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# TENANCY TERMINATION PRIMER
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## INTRODUCTION

In Ontario, unlike in other Canadian provinces, a residential lease does not end at the conclusion of the term that is set out in the lease document. Without doing anything, and regardless of whether there is an agreement to renew the lease, a tenant's lease continues on a month to month basis at the conclusion of the lease term. This is because the *Residential Tenancies Act* deems a lease to be renewed on the same terms and conditions that were in the expired tenancy agreement.[1]

What this means is that a residential lease, in Ontario, continues indefinitely, until such time as it is terminated by a legally delivered Notice of Termination. This is a key aspect of what is known as "security of tenure".

## TENANT GIVING NOTICE TO TERMINATE

How then does a tenant end the indefinite perpetual lease? To end a lease, legally, a tenant must deliver a Notice of Termination to the landlord which specifies that the tenant is terminating the tenancy as of a date at least 60 days in the future.[2] The termination date (the last day that the tenant intends to be in possession of the rental unit) that is set out in the notice must be the last day of the term–which normally is the day before the rent is due.[3] A tenant may not give 60 days notice to terminate in the middle of a month or any other day of a month other than the last day of the term–i.e. normally the day before rent is due.

It is important for tenants to understand that the right to terminate a tenancy on 60 days notice is restricted and only available when the tenant is on a month to month lease or for the end of a term of fixed term tenancy. In short, if a tenant is on a fixed term tenancy, the soonest that the lease may be terminated–by notice– is for the end of term. Hence, if a tenant has signed a lease for one year, six months, two years, etc., the earliest that the lease may be terminated by notice from the tenant is for the end of that fixed term.

[1] *Residential Tenancies Act*, S.O. 2006, c.17. section 38
[2] Note that the Notice period for daily or weekly tenancies is 28 days
[3] RTA, s. 47 & 44

## AGREEMENT TO TERMINATE

What of the situation where a tenant has signed a longer term lease but needs to move out? The first thing a tenant should do is consider speaking with the landlord to see if the landlord would agree to a termination of the tenancy early. If the landlord is agreeable to terminating the tenancy early then the landlord and tenant would sign an agreement to terminate.[4] If such an agreement is signed there is no requirement to give a Notice of Termination.[5]

## SUBLETTING AND ASSIGNMENT

Where a landlord will not agree to an early termination of a fixed term tenancy the law provides that a tenant may then seek to assign or sublet their tenancy. The rules relating to subletting and assigning are indeed fairly technical and detailed and beyond the immediate scope of this paper.[6] However, by overview, a sublet is a situation where a tenant finds a person to assume their tenancy for a period of time (while they are away) and then returns to resume the tenancy at some later date. The tenant must obtain the landlord's consent to a sublet–though the law requires the landlord to not unreasonably or arbitrarily withhold consent. Throughout the term of the sublet, a tenant remains liable to the landlord for the rent and for the conduct of the subtenant. As such, if a tenant is going to sublet it is very important to carefully select the subtenant as the tenant will be financially responsible for the actions of the subtenant and the subtenant's guests.

If a tenant has no intention of returning to the rental unit, then the other possibility provided for in the law is for the tenant to assign the tenancy to a new person. In an assignment, a tenant in fact transfers a tenancy to a new person. The new person steps fully into the shoes of the old tenant and assumes all responsibility and liability for the rental unit. Therefore, the old tenant ceases to be responsible for the premises upon the lease being assigned to a new person. A landlord does have the right to refuse an assignment (generally) and also specifically to proposed new tenants. Where the landlord refuses to allow an assignment generally–the law then allows the tenant to terminate the tenancy early. Where a landlord unreasonably refuses an assignment to a specific person a tenant may seek an Order from the landlord and tenant board to authorize the tenancy or alternatively to terminate the tenancy early.

## TERMINATION OF TENANCY BY LANDLORD

Security of tenure and the presumption that a lease continues indefinitely is of course not absolute. A landlord may terminate a tenancy for "fault grounds" as well as for "no fault grounds". In the case of both fault and no fault grounds a landlord must serve a tenant with a Notice of Termination. This Notice is in a format provided by the Ontario Landlord and Tenant Board and the exact wording on the forms is provided by law. A landlord is not permitted to simply make up their own Notice of Termination.

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[4] Form N11–Agreement to Terminate a Tenancy–is a form available from the Ontario Landlord and Tenant Board and from their website at http://www.ltb.gov.on.ca/en/index.htm
[5] RTA, s. 37(3)
[6] See RTA sections 95 through 104

A Notice of Termination given to a tenant, by a landlord, has very strict and technical requirements. The slightest error in the Notice of Termination can make the notice void– meaning that it is invalid and the landlord has to start all over again. The reason for the strict requirements is that the law in Ontario is structured to maintain tenancies so that persons are not evicted from their homes.

It is important to understand that the *Residential Tenancies Act* sets out all of the reasons for which a landlord is permitted to terminate a tenancy. If a landlord wishes to terminate a tenancy for a reason that is not provided in the law the landlord is prohibited from doing so. Just because a landlord wishes to end a tenancy does not mean that the landlord can legally do so. The reason for wanting to end a tenancy must be provided for in the law, otherwise, a tenant is fully within their legal rights to continue the tenancy even over the objections of the landlord.

**TERMINATION FOR Non-Payment of Rent**

The most common fault based Notice of Termination that is served by a landlord is a Notice of Termination for Non-Payment of Rent (Form N4). This Notice, as do all the other types of Notices, contains a termination date. The “termination date” is the date that the tenancy ends, and is the date that the landlord expects the tenant to vacate the rental unit. The amount of time between the tenant receiving the Notice of Termination and the Termination date varies depending on the type of Notice of Termination being served. In the case of a Notice of Termination for Non-Payment of Rent, a tenant will receive a minimum of 14 days between the date of service of the Notice and the Termination date contained within the N4–Notice to Terminate.

**OTHER FOR “FAULT” TERMINATION NOTICES**

Other fault grounds on which a landlord can serve a Notice of Termination include: termination for substantial interference with reasonable enjoyment (form N5), termination for committing an illegal act (form N6), termination for misrepresentation of income (form N6), termination for impairing safety of other tenants (form N7), termination for willful damage of property (form N7), termination for persistent late payment of rent (form N8). Each of these Notices of Termination have different termination dates and each have specific and unique requirements.

Some of the Notices, like the N4 and N5 are voidable notices meaning that a tenant is permitted to correct the behaviours complained of and maintain the tenancy. Other Notices are not voidable–meaning a tenant has no opportunity to correct their behaviour to maintain the tenancy.

**WHAT TO DO WHEN RECEIVING A FAULT TERMINATION NOTICE**

Just because a tenant receives a Notice of Termination from their landlord does not mean that the tenancy is ended. Please remember that each Notice of Termination contains important instructions that outline some of the tenant’s rights. Most importantly, if a tenant disagrees with the contents of a Notice the law allows them to remain in the rental unit. If a landlord still wants

the tenancy terminated the landlord is forced to apply to the Ontario Landlord and Tenant Board to get an Order to evict the tenant. This application is done with notice to the tenant and a hearing is held in front of an adjudicator (like a judge). At the hearing, the landlord has the burden of proof to prove that the tenant has done the things alleged in the Notice of Termination. A tenant has the right to cross-examine the landlord and his or her witnesses and to challenge the landlord's evidence. The tenant, along with his/her witnesses also get to testify and tell the adjudicator what actually happened, if anything.

The adjudicator, based on the evidence will decide what the accurate facts are and will decide what the penalty should be if it is found that the tenant did the things as alleged in the Notice of Termination. Be aware, that an adjudicator has the discretion to NOT evict someone even if the landlord proves the allegations against the tenant. Just because a landlord proves an allegation does not mean that it is appropriate for a tenant to be evicted for that transgression. A good example is in a case of non-payment of rent where a tenant is in arrears of rent due to the loss of a job, illness, or some other misfortune. While the landlord can prove non-payment of the rent, the Landlord and Tenant Board, instead of ordering eviction for non-payment of rent, can order the landlord to accept a comprehensive payment plan that takes into account future rent obligations and the arrears. Such a payment plan can allow a tenant to maintain their tenancy even though the rent has not been paid on the due date.

The caselaw is full of examples of adjudicators exercising their discretion to not evict a tenant. Sometimes eviction is simply too harsh a consequence for the transgression that is alleged. Sometimes the transgression arises from a disability or health condition that is beyond the control of the tenant and hence it would not be appropriate to evict if a suitable alternative can be found. Other times, an adjudicator can be convinced that the transgression was an anomaly, is unlikely to happen again, and accepts the remorse of the tenant. In those instances an adjudicator can refuse the eviction on the simple basis that the tenant is being given a second chance.

Because of the broad powers that an adjudicator has it is a mistake for a tenant to act as their own lawyer when receiving Notices of Termination. A tenant simply can not know the full range of options and possible outcomes no matter how obvious the situation may seem. When the situation is serious a tenant should always seek legal help. Legal help is available from community legal clinics, duty counsel at the landlord and tenant board, and from private lawyers (like the author of this paper). It is always worth it to at least make some cursory inquiries before reacting to a Notice of Termination or making any kind of deal with the landlord. Be informed—know your rights!

## "NO FAULT TERMINATION" BY LANDLORD

No fault termination of a lease is a situation where the landlord can terminate a tenant's lease for grounds that have nothing to do with the conduct of the tenant (i.e. non-payment of rent, interfering with reasonable enjoyment, etc.). People often believe that one of the no fault grounds for termination of a lease is when the lease term expires. As stated earlier in this paper, the right of a tenant to occupy a rental unit does not end with the expiry of a fixed term lease. By law, the lease continues on a month to month basis until such time as it is terminated by a valid

legal notice the grounds of which are provided under the *Residential Tenancies Act*.

So, if the end of the term of a lease is a not a basis for a landlord to terminate a lease on "no fault" grounds—what is? The most common such Notice of Termination is a termination for a landlord's own use or for purchasers own use.[7] A Notice of Termination for Landlord's own use (purchasers use) is served in Form N12. Like the Notices of Termination for cause, the requirements of the Notice are very strict and if the landlord makes a mistake in the Notice the entire Notice can be void and the landlord would need to start over from the beginning. Where a landlord wishes to take over the premises for his/her own use the landlord needs to give the tenant 60 days of notice. The last day of the notice period must be at the end of the term, must be given so that the landlord can use the premises for residential purposes, and must be given in good faith.

Because the Notice is not given for anything that the tenant did or did not do, there is no opportunity to void the notice or to continue the tenancy. Note that a way to protect against receiving this type of Notice of Termination is to enter into a fixed term tenancy. A landlord is not able to terminate a fixed term tenancy, on no fault grounds, before the end of the fixed term.

Because the termination on no fault grounds does not depend on the conduct of the tenant, this type of notice of termination is more susceptible to abuse by landlords who simply wish to see a tenant leave. What should a tenant do if they suspect that a landlord has served an N12 in bad faith?

Firstly, a tenant should know that receiving a Notice of Termination, based on a no fault ground, does not require the tenant to move out by the termination date stipulated in the Notice of Termination. A tenant may choose to remain in the rental unit and require the landlord to proceed to the Landlord and Tenant Board to obtain an Order terminating the tenancy. In many cases the landlord will be successful—however, there are exceptions. A tenant may defend a landlord's application on the basis that the Notice of Termination was not served in good faith, that the landlord (or designate) does not intend to occupy the premises for residential purposes, that the Notice of Termination was served because the tenant was pursuing his or her legal rights, that the landlord remains in substantial breach of his or her obligations under the *Residential Tenancies Act*, that the tenancy should not be terminated in the exercise of the Board's discretion, and that there are Human Rights Act grounds to maintain the tenancy.

The basis of a defence to a no fault termination will of course depend on the facts and circumstances of each tenancy. Sometimes, the defence can be as simple as a request for more time----a prime example being to maintain the tenancy to the end of a school year to allow a tenant's child to finish up in the same school.

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[7] For "own" use includes a use for a landlord's spouse, child or parent of the landlord or a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse. See section 48 RTA. Further, terminating for the residential use of a purchaser includes the same categories of persons other than the immediate purchaser of the premises. See section 49 RTA.

## OTHER NO FAULT TERMINATION BY LANDLORD

Aside from a no fault termination for Landlord's own use/purchasers own use, the other no fault ground includes a termination for demolition, conversion, or repair of the rental unit. This type of Notice is served in form N13, and like all of the other forms contains varying notice periods and strict requirements in order for the notice to be valid. If the landlord fails to comply with the strict requirements of the form it will be void and the tenancy cannot be terminated until a proper new notice is served that gives the tenant the proper full notice. The form itself contains information for the tenant, and again a tenant is not required to move out as a result of this notice. A tenant may demand that the landlord proceed to a hearing before the Ontario Landlord and Tenant Board and a tenant may defend against the termination of the tenancy.

## THE LANDLORD HAS AN ORDER---WHAT NOW?

If the landlord served a Notice of Termination (fault or no fault), then filed an application to the Ontario Landlord and Tenant Board (in Ottawa, Ontario, it is located at 255 Albert Street, 4th Floor), and proceeded to a hearing that the tenant attended or failed to attend, then the Ontario Landlord and Tenant Board will have proceeded to make an Order. The Order is mailed to the landlord and to the tenant.

The Order recites the names of the landlord and tenant, and the address of the rental unit. The Order will state the reason for the landlord's application. Thereafter, the Order will state who was present, who the witnesses were, what the evidence in support of the application was and what the evidence in support of the tenant was. The Order will then make findings of fact—which essentially is a weighing of the evidence with the adjudicator choosing between contradictory information that was provided through the witnesses. The findings of fact then lead to the adjudicator making a legal conclusion—which is the decision. Usually under a heading entitled "It is Ordered that" the adjudicator will either dismiss the application or state that the tenancy is terminated and provide a time that the tenant must vacate the unit by failing which the landlord may get the sheriff to enforce the eviction. Note that the under this same heading the adjudicator may exercise his or her discretion and set out a series of conditions that, if followed, will allow the tenancy to continue.

## CHALLENGING THE ORDER (REVIEW & APPEAL)

It is important for a tenant to know that an Order of the Ontario Landlord and Tenant Board may be challenged in two ways. The first way of challenging an Order is to seek a Request to Review[8]. The Request to Review procedure is designed to allow a person to bring to the Board's attention that a serious error may have occurred in the proceeding. If a party can establish that there was a serious error then the Order may be set aside and a new hearing may be granted. The nature of what constitutes a "serious error" is undefined[9]. However, a "serious

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[8] See section 209, 184, RTA and Rule 29 of the Landlord and Tenant Board Rules of Practice.
[9] See the Board's Interpretation Guideline "Review of an Order" for more explanation of what constitutes a "serious error".

error" would include a situation where a party did not get notice of a hearing or was unable to participate in the hearing through no fault of their own. A Request to Review is fairly technical and it must be completed fully and thoroughly in writing upon filing of the request. If the review request fails to substantiate a preliminary finding that there was a serious error then there is a substantial risk that the Board would refuse the Request to Review without scheduling a hearing.

If an adjudicator is satisfied that there was a serious error in a proceeding then the Order that flowed from the flawed proceeding will be set aside. For the most part, the Board will then proceed with a hearing de novo—a new hearing---where all of the evidence must be called again and the matter is fully reheard.

## APPEAL TO DIVISIONAL COURT

The other recourse to challenge an Order of the Landlord and |Tenant Board is to appeal the decision to the Superior Court of Justice (Divisional Court). An appeal to the Divisional Court may only be taken on errors of law—meaning that findings of fact may not be challenged before the Divisional Court.[10] In the event that the Divisional Court finds that the Landlord and Tenant Board did commit an error of law in reaching the decision the Court may affirm, rescind, amend or replace the Order under appeal or it may remit the matter back to the Board with the opinion of the Court. An appeal to the Divisional Court is pursued in accordance with the Rules of Civil Procedure and the full formality of the civil court process is required to be followed.

## THE SHERIFF

In the event that an eviction Order is upheld with no Request to Review nor Appeal being successful, a landlord will eventually direct the Sheriff to attend the rental unit to grant vacant possession. When the Sheriff is directed to give vacant possession the procedure that is followed, almost always, is that the Sheriff will attend at the rental unit and will post a Notice to Vacate on the rental unit door. The Notice to Vacate normally provides the tenant with 7 days to vacate the rental unit and it will indicate when the Sheriff will return to enforce the eviction. On the date specified in the Notice, the Sheriff will return to the rental unit at which time the locks will be changed and the tenant and other occupants will be physically removed if necessary. The Sheriff will give the landlord a certificate confirming that the landlord is in vacant possession of the premises. Thereafter, if the tenant returns or enters the unit, the tenant will be trespassing and may be arrested for being illegally in the rental unit.

Be aware, that in Ontario it is only the Sheriff that is empowered to enforce eviction Orders from the Landlord and Tenant Board. A landlord is not permitted to enforce the eviction order by himself or with the help of some friends.

Sometimes, tenants are taken completely by surprise and are in a state of disbelief when the sheriff actually physically removes them from their home. In those instances, arrangements have not been made to remove personal property and possessions. The Sheriff only removes people

[10] See section 210 RTA—Appeal Rights

from rental units and not personal property. To deal with this situation the *Residential Tenancies Act* allows a tenant a short period of time, after physical eviction, to get their personal property out of the rental unit. After this period of time the landlord is allowed to throw it out, keep it, or sell it. In these circumstances it is best to obtain immediate legal advice on an urgent basis.

**CONCLUSION**

People are often left with the impression that landlord and tenant issues are straightforward and that they can resolve the issues themselves. In fact, the law respecting Notices of Termination is highly complex and ever evolving. It is simply not realistic for a lay-person to represent their own interests especially when the security of their home is at stake. Given the legal implications and possible eviction flowing from a Notice of Termination it is always advisable to get legal advice prior to proceeding to a hearing in front of the Ontario Landlord and Tenant Board.

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