease, tenants should be required to place their garbage in the appropriate place and at the appropriate time for pickup.

What happens if a pipe breaks above your unit, and damages your unit or your own contents? The landlord is responsible to repair any damage to the unit caused by the water, but is not responsible to pay for the damage to the tenant's contents. For this reason, tenants should seriously consider obtaining tenant's insurance, which will include contents insurance as well as liability insurance. The reason for liability insurance is so that the tenant has protection against a claim that someone may make against them. This includes a guest who may hurt themselves in the apartment as a result of the tenant creating an unsafe condition.

In this regard, it is recommended that Landlords check any smoke or carbon monoxide detector twice a year, to make sure that they are working or need a change of batteries. A good rule is to do this every time the clocks are changed.

Landlords often require tenants to obtain renters' insurance as a term of any lease agreement. There was a 2005 case called Stanbar Properties v. Rooke which provided that it was grounds for eviction when a tenant agreed to obtain this insurance in their lease and then later refused. However, many tenant advocates argue that this case was wrongly decided. In any event, it is a good idea to include this type of clause in any residential lease. If the tenant agrees to obtain insurance and then does not, the landlord can try and evict the tenant based on breach of conduct, to be discussed later in this guide.

When can a landlord enter a unit and what notice must be given?

A landlord is permitted to enter the unit with written notice to the tenant at least 24 hours in advance, during the hours of 8 am to 8 pm, for the following reasons:

a) to carry out repairs or replacement work in the rental unit;
b) to allow a potential mortgagee or insurer to view the unit;
c) to inspect the unit to determine if it is in a good state of repair;
d) to permit a potential purchaser to view the rental unit; or
e) for any other reason specified in the tenancy agreement. (Section 27 of the Act)

An example of the written notice to be provided is as follows:

Notice of Entry for inspection of Rental Unit

To: (Tenant Name) Date:

I will be entering your rental unit on _____, 20___. I will arrive on or shortly after _____ am/pm and will remain for approximately _____hours in order to inspect the unit for general maintenance.

You are not required to be there at the time of entry. However, it is your right to attend if you wish.

If you are not planning on being there, please make sure that there are no chain locks or other devices installed that may prevent entry, and that any animals are tied up or not in the rental unit.

We apologize for any inconvenience that this may cause. Thank you for your anticipated co-operation.

Yours truly,

Name of landlord, property manager

What if landlord does not properly maintain the building or the rental unit or enters the premises illegally or harasses the tenant in any way?

If the landlord does not properly maintain the building or enters the unit without proper notice, the tenant can apply to the Landlord and Tenant Board (Section 29 of the Act). The form for improper maintenance is the T6 form. If the complaint is entry without proper notice, then the T2 form is used by the tenant. All forms can be downloaded from the Board website. If the Board concludes that the allegations are correct, then the remedies available could include:

a) a rent rebate;
b) terminating the tenancy;
c) reimbursing the tenant for costs paid to repair and maintain the unit;
d) ordering the landlord to conduct the necessary repairs;
e) refusing a landlord request to implement any rent increase until the work has been completed; or
f) refusing to grant the landlord an eviction request against the tenant.

The Board could also give a fine to the landlord, up to $25,000. (Section 31 of the Act)

The tenant must bring the application within one year of the act of the landlord that they are complaining of or it will not be permitted and the tenant will probably require proof that they have already brought this matter to the attention of the landlord in the past with no satisfactory action being taken by the landlord (Section 29 of the Act).

This provision becomes very important if the tenant tries to use it as a defence to any action by the landlord to evict a tenant. As will be discussed in the section regarding evicting tenants, the landlord must be prepared for these types of claims in advance of any court hearing, so that they are not ambushed with this at the trial.

When can a landlord enter a unit without written notice to the tenant?

A landlord can enter a unit without notice if it is an emergency or if the tenant consents (Section 26 of the Act). This provision regarding tenant consent becomes important if you want to show a home occupied by tenants and you do not have time to provide the twenty four hour written notice. If you have a good relationship with the tenant, you may be able to obtain the tenant's permission for the showing to take place even without giving the required written notice. This may also assist you in conducting an open house on the property, if the tenant agrees, when you do not have this right expressed in your tenancy agreement.

The landlord may also enter without notice if he has an obligation under the lease to clean the unit, at the time specified in the lease. If no time is specified, the cleaning must take place between 8 am and 8 pm.

The landlord may also enter without notice to show the unit to a potential new tenant if both the landlord and tenant have agreed that the tenancy will be terminated, or one of them has given notice of termination to the other (Section 26 (3) of the Act). The showing must take place between 8 am and 8 pm and the landlord must make a reasonable effort to provide notice to the tenant. For example, if the tenant has already told the landlord that they will be leaving and then if a potential tenant calls the landlord in the morning and says they want to come at lunch that day to see the unit, it is sufficient for the landlord to call and leave a message on the tenant's phone advising of the showing.

Tenant duties

A tenant is not permitted to change the locks on the rental unit without the permission of the landlord (Section 35 of the Act). The tenant is also responsible to repair any damage to the rental unit or the building that was caused by the tenant, anyone occupying the unit or any guest of the tenant (Section 34 of the Act).

Abandonment of a rental unit

This subject is outlined in Sections 41 and 42 of the Act. If a tenant is paying rent, then by definition, they have not abandoned the unit.

If the tenancy has been terminated by the Board or the tenant vacates after a notice of termination has been issued, but leaves behind any items, then the landlord can dispose of the items after waiting 72 hours (Section 41 of the Act).

In all other cases, when it looks as though the tenant has abandoned the premises, the landlord will have to obtain an order from the Board terminating the tenancy, or notify the tenant and the Board that the landlord intends to dispose of the property, before being entitled to dispose of the tenant's contents. In either case, the landlord can immediately dispose of items that may be unsafe or unhygienic. For all other items, the landlord must wait 30 days after giving the notice before disposing of them. The landlord can use any proceeds obtained to pay any rent arrears owing or any costs to store the items (Section 42 of the Act).

It is also a good idea to take pictures of the abandoned property before disposing of it, in case any claim is later made by the tenant.

What happens if the tenant passes away?

If the tenant passes away, then the lease is deemed to be terminated 30 days after the tenant passes away. The landlord must permit the estate executor or family members 30 days to remove the contents from the rental unit. If they are not removed, the landlord can sell the contents or otherwise dispose of them. The estate has 6 months to claim any money that the landlord received for selling the items, but the landlord may deduct any rent owing to the end of the lease and any incidental costs in disposing of the items.

Selecting Tenants

One way to make sure that you do not face the difficulties that you will encounter in trying to evict a problem tenant is to properly qualify tenants before renting to them.

It is very important to conduct the proper research in advance before renting any space to a residential tenant, whether it is a basement apartment in your home or an investment property that you own. Being careful in advance can save you unnecessary lost rent, repairs and legal costs. When you advertise for a tenant, indicate that you will be doing a credit and reference checks. This should discourage many potentially difficult tenants from applying in the first place.

You must also be very careful when interviewing any potential tenant that you do not inadvertently violate any sections of the Human Rights Code by asking any inappropriate questions.

Section 10 of the Act incorporates the above regulations under the Human Rights Code by stating that when selecting prospective tenants, landlords may use, in the manner prescribed in the regulations made under the *Human Rights Code*, income information, credit checks, credit references, rental history, guarantees, or other similar business practices as prescribed in those regulations.

Examples of questions that would violate the Human Rights Code are:

Do you plan to have children?

What is your ethnic, religious background or marital status?

A common question involves whether a landlord can request a tenant's Social Insurance Number (SIN). It is not illegal for a landlord to ask for a SIN number, although many tenants may refuse to provide it. If a landlord does ask for a SIN number, they have a duty to properly safeguard this information so that it does not carelessly fall into the hands of others.
Tenants who do not wish to provide their SIN number do not have to, but they may have to provide their full name, birth date, address and postal code. They may also be requested to provide some banking information as well. This will enable most credit reporting agencies to be able to conduct the same credit and tenant history checks. In addition, if you see the tenant's bank statements, you will have some proof that they are depositing regular income from employment on a consistent basis or whether it is just irregular amounts, deposited at different times.
Ask any prior landlord if they paid the rent on time, whether they kept unit neat and tidy, did they smoke or have pets and did they get along with the other tenants? It is better to speak to a prior landlord than their current landlord when it comes to a reference. A current landlord may give

you a good reference because they are in fact trying to get rid of this tenant. A previous landlord will probably be more open and honest.

Be very diligent to also check the tenant's credit and employment references.Join websites such as www.tenantverification.com or www.rentcheck.ca where for fees as low as $25, you can conduct a credit check on a proposed tenant.

Interview the tenant where they live. You will get a better idea how they treat someone else's property.

Check the phone numbers of all references that are provided to you in the phone book to make sure they are who the tenant says they are. Especially check the phone number of where they work separately, using the internet, to make sure that it is the same address and phone number given to you by the tenant.

Ask for a current pay stub from where they work.

Check their rental history to determine how often they move. The more often they move, or if there is a large gap in their rental history, needs to be followed up on.

Do they submit their completed rental application or deposit when they say they will? Do they respond to your emails and phone calls in a timely manner? If any excuse is given here, it is a sign of more to come.

Google the name of the tenant to see if they show up in the company that they say they work for. They may have a profile on linked in or facebook that has this information as well. If they have a pet, there should be a picture on facebook with them and their pet.

Besides advertising in a local newspaper for tenants, consider joining the following websites, which are visited by hundreds of thousands of potential tenants: www.viewit.ca, www.kijji.com, and www.gottarent.com.

If you refuse a tenant based on your credit and reference checks, the best answer to give a tenant is that you preferred another tenant. You do not have to tell them why you refused them. Or state that you are still reviewing applications. Also, if a tenant cannot meet with you in person because they are disabled, arrange to interview them via skype. Do your best to accommodate these types of requests, to avoid violations of the Human Rights Code.

When preparing a residential lease application, ask the tenant to provide the names of all children and pets that will be living on the property and ask for their Driver's License. Make sure the address on their Driver's License matches the current address that they have given you.

Use the Rental Application Form attached to this guide for any potential tenant applications. Use the Rental Interview Form to make sure you ask the appropriate questions when interviewing potential tenants.

Make sure to keep a copy of every consent you receive from a proposed tenant to check their credit, even for those tenants who you refuse. If the tenant complains to the credit bureau and you do not have proof of this consent, you could be held liable for breaking Privacy laws. I suggest retaining this consent for at least a two year period.

Prior to the tenant moving in, landlords should use the attached Rental Unit Condition Report, whereby the landlord and tenant initial regarding the condition of any appliance, floors, walls, patio doors, stairs, staircases, windows, countertops, closets and other fixtures in the rental unit. The remarks could be either that the item is broken, damaged, stained, clean or in good condition. This same form can then be reviewed with the tenant at the end of the tenancy, to determine whether the tenant has caused any damages to any of these items during the tenancy. With this signed form, it will be easier for a landlord to claim any repair costs from the tenant at the end of the tenancy. Some careful landlords ask the tenant after the review whether they are satisfied with everything in the unit, record their response on their smartphone and keep a record of the conversation, should a dispute arise later. Also deliver a copy of the Information for New Tenants Brochure at the end of this Guide, to every new tenant.

If you have required the tenant to sign up for a utility account or to obtain a tenant insurance policy, ensure that you have proof of this before permitting the tenant to enter the rental unit.

Terminating a Residential Tenancy

In order to terminate a residential tenancy, it must be in accordance with the Act. (Section 37 of the Act) All correct forms must be used as well. You can download a copy of all of the forms referred to in this Guide from the Landlord and Tenant Board website, which can be found at:

http://www.ltb.gov.on.ca/en/index.htm, or just by Googling the “Landlord and Tenant Board.”

A landlord and tenant can sign an agreement to terminate a tenancy, which is Form N11. However, the form is not valid if it is signed on the same date as the tenancy agreement or if signing it is a condition for the tenant to be able to move into the rental unit (Section 37 of the Act).

If a tenancy for a fixed term, such as a one year lease, ends and it has not been renewed or terminated, then it will automatically continue as a monthly tenancy, on the same terms as the expired lease, and subject to any permitted rent increases under the Act (Section 38 of the Act).

A landlord cannot recover possession of a rental unit unless the tenant has abandoned the unit or the landlord has obtained an eviction order under the Act (Section 39 of the Act).Every notice to terminate a tenancy, whether given by a landlord or a tenant, must identify the rental unit, state the date that the tenancy is to terminate and be signed by the person giving the notice or

their agent (Section 43 of the Act).The main difference between a landlord notice to terminate and a tenant notice to terminate is that the tenant does not have to state a reason for the termination. As long as the tenant follows the rules regarding the days of notice that must be given, then no reason is required. If the tenant has signed a lease for a one year period, then they are responsible for the rent to the end of their one year period. In order to terminate the lease, the tenant must provide 60 days' notice before the end of the one year term (Section 44 of the Act). If it is a monthly tenancy, the tenant must provide 60 days' notice before the end of any subsequent month (Section 44 of the Act). The form that the tenant will use is Form N9.

Let's say the lease expires next December 31 and the tenant wants to terminate the lease today on May 1. The tenant can terminate, but they will still be responsible for the entire rent until December 31. They can attempt to sublet the premises, to assist with this rental obligation. The rules on subletting are described later.

Let's say the tenant's lease has now expired, it is a monthly tenancy with rent payable on the first of every month and the tenant wishes to terminate the lease. Today is May 15. The tenant must provide 60 days' notice before the end of any subsequent month. The earliest the tenant could terminate would be July 31, which is more than 60 days from May 15 and is an end of a month. If the tenant just walks away on May 15, they will still be responsible for the rent until July 31. However, the landlord has the duty to try and reduce their losses by finding a new tenant as soon as possible.

Under new Section 47.1 of the Act, a tenant can also terminate a lease early if they allege that they or their child is in danger of abuse by someone they are currently living with or dating. The tenant only has to give 28 days' notice and can leave earlier.

When a landlord gives a notice to terminate a residential tenancy, it must always state a reason that is recognized by the Act. The notice of termination must contain the following items:

a) if the tenant vacates on the date specified in the notice, then the tenancy is terminated;
b) if the tenant does not vacate, the landlord will apply to the Board for an order terminating the tenancy; and
c) the tenant will have the right to dispute the application (Section 43 of the Act).

The notice periods related to any reason that the landlord may have to terminate a residential tenancy are different, yet the actual process in front of the Board is similar in all cases.

Here are the reasons that a landlord can use to terminate a residential tenancy as well as the notice time period associated with each reason.

Non-payment of rent = 14 days (Section 59 of the Act).

Bad conduct, which includes damaging the premises, interfering with the enjoyment of the landlord or the other tenants, or having more people in the unit than is permitted by the local by-laws = 20 days (Sections 62, 64 and 66 of the Act).

If the conduct consists of committing an illegal act on the premises, if the damage is serious or if there is a threat to the safety of the landlord or the other tenants, the notice period is = 10 days (Sections 61, 63 and 65 of the Act).

If the tenant has been persistently late in making rental payments = 60 days before the end of the term (Section 58 of the Act).

Landlord requires the rental unit for their family or for a caregiver of a family member= 60 days before the end of the term (Section 48).

A buyer under an agreement of purchase and sale requires possession of the rental unit for their family or for a caregiver of a family member = 60 days before the end of the term (Section 49 of the Act).

The Landlord requires possession to demolish the building, change the use to something other than residential premises or to do repairs or renovations so extensive that they require a building permit = 120 days before the end of the term (Section 50 of the Act).

If the reason is for repairs or substantial renovations, then the tenant must also be informed in the notice that they have the right to request a right of first refusal to re-occupy the rental unit once the repairs or renovations are completed (Section 50 of the Act).

The tenant must exercise this right of first refusal before vacating the rental unit. If they do exercise it, then they are entitled to re-occupy the rental unit at what would be the legal rent that the landlord could have charged them, had they not vacated (Section 53 of the Act).

If a tenant receives a notice for Family reason (Section 48 of the Act), if a Buyer requires the Premises for their family (Section 49 of the Act), or if the landlord wishes to demolish, change the use or repair or substantially renovate the unit (Section 50 of the Act), then in all cases, the tenant can terminate the tenancy earlier by providing the landlord with 10 days' written notice, at any time (Sections 48, 49 and 50 of the Act).

The Termination Process – Non-payment of rent

As discussed above, although the notice periods associated with terminating a tenancy by a landlord may be different, the actual process involved is the same, in each instance. For example, let us look at the process involved if the tenant is late in paying rent. On average, the entire process, from the time that the initial notice to terminate is delivered, until the time that the tenant is physically evicted from the rental unit by the Sherriff, will take on average, 90 days.

The time period is calculated and determined as follows:

Rent is late	-	5 days
Initial notice to terminate	-	14 days
Time to arrange a hearing	-	30 days

Time to obtain court order	-	5 days
Time given to tenant to remedy	-	11 days
Time for Sherriff to enforce eviction	-	25 days
Total – if no other delays	-	90 days

Let's say it is now May 6 and the tenant has not yet paid the rent for May. As soon as the rent is one day late, a notice can be given, although most landlords will try and reach the tenant first before starting these proceedings. The first notice that must be given is called the N4. As discussed above, the tenant must be given 14 days' notice for late payment of rent.

How is the notice served on the tenant?

To properly affect service, you can either hand it to the tenant or to any other occupant of the rental unit, leave it in the tenant's mailbox or you can slide it under the door of the rental unit. You should not tape it to the front door of the rental unit as this is not proper service. The day that you deliver the notice is not counted in your calculation. So if you deliver the notice to the tenant on May 6, you do not count May 6 and the earliest date that you can terminate on the notice will be May 20, which is 14 days, if you start counting on May 7.

If you fax the notice to the tenant, it is deemed to be received on the date that you fax it, so in this example, if it was faxed on May 6, the termination date stays at May 20.

If you send the notice by courier on May 6, then you must add one day to the termination date, so in this example, the termination date would now be May 21.

If you want to mail the notice on May 6, then you must add five days, bringing the termination date in this example to May 25. Use this method if the tenant is trying to avoid service.

In all cases, the notice must also state that if the tenant does not leave, the landlord will be applying to the Board for an eviction order and the tenant can dispute the application.

If the tenant pays the late rent before May 20, then this application becomes void. If the tenant does not make the payment, then the next step for the landlord is to go to the Board to arrange a hearing date for the court application.

If the application is for any reason that is not related to non-payment of rent, and if the tenant does not vacate and the landlord does not begin the application process to evict the tenant within thirty days of the date specified in the notice, then the original notice becomes void (Section 46 of the Act).

To arrange the date before the Board, you have to use the form L1. You cannot start the Board application to evict the tenant until a date that is after the date specified in your N4 notice. In the above example, you can start your application to evict the tenant based on non-payment of rent, on May 21. This form can be delivered in person or faxed to the nearest Board office, and with it you must include a copy of the original N4 form and a signed certificate showing how and when

you served the N4 form on the tenant. You will also have to pay the Board fee of $170 to arrange the date. If you file in person, you can pay by certified cheque, money order or credit card. If you are making the application by fax, you will have to pay by credit card.

When you file the application in person, you can usually arrange a date right there for the hearing date. If you do it by fax, the Board office will need to know when you are going to serve the application papers on the tenant before scheduling the date. The hearing is usually scheduled before an adjudicator at the Board office, but in some cases, it can even be scheduled as a telephone conference.

You must give the tenant a copy of your L1 application and the Notice of Hearing at least ten days before the Board hearing. If you mail the notice, you have to add an additional five days, as stated above in the section on serving notices. You must file a second certificate proving when and how you served the tenant with these papers, at least five days before the hearing.

The hearing date is determined by the Board, and will depend on the volume of cases that they have. Recent studies in Ontario have shown that the delay to obtain a hearing date can be on average 30 days. It is for this reason that landlords should not wait too long before starting any eviction proceeding.

At the hearing, if the tenant pays the outstanding rent and the landlord's costs in filing the application, then the matter will end there and the tenancy will continue.

If the landlord is successful, then the Board will order that the tenancy be terminated, that the landlord be given possession of the unit and that the tenant pay to the landlord all outstanding rent and application fees owing to the date of termination. It normally takes an additional 5 days to obtain the written order from the Board.

The next step is for the landlord to enforce the eviction order. Most Board orders provide that the tenant still has 11 days to pay the full arrears owing before the order can be given to the Sherriff for enforcement. It is interesting that there is no provision in the Act that gives the Board the power to grant this additional 11 day period, yet they do this anyways. Once the 11 day period expires, the landlord will have to attend with a copy of the Board order at the County Sherriff's office and make arrangements for the Sherriff to evict the tenants from the rental unit. In Toronto, the Sherriff's office is located at 393 University Ave, on the 19th floor.

The landlord will then be provided with instructions from the Sheriff's office, which includes the date and time that the eviction will take place. This usually requires an additional 17-25 days for the Sherriff to schedule the eviction date. The Sheriff will send a notice to the tenant, called a notice to vacate, instructing the tenant to leave the rental property on or before a specified date and time. If the tenant fails to vacate by the date specified in the Sheriff's notice to vacate then the landlord must contact the Sheriff's office to schedule the eviction.

The landlord will be informed of the date and time when the Sheriff will attend the rental property in person to enforce the eviction order. The landlord is required to arrange a locksmith to change the lock of the rental unit. The landlord is also required to pay a fee specified by the Sheriff's office. This amount varies but is usually between four to five hundred dollars, which includes a basic fee as well as a mileage charge to attend to complete the eviction.

If the tenant pays all arrears of rent owing and all of the landlord's costs before the Sherriff attends to evict the tenant, then the tenancy will continue. This includes any amount paid by the landlord to arrange the Sherriff's attendance. If the amount is not paid, then the Sherriff will attend at the premises with the locksmith arranged by the landlord, evict any person still in the rental unit and supervise the changing of the locks.

As discussed, this entire process, to go to the Board, obtain a date for a hearing, go to the Sherriff and complete the eviction order can take a minimum of three months in most cases, just due to the volume of cases at the Board and the difficulty in obtaining a hearing date. As we will see later, there are many procedural and other issues that can be raised by tenants that could have the effect of delaying these proceedings even longer. It is for this reason that landlords need to start any eviction proceeding as soon as possible and be fully prepared for any hearing.

In all other cases when the landlord is seeking to terminate a tenancy, the only real difference is the days of notice that must be given to the tenant at the beginning of the process. The court process is always the same. For example, if the landlord wants to terminate the tenancy because the tenant has damaged the unit or is bothering the other tenants, then the notice period is 20 days. If the tenant does not correct the behavior, the landlord will still have to go to the Board, set a date, obtain an order terminating the tenancy, take it to the Sherriff and complete the eviction.

The main difference between an application based on non-payment of rent and any other eviction proceeding is that the landlord must apply to the Board within 30 days of the termination date set out in the notice to arrange the court date. If they do not apply in time, the notice becomes void. So for example, if the landlord provides a notice for bad conduct (Form N5) and gives the tenant until June 7 to correct the behavior, but then the landlord does not apply to the Board for a hearing date before July 7, then the landlord must start over again with a new 20 day notice.

Landlord and Tenant Board Hearings

The Board can be contacted at 1-888-332- 3234.

Regional Office Locations and Fax Numbers

Regional Offices have Customer Service Representatives available during regular business hours. Customer Service Representatives can provide you with information about the Board and the law. Applications and supporting documents may be filed in person, by mail, or by fax to any Regional Office below:

Hamilton - Southern Regional Office,119 King Street West, 6th Floor,Hamilton, Ontario, L8P 4Y7, Fax No. 905-521-7870 or 1-866-455-5255

London - Southwestern Regional Office -150 Dufferin Avenue, Suite 400,London, Ontario N6A 5N6, Fax No. 519-679-7290 or 1-888-377-8813

Mississauga - Central Regional Office, 3 Robert Speck Parkway, Suite 520,Mississauga, Ontario L4Z 2G5, Fax No. 905-279-7286 or 1-888-322-2841

Ottawa - Eastern Regional Office, 255 Albert Street, 4th Floor, Ottawa, Ontario K1P 6A9, Fax No. 613-787-4024 or 1-888-377-8805

Sudbury - Northern Area Office, 199 Larch Street, Suite 301, Sudbury, Ontario P3E 5P9, Fax No. 705-564-4118 or 1-866-410-1399

Greater Toronto Region

East District Office, 2275 Midland Avenue, Unit 2, Toronto, Ontario M1P 3E7, Fax No. 416-314-8649 or 1-888-377-8808

North District Office, 47 Sheppard Avenue East, Suite 700, Toronto, Ontario M2N 5X5, Fax No. 416-314-9567

South District Office, 79 St. Clair Avenue East, Suite 212, Toronto, Ontario M4T 1M6,Fax No. 416-326-9838

Also at Service Ontario Office Locations

Board documents can also be filed at any Service Ontario location in the Province. A list of locations can be found at http://www.oltb.gov.on.ca. You can file applications and supporting documents in person at any of these locations. If you want to file documents by mail or fax, you must send them to one of the Regional Offices listed above.

Service Ontario offices do not have staff of the Board working behind the counters. They cannot provide you with information about the law, but they can accept documents on our behalf. Hearings before the Board can take place at one of the Regional offices listed above, depending on where your matter originates, or sometimes in a city closer to where the matter originates. You can find the nearest location in your area at the Service Ontario office. While it now takes approximately 30 days to obtain a Board hearing in Toronto, it may be less in other areas of the Province, depending on the volume of cases.

You can appeal any Board hearing to an Adjudicator by paying a $50 fee, but you must be able to prove that a serious error occurred in the process. You can also review a decision by filing in the Ontario Divisional Court. This appeal must be filed within 30 days of your decision and will be more costly to pursue. If you are going to appeal, it is best to try and appeal first to an Adjudicator.

Conduct Notices

A tenant committing bad conduct can fall under any of the following examples:

a) Damaging the premises by accident;
b) Interfering with the enjoyment of the landlord or the other tenants in the building;
c) Having more people in the unit than permitted by health, safety or housing standards;
d) Committing an illegal act;
e) Willfully damaging the premises;
f) Seriously impairing the safety of another person;

g) Using the premises in a way that is likely to cause serious damage; or
h) Substantially interfering with the rights of the landlord when the landlord also lives in the building and the building has three of fewer units.

If it is the first incident committed by the tenant, then for reasons in subparagraphs a, b or c above, the landlord has to give a twenty day notice to the tenant. This is the Form N5. The notice must indicate that if the tenant corrects the bad conduct within seven days, then the notice will be void. If the tenant does not correct the behavior or fix any damages caused, then the landlord can apply on the eighth day for the hearing in front of the Board, by paying the same $170 fee.

For the reasons in subparagraphs f, g or h above, use Form N7. For the reason in subparagraph d, use Form N6. The landlord has to give the tenant ten days' initial notice. If the tenant does not vacate, the landlord can apply to the Board for the eviction order.

In all cases, the form that the Landlord uses for any Board application related to any of the bad conduct notices issued under Forms N5, N6 or N7, is the Form L2 and costs $170.

If the tenant does correct the behavior but commits a second bad conduct act outlined in paragraphs a-h above, then the landlord can serve a fourteen day termination notice on the tenant, using either of Forms N5, N6 or N7, depending on the reason, and the tenant will not have the opportunity to correct the behavior. If the tenant does not leave after the fourteen day period, the landlord can apply for a hearing in front of the Board to evict the tenant, using the same L2 form.

All rules for service of the N5, N6, or N7 Forms, including proof of service by certificates, are the same rules as were outlined under the rental notice process section.

The court hearing for any bad conduct matter will require the landlord to be more careful in their preparation. When it comes to non-payment of rent, all the landlord must prove is that they did not receive the rent. When it comes to proving bad conduct or interfering with the enjoyment of the other tenants, the landlord must be very careful to have detailed accounts, including dates and times of all allegations, and will also require witnesses to attend at the Board hearing to prove that the allegations were correct. This can present a problem if you need a second tenant to attend to give evidence and they cannot attend because of employment commitments. This will also be difficult if the tenant who you want to come as a witness is afraid that the tenant being evicted may threaten them with physical harm.

In addition, unless there is a detailed account of all incidents, the Board will be reluctant to terminate the tenancy.

Terminating a tenancy because of animals

The reason in subparagraph b above, regarding interfering with the enjoyment of the other tenants, could be used by the landlord in order to potentially evict a tenant who has pets. As stated above, no lease agreement is permitted to prohibit a pet in the rental unit, unless the unit happens to be in a condominium building where the condominium declaration prohibits pets. In

the City of Toronto, for example, it is permitted for a tenant to have any combination of up to six dogs, cats or rabbits in their home.

In addition, even if you have a condominium declaration that prohibits pets, if a tenant is blind and requires a seeing-eye dog, then as a result of the Human Rights Code, they can have this pet in the building. In recent cases, judges have also found that if the tenant would become emotionally disabled by removing their pet, this could also qualify under the Human Rights Code as an exception, even if the condominium declaration prohibits pets. If the tenant's pet is bothering the other tenants, is causing allergic reactions to the landlord or the other tenants, or constitutes an unsafe situation, such as the tenant owning a pit bull terrier or other dangerous animal, then the landlord can use the N5 form to bring an application to evict the tenant if they do not remove their pet (Section 76 of the Act).

Can you terminate a tenancy because of smoking Cigarettes or Marijuana?

Even if a tenant signs a lease that says no smoking, whether cigarettes or Marijuana, and they later smoke, you cannot evict them just because they broke their promise made in the lease. Under the Act, you can include a no smoking clause in any lease and include a clause prohibiting the growing of any marijuana plant. If you are going to do this, you should also develop a building no smoking policy and try to make sure that all tenants, including their invited guests, not only follow the policy, but also assist in making sure that no one else smokes anywhere on the property. It may be difficult to enforce this against tenants who already have leases in your building that do not prohibit marijuana cigarettes or growing these plants.

However, even if a tenant signs a lease that says no smoking, and they later smoke, you cannot evict them just because they broke their promise made in the lease. You will still have to prove that the smoke was either damaging the unit in some way, or that it was interfering with the enjoyment of the other tenants, usually through second hand smoke which can affect adjoining units. If the landlord is living in the same building with the tenant, for example if the tenant is in a basement apartment, and the building does not have more than 3 rental units, and if the landlord can prove that the smoking is directly affecting them, then the eviction process can be a little faster, with an initial 10 day period, but the landlord will still have to serve the proper N5 notice on the tenant and then apply to the Board for an order to evict the tenant.

Now that smoking Marijuana or even growing Marijana plants will become legal, then in any of these eviction applications, it will still be easier to evict the tenant if there was a no smoking clause in the lease that the tenant agreed to in advance, so I would always recommend that landlords insert this clause into any residential lease if it matters to them. Make sure that when you write the clause, you include any kind of smoking, whether Marijuana or regular cigarettes, cigars or any similar product that generates smoke in the building. Also make sure that you prohibit smoking not only from the rental unit, but also from any balcony, patio, or common areas of the building itself.

In a reported case decided in 2007, a tenant rented a furnished apartment from in Toronto. The lease contained a no smoking clause. The landlord was able to prove that the tenant's smoking caused the furniture and the broadloom to absorb contaminants from the smoke that became difficult to remove. The landlord was also able to prove that much of the furniture which had fabric needed to be replaced, the walls had to be washed and painted and the carpet had to be

professionally steamed. The Board agreed, ordered the tenant evicted and the tenant had to pay the full amount of the damages, which was almost $11,000.

In another decision, a tenant was evicted for smoking when there was a forced air system in the building and other tenants were able to prove that the smoke came into their units.

Can you ask a tenant on a rental application if they smoke? The answer is yes. When you check references, ask any prior landlord if the tenant or any of their guests smoked.

What can a tenant do to fight a landlord notice of termination?

Tenants are permitted to raise any matter related to their tenancy when a landlord tries to terminate the tenancy, whether for non-payment of rent under Notice N4 or for any incident of bad conduct under Notice N5.

Landlords must be prepared for tactics raised by tenants that could delay their eviction proceeding. A simple strategy for a tenant is to come up with an excuse at the last minute as to why they cannot attend the Board hearing, which will usually result in a postponement, during which time the tenant can still live in the rental unit without paying rent. A postponement will usually have the effect of delaying the proceedings another 30 days, which is typically when the next available hearing date will take place.

Under Section 82 of the Act, the tenant can come to the hearing with allegations as to how the landlord has been harassing them repeatedly, claiming that the landlord has not been properly maintaining the property, has removed services from the tenant or turned off the utilities. This can also include cases where the tenant can prove that the only reason for the eviction is because the tenant tried to enforce their own legal rights under the Act, complained to a governmental authority about the safety or cleanliness of the rental building or joined a tenant's association. In some cases tenants have been able to get rent rebated if the Board believed their allegations. Even though the landlord was not given prior notice of any of these potential claims, the result will usually be that the hearing is adjourned until all matters can be heard at the same time. The result will be a further 30 day delay in order to schedule a hearing to determine all of the issues between the landlord and the tenant.

As such, landlords should always try and be prepared for what are referred to as tenant "ambushes", by for example, having statements available at the hearing signed by the other tenants confirming that the building has always been properly maintained.

Another tactic that a tenant might try to delay the court application is to send a letter to the landlord before the hearing asking for details of all witnesses and what the landlord will be entering as evidence at the hearing. If the landlord does not properly comply by giving the tenant this information before the hearing, then the tenant will likely be able to get an adjournment of the hearing. This could again delay the hearing for 30 days. Therefore, if a landlord receives this request from a tenant, they must disclose in advance everything they intend to rely upon at the hearing, including any documents that they will rely upon, and the names of the witnesses that they intend to bring. If the landlord is going to rely on any case law at a hearing, it is always a good idea to send the tenant a copy before the hearing as well.

Another area that causes problems between tenants is noise caused by musical instruments being played at night. It has been held that the landlord has a duty to keep one tenant from playing piano all the time if it bothers the other tenants. In some cases, the landlord may also be responsible to soundproof the room in order to resolve the problem by accommodating the tenant's needs, so landlords need to ask in advance if the tenant will be playing music late at night. If there is no discussion, the tenant can later argue that the landlord is interfering with the tenant's reasonable enjoyment of the unit by preventing them from playing their musical instrument. It is recommended that the landlord include a provision in any lease to restrict the playing of musical instruments after a certain hour.

In one case, the landlord promised to put in a ramp for a disabled tenant and then refused. The tenant became very ill when she realized that she would not be able to move in to the unit as planned. The landlord had to pay $2,000 in damages plus other packing costs. Landlords need to be aware that as a result of the Human Rights Code, unless it is going to be very expensive, a landlord will have a duty to try and accommodate the needs of disabled tenants.

It is recommended that landlords try to resolve issues between tenants in an amicable manner, to avoid unnecessary Board applications by the tenants or the Landlord. Sometimes private mediators can be used to assist. There are several voluntary mediation services in the GTA that have had success in resolving these types of issues. One of these in Toronto is St. Stephen's Conflict Resolution Service, which can be contacted at crs@ststephenshouse.com.

Terminating a lease at the end of the term

For all other reasons to terminate, including when you need the rental unit for a family member or when a buyer has purchased the rental unit and requires possession, you must wait until the end of the term of the lease. For example, if you have a lease that expires next December 31 and it is now May 15, you cannot terminate the lease on May 15 for the reason that you require the rental unit for your family. You would have to wait until December 31 to use this reason.

Can a landlord and tenant agree to voluntarily terminate a tenancy?

A landlord and tenant voluntarily can agree to end a tenancy at any time. In order to do this, both the landlord and the tenant would have to sign the Agreement to Terminate a Tenancy Form N11. Again, as stated previously, this form cannot be signed as a condition of the tenant moving into the rental unit.

If the tenant signs the form agreeing to vacate and then does not vacate on the date, the landlord can apply for a Board hearing immediately to terminate the tenancy, by using Form L3. The Landlord does not have to notify the tenant in advance of making this application. The Landlord will have to file an affidavit with the application in which he will produce a copy of theagreement that was signed by the tenant. The application must be brought within thirty days of the termination date set out in the agreement to terminate. The tenant does have ten days,

after being served with the eviction order, to try and bring a motion to overturn the order, or else the landlord can proceed to the Sherriff to enforce the eviction. (Section 77(6) of the Act)

Terminating a tenancy for family use

Let's say the lease is ending on December 31 and the landlord wants to terminate the tenancy on December 31 for the reason of family use. The form for the landlord to use is Form N12. The notice would have to be served on the tenant at least sixty days before the end of the term, or in this example, by November 1 at the latest. If the lease has already ended and is now a monthly tenancy, then the same sixty day notice must be given before the end of any month, if the rent is payable on the first of the month. Let's say you have a tenant with a monthly lease, with rent payable on the first of every month, and today is June 15. The earliest date that you can give notice to terminate, using the Form N12, would be August 31, which is more than sixty days and which takes effect at the end of a month. If the reason is for use by a family member, then the member must be the landlord, the landlord's spouse, parent, child, parent of the spouse or any caregiver to any family member (Section 48 of the Act). If the person is a caregiver, then the family member who is being cared for must also live in the building.

The Form N12 must be served on the tenant in accordance with the rules regarding service found in the section on non-payment of rent. If the tenant does not vacate the unit on the termination date, the landlord must use the Form L2, to start the eviction proceedings in front of the Board. The landlord will also have to prepare an affidavit proving that the rental unit is in fact for themselves, a family member or a caregiver to a family member. The landlord may be able to apply for a hearing date before the termination date set out in the notice, as long as the tenant is provided with notice of the hearing, but the eviction order cannot take effect until the actual date specified in the original notice. When an L2 form is used, it is important to also check the box claiming for additional rent if the tenant stays in the unit after the date that they are supposed to leave.

As of September 1, 2017, an additional one month rent must be paid to the tenant before the termination date as compensation for using this reason or provide the tenant another acceptable unit, and the family member must remain in the unit for at least 12 months, or there is a potential fine of $25,000, plus damages to the tenant for any increased rent the tenant has to pay at their new premises for a one year period and moving costs.

In an interesting decision regarding a Board application to terminate a tenancy because the landlord needed the rental unit for his son, the landlord gave the tenant the required N12 sixty days' notice to a tenant in a fourplex. This tenant suffered from chemical allergies and was not able to find another unit to move into. Even though the landlord was able to prove in good faith, they he required the rental unit for his child, the Board ordered that the eviction would not take place unless and until the landlord was able to accommodate the tenant by helping the tenant find suitable substitute accommodation.

In addition, if the owner of the rental unit is a corporation, then a shareholder in that corporation is now not able to give this notice of termination. A corporation cannot have a family. Thus you need to be careful to obtain advice as to how you will be taking ownership of a property if you do intend for yourself or a family member to move in.

What if a buyer requires vacant possession of a rental unit on closing?

If a buyer has signed an agreement of purchase and sale for the rental unit and wishes vacant possession on closing for themselves, their spouse, child, parent of them or their spouse, or a caregiver to any family member, then the same N12 form is used by the Landlord and given to the tenant on behalf of the Buyer. The notice must be given at least sixty days before the end of the term of the lease, if there is a lease, or sixty days before the end of any month, if it is now a monthly tenancy. The building in this case must have no more than three rental units in it for the Buyer to be able to evict a tenant using this reason (Section 49 of the Act).

Although the application is made by the Landlord, the buyer will still have to prepare a sworn statement as part of the application, confirming that they have in fact signed the agreement of purchase and sale and that they or a member of their family will be moving into the rental unit on closing. This same person will have to appear at any court hearing to give testimony to the same effect. If anyone gives a false sworn statement, the penalty under the Provincial Offences Act can be as high as $25,000. No one month compensation is required for this reason.

If the tenant does not vacate, then an application has to be brought before the Board, using Form L2, to formally evict the tenant. The landlord will also have to prepare an affidavit proving that the rental unit is in fact for the Buyer or a caregiver to the Buyer's family member. The landlord can make the application before the termination date set out in the N12 notice, as long as the tenant is given a copy of the application. The termination date in the order cannot take place earlier than the termination date stated in the Notice N12, but can take place on the termination date.

What if the tenant has been persistently late in paying rent?

If the tenant has been persistently late in paying rent, the landlord can use the form N8 to terminate the tenancy at the end of the term. The landlord must give sixty days' notice, coinciding with the end of any month. The landlord will have to provide proof that the tenant has paid rent late at least six to eight times during a twelve month period in order to succeed for this reason.

Selling a home occupied by tenants

If a home or condominium is being sold that is occupied by tenants, then all of the rules of the Act must be observed regarding showing the property to potential buyers and providing proper notice of termination if the Buyer requires vacant possession of the property on closing.

If you want to show a home to a potential buyer, you need to provide the tenant with twenty four hours' written notice and the showing must take place between 8 am and 8 pm (Section 27 of the Act). The only exception to this would be if the tenant has agreed to let you in earlier. It is a good idea to try and co-operate with the tenant regarding all matters relating to showing the home, in that this may assist you in obtaining the permission of the tenant to show the home even if you do not provide the required notice. In order to give the notice as a real estate salesperson, you need written authorization from the Landlord to do so.

What if the tenant refuses you entry into the rental unit for a showing even after you have provided the required twenty four hours' notice? This would be considered a violation of the landlord's reasonable right to sell the property and would thus be a violation of Section 64 of the Act, being an interference with the landlord's reasonable enjoyment of the property. The landlord would have grounds to terminate the tenancy for this reason, using the form N5. You cannot insist that the tenant leave the property during any showing. In addition, the landlord may be liable if the tenant later claims that some of their items were damaged or stolen by people who came to the showing.

Can you conduct an open house or conduct home staging when the home is occupied by tenants?

Unless you have the express right in your lease to conduct an open house during the sale of the property, this is not permitted under the Act. All you can do is arrange showings to potential buyers, under Section 27 of the Act. It is thus a good idea to include this right to conduct an open house in any residential lease where the landlord may want to sell the property in the future. Staging a home for sale involves either conducting minor repairs or repainting of the premises, changing or removing furniture and de-cluttering the rental unit. However, the tenant does not have to agree to any of this. If you have a good relationship with the tenant, then it is possible that they may agree to some of your staging ideas, but you cannot force the tenant to agree to this

Arranging the termination date

Once you have a Buyer who wants to buy the property, the first question to ask them is whether they want to assume the tenant after closing, or whether they want vacant possession. If they want to assume the tenant after closing, then you will not need to evict the tenant from the property. If the Buyer does want vacant possession, in order to move in, then you will have to evict the tenant, in accordance with the rules using the Form N12, as described above. The lease must be in a position to be terminated upon sixty days' notice. If the Agreement of Purchase and Sale is signed on July 15, then that is the first day that the N12 notice can be sent to the tenant. In this example, the earliest you would be able to terminate the tenancy would be September 30, if this was in fact a monthly tenancy. You would thus arrange for a closing date to occur on or shortly after September 30, to make sure that the tenant has in fact vacated the rental unit before the deal closes.

You should also consider including a clause that the Buyer and Seller agree to extend the closing date for up to a further thirty days, in the event that the tenant refuses to vacate the rental unit and it requires more time to go to the Board for an eviction order.

Real estate salespeople should be vigilant by keeping in communication with the tenant, to make sure that they have made alternative moving arrangements. If you sense that the tenant is making excuses about why they can't move on time and you feel that this may negatively impact your closing, then you need to communicate this immediately to the Buyer or Seller lawyer so that if necessary, a Board application using the form L2 can be made as quickly as possible in order to obtain the eviction order very close to the actual closing date.

Notice to Tenant Clause when Buyer is moving in on closing

Here is the clause to use when a buyer wants to move in on closing and notice has to be given to the tenant, assuming the tenant lease is now a monthly tenancy:

"The buyer agrees that they or their immediate family intends to move into the property on closing. In this regard, the seller agrees to provide the applicable 60 days' notice to the tenant using Form N12 under the Residential Tenancies Act, on behalf of the buyer. The buyer agrees to provide whatever support information may be required to demonstrate that the buyer or their immediate family will in good faith be moving into the property on closing and intending to remain on the property for at least one year after closing and to indemnify the seller for any damages suffered by the seller if the buyer does not remain in the property for at least one year after closing. In the event that the tenant disputes the notice as given, then the parties agree to extend the closing of this transaction to a period not more than 30 days, in order to effect the eviction of the tenant. In the event that vacant possession cannot be obtained prior to closing, as extended, for any reason, then the buyer shall have the right, but not the obligation, to complete the transaction and accept the tenant, or cancel the agreement and have any deposit returned, without interest or deduction."

Can you avoid any of these tenancy issues by terminating the tenancy before the rental unit is put up for sale?

The only way to avoid any of the tenancy issues discussed above that arise during the sale of a home occupied by tenants is to terminate the tenancy and have the tenant leave before the property is put up for sale. The only practical way to accomplish this is for the landlord and the tenant to agree to sign the Form N11 agreement to terminate the tenancy. The difficulty is that the tenant will usually want compensation in order to agree to this. The compensation can be anywhere from one to two month's rent and/or payment of the tenant's moving costs. This is a decision that will have to be made by the landlord/owner. If possible, just assist the tenant in finding another comparable place to live. In most cases, by having the rental unit vacant, you are able to then stage the home, not worry about giving notice before any showing, be able to conduct open houses at any time, and finally, not have to worry whether or not the tenant will vacate before the closing date.

When you also factor in the legal costs to attempt to terminate any tenancy through a Board application, it should be easier for a landlord/owner to understand that it is preferable to try and terminate the tenancy in this manner before putting this type of property up for sale.

Terminating for demolition, change of use or substantially renovating the residential unit (Section 50)

If the landlord wishes to terminate the tenancy for the following reasons:

a) The use of the rental unit is being converted to a non-residential use;
b) The landlord intends to demolish the rental unit; or
c) Vacant possession is required to do repairs or renovations that are so extensive that they require vacant possession and a building permit,

then the landlord must wait until the end of the tenancy and must provide the tenant with one hundred and twenty days' notice. The form to be used is form N13. If it is a monthly tenancy, with rent payable on the first of every month, then one hundred and twenty days' notice must be given before the end of a future month. For example, if today is March 15 and it is a monthly tenancy, with rent payable on the first of the month, then the earliest the tenancy could be terminated for any of the above three reasons is July 31. If the tenant does not vacate on or before that date, the landlord must apply to the Board to evict the tenant within thirty days of July 31, using Form L2. However, the landlord is able to apply to the Board to terminate the tenancy as soon as they give the Form N13 notice to the tenant, provided that notice of the application is also given to the tenant.

If the reason is for substantial repairs or renovations, then the tenant has the right to move back into the unit once the repairs have been completed, provided that the tenant informs the landlord of their intent to move back in before leaving the rental unit. The tenant must also provide the landlord with their change of address during the period that they will not be living in the rental unit.

If the landlord has been ordered to do the repairs under the authority of any other Provincial Act or city order, then no compensation is payable to the tenant. If the residential complex contains less than five units, then no compensation is payable to the tenant. However, if the residential complex contains at least five residential units, and the landlord is terminating the tenancy for the reasons in Section 50, then in most cases, the landlord must either find the tenant an alternate rental unit that is acceptable to the tenant, or compensate the tenant with three month's rent (Sections 52 and 54 of the Act).

Can the tenant leave early after being served with Forms N12 or N13?

If a landlord tries to terminate a residential tenancy for any of the reasons found on Forms N12 (family, buyer needs it) or N13 (demolition, changing use or substantially renovating the rental unit), and gives the tenant the required sixty or one hundred and twenty day notice, as the case may be, then the tenant has the right to terminate the tenancy earlier, by giving ten days' notice to the landlord (Sections 48(4), 49(5) and 50(5) of the Act).

For example, if on July 15, the tenant receives notice that the tenancy will be terminating on September 30 because the landlord requires possession of the rental unit for his son, the tenant may start looking immediately for another rental unit. Let's say the tenant finds a unit that he could rent on August 1. The tenant can then give the landlord ten days' notice, perhaps on July 21, telling the landlord that they will be leaving on August 1. In this case, the tenancy will end on August 1, and if the tenant has prepaid the last month's rent for August, then the landlord will have to reimburse this entire amount to the tenant, minus one day. If the tenant gives the notice on July 26, saying that they will vacate the rental unit on August 5, then the landlord will have to reimburse the tenant twenty six days of rent for August, if the tenant has prepaid the August rent.

What happens if the landlord tricks the tenant into leaving?

There may be situations where a landlord may try to use the family reason (Section 48 of the Act) or that the Buyer requires vacant possession (Section 49 of the Act) or that the landlord will

be demolishing or changing the use of the building (Section 50 of the Act) in bad faith, in order to trick the tenant into leaving the rental unit. One of the main reasons that a landlord may try this is so that they can fix up the rental unit and then raise the rent dramatically higher to a subsequent tenant. This is done to try and get around the rules regarding legal rent increases, to be discussed later in the section on rent review. If the tenant can prove that the application was brought in bad faith, then they can make an application to the Board, using the Form T5 (Section 57 of the Act).

The Board then has the power to fine the landlord up to $25,000, and to pay the tenant for any increased rent that they may be paying at a new location and/or moving costs, and may even order the landlord to permit the tenant to move back into the rental unit, if that is an option. Every case will depend on its own unique facts. For example, let's say the landlord gave notice to the tenant, requiring vacant possession for their son, in the City of Toronto, so that the son could attend University at the University of Toronto. The son moves in and starts attending school on September 1. Then on September 21, the son receives word that a spot has just opened up at the University of Ottawa, which was his first choice. If he leaves the unit to move to Ottawa, the landlord should be able to rent the unit to a new tenant, without penalty or claim from the initial tenant.

However, if in the same example, the son already had a separate apartment in downtown Toronto, and did not give it up, but then simply stayed in the rental unit for which the landlord had given notice for six months and then moved back into his downtown apartment, then this would probably be considered bad faith. It appears that the son never really intended to stay in this unit. In this case, the original tenant would probably be successful if they brought a claim under Section 57 of the Act. The lesson for any landlord is not to resort to any trickery to try and terminate a residential tenancy because the costs can be substantial.

There is a time limit. The tenant must bring the application based on bad faith within one year of their vacating the rental unit (Section 57 (2) of the Act).

If the buyer wishes vacant possession on closing, in order to rent to other tenants, then the agreement must be clear that the seller must make these arrangements through N11 agreements with the tenants, and not by providing any notice that the buyer intends to move into the unit.

Can the tenant stay in the unit even after the landlord obtains the eviction order?

Once the landlord goes to the Board and obtains the eviction order, it still must be enforced by the County Sherriff. If the reason is for non-payment of rent, and the tenant brings a motion to pay all outstanding rent, including any NSF cheque charges, and all the landlord's costs in obtaining the eviction order, including any fees paid to the Sherriff, before the eviction takes place, then the tenant is permitted to pay these amounts and remain in the unit.

What if a tenant violates a settlement agreement made with the landlord?

If the landlord had previously applied to the Board to terminate the tenancy, and the landlord and tenant had agreed to settle their differences through mediation services provided by the Board, and then the tenant did not follow the conditions of the settlement, then the landlord can

apply directly to the Board for an order terminating the tenancy, without giving notice to the tenant. The landlord will have to file an affidavit which includes the settlement agreement and the details of the tenant breaking the conditions. If the Board is satisfied with the material, they can make an order terminating the tenancy and ordering the tenant to pay any monies owing to the landlord. The landlord must bring the application within thirty days of the date that the tenant broke the conditions set out in the settlement agreement (Section 78 of the Act). The landlord will use Form L4 to bring this application. The landlord will still need to give the tenant a copy of any order obtained before going to the Sherriff to enforce the order.

Can an eviction order expire?

If a landlord obtains an eviction order under any reason contained in the Act, whether for example non-payment of rent, bad conduct or requiring the rental unit for a family member, but then the landlord does not enforce the eviction order by going to the County Sherriff to obtain possession of the rental unit within six months of the date of the eviction order, then the eviction order expires and is of no further effect (Section 81 of the Act).

Do tenants or landlords need to minimize any losses?

The landlord and the tenant must try to use their best efforts to minimize any losses caused as a result of a breach of a tenancy agreement. So for example, if a tenant leaves early without giving the required sixty day notice, the landlord must still try and re-rent the rental unit, and if the unit is re-rented, then any amounts received by the landlord must be reduced from any amount claimed from the tenant (Section 16 of the Act).

Practical Advice

In my experience, it is best to try and avoid a landlord and tenant board hearing if at all possible, as everyone ends up losing. The landlord may have to wait months to evict a problem tenant, while the tenant's credit history will be adversely affected. To be proactive, I recommend that landlords consider offering a small incentive to tenants who pay their rent on time, such as a Tim Horton's gift card. Tenants appreciate these small gestures and will look after your unit better. If you have a problem with a tenant, for example if they have lost their job, sit down and talk it over first with the tenant. Try and work out a solution that involves the tenant leaving early and perhaps moving in with a relative. In exchange, the landlord will assist with the moving costs and will release the tenant from any amount of rent owing. The landlord also will agree not to report the tenant to any credit reporting agency. In this manner, the landlord can minimize their loss, the tenant can retain their credit standing and rent again once their financial situation improves.

If you must go to the landlord and tenant board, always use an experienced paralegal instead of a lawyer. Paralegals are very familiar with the forms and the board adjudicators, so you will not make any mistakes and they will anticipate some of the claims that tenants will bring and make sure that the landlord is prepared to answer them.

Renewal Clauses

Be careful about renewal clauses in residential leases. If you make a mistake, you could unknowingly give the tenant an unlimited number of renewal rights. On the Additional Lease Term page, see a sample renewal clause that you should consider using.

Superintendent Premises

If someone is occupying a rental unit because they are employed by the building owner as the superintendent of the building, and then their employment is terminated, then the tenancy is terminated on the date that the employment is terminated. The superintendent must vacate the rental unit seven days after receiving the Form N8 or else the landlord can apply to the Board for an eviction order. The superintendent does not have to pay rent for this one week period (Section 93 of the Act). The form to use for the application is Form L2.

Assigning or Subletting a Residential Tenancy (Sections 95 and 96 of the Act)

What happens if you are renting a unit to a tenant and then all of a sudden, you notice someone new living there? What are your rights?

This brings up the subject of assigning or subletting your lease. Under the Act, any residential tenant has the right to assign or sublet their rental unit, as long as they get the consent of the landlord. The landlord cannot unreasonably withhold their consent.

What is the difference between an assignment and a sublet? In an assignment, the original tenant is moving out of the apartment permanently, and transfers their lease to the new tenant. The new tenant then pays their rent to the landlord. In a sublet, the original tenant plans to eventually move back into the apartment. Thus, the subtenant pays the rent to the original tenant and the original tenant continues to pay the rent to the landlord.

What does it mean when we say that the landlord has to be reasonable in giving consent? Typically this means that the main reason that a landlord can use to withhold consent would be if the new tenant did not pass a credit or background check done by the landlord. However, in an interesting case decided in Ontario, a landlord was permitted to refuse an assignment of lease when they had a waiting list of new tenants who wanted to come into the building and were permitted to choose the next name on the waiting list instead.

If the tenant feels that the landlord is not being reasonable in permitting the assignment or sublet of the unit, they can apply to the Board to either force the landlord to agree, using Tenant form A-2, or to cancel the lease, using form N9.

Tenants are not permitted to charge the subtenant more in rent than they pay to the landlord and cannot charge any extra fee for the new tenant to take over the lease (Section 134 of the Act).

Let's say the tenant has assigned or sublet the unit to a new tenant without the landlord's permission. The landlord then has 60 days from discovering the new tenant to apply to the

Board to terminate the tenancy. They will use Form L2. If the landlord does nothing, then after 60 days, they are deemed to have accepted the new tenant.

If the landlord does not provide the consent to an assignment of lease, then the tenant has the right to terminate the tenancy by giving written notice to terminate no later than thirty days after the request to assign or sublet was made, using Form N9. If it is a monthly tenancy, the tenant still has to give the required sixty days' notice. If the tenancy still has six months to run, the tenant is still responsible for the remaining six months of their lease.

The landlord is not permitted to charge an administrative fee for consenting to the sublet or assignment of the rental unit.

If a tenant wants to bring in a roommate to live with them, they do not require the permission of the landlord to do so, as long as they are in compliance with local by-laws regarding the number of people that can occupy a rental unit.

Some landlords are suspicious that the tenant may be subletting or assigning the lease for more money in rent than they are paying the landlord. If this is the case, just refuse to consent to the sublet or assignment on this basis. The tenant may still be able to terminate the tenancy, but then the landlord will be in control of who they rent to next and the amount of rent charged.

Air BNB

It is difficult to say whether a tenant who puts a room on Air BNB is in fact conducting an illegal sublet as there is no case on point. See the sample Air BNB clause in the schedule of additional provisions to attempt to prevent it in your unit.

Rent Increases

In order to raise the rent under a residential tenancy, all rules of the Act must be followed (Section 110 of the Act),

The lawful rent when a tenant moves in is the rent that the landlord and the tenant agree upon. If you agree to a rent of $1,000, but you agree as part of the lease, to reduce the rent by $50 in the winter months if the tenant shovels the snow, the base rent remains $1,000.

The permitted legal rent increase per year is set in accordance with the change in the Consumer Price Index for Ontario, based on the prices of goods and services as reported monthly by Statistics Canada, averaged over the 12 month period that ends at the end of May in the prior calendar year. (Section 120 of the Act) This amount must be announced every year before the end of August, for each subsequent year. The permitted rent increase in Ontario for the year 2018 is 1.8%. This means that if a tenant is paying $1,000 in rent in 2017, the permitted rent increase in 2018 would be $18.00, or 1.8%.

The tenant must be given ninety days' notice in advance of the rent increase (Section 116 of the Act). If you are late by even one day, then the notice must be served again.

At least twelve months must have elapsed since the date of the last increase or since the tenant first occupied the rental unit (Section 119 of the Act).

If the tenant first occupied the unit on September 1, 2017, then the earliest that the rent can be raised is September 1, 2018. In order for the landlord to raise the rent on September 1, 2018, they still have to give the tenant notice at least ninety days before this date, or June 1, 2018. If the proper ninety day notice is not given, then the tenant does not have to pay the rent increase. The form to use is Form N1.

If the landlord is providing the tenant with an extra parking space, storage locker or for example laundry machine services which were not included in the original tenancy agreement, then the landlord can charge extra for this parking space, storage locker or laundry service upon agreement with the tenant. If the parking space or laundry service is later cancelled, then the rent must be reduced by the same amount (Section 123 of the Act). In these cases, Form N1 for rent increases does not have to be used.

If the landlord wants to make capital improvements to the rental unit, they are permitted to make an agreement with the tenant to raise the rent up to 3% more than the permitted rent increase (Section 121 of the Act). The form to use is the form N10. The tenant can change their mind, providing that they advise the landlord in writing within five days of signing this agreement.

A tenant may agree to sign an agreement for an added service the landlord has offered such as a dishwasher put into the unit that was not there when the tenant moved in.

However, some landlords may ask tenants to sign an agreement for an increase in rent to replace faulty refrigerators or stoves. If the apartment came with these appliances, it is the landlord's responsibility to make sure that they are working; the landlord does not have to provide the tenant with new appliances, only working ones.

For any notice of rent increase where the landlord only wants to increase the rent by the permitted guidelines, Form N1 must be used.

If the landlord wants to increase the rent above the legal guidelines without the agreement of the tenant, they must apply to the Board in all cases for approval (Section 126 of the Act). The form to be used is Form L5.

A landlord is permitted to apply for an increase above the guidelines in each of the following circumstances:

a) There is an extraordinary increase in the costs of municipal taxes or utilities;
b) Eligible capital expenses are incurred in the building; or
c) Increased operating costs relating to security services provided by people not employed by the landlord.

In order to qualify as an eligible capital expense, the expense must be:
a) to protect the physical integrity of the residential complex or part of it;
b) to maintain the plumbing, heating, electrical, ventilation or air conditioning system;
c) to provide access to persons with disabilities;

d) to promote water or energy conservation; or
e) to maintain or improve the security in the residential building or part of it.

The landlord will have to complete the Form L5 in detail and will have to include supporting documentation to prove all of the expenses that are claimed. The landlord must also permit the tenants to view all of the supporting documentation before the hearing date. Once the landlord obtains a hearing date from the Board, then the landlord must give every tenant whose rent may be increased as a result of the Board order at least thirty days' notice of the Board hearing date. The landlord must file a certificate of service with the Board, proving that they did serve all of the tenants with proper notice of the Board hearing.

If the Board approves an application based on Eligible Capital Expenses, then the maximum increase over the guidelines is three per cent in any year. So for example, in 2018, if a landlord is successful in their application based on Eligible Capital Expenses, they can increase the rent in each rental unit in the building 4.8% in 2018. If the Board approves a 7% increase, then a maximum of 3% is added in the first year, 3% in the second year and an extra 1% in the third year.

If the increase is for extraordinary taxes or utility increases, then there is no limit as to what the landlord can ask for above the guidelines, as long as he is able to prove the increase. If your increase is based on utilities, you must show the total utility increase for all utilities in the premises, being, hydro, gas and water.

Landlords must permit tenants to see a copy of any application that they want to make to the Board for a rent increase and the tenants have the right to attend at the hearing to challenge any of the claims being made by the landlord.

If the Board permits an increase as a result of an extraordinary increase in the cost of utilities, then if the cost of utilities decreases more than the prescribed percentage, then the landlord must also reduce the rent by the same percentage (Section 128 of the Act).

Similarly, if the municipal taxes for the residential complex are reduced by more than the prescribed percentage in any year, then the landlord must also reduce the rent by the same percentage (Section 131 of the Act).

Tenants cannot dispute a rent increase if more than one year passes (Section 136 of the Act).

In a case heard in 2007, the issue was that rent was increased without 90 days' notice being given and the amount of the increase was also unlawful. The tenant did not launch the case until more than one year after the unlawful rent increase. The court ruled that since the 90 days' notice provision was violated, the rent increase was void to begin with and thus it did not matter that the tenant brought the application more than one year after the rent was increased. This demonstrates that it is very important to make sure that any rent increase is given only once every 12 months and that 90 days' advance notice be given every time.

In another case, the tenant proved that the landlord had not paid interest on the deposit for more than 6 years. The court found that again the one year limitation period did not apply because the

landlord was still deemed to be holding the rent so the tenant was successful. This may not apply, however, if the building was sold and the new landlord was not aware of this.

As a result of changes in effect as of April 21, 2017, no rental unit can be raised more than the permitted increase under the Guideline, which is .8% in 2018.

Suite meters

Many older apartment buildings are bulk metered which means the landlord pays the hydro for everyone and builds that into the rent. Suite meters are electrical meters that a landlord can install in a residential rental unit to measure how much electricity is being used by each unit in a building. The meter records only the amount of electricity used by that specific unit. Suite meters help tenants manage their energy consumption and better participate in Ontario's conservation efforts. Studies have shown that suite meters may help tenants to reduce their energy consumption by 12 to 23 per cent. However, since hydro charges are expected to rise more than the permitted rent increase over the next few years, tenants need to be very careful before agreeing to pay for the utilities separately.

Over the last several years, landlords have been attempting to install these meters into their buildings and then asking the tenants to pay for their own unit electricity costs. The motivation of the landlords is to have every tenant pay their fair share of utilities. However, problems arose because the tenants only found out later that there were undisclosed terms and conditions regarding the companies that installed these smart meters and were now collecting the utility payments. If the Landlord's utility charges were not properly authorized, there was also confusion as to whether the appropriate application should be made to the Landlord and Tenant Board or the Ontario Energy Board to resolve them.

The new *Energy Consumer Protection Act*, 2010 (ECPA), which took effect on January 1, 2011, allows for the installation of suite meters in residential rental units. Section 137 of the Residential Tenancies Act provides the rules when a landlord wants to install a suite meter in a rental complex.

Under section 137, if a landlord chooses to install a suite meter, tenants will have the choice of paying for their electricity consumption separately from rent. If electricity is currently included in a tenant's rent, landlords must lower the rent if a tenant chooses to pay for their own electricity using a suite meter.

Current tenants are presumably paying a bundled rent, which includes the utilities. If the landlord now wants to change this to a suite meter, they must have the informed written consent of the tenant. As such, the Landlord is now required to provide the following information to existing tenants when seeking their consent to bill them for their own electricity use:

- the amount of rent reduction and how it is calculated;
- the contact information for the suite meter provider and the Ontario Energy Board;
- the suite meter provider's fees and charges including any planned increases;
- the suite meter provider's security deposit policy if tenants are required to pay a security deposit;
- the disconnection policy if electricity costs payable by the tenants are overdue;

- the energy efficiency of the refrigerator, if supplied by the landlords, to help tenants estimate their future energy costs.

Tenants will be able to apply to the Board for remedies if the landlord has breached their obligations around consent, rent reductions, energy standards, or disclosure of information.

A guiding principal under the Act is that the landlord takes the actual cost of the utilities for the previous 12 months, divides by 12 and then reduces the rent by that amount. In this way, a tenant can determine the potential savings if they actively try and conserve energy going forward, before agreeing to the change. If the unit is vacant for any of the last 12 months, then a different calculation must be used to account for the fact that the utility costs for the vacant months would be less than if there was a tenant living there. Tenants are permitted to contact the Ontario Energy Board if they have a dispute with their energy supplier.

For a new tenant, the landlord has to provide details about the energy usage for the unit for the prior 12 months as well as the electrical efficiency of the refrigerator, if it is being provided by the landlord. This will give the tenant a good idea as to what they will have to pay for electricity costs directly, before renting the unit.

Current tenants do not have to agree to the request by the landlord to pay the utilities directly. The landlord is permitted to install the suite meter in your unit, but the landlord will be responsible to pay the bill. However, if a tenant determines, after seeing the rent reduction that they will receive, that they can save money by being more energy efficient, then it may be a good idea for the tenant to consent to this change. In this regard, tenants also need to be aware of the potential increase in electricity costs going forward. If they suspect that electricity costs will rise higher than permitted rent increases, it may still be advisable for the tenant to continue paying a bundled rent, including utilities.

The landlord will have to give a tenant 24 hours' notice if the electricity supply will be interrupted as a result of the installation and will have to inform the tenant how long the unit will be without electricity.

If a tenant wants to install an air conditioner in their unit and already pays a rent that includes utilities, a landlord can require an additional sum related to these electricity charges, as long as it reflects the actual charge the landlord incurs (Regulation 506/06). In most cases, this is approximately an extra $50 per month.

Can tenants apply to the Board directly for a rent reduction?

Tenants also have the right to apply to the Board to reduce the amount of rent based on a reduction of the municipal taxes for the building (Section 133 of the Act). The way the calculation is made is that if it is a smaller property, you reduce the rent by 15% of the tax reduction. If it is a multi-unit residential property, you reduce the rent by 20% of the tax reduction. So for example, let's say that you live in a multi-unit building and the landlord's taxes went down 30%, you multiply that by 20%, which would mean that the rent should be reduced by 6%. When there are at least 7 units in the building, most municipalities will notify the tenants directly as to whether there was any tax decrease and how much that they can reduce their rent. However, if the landlord can prove that his total taxes is less than 20% of his total rental income,

then the total reduction will be reduced. In the above example, if the landlord can prove that his taxes are only 10% of his total rental income, then the rent reduction will be 30% x 10% or a 3 per cent reduction.

The tenants can also apply for a reduction if the landlord discontinues a service that was given at the time the unit was rented. So for example, if there was a swimming pool when you moved in but the landlord later decided to fill it in, then the tenant can file an application to the Board for a reduction in the rent, based on the value of that service.

Limitation Period to challenge rents

If a tenant does not challenge the legality of the rent within one year after the rent was first charged, then they can no longer bring an action against the landlord to challenge the legality of the rent increase or reduce the rent (Section 136 of the Act). However, as stated above, this one year period will be extended if the required 90 days' notice of rent increase was not given in the first place.

In my experience, it makes financial sense to convert your meters to individual meters wherever possible. Even if you can't require a current tenant to change from gross rent to a rent plus utilities formula, you will be able to change this for a new tenant, once the existing tenant vacates.

Basement Apartments

For many first-time buyers, they require the income from a basement apartment to help carry the costs of their home. As such, it is very important that buyers understand their rights and obligations in the following key areas affecting basement apartments:

Is the apartment legal?

Does the apartment comply with the applicable fire code retrofit guidelines?

Basement apartments must comply with the local zoning by laws and the fire code requirements. If both are not present, then the apartment is not legal. Some homeowners have had to pay up to $25,000 to bring their basement apartment up to code, after having work orders placed on their property by the city fire or building department.

You need to check with the city municipal standards department or the Fire Department to see if your basement apartment is registered as a second unit. If it is, then it is legal and it complies with the fire code. If it is not registered, then you have to conduct further research

The city zoning by-law will tell you if your area permits a basement apartment. If a basement apartment in the home has been rented since November 17, 1995, then it is legal even if the zoning by-law now does not permit it. In order to prove this, you will have to be able to produce a signed lease agreement or cancelled cheques proving that the unit was in fact rented out before that date. You may also be able to obtain a copy of the municipal assessment roll from that time, which may have indicated a second occupant of the property, or perhaps proof of when a separate utility meter was installed at the property.

On July 6, 2000, the City of Toronto's new "second suites bylaw (493-2000)" came into effect. This bylaw permits second suites in all single-detached and semi-detached houses throughout the City of Toronto, with certain conditions.

Some of the conditions include:

- the second suite must be self-contained with its own kitchen and bathroom;
- the house, including any additions, must be at least five years old;
- the floor area of the second suite must be smaller than the remaining part of the house;
- in most cases, a home with a second suite must have at least two parking spaces;
- all existing second suites must comply with the Ontario Fire Code, zoning and property standards

Therefore, in the City of Toronto, as long as your home or duplex is at least five years' old, it is legally permitted to have a basement apartment.

New Provincial laws have required cities to come up with changes to permit basement apartments so we should be seeing this introduced over the next few years. For example, the City of Mississauga has introduced a process to have a basement apartment legalized and other Cities are in the process of public consultations on the issue.

If the zoning by-law permits a basement apartment unit, you still have to satisfy the provisions of the fire code. The Fire code has 4 basic requirements:

- There must be adequate fire separation – this means that if a fire starts upstairs, it must take at least 30 minutes to reach the basement
- A separate exit or a window escape that is at least 600 square inches and there is enough room to crawl out.
- Smoke alarms; and
- An electrical inspection must be completed with all deficiencies corrected. In Toronto this is done by the Electrical Safety Authority.

In addition, a basement apartment must usually also meet the following criteria:

- Minimum ceiling height of 6'5"
- Entrance door at least 32 inches wide and 78 inches high.
- Bathroom must have a window or exhaust fan
- A parking spot is required if you have a parking space for the home itself.

If you are considering buying a property where the basement unit does not comply with the standards of the fire department and you intend to rent it out, then you need to know the cost of updating the unit to pass the required fire and electrical inspections. This amount can cost up to $25,000. One of the main issues is the 6.5" height requirement from the floor to the ceiling. This could require digging down into the foundation which can be very expensive.

When you are looking at a property, if the basement apartment is being advertised as a "nanny suite", or "in-law apartment", do not be fooled. This unit is most likely illegal.

Once you have created a basement apartment, it is not so easy to change it back to be part of your family home, using the reason of needing the rental unit for your family, as per Form N12. For example, in one case where a landlord tried to terminate a basement apartment tenancy in order to use the space as a home office, this was not deemed to be acceptable as a reason to evict the tenant. Similarly, converting the basement for extra storage space will also not likely be an acceptable reason to evict the tenant. It will have to be demonstrated that you need the basement for a specific family member or caregiver to a family member. In such cases, it is advisable to reach an agreement to terminate with the tenant, using Form N11.

Even if your basement apartment is illegal, or has not been legally retrofitted, this is not a reason that you can use to evict the tenant. Only the City can evict the tenant, but if you try that route, be careful because the City could also issue a work order, requiring you to spend thousands of dollars to properly retrofit the unit instead up to the Fire Code standards.

Student Housing Issues

The issue of student housing in residential neighbourhoods has caused battles all over Ontario, as Municipal Governments try to balance the rights of students to housing close to their College or University, investors who buy these properties to convert them into student housing, and the homeowners who see their property values diminish as a result of these "rooming houses" being created on their streets.

A home located in St. Catharines was renovated into a six bedroom student residence. Complaints about the home were sent to the local Building Department and on September 1, 2009, a building inspector attended at the property. He determined that the property had been converted from a "dwelling unit" as defined under the Ontario Building Code, into a "rooming, lodging or boarding house." As a result, this would require much more stringent fire and life safety requirements, including the need for an increase in exits from the building, separation of service rooms, smoke alarms and mechanical ventilation. These would not be required if it was a dwelling unit, occupied by a family.

The case was decided on April 19, 2010. The judge, when considering the matter, also looked at similar cases, and in particular, the case of a landlord who converted a single story home in Ottawa into a three story fourteen bedroom, four bathroom student residence. In that case, heard in 2006, the court found that this was a boarding, lodging and rooming house, partly based on the fact that the owner had conducted substantial renovations to the property, each tenant had a separate lease, there was no sharing of utilities, one student acted as a superintendent and the owner's son lived on the third floor in a unit that was not accessible to the other students. An order to cease was issued.

In the St. Catharines case, the judge paid careful attention to the terms of the lease between the 6 students and the landlord. It was a single lease, for a total rent of $2,160. Each student paid a share of $360 but was also responsible for payment of the entire monthly rent. Utilities also had to be split by the tenants equally and each of the tenants had access to the entire property. The judge also found that substantial renovations had not occurred at this property to create the 6 bedroom home. As such, he agreed that this was in fact a dwelling unit and the owner did not have to conduct the costly repairs.

But it is still not that simple. There have been other cases, where the definition of a "dwelling unit" under the Ontario Planning Act has been interpreted differently. In the case of the

Neighbourhoods of Windfields subdivision, in north Oshawa, complaints were made against the owners of over 20 homes in the subdivision in 2008, alleging that each of these homes had been converted from a dwelling unit into a Lodging House, which was not permitted in that residential R1 zoning bylaw. Although the word "family" was not used in the definition of a dwelling unit, it was found that the intent of the words "single housekeeping establishment" in the zoning bylaw meant a typical family unit or other similar basic social unit, which may not follow the traditional family model. But this was held not to include a group of students who only shared short term temporary sleeping quarters and facilities on a rental basis. The result was that the homes had to cease to be used as strictly student housing.

In an R1 zone, it is permitted for an owner to rent units in their home to a maximum of two students. Problems occur when more than 2 students are involved, including major renovations of the home itself.

In the City of Toronto, all rooming houses need to be licensed by the Municipal Standards department.

In another development, the Ontario Municipal Act was amended in 2007 to give municipalities the power to govern, regulate and license rental properties. This could have a significant impact on student rental properties in the future. As an example, the City of Waterloo introduced a draft By-law in 2010 that would place limits on the number of students permitted in a home to a maximum of three. While this would not affect existing homes, it would apply if and when the home is sold. This highlites some of the research that investors and salespeople must make in any municipality where they are selling or buying a student rental property.

These cases raise many issues for buyers, sellers and salespeople and accordingly:

1. Buyers should always research the area that they are considering moving into in advance to make sure that there are no surprises such as local rooming houses; and
2. If you are selling or buying a student rental property or rooming house, consult with a private planner in advance to make sure that the property does satisfy all local city zoning and fire code requirements and that if a license is required, it has been issued. You can find a planner in your area at www.ontarioplanners.on.ca.

Insurance Issues

It is very important that property owners understand all exclusion provisions in their insurance policies. This is unfortunately due to the fact that there are many terms and conditions that are included with any insurance policy, which could result in no coverage, and owners must be aware of what these terms mean or else they may face disastrous consequences.

This is illustrated by an Ontario case decided on December 2, 2009. In this case, the owners had rented out their home in Windsor to a tenant. The tenant took terrible care of the premises, and neighbours complained to the city about junk being left in the yard. The city issued a notice to the owners and they then gave notice to the tenant to vacate. The tenant left on August 5, 2006, with the property a mess. The owners spent the next 6 weeks cleaning up the property and signed a lease with a new tenant which was to start on November 1, 2006. They visited the property almost daily to continue cleaning and to remove flyers from the property. Sometime around October 11, 2006, a fire started and the pipes burst, causing approximately $100,000 damage to the property.

The owner immediately called his insurance agent and was advised that his policy contained a 30 day vacant notice provision, which required the owner to notify the insurer if the home was going to remain vacant for over 30 days. The insurer also took the position that since the owners knew that the tenant had created such a mess on the property, they had a duty to inform the insurer about this as well since it increased the risk of damage occurring on the property.

The case went to court and although the judge was sympathetic to the owners, he sided with the insurer, because no notice was given by the owners about the mess that had occurred on the property and that the property was going to be vacant for more than 30 days. The fact that the owners visited almost daily did not change the fact that the home was vacant.

Most home and rental policies in the market today contain this same exclusion of coverage if your property is going to be vacant for more than 30 days and you do not notify the insurance company. Anyone travelling south for the winter or anyone renting a unit in a building that becomes vacant for more than 30 days must notify their insurer on each occasion to avoid this result happening.

Similarly, if you move out of your home and want to keep it as an investment rental property, this can also be said to increase the risk as tenants typically do not take as good care of property as the owner. Thus you must inform the insurer of this change in circumstance or else they may deny liability if something happens while the tenant is residing on the property, even if it is no one's fault.

Other common exclusions or limitations in home insurance policies relate to flooding or sewage backup in the basement. In some areas of Toronto, where there is a history of sewage backups, it is very hard to obtain any insurance for your basement, whether it is to repair the floor, carpet or drywall, or the contents, perhaps of a home office. Make sure you understand all exclusions in your policy before storing anything valuable in your basement.
It is also very important to obtain insurance against rental income loss in the event of fire or other damage where it will take time to rebuild the building while it sits vacant.

When it comes to insurance policies, the key message is to understand all restrictions that relate to your policy. Always keep your insurance company informed any time the property is going to be unoccupied for more than 30 days or if any change of use is being contemplated which might increase the insurance risk. If you are not sure, just inform the insurance company anyway, to have peace of mind.

Please also remember to obtain insurance on the rental income stream of your property, as this will not be paid if there is a fire. The insurance will only cover the cost to repair your building.

Property Managers – what to look for?

When you are looking at the purchase of a rental property, it is best to look for a company that can provide you with professional property management services. Otherwise, you or your client will be subject to calls 24 hours a day to deal with issues on the property. Although you will have to budget up to 10% of your revenues to pay for these services, you will be better off in the long

term. The more rental properties that you or your client acquires, the more cost effective it will be to have a property manager as part of your team.

Here are some things to look for:

1. Does the property management company have a designated person to look after your specific property?
2. Are they located in the same geographic territory as your property?
3. Do they have a separate bank account for your property?
4. Will they provide monthly revenue and expense statements?
5. What services will they contract out? Do they have favourable terms with suppliers for landscaping, snow removal, garbage collection activities?
6. Have they given references? Follow up with each one.
7. Will they handle all evictions for you, if necessary?

Always show appreciation to your property manager as you want them to treat your investment as though it were their own.

Clauses to consider in an agreement to purchase a rental residential property

If you are purchasing a residential rental property, the main issues to be aware of are as follows:

a) Have all rents been legally raised during the term of the previous owner?;
b) Are all rents represented accurate, what amounts have been paid as security deposits and do the existing tenants have any claims against the current owner?
c) Will you be assuming any of the seller employees?

Tenants in general have 12 months to challenge any rent increase if they disagree. As such, any warranty that you ask from the seller should be for a minimum of 12 months. However, since tenants may have the right to challenge any rental increase if the 90 day notice was not given, it may sometimes be advisable to have the warranty extend for a longer period. The language to be considered is as follows:

"The seller represents and warrants that the rentals charged for all the residential units are legal rents, have been increased in accordance with the guidelines of the Residential Tenancies Act, 2006, and that no claim has been received from any current or former tenant on the property

challenging the rent charged. This warranty shall survive closing for a period of one (two) year(s)."

With respect to the items in section (b) above, the agreement should contain the following additional clause regarding tenant acknowledgements:

"The seller agrees to deliver on closing a signed tenant's acknowledgement from each of the tenants on the property confirming the following:

1. The current rent charged for the property and the date of the last rent increase;
2. The amount of the last month's rent, if any, being held by the landlord;
3. Confirmation that interest on the last month's rent has always been paid, or has been added to the last month's rent that is being held; and
4. That the tenant has no outstanding claim against the landlord with respect to any matter on the property or the rental unit."

In order to further protect a buyer, consider the following clauses in any agreement of purchase and sale:

"Within 5 days after signing this agreement, Seller agrees to provide the Buyer with the following:

a) Schedule of all leases or tenancy agreements, containing the names of all tenants, rental amount, details of all last month's rent held and details of payment of interest on any last month's rent;
b) Any Rental License required by the Municipality;
c) Current list of employees detailing the employee name, date of first hiring, copy of employment contract, if any, wages, job description, unpaid vacation pay and any other information required by the Buyer to assess whether to continue this employee's employment following closing;
d) Operating records for the property, including utility bills, municipal tax information, any tax appeals, municipal notices related to any tax reduction;
e) Any metering agreements entered into between the Seller and the meter provider and a list of all rental units where the tenants pay for individually metered utilities.

f) Copy of any contracts to be assumed by the buyer

This agreement is conditional for a period of 15 days following acceptance upon the Buyer being satisfied, in their sole and absolute discretion, with the information provided, failing which this agreement shall be null and void and any deposit returned to the Buyer, without any deduction. This condition is for the sole benefit of the Buyer and may be waived by him in his sole option, by delivering written notice to the Seller or the Seller's agent on or before the 15th day following acceptance. If no notice is delivered on or before such date, then this agreement shall be terminated, and the deposit shall be returned to the Buyer, without deduction."

Regarding any employees who may be working for the seller in the buildings being purchased, consider the following:

"Seller agrees to terminate the employment of any employee who works or lives in the property, and provide any required statutory notice payment and any Record of Employment required under the Employment Standards Act."

Seller should agree not to re-negotiate any lease prior to closing without the buyer's approval.

Seller should also provide a notice and direction to the tenants on closing to pay any rent to the buyer after closing.

Seller should warrant that property is not designated as a heritage property.

RENTAL APPLICATION FORM

Landlord Reference and Information Sheet

Please Print **Date**_____

Date Premises Required_____

Applicant's legal name_____ Age_____

Social Insurance Number_____

Driver's License Number _____

Co-Applicant's legal name_____Age_____

Social Insurance Number_____

Driver's License Number _____

Applicant's present address_____

Phone_____ Fax_____Cell phone_____ Email_____

How long?_____ Present monthly rent_____ Reason for leaving_____

Present Landlord_____Phone_____

Address of premises to be rented_____Apartment #_____

Type of Apartment Desired ( ) Bachelor ( ) 1 Bedroom ( ) 2 Bedroom ( ) 3 Bedroom

Number of Adults to occupy apartment_____ Number of children under 18_____

Ages of Children_____ _____ ____ _____ Total number of occupants_____

Pets to occupy apartment_____

Applicant Employment History

Status: ( ) Full time ( ) Part time ( ) Student ( ) Retired ( ) Unemployed ( ) Other

Employer Address_____

Supervisor:_____ Phone_____ Income _____

Former Employer_____

From_____to_____Phone_____

Co-Applicant Employment History

Status: ( ) Full time ( ) Part time ( ) Student ( ) Retired ( ) Unemployed ( ) Other

Employer Address_____

Supervisor:_____ Phone_____ Income _____

Former Employer_____

From_____to_____Phone_____

Credit references (List bank, credit union, type of accounts, or other credit references)
1._____
2._____
3._____

Personal references:
1._____Phone_____
Relationship_____Cell phone_____

2._____Phone_____
Relationship_____Cell phone_____

Referred to landlord by_____

Automobile
Make/Model_____ Year/Colour_____ License Plate_____

Emergency Contact:
Name:_____ Phone_____ Relationship_____
Address:_____

I acknowledge and agree that this application in no way constitutes a tenancy agreement between the Landlord and the undersigned to rent any rental premises, and I/we understand that any tenancy agreement or lease will be entered into only upon the acceptance of this application by the Landlord, and is subject to the provisions and conditions described herein.

If this application is accepted, then upon execution of the lease, the deposit, if there is one, shall become a rent deposit to be applied towards the last month's rent. If a lease is executed, the tenant shall be required to pay the rent for the first month of the tenancy prior to the commencement date of the tenancy. Failure to pay the first month's rent or to take possession of the premises as agreed will amount to a fundamental breach of this agreement, and any funds on deposit shall be applied towards any unpaid rent.

A deposit of $_____ was paid on the _____ day of _____. Said deposit was paid to the landlord by: ( ) Cheque/Cash ( ) Money Order ( ) Visa/MC. This deposit will be applied as follows:

Last month's rent $_____ First Month's rent $_____

Balance to follow: $_____ payable on or before _____

The undersigned acknowledges and agrees that refusal to provide certain information may result in our tenancy being refused if the Landlord cannot determine credit or tenant worthiness.
The undersigned agrees that upon the Landlord's acceptance of this application, a binding tenancy agreement shall be created between the parties, and the undersigned shall enter into a written tenancy agreement on the Landlord's usual form prior to taking possession of the rental unit, and the deposit shall be applied as set out above, and the undersigned shall take possession of the rental unit upon the terms set out herein.
The Landlord agrees to keep the supporting information in this application confidential except as described herein.

I/we hereby give permission to the Landlord or their Agent to obtain at any time a consumer/credit report about me/us, to contact previous landlords to obtain information about my/our previous tenancies, to contact agencies that provide landlord information, to contact employers and references, and to take any other reasonable steps necessary to assess this Rental Application, or for any renewal of my/our tenancy.

I/we also provide my/our consent to the Landlord or their Agent to disclose information in my Rental Application and any information arising from any tenancy between us to any third party for the purposes of providing a consumer/credit report or distributing information to a database of tenant information made available to landlords or their agents.

I/we also provide my/our consent to the Landlord or their Agent to disclose any information contained herein and any information in the tenancy agreement to present or future mortgagees, potential purchasers, utility providers, accountants, government agencies, financial institutions, insurance providers, telecommunications providers, financial institutions, lenders and prospective lenders.

I/we hereby certify that the above information is true and complete and I/we have not withheld any information relevant to this application. It is also understood that the property management or the landlord reserve the right to reject this application at their sole and absolute discretion, subject to the full return of any rent deposit paid. I have read and understood these conditions.

Applicant Signature_____Date_____

Print name_____

Co-Applicant Signature_____Date_____

Print name_____

Witness_____Date_____

Print name_____

RENTAL INTERVIEW FORM

Date_____

Applicant's legal name_____ Age_____

Have application form available

Questions to consider asking on personal interview:

What is your income?

Where do you work?

How many people will be living with you and what are their names?

Do you have pets?

W*hat kind of pets do you keep?*

Do you smoke?

May I see references and their contact information?

How long have you been living at your current address?

Why are you leaving?

Have you given your notice?

Do you have a lot of items to store?

What do you do when you can't sleep at night?

Do you have ID with you?

How long does it take for you to commute to work?

How far do you commute to work?

Ever considered buying your own place?

What changes at your place would make you stay?

How efficiently were repairs made at your current address?

Will you be conducting a home based business?

Landlords should try and ask open ended questions or use the following phrases during any interview with a potential tenant. Examples include:

Tell me about yourself

Could you explain that to me?

Help me understand that

That's interesting..go on..

Tell me about your neighbours and how you get along

What annoys you about your neighbours?

Who are your friends?

Can you describe them?

How close are you to your family?

What is your normal daily routine?

Would you rent from your current landlord again? Why or why not?

How do you like your job?

Were you ever accused of something by your prior landlord or the other tenants for something you feel you weren`t responsible for?

Clues to watch for to see if a potential tenant may not be telling the truth:

Short answers

Fidgety behavior, will not look you in the eye

Repeating the question that you ask them

Overly polite

Too many pauses when they answer

Says things like:

"I would never do that"

"My last landlord was a great guy; he cut me a lot of slack"

"To tell you the truth" or "to be perfectly honest"

Examples of questions that you cannot ask as they may violate the Human Rights Code are:

Do you plan to have children?

What is your ethnic, religious background?

Are you married, single or divorced?

Will your family be visiting?

Be wary when they offer to do odd jobs for you in exchange for rent.

Be very wary when they blame other people, whether their prior landlord, employer or others for their current situation, or for any other problem that they have experienced in the past.

This Agreement (the "**Option Agreement**") is made this _ day of_____ 20__,

BETWEEN:

Landlord Name: _____

Address for Service of any required Notice: _____

_____

(hereinafter called the "Landlord")

and

the Tenants as listed below:

1)_____ 2)_____

Hereinafter referred to jointly and severally as the **"**Tenants"

For the residential unit located at the following address:

_____

Hereinafter referred to as the ("Property")

Whereas the Landlord is the owner of the Property;

And whereas the Landlord and Tenants have entered into a lease agreement for the Property for a term of _____ years (the "Lease Agreement").

And whereas the parties have agreed to an Option Fee and a Monthly Credit, as hereinafter defined, to give the Tenants the opportunity to purchase the Property during the term of the Lease Agreement.

Now therefore for good and valuable consideration, the receipt and sufficiency of which is duly acknowledged by the parties and in consideration of the mutual covenants and agreements contained herein, the parties hereby covenant and agree as follows:

1. The Tenants shall have the right or option to purchase the Property for the purchase price of $_____, at any time during the term of the Lease Agreement, (the "Option"), provided that written notice is delivered to the Landlord at least 90 days prior to the end of the Lease Agreement and further provided that all other terms of this Option Agreement have been fully complied with.

2. The Tenants agree to submit the sum of $_____made payable to the Landlord on the date of signing of this Option Agreement representing a non-refundable option fee (the "Option Fee") to be used towards the down payment of the purchase price upon exercise of the Option in Section 1 of this Option Agreement. The parties acknowledge that this Option Fee is not a rental deposit. No interest shall be payable on the Option Fee.

3. In the event that the Tenants do not exercise the Option right as set out in Section 1 of this Option Agreement or if the Tenants default in the payment of any rent owing under the Lease Agreement, or default in any of their other obligations under the Lease Agreement, which is not cured within 30 days after written notice from the Landlord, then the Option Fee will be forfeited to the Landlord.

4. For each month that rent is paid in full pursuant to the Lease Agreement, the Tenants will earn a monthly credit (the "Monthly Credit") of $_____ towards the payment of the purchase price of the Property. This credit will accrue to a maximum credit of $_____, to be used towards the down payment of the purchase price upon exercise of the Option specified in Section 1. In the event that the Tenants do not exercise the Option as set out in Section 1 of this Option Agreement or if the Tenants default in the payment of any rent owing under the Lease Agreement, or default in any of their obligations under the Lease Agreement, which is not cured within 30 days after written notice from the Landlord, then the Monthly Credit will be forfeited to the Landlord. No interest shall be payable on the Monthly Credit.

5. The Tenants may not assign, list or advertise for sale or in any way transfer this Option Agreement without the consent of the Landlord, which consent may be arbitrarily withheld.

6. The Tenants agree not to register notice of this Option Agreement against title to the Property. Any attempt to register notice of this Option Agreement against title to the Property shall result in the immediate termination of this Option Agreement and the forfeiture of the Option Fee and the Monthly Credit to the Landlord, and the Tenants agree to remove the notice immediately, at their expense, from title to the Property.

7. If the Option is exercised in accordance with Section 1 herein, and if the Tenants are then in compliance with all other terms of this Option Agreement, then the Tenants agree to pay an additional deposit of $_____ on the date of exercise of the Option, which shall be credited towards the purchase price on closing. The Landlord and the Tenants parties agree to sign the Ontario Real Estate Association standard form Agreement of Purchase and Sale, upon the Option Price indicated in Section 1, giving the Tenants' lawyer 15 days to conduct all title and other searches against the Property and the closing is to take place 30 days after the exercise of the Option by the Tenants. Taxes and any other expenses payable by the Landlord shall be adjusted on the closing date, with the Tenant being responsible for the date of closing. The balance of the Purchase Price, after payment of the Option Fee noted in Section 2 and the additional deposit noted in this Section 7, shall be paid by the Tenants by certified cheque or money order on closing, as directed by the Landlord or the Landlord's lawyer.

8. If any provision of this Option Agreement is or becomes invalid, void, illegal or unenforceable, it shall be considered to be separate and severable from the remaining portion of this Option Agreement and the remaining provisions shall remain in force and be binding upon the parties hereto as though such provision had not been included.

9. This Option Agreement shall constitute the entire agreement between the parties. There are no other representations, warranties, conditions or agreements, express or implied, between the parties in connection with this Option Agreement except as set out specifically herein.

10. The undersigned acknowledge having obtained or been given the opportunity to obtain independent legal advice prior to signing this Option Agreement and acknowledge having read and understood all of the terms of this Option Agreement.

11. The undersigned agree to be bound by this Option Agreement, as of the date first above written.

12. This agreement shall be governed by the laws of the Province of Ontario.

By:_____
Landlord Date

By:_____
Tenant Date

By:_____
Tenant Date

Additional Clauses for Standard Form Lease

PETS

The Tenant shall be responsible for any damage caused to the Leased Premises by the pet, and shall reimburse the Landlord for the cost of any repairs resulting from the damage. The Tenant agrees to clean up after the pet so that there is no pet hair, urine or feces remaining or visible anywhere in or on the Leased Premises and the building or common areas where the Leased Premises forms a part. The Tenant shall keep the pet on a leash while the pet is in the common area of the building in which the Leased Premises forms a part.

First and Last Month's rent

A deposit equal to two month's rent is due at the time of acceptance of this Lease by the Landlord, to be applied to the first and last month's rent due under this Lease

SMOKING

Due to the known health risks of exposure to second-hand smoke and the damages that may be caused by growing marijuana or cannabis plants, increased risk of fire and increased maintenance costs;

a) No Tenant, resident, guest, invitee or visitor shall smoke a Marijuana or other tobacco cigarettes, cigars, electronic cigarette or any similar product whose use generates smoke or vapors within the building and the Leased Premises. This prohibition includes all residential units within the building, all balconies and patios, enclosed common areas, as well as outside within 9 meters of doorways, operable windows and air intakes.
b) "Smoking" shall include inhaling, exhaling, burning or carrying of any tobacco or electronic cigarette or similar product whose use generates smoke or vapor.
c) No Tenant shall grow any Marijuana, Cannabis or similar plant in any part of the Leased Premises.

FIRE SAFETY EQUIPMENT

The Tenant acknowledges that the equipment required by law with respect to smoke or fire detection or carbon monoxide detecting devices was installed in the Leased Premises upon the commencement of the tenancy and that it is in working order. The Tenant or their guests shall not tamper with, adjust or in any way alter the detection equipment supplied by the Landlord including, but not limited to, the removal of batteries or disconnection of electric wires by the Tenant or an occupant of the Leased Premises.

The Tenant shall notify the Landlord in writing immediately of any malfunction of any smoke or fire detector or carbon monoxide detecting device and the Landlord shall service same subject to the following:

a) The Landlord shall provide sufficient batteries for each smoke or fire detector or carbon monoxide detecting device at the time the Tenant first occupies the Leased Premises, and thereafter the tenant shall replace the batteries as needed.
b) The Landlord shall not be responsible for servicing if a malfunction is due to the Tenant's tampering, alteration or adjusting of the detector, and if a malfunction is so caused, the Tenant shall reimburse the landlord for any expenses incurred by the Landlord to replace or repair the detector or related equipment.

CONDOMINIUM RENTAL (If applicable)

The Declaration, Rules and By-laws of the Condominium Corporation are attached to this Agreement as Appendix B and form part of this entire agreement. The Tenant acknowledges that they will abide by any Declaration, Rules or By-laws that the Condominium Corporation currently has in force, or may at some point in the future have in force during the term of occupancy of the Leased Premises. The Tenant further acknowledges that they have read the Declaration, Rules and By-laws of the Condominium Corporation and that failure to comply with same will be deemed to be substantial interference with the Landlord's right, interest and privilege as set out under the Act.

NOISE AND MUSICAL INSTRUMENTS

No noise caused by an instrument or other device which in the opinion of the Landlord may be calculated to disturb the comfort of the other Tenants or the Landlord shall be permitted by the Tenant in the Leased Premises; nor shall any noise whatsoever be repeated or persisted in after request to discontinue the same is made by the Landlord or their agent. All musical instruments, including but not limited to pianos, radios, organs, violins and guitars shall not be permitted by the Tenant to be used in the Leased Premises after 9 pm.

GENERAL

Tenants must observe strict care not to allow any window or door leading to the outside to remain open so as to admit rain or snow or otherwise interfere with the heating of the Leased Premises.

Water shall not be left running unless in actual use.

Nothing shall be thrown out of the windows or doors or balconies by the Tenant or any occupant of the Leased Premises or their guests.

Renewal of Lease

The tenant shall have the option, if not in default, to renew this lease on the same terms and conditions, save for the right to any further renewals and the right for the landlord to raise the rent in accordance with the Residential Tenancies Act, for one further 1 year term. Said option must be exercised in writing no later than 60 days prior to the end of the first term.

No Air BNB

The tenant agrees not to sublet or license the premises or any part thereof or list or advertise or use all or any part of the premises for any short term or hotel, boarding, lodging house, time-sharing, commercial or travel website, including but not limited to Air BNB, during the entire term of this tenancy.

MAINTENANCE SCHEDULE

In consideration of the Tenant agreeing to shovel the snow from the driveway, steps and walkway on the Leased Premises during the term of this Lease, the Landlord agrees to pay to the Tenant the sum of $_____, for each month that the Tenant provides these services.

In consideration of the Tenant agreeing to cut the grass in the front and rear yards on the Leased Premises during the term of this Lease, the Landlord agrees to pay to the Tenant the sum of $_____, per month for each month that the Tenant provides these services.

Dated this _____ day of _____, 20___.

_____ _____

Landlord Tenant