



# Landlord's Self-Help Centre

*A community legal clinic funded by Legal Aid Ontario*

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September 23, 2015

The Honourable Ted McMeekin  
Minister of Municipal Affairs and Housing  
17<sup>th</sup> Floor - 777 Bay Street  
Toronto, Ontario  
M5G 2E5

Dear Mr. Minister:

**Re: Second Suites in Ontario and the *Residential Tenancies Act, 2006***

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The Landlord's Self-Help Centre ("LSHC") is leading a province-wide project that promotes the benefits of operating a 'second suite' and that educates Ontario homeowners about the processes and procedures required to create and operate a secondary rental unit. The task of promoting the benefits of operating a second suite is especially challenging given the current regulatory environment that governs Ontario landlords. In this regard, we are writing to you on behalf of small scale landlords to request that certain changes be made to the *Residential Tenancies Act, 2006* (the "RTA") and to the practices and procedures at the Landlord and Tenant Board (the "LTB").

By way of context, the *Strong Communities through Affordable Housing Act, 2011* resulted in recent amendments to the *Planning Act* to further expand affordable housing opportunities. These amendments require Ontario municipalities to amend their respective official plans and establish policies that allow second suites in new and existing developments. The reason for this is that second suites provide an important source of affordable housing for low- and moderate-income households, allow existing infrastructure to be leveraged, and are a cost-effective way to create new rental housing stock.

Many homeowners that rent second suites rely on the additional income to help meet the costs of homeownership. Proceedings to evict tenants for non-payment of rent are unduly lengthy. Specifically, it will typically take a landlord at least 90 days to recover possession of a rental unit from a non-paying tenant. This turnaround time can be further delayed by many months if the proceeding is adjourned and/or if the eviction order is appealed. The likelihood of the landlord recovering the outstanding rent is minimal.

The changes that we are proposing will maintain and increase the affordable housing stock by making it easier for landlords to prosecute applications initiated against tenants who do not pay their rent, thereby bringing balance to this issue and encouraging more homeowners to become landlords.

To streamline the eviction process for tenants who are not paying their rent, we propose the following five changes:

**1. Shorten the notice of termination period to 7 days and/or allow a landlord to initiate an application before the 14 day notice of termination period has expired.**

Subsection 59(1) of the RTA provides that, if a tenant fails to pay rent, the landlord may give the tenant notice of termination of the tenancy effective not earlier than: (a) the 7th day after the notice is given, in the case of a daily or weekly tenancy; and (b) the 14th day after the notice is given, in all other cases.

Subsection 74(1) of the RTA provides that a landlord may not apply to the LTB for an order terminating a tenancy and evicting the tenant based on a notice of termination under section 59 before the day following the termination date specified in the notice.

Our proposed change(s) would simplify and streamline LTB proceedings by creating one notice period for all tenancies, and would also provide landlords with an opportunity to obtain earlier hearing dates.

**2. Require tenants to disclose any section 82 issues that they intend to raise, together with the particulars of same, at least five days prior to the hearing.**

Pursuant to section 82 of the RTA, at a hearing of an application initiated by a landlord to evict a tenant based on non-payment of rent, the LTB is required to permit the tenant to raise any issue that could be the subject of an application made by the tenant under the RTA. There is no requirement, however, for the tenant to disclose any such issue(s) before the hearing of the landlord's application. In light of the foregoing, the landlord will often discover that the tenant intends to raise section 82 issues at the first hearing date of the landlord's application. This frequently results in the landlord's application being adjourned so that the landlord can adequately prepare a response to the section 82 issues being raised by the tenant.

Our proposed change would eliminate these delays by providing landlords with an opportunity to prepare a defence to the section 82 issues prior to the first hearing date.

**3. Require tenants to pay into the LTB the amount required to void an eviction order as a condition to obtaining an order that voids the eviction order.**

To void an eviction order before it becomes enforceable (i.e., before the landlord can file the eviction order with the Court Enforcement Office), a tenant must pay, all outstanding rent. After paying the amount required to void the eviction order, pursuant to section 74 of the RTA, the tenant can bring a motion to the LTB to obtain an order that voids the eviction order. This motion is brought without notice to the landlord. To bring this motion, the tenant must file an affidavit that confirms that s/he has paid the full amount required to void the eviction order. Upon receipt of the tenant's motion material, the LTB will automatically render an order voiding the eviction order. If the tenant, however, did not actually pay the amount required to void the eviction order, then the landlord must bring a motion to the LTB to set aside the order obtained by the tenant. The landlord's motion is brought on notice to the tenant and is disposed of at a hearing at the LTB. Ultimately, after hearing the landlord's motion, if the LTB is satisfied that the tenant did not pay the full amount required to void the eviction order, it will set aside the order obtained by the tenant.

There is an opportunity for tenants to act in bad faith to file affidavits that falsely confirm that the amount required to void an eviction order has been paid. The purpose of this practice is to enable these tenants to remain in their rented premises for long periods of time without having

to pay rent to their landlords. Our proposed change would eliminate this practice by requiring tenants to pay the full amount required to void the eviction order into the LTB.

**4. Require tenants to pay into the Divisional Court the amount required to void an eviction order, together with prospective rent, as a condition to obtaining a stay.**

Section 210 of the RTA gives a tenant an automatic right to appeal LTB decisions to the Divisional Court on questions of law. Subsection 25(1) of the *Statutory Powers Procedure Act* and Rule 63 of the *Rules of Civil Procedure* provide that an appeal from a final order made under the RTA stays, until the disposition of the appeal, any provision of the order that requires the payment of money and/or that evicts a person.

As a result of this statutory scheme, there is a growing practice among unscrupulous tenants of moving into rental units, not paying rent, and abusing the automatic right of appeal and accompanying stay to frustrate landlords' legitimate efforts to evict them for non-payment of rent. That is, tenants can initiate frivolous appeals that are devoid of any merit for the purpose of delay so that they can live rent-free at their landlords' expense for long periods of time. Our proposed change would eliminate this practice by requiring tenants to pay the amount required to void an eviction order, together with prospective rent, into the Divisional Court pending the disposition of the appeal. Alternatively, as a condition of being able to appeal an order that evicts a tenant for non-payment of rent, the tenant could be required to obtain leave to appeal from the Divisional Court. This would provide a mechanism to deter those tenants who are seeking to abuse the system from legitimate appellants.

**5. Require the LTB to dispense with strict compliance with the RTA respecting the contents of forms, notices or other documents.**

Section 183 of the RTA requires the LTB to adopt the most expeditious method of determining a proceeding. Section 212 of the RTA provides that substantial compliance with the RTA respecting the contents of forms, notices or documents is sufficient. However, in spite of the aforesaid provisions, the LTB will routinely dismiss applications because of minor breaches of the RTA respecting the contents of forms, notices or other documents. By way of example, in circumstances where the termination date of a tenancy must fall on the last day of the month, the LTB will dismiss a landlord's application where the landlord mistakenly writes in the notice of termination that the termination date is the 30<sup>th</sup> day of the month if that month contains 31 days. The LTB will also dismiss an application if the landlord inadvertently omits to sign the notice of termination.

Our proposed change would eliminate delays caused by these technical, non-substantive issues by ensuring that minor breaches of the RTA's provisions respecting the contents of forms, notices or other documents will not render a proceeding or a step or document a nullity.

Finally, we would like to emphasize that, while our proposed changes will streamline LTB proceedings by eliminating inherent delays and tenant abuses, they will not have an adverse impact on tenants and will create greater certainty about the process and alleviate some of the financial hardship experienced by small scale landlords making it more likely that they will continue to provide affordable income housing. At all times, the LTB has the ability to, among other things, refuse to grant an eviction application and/or render an order that the enforcement of an eviction order be postponed for a period of time on such terms as are just.

We would like to meet with you to discuss the changes that we are proposing. To this end, we will be contacting you shortly to schedule a meeting.

Yours truly,

**Landlord's Self-Help Centre**

A handwritten signature in blue ink, appearing to read "Douglas Levitt".

per:  
Douglas Levitt, Vice President  
Board of Directors