

# 2016 ONPHA Conference and Trade Show

**303**

## Head lease arrangements: Challenges and options

**PRESENTED BY:**

Douglas H. Levitt, Horlick Levitt Di Lella LLP

Isaac Coplan, Coordinator, Education Services, ONPHA



# Today's Presenter



**HORLICK  
LEVITT  
DI LELLA  
LLP** BARRISTERS  
& SOLICITORS

Douglas H. Levitt was admitted to the Law Society of Upper Canada in 2000. Doug is a senior partner at Horlick Levitt Di Lella LLP, and has extensive experience advising and representing landlords. His practice includes representing landlords with respect to property acquisition and disposal, financing, construction, conversion of residential properties, property management, employment, contracts, leasing and litigation & dispute resolution. In this last regard, Doug has appeared before a variety of courts and administrative tribunals, including the Landlord and Tenant Board and the Divisional Court of Ontario.

Why are you here?

# The Issues



1. What is the legal relationship between the private landlord and the social housing landlord?;
2. What is the legal relationship between the private landlord and the occupant?;
3. What is the legal relationship between the social housing landlord and the occupant?;
4. Are these relationships governed by the RTA?



# Some Law



## Section 1 - Purposes of Act

- to provide protection for residential tenants from unlawful rent increases and evictions;
- to establish a framework for the regulation of rents;
- to balance the rights and responsibilities of landlords and tenants; and
- to provide for the adjudication of disputes.



# Some More Law

## Section 2(1) - “landlord” includes:

- the owner of a rental unit;
- any person who permits occupancy of a rental unit; and
- a person who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or the RTA.



## Section 2(1) - “tenant” includes:

- a person who pays rent in return for the right to occupy a rental unit.



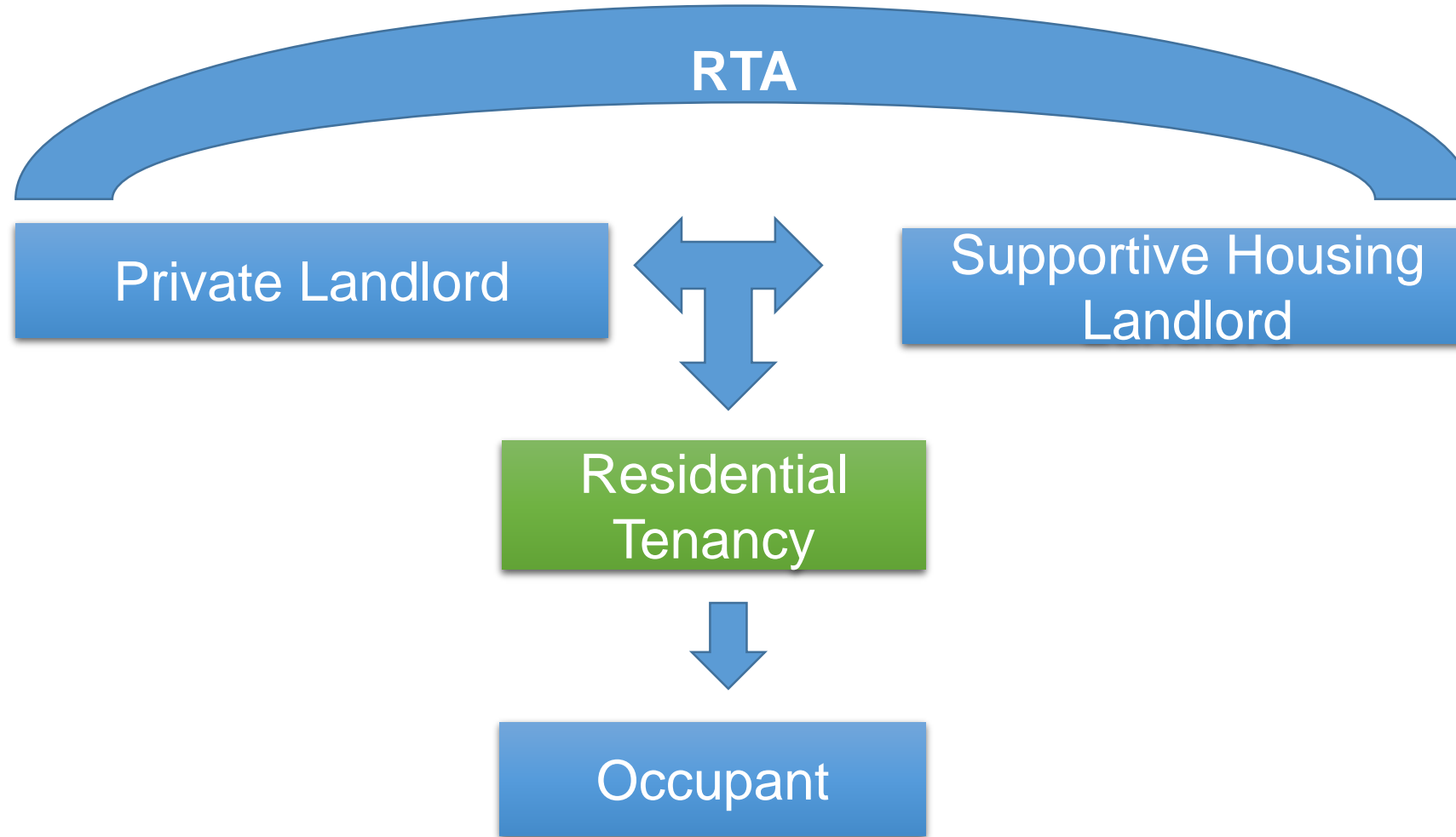
# Just a Bit More Law

## Section 202 (1) - Findings of Board:

In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a rental unit and, in doing so, may disregard the outward form of a transaction.

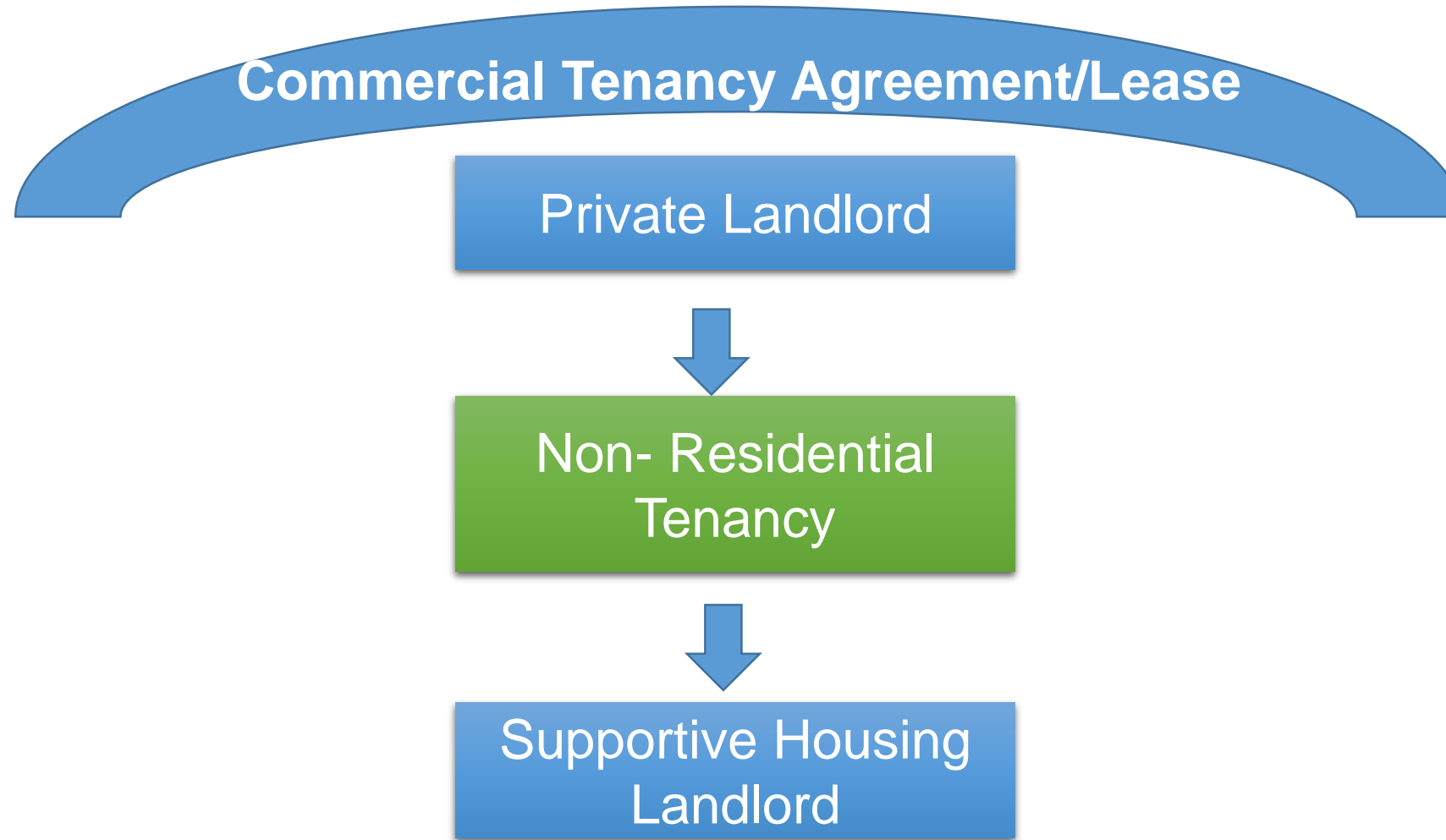


# Single Residential Tenancy





# Non-Residential Tenancy

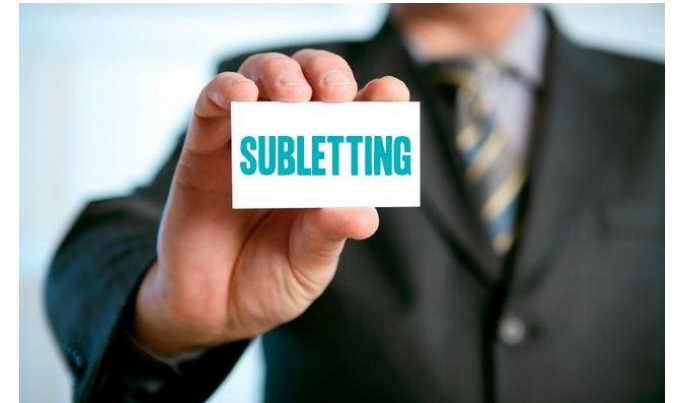


# Subleasing Defined

**Section 97(2):** A tenant may sublet a unit with the consent of the landlord.

**Section 2(2)** - subletting a unit refers to the situation in which the tenant:

- vacates the unit;
- gives another person the right to occupy the unit for a term ending on a specified date before the end of the tenant's term; and
- has the right to resume occupancy of the unit.



# Subleasing Consequences

- the tenant remains entitled to the benefits, and is liable to the landlord for the breaches, of the lease or the RTA during the subtenancy; and
- the subtenant is entitled to the benefits, and is liable to the tenant for the breaches, of the sublease or the RTA during the subtenancy.



# Termination of a Subtenancy

- **Section 97(5):** A subtenant has no right to occupy the unit after the end of the subtenancy.
- **Section 101(1)&(2):** If a subtenant continues to occupy the unit, the landlord or the tenant can apply to the LTB for an eviction order within 60 days after the end of the subtenancy.
- **Section 104(4):** If an application is not initiated and/or if a new lease is not entered into, occupation of a unit is deemed to be an assignment.



# Assignment Consequences

- the lease continues to apply on the same terms and condition.
- the assignee is liable for the breaches of, and may enforce the landlord's obligations under, the lease or the RTA, if the breach or obligation relates to the period after the assignment;
- the assignor is liable for the breaches of, and may enforce the landlord's obligations under, the lease or the RTA, if the breach or obligation relates to the period before the assignment.



# The Acts



RTA	CTA
security of tenure	no security of tenure
protection against unlawful evictions	self-help terminations
protection against rent increases	no protection against rent increases
repair & maintenance obligations	no repair & maintenance obligations
cost-effective adjudication of disputes	adjudication before the SCJ
RTA prevails over terms of lease	lease prevails over terms of CTA



What are the issues and  
potential options?

# Questions



**HORLICK  
LEVITT  
DI LELLA  
LLP** BARRISTERS  
& SOLICITORS