



2017 ONPHA Conference and Trade Show

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Future

602

What's in a lease? The basics of lease management under the HSA

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Learning goals

By the end of the session, participants will be able to:

1. Assess who qualifies as a tenant
2. Identify what to include in a lease and how to administer it
3. Update the lease after a tenant moves in



The Legislation

Residential Tenancies Act

- *Residential Tenancies Act* (RTA)
 - governs legal relationship between tenants and landlords
 - Establishes the Landlord & Tenant Board to adjudicate disputes



Housing Services Act

- *Housing Services Act* (HSA)
 - governs amount of and eligibility for RGI rent
 - “Tenant” never appears
 - HSA refers to households, and “members of households”



Housing Services Act

- General Duties of Housing Providers:
 - “collection of rents and administration of leases”
- Part VII Providers
 - required to have written leases with their tenants
 - Service Managers may make local standards relating to leases



How does HSA and RTA fit together?

- Exemptions from RTA for Social Housing Providers
 - designed to provide control over who is legal tenant
 - ensure that the chronological waiting list is respected
 - Definition of tenant is more narrowly defined for social housing tenants
 - Spouse not included in definition of tenant*
 - Tenant cannot assign their unit to another person or sublet it
- Designed to ensure that each new tenancy is created from person coming from waiting list, and not by one household passing unit to another



RTA Sections that DO NOT apply

- Sections 95-99:
 - Tenants may sublet or assign unit with the permission of the landlord
 - Landlord must consent if reasonable
- Section 100(2)
 - Landlord must bring application to terminate within 60 days
- O. Reg 516/06 Tenant dies or vacates leaving a spouse in unit, spouse is defined as a tenant



Local Standards

- How many people have all members of household over 16 sign initial lease?
- A tenant wants to add person to household. How many of you:
 - Sign brand new lease with ALL members of household
 - Have them send in notification in writing that someone is added
 - Sign contract or addendum saying new person is added, but not tenant, no right to subsidy
 - Other



HSA O. Reg 367/11 Reporting

- Households must report annually and within 30 days
 - Changes to household membership or income
 - Provide information necessary to determine rent when requested
- Other eligibility requirements such as absence from unit and occupancy standards
- What is the consequence of breaching these clauses of a lease?
 - Subsidy loss
 - Eviction IF: misrepresentation of income or assignment/sublet



Current RTA Requirements

- Name and address of landlord for purpose of service
- Must provide LTB brochure *Information for New Tenants*
- Must provide copy of signed agreement within 21 days
- If no lease, must still provide name and address
 - Tenant's obligation to pay rent is suspended if these things are not done
- If tenant pays electricity – before they sign lease – must provide information on usage
- NEW: Certain classes of tenancies will have prescribed leases



RTA Requirements Cont'd

- Term commences on date tenant is entitled to occupy unit under agreement
- “No pet” provisions void
- Clauses that provide penalty if rent not paid are void
- In general any clause that contradicts or does not comply with the RTA is void
- More to come with prescribed leases



Starting the tenancy

What is a Lease?

- A lease is a contract, and requires:
 - Offer and acceptance
 - Consideration
 - Capacity
 - Consent
 - Lawful purpose
- Regulated by the *Residential Tenancies Act* and *Housing Services Act*



What is important: Basics

- Proper identification of parties to contract
- Proper identification of the subject of contract
- Specifying consideration
- The term or any timelines
- What are rights and obligations of parties
- *What will happen if a party breaches their obligations*



Breach of Contract - Generally

- Can go to court to enforce
 - Damages equal to loss suffered
 - Specific performance
- Cease performance
 - Not available to residential landlords
- Should attempt to mitigate damages



ONPHA Sample lease

☐ Landlord Copy ☐ Tenant Copy

RENTAL AGREEMENT (LEASE)

[insert your non-profit's logo here]

Lease Part 1: Terms

This is a legal agreement (the Agreement) between you, the tenant(s),

Tenant _____ Tenant

Tenant _____ Tenant

and [Name of non-profit],

Mailing Address: [insert here]

Office Address: [insert here]

If there is more than one Tenant or there is a co-signor, each Tenant and co-signor are fully responsible for all parts of the lease. For example, if one of the Tenants does not pay his or her share of the rent, the other Tenant(s) and/or the co-signor must make up the difference.

Only these people can live in the Unit in addition to you:



Identifying the parties

- Who is signing lease:
 - Landlord (or Representative)
 - Tenants: lease should identify tenants and be signed by everyone identified as tenants
- If there are additional household members (occupants) you should list them separately:
 - Tenant = Joe Smith
 - Occupants/Members of Household = Mary and Jane Smith (children)



Definition: Tenants, Occupants & Guests

- Guest (dependent on guest policy) not part of household
 - short and finite term
- Tenant v. Occupant: Its complicated!!
 - Who signed lease
 - Have there been changes to household
 - Have signatories to lease moved out
 - What does paperwork say



Tenants and Occupants

- Should be defined in lease
- If no lease, or changes to household so that one or more tenants have moved out:
 - definition of “tenant” may require legal interpretation



Terms

- What is included
 - Market rent and RGI
 - Parking
 - Utilities
 - Appliances



Conditions

- Rent
 - When rent is due
 - How and where to pay
- Responsibilities
 - Tenants
 - Landlord
- Making Changes to Property
- Damages
- Insurance
- Entry
- Moving out
- Lease renewal
- Abandoned belongings
- Smoking
- Notices



Policies

- Paying rent
- Locks
- Pest control
- Pets
- Security
- Building safety
- Parking
- Laundry rooms
- Balconies
- Requests for maintenance
- Smoking
- Complaints



RGI provisions

- Requirements to report changes
- Basic eligibility criteria
- Local rules
 - Absence from unit
 - Overhousing
 - RGI to market rent
- Guests
- Pursuit of income



During the Tenancy

Responsibilities of Tenants

- Pay rent on time
- Paying utilities if necessary
- Not to sublet or hand over unit (queue jumping)
- Ordinary cleanliness
- Notifying of need for repairs/maintenance*
- Not to interfere with landlord or neighbours
- Not to change locks without permission of landlord
- Not to modify unit or install appliances without consent.*



Responsibility of Landlords

- Maintenance of complex
- Not to change locks without providing key
- To enter unit only as allowed by law
- Not to withhold supply of any vital service, care or food that landlord is obligated to supply
- Not to interfere with reasonable enjoyment, nor harass, coerce obstruct or threaten a tenant



Using lease at LTB

- Determine what can be adjudicated at LTB
 - Does the breach:
 - Impact the neighbours
 - Interfere with your legal obligations to other tenants
 - Impose costs on you as landlord
 - Cause an actual or potential hazard



Impact of Policies on Leases

- Lease is contract between 2 or more people
 - To obtain living space in exchange for monthly rent
- To change term in lease, need consent of all parties
- To add conditions to tenancy you need consent *unless it is already allowed for in the lease*



Examples

- Tenant
 - Stops paying rent
 - Makes alterations to unit
 - Stops paying utilities
- Landlord
 - Adds charge for parking
 - Tells tenants that from now on, satellite dishes must be installed on a pole in yard
 - Tells tenants that they can't have overnight guests



Enforcement

- Landlord enforcement generally by Notice to Terminate and Application
 - N4 Rent payment – what does your lease say is included
 - N8 Consistent late payment – lease specifies due date of rent
 - N5 Substantial Interference – breach of lease?
 - Depends on clause and the facts!
- Tenant enforcement by application to LTB
 - Has Landlord breached terms of lease or RTA
 - Has breach impacted tenant



Ending a tenancy

- Communicate with tenants at beginning of tenancy, how to end tenancy if necessary:
 - Notice is required (N9)
 - End of term
 - or 60 Days notice
 - N11, if you agree to different notice
 - Tenants cannot pass their unit on to other family or friends





Best practices

- When someone moves out
 - Is person a signatory to lease?
 - Is tenancy continuing, or is it an assignment
 - Should you sign new lease or addendum?
- When someone moves in
 - Should you sign a new lease
 - Do you think it is an attempt to “queue jump” - should you clarify expectations and rules



Best practices (cont'd)

- Use checklist at unit viewing and lease signing
- Use lease as information and communication
- Make sure responsibilities are outlined, but be careful of being too specific
- Ensure that there is clause for:
 - Modifications need permission of landlord
 - Insurance
 - Smoking if you have non smoking units
 - Specify that you cannot sublet or assign unit
 - Collection and disclosure of information





How ONPHA can help you

1. Visit ONPHA online:

onpha.on.ca

- handbooks and guides
- sample lease, policies
- Info Ons

2. ONPHA Member Support Hotline: 1-800-297-6660

3. ONPHA Education Program

- Online courses: RGI, RTA, Finance and Governance
- Webinars
- In-person training

4. ONPHA Conference

- Join us in Toronto
October 26 – 28, 2018

Thank you!

ONPHA values your opinion. Please complete the workshop evaluation.