WORKING WITH THE RESIDENTIAL TENANCIES ACT, 5th Edition

By John Dickie & David Lyman

This is to update WORKING WITH THE RESIDENTIAL TENANCIES ACT, 5th Edition, to August 14, 2023.

**Note on Expanded Landlord and Tenant Board Jurisdiction**

It is important to read and absorb that note and the two points that follow.

Concerning the information in the last paragraph on page xix, users of the text should also refer to section 189.0.1, which provides for the applicant to serve the application and notice of hearing on former tenants. See also Rule 5.8, which provides: “A landlord’s Application to Collect Money a Former Tenant Owes and the Notice of Hearing must be served **at least 30 days** before the hearing date set in the Notice of Hearing.”

For several reasons, a request for substituted service should be made early immediately after the hearing notice is received. The first step is usually to try to achieve actual service by hand as soon as possible after the hearing notice is received. If using a process server, you should impress upon them the need for speedy action, and the need for them to record the attempts made, and any evidence that the tenant is evading service. That information will be needed to support your request for an order for substituted service.

**Chapter 1 — Overview**

At the bottom of TABLE 1.1, insert a new row in columns 1 and 2 as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Date Stature Took Effect** | **Name of the Statute** | **Name of the Decision-Making Body for Rent control** | **Notes** |
| June 8, 2023 | *Helping Homebuyers, Protecting Tenant Act, 2023* (Bill 97), Schedule 7\*\* |  |  |

\*\*Bill 97 was an omnibus Act, which amended seven separate Acts. The revisions to each Act are set out in a separate schedule. It is Schedule 7, which amends the Residential Tenancies Act (RTA). In citing the Act, one need not generally refer to Schedule 7. However, to find something in the Act pertaining to the RTA, you need to know to look at Schedule 7. The website “Ontario e-laws” sets out the sections within the RTA (in the order of the sections in the RTA, and with a clear indication if the section or sub-section is not yet in force.)

**Chapter 2 — Legal Framework**

Since the editing of the text closed in September 2021, there have been no significant changes affecting this chapter.

**Chapter 3 — Does the RTA apply**

Since the editing of the text closed in September 2021, there have been no significant changes affecting this chapter.

However, note that on page 28 there is a box on the “Special Rule for 2021.” The text refers to the guideline rent increase, which is discussed at pages 216 to 217.

**Chapter 4 — The Tenancy Agreement**

On page 37, in a new section under the section entitled “Responsibility for Services,” readers should insert the following:

**Rules about installing air conditioners**

There are several stages to bringing new statutory rules into force. First, the Provincial Legislature must enact it. Then there will be “Royal Assent,” by the Lieutenant-Governor on behalf of the King. Some Acts or sections of Acts come into force on Royal Assent. However, other sections are designated to come into force on a date to be proclaimed by the Lieutenant-Governor. Those sections can be sections that the government (i.e. the provincial cabinet) wants to delay for one reason or another. Or those sections can be rule changes that require other steps besides enactment, such as new regulations or new forms.

As a new set of rules, Bill 97 includes RTA section 36.1. That section addresses tenants’ rights to install air-conditioners provided they follow certain steps. That section is to come into force on a date to be proclaimed.

There will be various new rules about installing air conditioners and about an additional charge to be payable for the cost of the electricity to operate the air conditioners, some of which depend on the regulations which are to be enacted by the Lieutenant-Governor-in-Council (i.e., the provincial cabinet).

The authors will provide an update when those rules are brought into force.

**Chapter 5 — The landlord’s obligation to repair**

Since the editing of the text closed in September 2021, there have been no significant changes affecting this chapter.

**Chapter 6 — Other rights and obligations**

In the second to last paragraph on page 64, there is a reference to maximum fines for violations of the RTA of $50,000 for an individual and $250,000 for a corporation. Although increases in the maximum fines to $100,000 and $500,000, respectively, have been enacted by Bill 97, those changes have not been brought into force.

As noted on page 252, under standard sentencing principles, the maximum fine will only be imposed on the worst offender for the worst offence. It is highly unusual for significant fines to be imposed under the RTA unless there are aggravating circumstances and/or repeat offences.

**Chapter 7 — Procedures Under the RTA**

On page 69, paragraph 3 ends with this phrase, “… applying to the Board for direction about service is rare.” Users of the text should note that that comment does not apply to the service of an application (and the notice of hearing) on former tenants. In that situation, the Board is quite concerned that the documents actually reach the former tenant. Therefore, landlords need to follow best practices in keeping e-mail addresses and updating addresses for service. Under the Rules, a request for an order for substituted service must be made at least 45 days before the hearing, and it should be made as soon as possible. The Board wants information to show that the former tenant will receive the documents by the proposed method of service. Evidence that the former tenant is evading service may be helpful as well.

Page 73 is largely obsolete. What follows is the updated information about filing applications.

The Board has recently shifted to a digital-first approach to the filing of applications. The Board strongly encourages parties to file most applications through the Tribunals Ontario Portal or, as a second best choice, by e-mail. Filing by mail or courier to any Board office can be done, but that is discouraged. The Board’s website says that parties can file applications in person at some Service Ontario offices.

The main exception to e-filing is for AGI applications, when filing at a Regional office is required. Such applications often involve hundreds of pages of paper. They are discussed in Chapter 16 at pages 224 to 231.

In most cases, a fee must be paid to file an application. The fee can be paid by a credit card, or by a certified cheque or money order.

**Chapter 8 — Tenant Applications**

On page 78, at the beginning of the section “Limitation Periods,” the text states: ”… most tenant applications to the Board have a one year **limitation period**.” That is still correct, but an unusual exception has been added for tenant applications alleging a bad faith eviction for major repairs or renovations. The following explanation should be added after the Case in Point on page 79:

Once the relevant sections of Bill 97 have been brought into force, there will be a special limitation period for claims that a landlord has evicted a tenant for renovations in bad faith. (Once those sections are in force, additional content will be provided for Chapter 10, giving more information about the issues involved in claims for bad faith evictions for renovations.) This material addresses the limitation periods.

Instead of the normal limit of one year from the wrongful act, section 57.1(2) already provides for a limit of two years from the date the former tenant vacated the unit. If the tenant indicates they want to return to the rental unit, a landlord is required to provide the tenant information after the tenant has left the unit. The special limitation period is that the former tenant will also have until six months after the major repairs or renovations are completed to file an application. The limitation period will run until the later of two years after the tenant vacates and six months after the repairs or renovations are complete.

Unlike under the usual rules, the extended limitation period is to apply to applications made but not finally determined when the new limitation period is brought into force. In addition, if an application has been dismissed for failure to file within two years of vacating the unit, a former tenant may make a fresh application to claim compliance with the new six-month limit.

**Chapter 9 — Terminating Tenancies: Fault Grounds**

Since the editing of the text closed in September 2021, there have been no significant changes affecting this chapter.

On page 107, in the box, at the end of paragraph one, there is a note that “As of June 2021, no end date has been prescribed.” That should be updated to read: “As of August 2023, no end date has been prescribed.”

**Chapter 10 — Terminating the Tenancy Agreement: No-Fault Grounds**

At page 142, add the following at the end of the section entitled “Repairs or Renovations”: When Bill 97 is brought into force, it will make it mandatory for landlords who serve tenants with an N13 notice of eviction to provide them with a report from a qualified individual stating that vacant possession is needed to carry out the work and that a building permit will have to be issued. An expected timeline for the renovation must also be included.

If a landlord does not deliver the report, the N13 notice is void, and the landlord will not be granted their termination: section 50(3.1). Bill 97 also provides that an adjudicator is not bound by a report indicating that vacant possession is needed: section 73(4).

**Chapter 11 — Processing Application Under the RTA**

Since the editing of the text closed in September 2021, there have been no significant changes affecting this chapter.

**Chapter 12 — Negotiations, Mediation, and Hearings**

On page 161, there is a box about the Landlord Obligation to attempt to negotiate a payment plan. That obligation still exists, but the Board has not put specifics around it.

At the top of page 167, readers are invited to check the emond.ca website for an update on the usual hearing processing. Here it is:

The Board is now holding almost all its hearings by Zoom video conference. The most common set up has a Board employee sign people in and give them a name tag with their docket number and role, such as “#14-Tenant” or “#20–LL rep,” standing for docket #20, landlord representative. The Board employee then sends people to break out rooms to speak to Duty Counsel, or a mediator, or to negotiate by themselves if they want to do that. When people are ready, the Board employee sends people to one or other of two hearing rooms for an adjudicator to hear their case. In one three- or four-hour time block, there can be as many as 40 cases, with 80 people waiting to be heard or helped by two adjudicators and one or two mediators. Often, the Board gets through all the cases, but sometimes it does not. When cases are being scheduled for the second time, the Board usually schedules far fewer cases with one adjudicator and no mediator in the expectation of finishing all the cases.

**Chapter 13 — The Order and Beyond**

Since the editing of the text closed in September 2021, there have been no significant changes affecting this chapter.

However, to explain the law and practicalities better, in the section “Appeal of an Order,” starting on p.190, it would be advisable for users of this text to insert the following after the first sentence of the section “Appeal of an Order”:

“S. 210(1) contemplates a final order of the Board, i.e., an order that determines the parties’ substantive rights, not an interim order that provides for what the parties need to do until the final order is made. In all legal areas, the courts of Ontario are extremely reluctant to hear appeals of interim orders. An example of an interim order would be an order that a tenant who owes $20,000 in rent pay $1,000 of it to the Board and pay the landlord the rent (of, say, $2,00 per month) until the hearing is held. The Divisional Court would reject an appeal of such an interim order and probably order the party who made the appeal to pay the costs of the respondent in the appeal. In addition, the Board would not delay its proceedings for an appeal of an interim order to be decided because to do that would allow parties to stall Board proceedings and interfere with the Board’s timely resolution of the parties’ rights.”

Then, start a new paragraph. For the first sentence in that new paragraph, replace “The appeal does not require …” with “The appeal, which is presumed to be an appeal of a final order, does not require … .”

**Chapter 14 — Parting with Possession by the Tenant**

Since the editing of the text closed in September 2021, there have been no significant changes affecting this chapter.

**Chapter 15 — Additional Grounds for Termination**

Since the editing of the text closed in September 2021, there have been no significant changes affecting this chapter.

**Chapter 16 — Increasing the Rent**

Since the editing of the text closed in September 2021, there have been no significant changes affecting this chapter.

**Chapter 17 — Rent Reductions and Rebates**

Since the editing of the text closed in September 2021, there have been no significant changes affecting this chapter.

However, at the end of page 244, it would be well to note that applications to vary automatic rent reductions are usually processed as written hearings.

**Chapter 18 — Offences under the RTA**

Since the editing of the text closed in September 2021, no changes have been made to the offences other than through the provisions not yet in force that deem certain acts or failures to act to constitute terminations in bad faith.

In the first sentence under the title “Fines for the Offences” on page 252, there is a reference to maximum fines for violations of the RTA of $50,000 for an individual and $250,000 for a corporation. Although increases in the maximum fines to $100,000 and $500,000, respectively, have been enacted by Bill 97, those changes have not been proclaimed. You can check whether they have been brought into force at Ontario e-laws.

**Chapter 19 — Housing Co-operatives**

Since the editing of the text closed in September 2021, there have been no significant changes affecting this chapter.

**Appendix D**

On page 404, add to the table two more rows:

|  |  |  |
| --- | --- | --- |
| **Guideline percentage** | **Time period** | **Statute** |
| 2.5 | January 1, 2023 – December 31, 2023 | RTA |
| 2.5 | January 1, 2024 – December 31, 2024 | RTA |

John Dickie &

David Lyman

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