

GREATER TORONTO APARTMENT ASSOCIATION

BILL 132 AND THE 28 DAY NOTICE TO TERMINATE A TENANCY

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**Evidentiary Issues: Section 47.3 is the key
“Tenant” or “A Child residing in the rental unit”
experiencing “violence or another form of
abuse”**

**s. 47.3 (1) “...the Tenant/Child is ‘deemed’ to have
experienced violence or another form of abuse if:**

- There is an Order made by a legal authority (Not the LTB): i.e.: *Criminal Code; Family Law Act; Children’s Law Reform Act.*
- If there is such an Order, then the Tenant/Child is “deemed” to be experiencing violence or abuse: no possibility of challenging the “deeming” effect.
- abuser against whom the Order is made must be a member of the group described in 47.3(4)

BUT EXPERIENCE OF VIOLENCE OR ABUSE WILL ALSO BE “DEEMED” TO OCCUR IF THERE IS....

47.3 (d), (e), (f): An “allegation” by the tenant of:

- **an “intentional or reckless act or omission that caused bodily harm to the Tenant/Child or damage to property”;**
- **“forced confinement of the Tenant/Child” without lawful authority”**
- **“an act or omission or threatened act or omission that caused the Tenant/Child to fear for their safety”**
- **“series of acts which collectively cause fear for their safety which includes contact, communication, observing or recording the Tenant/Child”**
- **perpetrator of these acts or omissions must be from a defined class of persons 47.3(4) (a) – (d)**

**Tenant's Notice to End my Tenancy Because of Fear of
Sexual or Domestic Violence and Abuse
N15**

To: (Landlord's Name)	From: (Tenant's Name) <i>include the names of all tenants giving this notice</i>
Address of Rental Unit:	

I am giving you this notice to end my tenancy.

The last day of my tenancy will be

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 .
dd/mm/yyyy

I will move out of the rental unit on or before this date.

The law states that I must include one of the documents listed below with this notice. I have included:

a completed LTB form "*Tenant's Statement About Sexual or Domestic Violence and Abuse*"

OR

a copy of a restraining order or peace bond issued by a court within the last 90 days that orders the alleged abuser not to contact me or the child and/or not to enter the rental unit

Tenant's Statement About Sexual or Domestic Violence and Abuse

To: (Landlord's Name)	From: (Tenant's Name)
Address of Rental Unit:	

Reason for giving the notice to end my tenancy (Form N15):

I or a child living with me has been a victim of domestic or sexual violence and/or abuse and we must move out of the rental unit. I believe we may be at risk of harm or injury if I continue to live here, based on one or both of the following reason(s):

One of these people:

- my spouse or my former spouse
- someone I live with, or lived with in a conjugal relationship
- a person that I am dating or I used to date
- someone who lives in my unit that is related to me or the child by blood, marriage or adoption

has caused me or a child living with me:

- to suffer bodily harm or damage to our property by intentional or reckless behaviour or actions.
- to fear for our safety because of their behaviour and actions or threatened actions.
- to be held by force against our will.
- to fear for our safety because of a series of actions, including following, contacting, communicating with, watching, or recording us.

AND/OR

I or a child living with me was a victim of sexual violence as defined in section 47.3(2) of the *Residential Tenancies Act, 2006*.

Signature:

Date: (dd/mm/yyyy)

Important Information from the Landlord and Tenant Board

The information must be the truth

It is against the law for a tenant to give a landlord this statement if it does not apply to the tenant's situation. It is an offence and they could be taken to court.

If they are found guilty, the tenant could be fined up to \$25,000.

How to get more information

For more information about this notice or your rights, you can contact the Landlord and Tenant Board (LTB). You can reach the LTB by phone at **416-645-8080** or **1-888-332-3234**. You can visit the LTB website at sjo.to.ca/LTB.

- The allegation does **NOT** have to:
- (a) describe the “circumstances” of the violence or abuse;
- (b) specify the nature of the violence or abuse;
- (c) identify who it is that is alleged to have committed the violence or abuse; or
- (d) specify whether the abuse was caused against the tenant or a child residing with the tenant.
- **The bare “allegation”, made in the “prescribed form”, is sufficient to “deem” that the person is experiencing sexual violence, violence or abuse.**

THE ALLEGED ABUSER IF THE ALLEGATION IS “VIOLENCE OR ABUSE” MUST BE:

- (a) a spouse or former spouse of the tenant;
- (b) another person who is, or was, living with the tenant in a “conjugal relationship”;
- (c) a member of the family who lives in the rental unit; or,
- (d) “a person who is, or was, in a dating relationship with the tenant”.
- where Tenant alleges that sexual violence, as defined, has been committed against the Tenant /Child, the relationship to abuser criteria do not apply.
- By subsection 47.3 (6) “the Board may not inquire into or make any determination as to the truth/belief” of any such allegation.
- A tenant/abuser cannot give the 28 day Notice even if the victim is a child living with the tenant/abuser s. 47.3 (b).

WHAT IF THE ABUSER IS SOMEONE ELSE?

- Landlord?
- Superintendent?
- Maintenance Staff?
- Roommate?
- Joint Tenant (ie: students?)
- Occupant?
- Unless there is a past dating relationship, family member, spouse, etc., the “violence/abuse” sections don’t apply and Notice may not be given.

- **BUT!!.....**

WHAT ABOUT “SEXUAL VIOLENCE”?

WHAT IS IT?

- “ANY SEXUAL ACT OR ACT TARGETING A PERSON’S:
 - SEXUALITY,
 - GENDER IDENTITY OR GENDER EXPRESSION
 - WHETHER THE ACT IS PHYSICAL OR PSYCHOLOGICAL IN NATURE
- “...THAT IS COMMITTED, THREATENED OR ATTEMPTED AGAINST A PERSON WITHOUT THE PERSON’S CONSENT”
- INCLUDES: SEXUAL ASSAULT, SEXUAL HARASSMENT, STALKING, INDECENT EXPOSURE, VOYEURISM AND SEXUAL EXPLOITATION

WHAT ABOUT “SEXUAL VIOLENCE” ?_(cont'd)

- If the tenant alleges “sexual violence” has been committed against the tenant or a child living in the unit,
- And the allegation complies with the requirements of the “prescribed form”
- Then the allegation may be made against another tenant, employee of the landlord, the landlord, leasing agent, property manager, roommate, co-tenant, anyone...., although it need not, in the case of sexual violence, identify the person

Subsection 47.3 (6)

- Where there is a question as to whether a person is deemed to have experienced violence or another form of abuse....

“...the Board may not inquire into or make any determination as to the truth of, or the belief in the truth of, any [such] allegation or assertion...” .

Offence

- It is an offence under the RTA to knowingly provide false or misleading information in connection with giving notice under 47.1(1) or 47.2(1).
- on conviction a person could face a fine of up to \$25,000.00
- complaint to be made to the Ministry of Housing's Enforcement Unit

Occupational Health and Safety Act

- OHSA Issues for Landlords who employ at least one person
- Deadline for compliance: September 8, 2016
- What's new?
 - “Workplace Sexual Harassment” now included in definition of “workplace harassment”: What is it?
 - What isn't it? “Reasonable management”
 - Develop and maintain a policy and program
 - Employee communication of process and outcome

WHAT IS WORKPLACE SEXUAL HARASSMENT? (part 1)

- A course of “vexatious comment” or “conduct”
- Against a worker
- In a workplace
- Because of sex, sexual orientation, gender identity, gender expression
- Where the course of conduct is known or “ought reasonably to be known” to be “unwelcome”

WHAT IS WORKPLACE SEXUAL HARASSMENT? (part 2)

- Making a sexual solicitation or advance
- Person making the solicitation or advance is in a position to “confer, grant or deny a benefit or advancement to the worker”
- The “Person” knows or “ought reasonably to know” that the solicitation or advance is unwelcome
- Note: need not occur in the workplace

WHAT ISN'T WORKPLACE HARASSMENT?

- “Reasonable action taken by an employer or supervisor “
- Relating to the management and direction of workers or the workplace
- Examples: Dress code? Conduct? Comment?

POLICY REGARDING WORKPLACE HARASSMENT

- Employer obligated to prepare a policy with respect to workplace harassment ; must be reviewed at least annually 32.0.1 (1) (b) (c)
- Policy must be in written form and posted where five or more workers
- Current policy with respect to workplace harassment should be reviewed and updated to address the addition of workplace sexual harassment to the definition

WHO DOES THE OBLIGATION APPLY TO?

- “All employers who employ one or more persons”
- Landlords
- Property Managers
- Condo Boards
- Applies to part time or full time staff

WHAT MUST THE POLICY CONTAIN

- a statement demonstrating the employer's commitment to addressing workplace harassment
- OSHA definition of workplace harassment and the clarification for "reasonable action taken by employer"
- Statement that policy applies to all workers
- Statement encourage workers to report workplace harassment
- Statement that employer will investigate and address all complaints or incidents and information received not to be disclosed except to extent needed
- Employer will not penalize a worker who reports
- Information about other resources for help to address workplace harassment
- Policy should include a communications component which ensures employees have both information and instruction on the policy and the program
- Policy and program should be designed to "protect a worker from workplace harassment"

WHAT MUST THE PROGRAM CONTAIN

- Employer must “develop and maintain” a “program” to implement the workplace harassment policy with the committee or a health and safety rep, if any.
- Content of the program must include:
 - Procedures for workers to report incidents to the employer or supervisor, or, where that person is the alleged harasser, to another person

WHAT THE PROGRAM MUST CONTAIN

- set out how incidents or complaints will be “investigated and dealt with”
- Information obtained will not be disclosed unless necessary or required by law
- how the alleged worker/victim and the alleged worker/harasser will be notified of investigation results and what corrective action was or will be taken

EMPLOYER HAS DUTY TO “PROTECT” THE WORKER FROM WORKPLACE HARASSMENT

- Protection will be achieved by
- conducting an investigation of incidents and complaints of workplace harassment that is “appropriate in the circumstances”
- give the alleged worker/victim and the alleged worker/harasser written results of the investigation and details of corrective action taken or to be taken
- Is the harasser a worker? Employer? Customer? “Agent of the landlord”? Tenant?
- Must have a reporting component where the employer shall inform both the complainant and the alleged harasser, (if the harasser is a worker of the employer), in writing, of the results of the investigation

WHAT MUST THE PROGRAM CONTAIN

- Employer must provide workers with appropriate “information” and “instruction” on the contents of the policy and the program regarding workplace harassment.

POST-INVESTIGATION REPORTING REQUIREMENTS

- The Report must be in writing
- Must include results/findings of the investigation
- Must set out corrective action that has been taken or that will be taken as a result of the investigation (serve an N5 on a tenant?)
- Ensure that other “duties as prescribed” are carried out.

POST-INVESTIGATION CORRECTIVE ACTION

- Eviction of a Tenant where the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another Tenant.
- 2 decisions of the LTB where Tenants were evicted due to behaviour toward superintendents and other tenants which included spitting, swearing, stalking,
- LTB must also consider OHRC issues and the duty to accommodate as well as S. 83 issues (delay or deny an eviction)
- S. 36 – Tenant shall not harass, obstruct, coerce, threaten or interfere with a Landlord

WHAT TO DO?

- Learn the Rules relative to RTA amendments
- Train your staff and yourself in procedures for dealing with 28 day Notices
- Recognize the “red flags” relative to 28 day notices and get advice before you “act”
- Amend Leases?
- If you have employees, begin the process of amending current OSHA workplace violence and harassment policies to comply with the amendments
- Train (inform) your staff with respect to implementation and compliance with the new OSHA requirements, particularly in the context of multi-res workplaces

QUESTIONS?