

Ontario's New Standard Form of Residential Lease: What Landlords and Property Managers Need to Know

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Background, Purpose, and Implementation of the New Lease¹

Building on its 2017 expansion of rent control to all residential units and the City of Toronto's recent registration and maintenance obligations on residential landlords, the Government of Ontario has now developed a new standard lease template (the "New Lease"), which was promised under 2017's Ontario Fair Housing Plan.

The New Lease is a direct response by the provincial government to what it sees as landlords taking advantage of unsophisticated tenants in a rental market that already favours landlords (low vacancies). According to the Ministry of Municipal Affairs and Housing, the purpose of the New Lease is to help:

- reduce "legalese" and replace it with easy-to-understand language;
- landlords and tenants understand their respective rights and responsibilities;
- reduce illegal terms in leases and misunderstandings caused by oral tenancy agreements; and
- reduce the need for Landlord and Tenant Board hearings to resolve disputes.

Commencing April 30, 2018, landlords of almost all (see below for exceptions) private residential dwellings must use the New Lease which will be available in both English and French and the Government of Ontario is creating a guide to the New Lease which will be available in 23 languages.

Application of the New Lease

The New Lease will apply to almost all private residential tenancies in Ontario, including:

- single and semi-detached houses;
- apartment buildings;
- condominiums; and
- secondary units (for example, basement apartments).

The New Lease will NOT apply to residential tenancies that have special rules or partial exemptions from the *Residential Tenancies Act*, including care homes (such as retirement homes), mobile home parks and land lease communities, and social and supportive housing; instead, the Government of Ontario is planning on developing separate standard lease forms to address the unique characteristics of each of those types of tenancies.

Any new lease signed on or after April 30, 2018 must be on the New Lease form. Tenants who signed leases prior to April 30 are not entitled to rely on the terms in the New Lease unless they agree with their landlord to enter into a New Lease on or after April 30. Similarly, tenants with leases signed prior to April 30, 2018 which then renew on a month-to-month basis after April 30 are not entitled to ask for a New Lease.

Lease Terms

Landlords and residential property managers alike should familiarize themselves with the terms of the New Lease and understand how it will impact their businesses.

Basic Information

The New Lease requires the parties to list standard basic information: the names of the parties, the rented premises (and any associated parking spaces), the term, and the total rent payable (including base rent, any parking rent, and rent on account of any other services and/or utilities supplied by the landlord).

A new addition to the New Lease is a checkbox for whether the premises is a unit in a condominium; if it is, then the tenant must agree to comply with the condominium declaration, by-laws, and rules, which must all be provided to the tenant by the landlord.

Payment of Rent

The New Lease clarifies existing law in Ontario regarding deposits – deposits cannot exceed one month's rent (or the rent for one rental period, e.g. one week, if the rental period is less than one month), they can only be applied towards last month's rent and CANNOT be applied as a damage deposit. The landlord must pay the tenant interest on the rent deposit every year, as is currently required. Likewise, any key deposits cannot be larger than the expected replacement cost of the keys.

The New Lease also specifically notes that tenants cannot be forced to pay rent by postdated cheques or by automatic debit, and limits the administration fee for any NSF cheques to a maximum of \$20.

Regarding utilities, the New Lease requires that where a tenant will be paying for electricity on the basis of a separate meter, the landlord must provide the tenant with historical usage data over the preceding 12 month period using the prescribed Landlord and Tenant Board form.

Smoking Rules

As we move towards the legalization of recreational cannabis in Canada, many questions have been asked about the rights of tenants to smoke cannabis in their rental units. As it currently stands, the consensus seems to be that the terms of existing leases regarding "smoking" will be applied to cannabis as well. This means that where an existing lease does not PROHIBIT smoking, tenants will be allowed to smoke cannabis in their units (subject to reasonable restrictions on interfering with other tenant's enjoyment of their units). The New Lease contains a section on smoking and allows the landlord to prohibit smoking altogether or to give details about smoking rules. Prudent landlords or property managers should ensure that recreational cannabis is specifically addressed in their leases (note that special rules apply to medicinal cannabis).

Additional Terms

The key provision in the New Lease which provides landlords with flexibility – and has been decried by tenant activist groups – is the ability for landlords to include "Additional Terms" in the New Lease.

Crucially, all Additional Terms must comply with both the general terms of the New Lease and with the Residential Tenancies Act; any conflicting term is void. Some examples of void provisions include limiting the number of guests a tenant may have, prohibiting pets (subject to condominium rules), and requiring damage deposits.

Some common Additional Terms suggested by the New Lease are:

required changes to the unit that the landlord must make prior to the tenant's occupancy;

rules for the use of common areas and/or building amenities; and

requirements on the landlord/property manager to clean the unit.

Failure to Comply

Withholding Rent

The New Lease regime permits tenants who sign leases on or after April 30 that are NOT on the New Lease form to ask their landlord to sign a New Lease form, and the landlord is obligated to provide such New Lease within 21 days of request. If the landlord does not provide a New Lease within such 21-day period, then the tenant may withhold one (1) month's rent!

The landlord then has an additional thirty (30) days to provide the New Lease (in which case the tenant must pay the withheld rent), failing which the landlord forfeits the one (1) month's rent. Tenants cannot withhold more than one (1) month's rent and must continue to pay rent in full following the one month, even if the landlord never provides a New Lease.

Terminating the Tenancy

In addition to a tenant's right to withhold rent as set out above, if the landlord does not provide the New Lease within 21 days after the tenant has made a written request, the tenant may terminate the lease on 60 days' notice (for a yearly or fixed-term tenancy).

Moreover, if the landlord provides the tenant with the New Lease after the tenant has asked for it, but the tenant does not agree to the proposed terms (for example, a new term is added), the tenant may also terminate the lease on 60 days' notice (for a yearly or fixed-term tenancy). In such a case, the tenant must give the 60 days' notice no later than 30 days after the landlord provided the New Lease.

In either case, the effective date for termination must be the last day of a rental period (for example, the end of a month).

More Information

We would be happy to discuss how the New Lease – or Ontario's recent reforms to residential tenancy law – may affect your business. For more information, please contact Robert Eisenberg of our Leasing Group at 416-619-6287 or by email at reisenberg@weirfoulds.com.

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The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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Robert Eisenberg is a property development and commercial leasing lawyer who excels at identifying potential landmines and devising clear, creative, and proactive solutions.

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