

Goodbye TPA! Hello RTA!

The Residential Tenancies Act and Evictions:

High(and low)lights

1. No default eviction orders: Under the RTA, all tenants facing eviction will have the right to attend a hearing. There will be no more 5 day deadline to dispute an eviction, and no more default eviction orders. If a tenant does not show up for the hearing for legitimate reasons, we anticipate that there will be a special procedure to ask for a new hearing. At this point, we are not aware of the details of what will happen when a tenant misses the hearing.

2. Tenants can defend an eviction by raising maintenance and other issues. When a landlord tries to evict a tenant for arrears of rent, the tenant will now be able to challenge the eviction by raising at the hearing maintenance and repair issues, claims related to the landlord's conduct, or any other matters that could be the subject of a tenant application. However, the value of this may be severely undercut if the new Landlord and Tenant Board requires tenants to pay all of their arrears before making a claim. Also, tenants who want to do this must make sure they are fully prepared, with evidence such as photographs, repair bills, and any other documents they would need to bring if they were bringing their own application.

3. Fast track evictions: The RTA provides for fast track evictions in a number of situations. For example, the legislation provides for a shortened notice period (ten days instead of twenty) and no opportunity to rectify the problem where a tenant:

- ❖ "willfully causes undue damage to the rental unit or residential complex", or
- ❖ "uses the rental unit or the residential complex in a manner that is inconsistent with use as residential premises and that causes or can reasonably be expected to cause damage that is significantly greater than the damage that is required in order to give a notice of termination".

In these situations, and where there is impairment of safety, the Landlord and Tenant Board will be able to make an eviction order with an effective date *earlier* than the termination date set out in the initial notice of termination. The Board will also schedule this type of 'urgent' application within 7 days of the application being filed.

In addition, a landlord living in a building with three or fewer apartments only needs to provide ten days notice (rather than twenty) to terminate a tenancy if a tenant substantially interferes with the landlord's reasonable enjoyment of the building. There will be no opportunity for the tenant to rectify the problem.

In the situations described above, and also in cases involving illegal drug related activities or impairment of safety, the Landlord and Tenant Board must also request that the sheriff expedite the enforcement of an eviction order. This may mean that there will be no advanced notice from the sheriff, though practice differs in different locations.

4. Landlord and Tenant Board cannot consider issues related to the cancellation of a subsidy: Tenants in subsidized housing being evicted for arrears of rent due to the cancellation or variation of their rent-geared-to-income subsidy cannot ask the Board to review the "lawful rent" determination of the housing provider. However, there are also arguments that the section means the Board cannot simply accept a social housing landlord's claim that the subsidy was properly cancelled, as that too would be a "determination." The issue of how disputes about subsidy cancellations are resolved is currently in flux. Though it is quite likely the Board will think it has to accept the landlord's word, it is not clear whether this is legally accurate.

5. If you leave by the termination date on the eviction notice, the tenancy is over: If a tenant vacates an apartment on or before the termination date set out in an eviction notice, then the tenancy is ended as of the termination date. This generally limits the ability of the landlord to claim future lost rent. However, if the tenant did something to induce the landlord to give the notice (e.g., a 'lease breaking party'), the landlord may nonetheless be able to sue the tenant in Small Claims Court for future rent loss.

6. Tenants can stop an eviction even after it becomes enforceable: Tenants will be able to stop an eviction *after* the order becomes enforceable but *before* the sheriff changes the locks by paying to the Landlord and Tenant Board all of the money he/she owes the landlord. A tenant can only do this once during any tenancy. The Board will be able to order the tenant to pay any fees that the landlord had to pay to the court enforcement office.

7. Tenants have 72 hours to get their property: Tenants will have 72 rather than 48 hours to remove their belongings after the sheriff has changed the locks for their apartment. If a landlord does not make a tenant's possessions available during the 72 hour period (between 8am and 8pm), the tenant will be able to make an urgent application to the Board to require the landlord to give the possessions to the tenant, and/or for compensation, etc.

8. Caregivers can be the basis of "own use" evictions: Under the RTA, tenants can be evicted if the landlord or purchaser of a unit requires the apartment to be occupied by a caregiver for the landlord/purchaser or his/her family. The apartment must be in the same building or group of buildings as the person requiring care.

9. Landlord and Tenant Board *must* consider relief from eviction: The Landlord and Tenant Board cannot order an eviction unless it has reviewed the circumstances and considered whether it would be appropriate to use its discretion to stop or postpone the eviction.

10. Illegal act by other occupant: Under the *Tenant Protection Act*, an illegal act committed by an occupant (as opposed to the "tenant") of a rental unit is only grounds for eviction if the tenant permitted the occupant to commit the act. Under the new legislation, an illegal act by another occupant is grounds for eviction whether or not the tenant knew about it or permitted it.