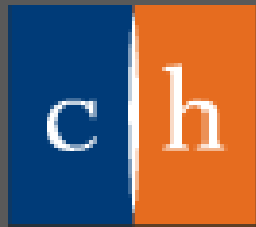


# GREATER TORONTO APARTMENT ASSOCIATION

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## BILL 132 AND THE 28 DAY NOTICE TO TERMINATE A TENANCY

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# THE *SEXUAL VIOLENCE AND HARASSMENT ACTION PLAN ACT*: INTO FORCE SEPT. 8, 2016

- Amends :
- The *Residential Tenancies Act* (RTA); and,
- The *Occupational Health and Safety Act* (OHSA)
- The “purpose” of Bill 132 is to protect people from: (i) “sexual violence”; (ii) “sexual harassment”; and, (iii) “domestic violence”.

## RTA: Key Changes, s. 47.1 – 47.4

- Notice period: 28 days
- Notice is not voidable if only one tenant on lease
- Grounds for Notice: “violence”, “abuse”, or “sexual violence”
- Burden of proof of grounds: minimal...a form
- Tenant may terminate interest in joint tenancy but if fails to vacate, the notice is “void”
- Remaining tenants may leave on 60 days simple notice
- Secrecy requirements and liability to landlord for breach of same

# 28 DAY NOTICE TO TERMINATE

47.1 (3) A notice under subsection (1) shall be given “at least” 28 days before the date the termination is specified to be effective.

- No requirement that it be “prior to the end of a rental period or fixed term”: tenancy can end at any time in a month.

# DOES THE NOTICE ACTUALLY TERMINATE THE TENANCY? “MAYBE”

- IF THERE IS ONLY ONE TENANT ON THE LEASE THEN THE NOTICE OF TERMINATION IS BINDING
- IF TENANT FAILS TO VACATE, LANDLORD MAY APPLY TO ENFORCE THE NOTICE AND EVICT THE TENANT (But would you? Could you?)
- ISSUES: WHAT IF OCCUPANT CLAIMS “SPOUSE” STATUS; IF YOU APPLY TO EVICT, WILL LTB EXERCISE DISCRETION TO REFUSE; WHAT IF THE FORM WAS NOT PROPERLY GIVEN?

S. 47.2 (2) A joint tenant who meets the requirement in clause (1) (a) or (b) may,

(a) Give a notice of termination of the tenancy under subsection (1), provided the notice is given jointly with all the other joint tenants;  
or

**(b) Give a notice of termination of his or her interest in the tenancy under ss. 47.2 (1)**

- The joint tenant who terminates an interest loses their entitlement to a benefit of LMR.

# DOES THE NOTICE ACTUALLY TERMINATE THE TENANCY? “MAYBE”

- JOINT TENANTS: YOU WON'T KNOW IF THE TENANCY IS TERMINATED UNLESS AND UNTIL THE PERSON WHO GAVE THE NOTICE HAS VACATED ON OR BEFORE THE SPECIFIED TERMINATION DATE (assume its 28 days...)
- IF JOINT TENANT CHANGES MIND AND DOES NOT VACATE ON OR BEFORE DAY 28, THE TENANCY IS NOT TERMINATED AND THE NOTICE IS “VOID”.
- IF TENANT MOVES OUT BEFORE DAY 28 AND MOVES BACK IN BEFORE DAY 28, THE TENANCY IS TERMINATED EFFECTIVE ON THE TERMINATION DATE.
- IF AN INTEREST IN A JOINT TENANCY IS TERMINATED AND THEN THE FORMER TENANT MOVES BACK IN, THEY ARE NOW AN “OCCUPANT”, EVEN IF THEY MOVE BACK IN BEFORE THE TERMINATION DATE (s. 47.2 (5), (6)).
- WITH JOINT TENANTS, NO LIMIT ON NUMBER OF TIMES A 28 DAY NOTICE CAN BE GIVEN IF NONE OF THEM EFFECTS TERMINATION OF THE TENANCY

# WHAT ABOUT THE “OCCUPANT” LEFT BEHIND IN A SINGLE TENANT UNIT?

- ARE THEY A “SPOUSE”?
- FILE s. 100 APPLICATION: UNAUTHORIZED OCCUPANT
- IF “SPOUSE” THEN MUST FILE CERTAIN FORMS TO ASSERT RIGHT TO STAY
- IF STAYS, THEN THAT IS YOUR NEW TENANT, BUT CAN BREAK LEASE AT ANY TIME ON 60 DAYS FROM DATE 60 DAY NOTICE IS GIVEN, EVEN IF THAT IS YEARS LATER



## **CONFIDENTIALITY BY LANDLORD (INCLUDES EMPLOYEES/AGENTS OF LANDLORD)**

- Cannot disclose to anyone that a notice has been given, nor any reference to its contents, except to [the usual suspects: landlord's lawyer, law enforcement "if they request it", etc.]
- In the case of a joint tenancy, can tell other joint tenant(s) only after tenant has vacated
- You cannot advertise the unit as available for rent until after the unit is vacated
- As Landlord, you can inform the PM or superintendent that the notice has been given only "if the person needs to know that fact"
- PM or superintendent has to maintain confidentiality
- New offence provisions make it an offence to breach confidentiality (up to \$100K fine)
- There is "civil liability" if tenant is injured by abuser after "landlord" breach of secrecy provision

# Landlord/Staff Training Issues

- Ensure you know what the form looks like; what it means; and, what to do with it.
- Make sure the statement meets the basic requirements such as:
  - (i) Asserts “violence or abuse” or “sexual violence”;
  - (ii) caused by a member of the “abuser class”;
  - (iii) that has been experienced;
  - (iv) by a tenant or a child residing in the unit.
- The abuse need not have been experienced at the rental unit.

# Landlord/Staff Training Issues

- Have clear written instructions available to all staff
- Instructions should clearly set out process for what to do with the form (who it may be given to) and assign a person to receive and review it
- Written instructions should be clear that absolute secrecy about the fact that a notice has been given is paramount, as should consequences of breach of secrecy or breach of process (ie: discipline to and including termination of employment)

# Landlord/Staff Training Issues

- Written instructions should include process for determining whether the Tenant has vacated the rental unit on or before the termination date
- Written instructions should include process for communication with remaining tenant(s) after termination date if tenant giving the notice has vacated
- Written instructions should include process for unit inspection after termination date

# Landlord/Staff Training Issues

- Written instructions should include process for entry if entire tenancy is terminated
- Written instructions should include process for determination of termination of interest by one tenant where there is a joint tenancy (caution is required!)
- Written instructions should include process for documentation of, and continuity of, movement of the Notice within landlord's operation

## Landlord/Staff Training Issues (LMR)

- Written instructions to staff relative to LMR?  
It remains to the credit of the Landlord unless the tenancy is fully terminated. In a joint tenancy, the vacating tenant cannot claim an interest in LMR.
- Since the tenancy can be terminated mid month, if a portion of LMR is left over, it must be credited/returned to the tenant(s) who vacated

# Landlord/Staff Training Issues (Turnover and Re-rental)

- You cannot list the unit for rent until after the tenancy is terminated, if and when it is terminated.
- You can advertise that a unit “might” be available: not recommended in a small building because it may result in breach of secrecy

# Landlord/Staff Training Issues

- If you want to challenge the validity of the Notice, you can disclose the fact the Notice has been given, but only to:
  1. Legal reps
  2. A “ministry” employee in connection with investigation or prosecution of an offence
  3. Police, but only if they request it from you
  4. To an employee of the Board if you have started a proceeding (ie: arrears owed, ss. 87, 88) where an issue is whether the Notice is valid (but no section permits the landlord to file a separate application on this basis!)



# QUESTIONS?

