



TERMINATING A TENANCY:

**Landlord's Own Use
Purchaser's Own Use**

Ending a rental agreement because the landlord or purchaser requires the unit for their own use is a complicated process.



Landlord's Self-Help Centre

- Established as Landlord Aid in 1975
- Incorporated as a non-profit in 1977 as Landlord's Self-Help Centre
- Funded by Legal Aid Ontario as a Specialty Community Legal Clinic
- Assist 10,000 small-scale landlords annually
- 30,000+ monthly visits to website
- Stay informed:
[Facebook.com/landlordselfhelp](https://www.facebook.com/landlordselfhelp)
Twitter: @lshc1



Terminating a Tenancy: Landlord's/Purchaser's Own Use

At this Town Hall meeting we will learn about and discuss:

- Security of tenure;
- The reasons a tenancy may be ended related to the landlord's or purchaser's own use;
- Common pitfalls;
- Notice requirements;
- Tenant options for terminating early;
- The Landlord and Tenant Board procedures required to obtain an order terminating the tenancy;
- How to prepare for the hearing; and
- The importance of acting in good faith.



PART ONE



Security of Tenure

All tenants have security of tenure which means that tenants can stay in the rental unit regardless of any term specified in a rental agreement unless:

- The tenant decides to leave and gives notice to terminate the tenancy; or
- The landlord and tenant agree to terminate the tenancy; or
- The landlord gives notice to end the tenancy for a reason permitted under the RTA, and the tenant moves out, or if the tenant does not move out, the landlord applies to the Landlord and Tenant Board and obtains an eviction order.



Residential Tenancies Act, 2006

The *Residential Tenancies Act, 2006* (RTA) is the provincial statute that governs most residential rental agreements in Ontario. The RTA defines the rights and responsibilities of landlords and tenants.

The RTA includes provisions for the termination of a rental agreement when the landlord or a purchaser in good faith require the unit for the landlord's or purchaser's own use or the residential use of an immediate family member.

The RTA defines who may occupy the rental unit.



Landlord's Own Use

The landlord can give a notice of termination of the rental agreement if the rental unit is required for the residential use by:

- The landlord;
- The landlord's spouse;
- A child or parent of the landlord or the landlord's spouse; or
- A person who will provide care services to the landlord, spouse/child or parent of the landlord.



Purchaser's Own Use

A landlord can on behalf of a purchaser give a notice of termination of the rental agreement if the rental unit is required for the residential use by:

- The purchaser;
- The purchaser's spouse;
- A child or parent of the purchaser or the purchaser's spouse; or
- A person who will provide care services to the purchaser, spouse/child or parent of the purchaser.



Own Use: Landlord

The RTA establishes specific requirements for a notice that terminates a tenancy for own use. This type of notice must become effective at the end of term or rental period.

A notice of termination for own use can be given at anytime, however the termination date must coincide with:

- The end of the term if there is a fixed term lease agreement;
or
- The day before the rent is due if the tenancy is on a month to month basis.



Own Use: Purchaser

A landlord can give a notice to terminate a tenancy on behalf of the purchaser for the purchaser's own use if:

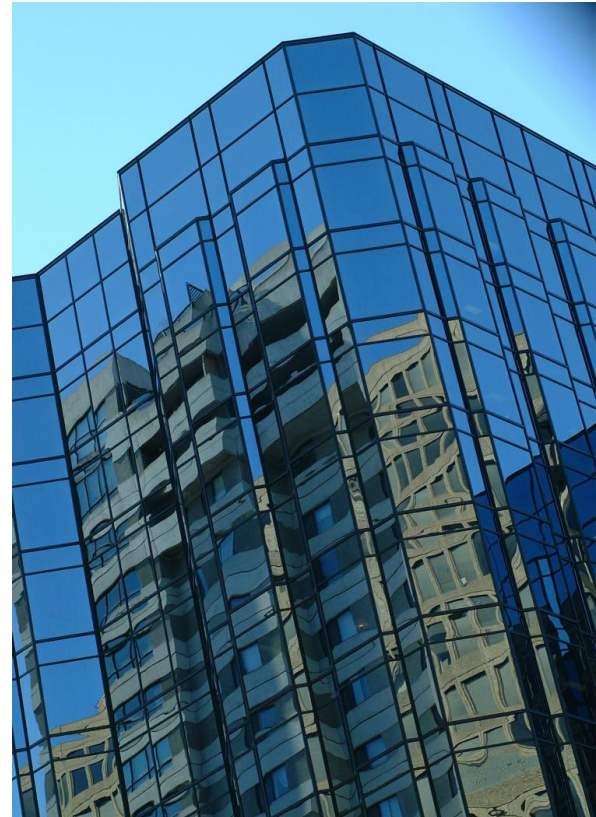
- The landlord has an executed agreement of purchase and sale;
- The property contains **three** units or less; and
- The purchaser or the purchaser's immediate family member or a caregiver in good faith requires the rental unit for their own personal occupation.



Landlord's Notice for Own Use

A landlord cannot give a notice for own use if:

- The complex is an equity co-op;
- The landlord is a corporation;
- The complex has been converted to a condominium;
- The complex is proposed to be converted to condominium;
- The complex was severed.



Purchaser's Notice for Own Use

A landlord cannot give a notice for purchaser's own use if:

- The property contains more than **three** residential units;
- The tenant(s) have a lease in place;
- The purchaser is a corporation;
- The complex is an equity co-op;
- The complex has been converted to a condominium;
- The complex is proposed to be converted to condominium;
- The complex was severed.



Good Faith: Landlord's Own Use

When termination is sought for own use, suspicions are raised because this ground is commonly used inappropriately.

If thinking of giving an N12 notice, landlords should consider the following:

- When did the tenant move in and is it reasonable to give notice now?
- Have other suitable rental units recently turned over?
- Is there a reason this specific unit is required?
- How long will the unit be occupied, if this is a short term measure.
- Consider whether it would be reasonable to dislocate a tenant for a short term occupancy.



Good Faith: Purchaser's Own Use

When signing the Agreement of Purchase and Sale, the landlord must establish what the purchaser's plans are for the property.

- If the purchaser intends to move in, the landlord should obtain a sworn Affidavit from the purchaser or family member confirming his/her intentions to move in. (*Note: the purchaser or family member needs to be able to live in the rental unit for a minimum of 1 year as his/her primary residence)
- Some landlords make the mistake of promising vacant possession and give notice to the tenants believing that the tenants will have to vacate because the property has been sold.



Notice of Termination



Notice of Termination: Landlord's Own Use

The following are the steps a landlord must take in order to terminate a tenancy based on own use:

- Serve the tenant with the proper notice of termination - Form N12 – Notice to Terminate at End of Term for Landlord's or Purchaser's Own Use.
- The notice period must give at least 60 days and terminate at the end of the fixed term or lease or, in the case of a month to month tenancy, at the end of the rental period.
- **Any N12 notice being served after September 1, 2017 the landlord is required to pay the tenant an amount equal to one month's rent by the termination date on the notice OR offer the tenant another rental unit that is acceptable.**



Notice of Termination : Purchaser's Own Use

The landlord must take following steps in order to terminate a tenancy based on purchaser's own use:



- The landlord must serve the tenant with the proper notice of termination which is Form N12 – Notice to Terminate at End of Term for Landlord's or Purchaser's Own Use.
- The notice period must be at least 60 days and it must terminate at the end of the lease term or at the end of the rental period.
- Landlords should take into consideration the length of time it will take to evict the tenant, which could be up to three months or longer.



Completing the Form N12

The form must be filled in with the following information:

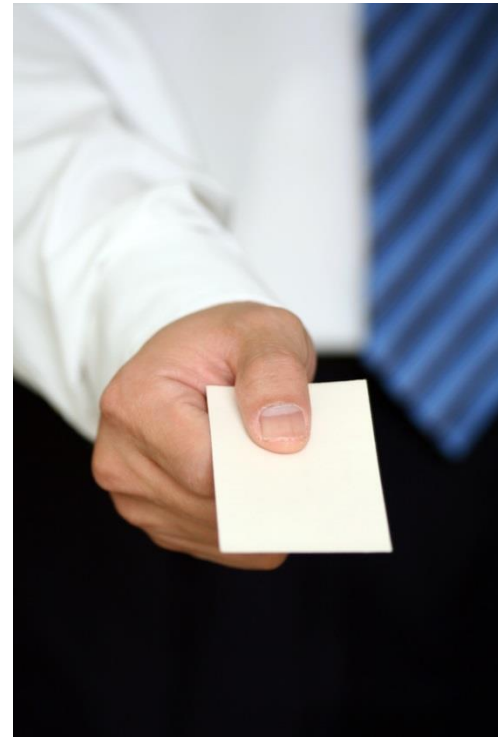
- The name(s) and address of the tenant;
- The rental unit must be clearly identified – e.g. “Basement” or “2nd floor”;
- The landlord’s legal name and address;
- The termination date – must be at least 60 days and must fall on the last day of the rental period, or the last day of the fixed term;
- Information on who requires the rental unit;
- The notice must be signed by the landlord and include the date of signing.



Serving the Notice

Section 191 of the *Residential Tenancies Act, 2006* sets out the methods of service of documents which are the following:

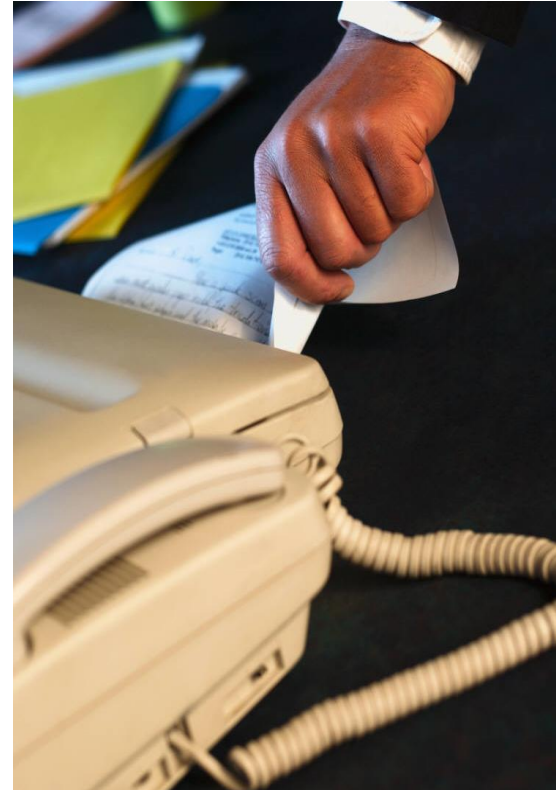
- Handing it to the tenant;
- Sliding it under the door;
- Placing it in the mailbox or where mail is normally delivered;
- Handing to an apparently adult person on the premises; or
- Sent by regular mail (must allow five days for delivery).



Other Permitted Methods of Service

- By courier; (deemed to be given on the day following the day it was given to the courier)
- By fax to the tenant where he/she carries on business or the tenant's residence (deemed to be given on the date imprinted on the fax).

Note: Always keep a copy of the notice for your records.



Tenant's Rights After Being Served

The tenant is not obligated to respond to the notice and can remain on the premises if they wish to dispute the landlord's notice.

- The tenant may terminate earlier than the termination date by giving at least 10 days notice.



Landlord's Rights : Filing an Application

The landlord can file an application with the Landlord and Tenant Board at any time after serving the N12 notice if:

- The landlord believes that the tenant may not leave; or
- The tenant fails to vacate at the end of the notice period.



IMPORTANT: The notice becomes null and void if the landlord fails to apply to the Board within 30 days of the termination date.





Key points coming up in **Part Two:**

- Applying to the Landlord and Tenant Board
- Application, Notice of Hearing and Proof of Service
- Enforcement
- Bad Faith

Please reserve any questions you may have about the topics above until the end of the presentation.

PART TWO



Applying to the Landlord and Tenant Board



Supporting Documentation: Landlord's Own use

The landlord needs to organize any documentation that will be required to support their case. For example:

- If the landlord is seeking the unit for his parents who are moving to Canada from abroad, the landlord should have immigration documents, visas, airline tickets, etc. which support this claim.
- If unit is required for a caregiver, gather medical or other information that can be offered in support of the application and illustrate the need for the caregiver.
- If the unit is for a child attending a local university gather documentation which confirms registration, etc.



Supporting Documentation: Purchaser's Own Use

The landlord and the purchaser will need to organize any documentation that will be required to support their case such as:

- A copy of the executed Agreement of Purchase and Sale.
- An Affidavit sworn by the person who is moving in (can be the purchaser, family member or a caregiver).
- If the purchaser is moving in because he is currently renting, a copy of his/her rental agreement should be presented to support this claim.
- If the unit is for a child who wants to move in because it is closer to his/her place of work/school, proof of employment/enrollment should be provided.



Forms Required to Apply to the Landlord and Tenant Board

The following forms must be filed with the Board:

- Form L2 – Application to Terminate a Tenancy and Evict a Tenant
- Certificate of Service
- Affidavit- sworn by the person who will be moving into the unit.
- Copy of the Form N12

Forms and Board locations can be obtained from the Landlord and Tenant Board's website at

<http://www.sjto.gov.on.ca/ltb/forms/>



Fees and Method of Filing



Landlord
and
Tenant Board



An application can be filed in person or by fax at any Board location or Service Ontario office.

The application fee is \$190.00 or \$175.00 if filing online using e-File; methods of payment include :

- Cash
- Debit card
- Credit card
- Money order, or
- Certified cheque

*** At the moment e-File is only available for the L1 & L2 Applications



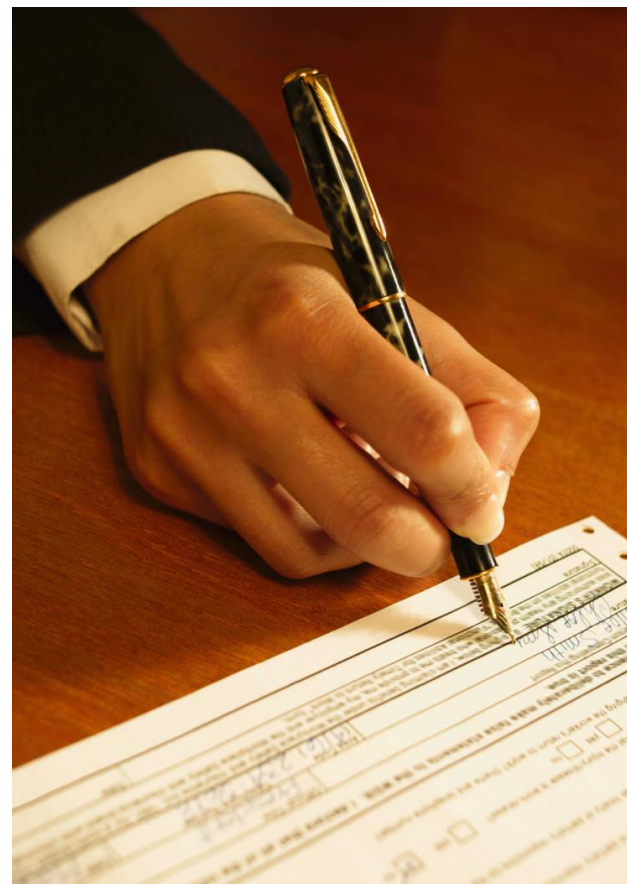
Application and Notice of Hearing

- Once the application is filed with the Board a hearing date will be scheduled, the landlord will be given copies of the application together with a Notice of Hearing.
- The landlord will have to serve the tenants with the Application and Notice of Hearing at least 10 days before the hearing date.
- Serve the documents using the same methods of service set out under section 191 of the RTA, as previously discussed.



Proof of Service

- The landlord must then complete another Certificate of Service explaining when and how the Notice of Hearing and Application was served to the tenant.
- Certificate of Service must be submitted to the Board within five days of serving the Application and Notice of Hearing.



Landlord and Tenant Board Hearing

- The Notice of Hearing will indicate the hearing date, time and the location where the hearing will take place.
- An adjudicator will preside at the hearing. These hearings are generally conducted in person.
- The landlord will be required to explain the reasons and circumstances for giving the notice to terminate the tenancy and demonstrate that there is a good faith intention by the landlord or family member to move into the rental unit.



Landlord and Tenant Board Hearing (continued)

- The person who will occupy the unit should be present at the hearing.
- The tenant can dispute the landlord's application. For example, the tenant may not believe that the landlord or the family member is acting in good faith.
- Landlord must be prepared to provide any evidence possible to prove that the landlord or family member in good faith requires the unit.
- Board decision (Order)



Enforcement



Eviction by Sheriff

If the tenant does not vacate on the termination date set out in the Order, the landlord will have to file the Order with the Court Enforcement Office (Sheriff) to evict the tenant.

Court Enforcement Offices are usually located in the local court house. For locations across Ontario consult the online directory at <http://www.attorneygeneral.jus.gov.on.ca/english/courts/>



Bad Faith Application

- If a tenant moves out pursuant to the N12 notice and then discovers that the landlord or family member has not moved into the unit, the tenant can file an application (Form T5) with the Landlord and Tenant Board claiming that the landlord gave notice in bad faith.
- Landlords should not serve the N12 notice to a tenant simply because they are experiencing problems with that tenant and believe this is the easiest method to ask the tenant to leave. This is a common mistake landlords make which can lead to serious consequences.
- A tenant can file this type of application within 12 months of the date they moved out.



Bad Faith

If the Board finds that the landlord gave the N12 notice in bad faith, the landlord could be ordered to pay the following:

- All or any portion of any increased rent that the former tenant has incurred or will incur for a one year period after vacating the rental unit;
- Reasonable out-of-pocket moving, storage and other like expenses that the former tenant has incurred or will incur;
- An abatement of rent;
- An order that the landlord pay a fine to the Board;
- Any other order that the Board considers appropriate.



In closing ...



Terminating a Tenancy: Landlord's/Purchaser's Own Use

In this Town Hall meeting we have covered:

- ✓ Security of tenure;
- ✓ The reasons for ending a tenancy for a landlord's and purchaser's own use;
- ✓ Common pitfalls;
- ✓ Notice requirements;
- ✓ Tenant options;
- ✓ The Landlord and Tenant Board procedures;
- ✓ Prepare for the hearing and enforce a Landlord and Tenant Board order; and
- ✓ The importance of acting in good faith.



Resources

- Landlord 's Self-Help Centre's RTA Fact Sheet on Ending a Tenancy also discusses own use and can be found at <https://landlordselfhelp.com/media/2017-Ending-a-Tenancy.pdf>
- The Landlord and Tenant Board website contains helpful information about the own use procedure and requirements. They can be found in Interpretation Guideline 12 at <http://www.sjto.gov.on.ca/documents/lrb/Interpretation%20Guidelines/12%20-%20Eviction%20for%20Personal%20Use.html>
- Court Enforcement Offices are usually located in the local court house. For locations across Ontario consult the online directory at <http://www.attorneygeneral.jus.gov.on.ca/english/courts/>





The information offered in this presentation is intended as general information, it is not legal advice.

If you have a specific issue or situation, please contact a legal service provider.

