

Ending a Tenancy

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When can a tenancy be terminated?

The Residential Tenancies Act defines the circumstances under which a tenancy may be terminated and establishes specific notice requirements, which vary depending on the notice being given.

How can a tenancy be terminated?

- 1) Agreement to terminate;
- 2) Tenant's notice to terminate tenancy;
- 3) Notice of termination before end of term; and
- 4) Notice of termination at end of term.

AGREEMENTS TO END A TENANCY

Can a landlord and a tenant agree to end the tenancy?

A landlord and a tenant may enter into a mutual agreement to terminate the tenancy at any time during the tenancy. An agreement to terminate should be in writing and include:

- a) the date the tenancy will end;
- b) a description of the rented premises (unit and address);
- c) the date the agreement is signed; and
- d) the signature of the landlord and all tenants occupying the unit.

A landlord or tenant may use the Landlord and Tenant Board Form N11. If the tenant fails to vacate the premises according to the notice, the landlord **must** take action within 30 days of the stated termination date or the notice becomes void and unenforceable.

An agreement to terminate the tenancy is void if:

- It is entered into at the time the tenancy agreement is entered into; or
- It is a condition of entering into a tenancy agreement.

(Except where the rental unit is owned or administered by an educational institution).

TENANT'S NOTICE TO END A TENANCY

What are the requirements for a tenant giving notice to a landlord?

A daily or weekly tenant is required to give 28 days' notice to the end of the rental period or term. For all other types of tenancies, a tenant is required to give 60 days to the end of the rental period or term. A tenant's notice to terminate should be in writing and:

- a) identify the rental unit for which the notice is given;
- b) state the date on which the tenancy is to terminate; and
- c) be signed by the person giving the notice, or the person's agent.

A tenant **must** use the Landlord and Tenant Board Form N9. If the tenant fails to vacate the premises according to the notice, the landlord **must** take action within 30 days of the stated termination date or the notice becomes void.

The tenant's notice to terminate the tenancy is void if:

- It is entered into at the time the tenancy agreement is entered into; or
- It is a condition of entering into a tenancy agreement.

Tenant's Notice to End Tenancy Because of Fear of Sexual or Domestic Violence

If the tenant, or a child living with the tenant experience sexual or domestic violence or abuse, the tenant can give a notice to end the tenancy. This is a 28 days' notice given by the tenant (using form N15) and it does not have to be the last day of the rental period. However, the notice should be accompanied by a copy of either a court order (restraining order or peace bond), or a signed and dated statement (Tenant's Statement About Sexual or Domestic Violence and Abuse) declaring that the tenant or a child living in the unit has experienced domestic or sexual violence.

For more information, please review our RTA Fact Sheet entitled Tenant's Notice to End Tenancy Because of Fear of Sexual or Domestic Violence (N15) at <https://landlordselfhelp.com/rta-fact-sheets/>

How can a Landlord enforce an Agreement to Terminate or Notice of Termination by a Tenant if the tenant does not leave?

Under s.77 of the *Residential Tenancies Act*, a landlord may, without notice to the tenant, file an application with the Landlord and Tenant Board using Form L3 upon receipt of the tenant's proper notice to terminate or upon the signing of the agreement to terminate but no later than 30 days after the termination date. The Board may then issue an Order terminating the tenancy and evicting the tenant.

LANDLORD'S NOTICE – ENDING A TENANCY EARLY

The *Residential Tenancies Act* permits a landlord to terminate a tenancy early for several reasons. Most provisions for early termination of tenancy provide the tenant the option of avoiding termination by correcting the problem within a specific time frame. A landlord may terminate a tenancy early for specific grounds including:

- non-payment of rent;
- interference with the reasonable enjoyment or lawful right of the landlord or another tenant;
- overcrowding;
- undue damage;
- impairing safety; and
- illegal act.

NOTE: If a tenant does not agree with what is in the notice, they do not have to move out of the unit. This means the landlord would be required to apply for an eviction and attend a hearing, seeking an order issued by the Landlord and Tenant Board.

Non-Payment of Rent

A landlord may issue a notice of termination using Form N4 if the tenant fails to pay rent lawfully owing under a tenancy agreement. The notice may not be effective earlier than the 7th day for a daily or weekly tenancy or the 14th day for all other types of tenancy agreements. The notice must specify the amount of rent overdue and that the tenant may avoid termination by paying the rent before the notice becomes effective.

Note: Section 83 (6) states that in determining whether to grant an application to evict a tenant based on arrears of rent arising during the period **beginning on March 17, 2020 and ending on the prescribed date**, the Board shall consider whether the landlord has attempted to negotiate an agreement with the tenant including terms of payment for the tenant's arrears. Landlords need to retain any documentation that illustrates or documents their efforts to negotiate a payment plan or agreement with the tenant for the rent arrears.

Reasonable Enjoyment or Lawful Right

If the conduct of a tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant substantially interferes with the reasonable enjoyment of the residential complex or another lawful right, privilege or interest of the landlord or another tenant, a notice may be given using Form N5. The landlord must include the dates and times of the occurrence of the events listed on the notice. The notice cannot be effective earlier than 20 days and must explain in detail the reasons for termination and require the tenant to stop the activity or conduct or correct the problem set out in the notice within 7 days. The notice becomes void if the tenant complies within 7 days. If the tenant voids the notice by correcting the problem and the event occurs again within six months of the 1st N5 being issued, the landlord may serve a 2nd N5. The 2nd N5 notice cannot be effective earlier than 14 days and there is no opportunity for the tenant to correct the problem and void the notice.

NOTE: Landlords who reside in a building containing not more than 3 residential units may instead give a tenant of a rental unit notice using Form N7. The termination date is at least **10 days** after the notice is given and does **not** give the tenant the opportunity to correct the problem and void the termination notice.

Too Many Persons/Overcrowding

If the number of people occupying the rental unit on a continuing basis contravenes health, safety or housing standards required by municipal law, notice may be given using Form N5. The notice must include the name of the municipal law or by-law that sets out the maximum number of people and the maximum number of people permitted to occupy the rental unit by municipal law. The termination date must not be earlier than the 20th day after notice is given; set out the details or the grounds for termination; and require the tenant to reduce the number of persons occupying the rental unit to comply with health, safety and housing standards within 7 days. If the tenant voids the notice by correcting the problem and the event occurs again within six months of the 1st N5 being issued, the landlord may serve a 2nd N5. The 2nd N5 notice cannot be effective earlier than 14 days and there is no opportunity for the tenant to correct the problem and void the notice.

Undue Damage

If the tenant or a person the tenant allows in the residential complex **wilfully** or **negligently** causes damage to the rental unit or the residential complex, the landlord can give notice using Form N5. The landlord must include the dates and times of the occurrence of the events listed on the notice. The notice must be dated for 20 days or longer, detail the reasons for termination and inform the tenant he or she is required to pay the reasonable costs of repairs or make the repairs within 7 days. The notice becomes void if the tenant complies within 7 days. If the tenant voids the notice by correcting the problem and the same event occurs again within six months of the 1st N5 being issued, the landlord may serve a 2nd N5. The

2nd N5 notice cannot be effective earlier than 14 days and there is no opportunity for the tenant to correct the problem and void the notice.

NOTE: If the tenant has wilfully damaged a rental unit or complex or used the unit or complex in a manner inconsistent with its use as residential premises, which causes, or can reasonably be expected to cause damage, the landlord can issue a shorter notice using Form N7. The tenancy termination date must be no sooner than **10 days** after the notice is given, and does **not** give the tenant the opportunity to repair the damages and void the termination notice.

NOTE: As of September 1, 2021 an amendment to section 88.1 pursuant to Bill 184 has expanded the definition of damages to allow landlord applications to the LTB for out of pocket costs due to the tenant's behaviour or conduct that results in monetary "damages". For example, if a tenant maliciously pulls a fire alarm and the fire department attends the property and determines it is a false alarm, the landlord may be charged hundreds and even thousands of dollars. Likewise, if a tenant disables a smoke detector or CO2 detector props open a fire door etc., the landlord may be charged under the *Provincial Offences Act* and fined similar amounts.

Impairing Safety

If an act or omission of the tenant or another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impaired the safety of any person, and the act or omission occurs in the residential complex, a notice of termination may be given using Form N7. The landlord must include the dates and times of the occurrence of the events listed on the notice. The notice may not terminate earlier than the 10th day after notice is given and must explain the reasons for the termination.

Illegal Act

If the tenant commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex the landlord can give notice using Form N6. The landlord must include the dates and times of the occurrence of the events listed on the notice. The notice cannot terminate earlier than the 20th day after it is given and must detail the reasons for termination. No less than 10 days can be given when the issue is drug trafficking.

LANDLORD'S NOTICE – ENDING A TENANCY AT THE END OF THE TERM

When can a tenancy be terminated at the end of the rental period or term?

The *Residential Tenancies Act* permits a landlord to terminate a tenancy at the end of the rental period or term for specific grounds including:

- landlord's own use;
- purchaser's own use;
- demolition, conversion or repairs; or
- persistent late payments.

Landlord's Own Use

If the landlord, in good faith, requires possession of the rental unit for residential occupation by himself/herself, a spouse or a child or parent of one of them or for a person who will provide care service to the landlord, the landlord's spouse or a child or parent of the landlord or the landlord's spouse, a notice

may be given using Form N12. The landlord must provide at least 60 days' notice and the tenancy must terminate at the end of the rental period or term.

A tenant who has received a notice of termination on the basis of the landlord requiring possession of the premises for his/her own occupation may give notice to terminate the tenancy earlier than the date set out in the notice. The tenant must give at least 10 days' notice of their intention to vacate prior to the termination date specified in the landlord's notice.

The landlord is required to give the tenant one month's rent as compensation, or offer the tenant another acceptable unit if pursuing the N12 notice. The compensation must be given on or before the termination date on the notice.

When filing an application for landlord's own use, the declaration or affidavit **must** be submitted along with the application.

Personal Use by Purchaser

Where a property is being sold and the purchaser requires possession of the premises for his/her occupation or the occupation of his/her spouse, child or parent, and **the residential complex contains no more than three residential units**, a notice may be given by the landlord/seller on behalf of the purchaser using Form N12.

The landlord is required to give the tenant one month's rent as compensation, or offer the tenant another acceptable unit if pursuing the N12 notice on behalf of the purchaser. The compensation must be given on or before the termination date on the notice and paid by the landlord/seller giving the notice.

The landlord/seller must provide at least 60 days' notice and the tenancy must terminate at the end of the rental period or term. The landlord/seller may issue this notice providing that:

- 1) The landlord has entered into a **firm agreement of purchase and sale** to sell the residential complex; **and**
- 2) The purchaser in **good faith** requires possession of the residential complex or a unit in it for residential occupation by the purchaser, the purchaser's spouse or a child or parent of one of them or a person who will provide care service to the purchaser, the purchaser's spouse or a child or parent of the purchaser or the purchaser's spouse.

When filing an application for purchaser's own use, the declaration or affidavit **must** be submitted along with the application.

Demolition, Conversion or Repairs

If the landlord requires possession of the rental unit to:

- a) demolish it;
- b) convert it to use for a purpose other than residential premises; or
- c) perform extensive repairs or renovations that they require a building permit and vacant possession of the rental unit.

A notice of termination may be issued using Form N13. The termination date specified in the notice must be at least 120 days after the notice is given and must be the day the rental period ends or the end of the term if there is a fixed term. The landlord is required to give the tenant one month's rent as compensation, or offer the tenant another acceptable unit if pursuing the N13 when there are less than 5 rental units. The compensation must be given on or before the termination date on the notice.

The notice, when given for extensive repairs or renovations, must inform the tenant if they wish to exercise their right of first refusal to occupy the premises after the work is completed. The tenant must give the landlord notice before vacating the unit that they intend on re-renting the unit once the repairs and/or renovations are complete. The *Residential Tenancies Act* under s.52 requires the landlord to provide compensation to the tenant under certain conditions.

A tenant who receives a notice of termination for demolition, conversion or repairs may at any time before the termination date specified in the landlord's notice give a notice to vacate sooner. The effective date of the tenant's notice must be at least 10 days after the tenant's notice is given.

When filing an application for landlord's own use, purchaser's own use or demolition, conversion or repairs, the landlord will be required to disclose in the L2 application to the Landlord and Tenant Board whether they have previously given a N12 or N13 notice within two (2) years of this application for the same or different rental unit. Failure to comply with this requirement will result in the refusal of the application.

Former tenant's application where notice given in bad faith

Pursuant to subsection 57(3) if a landlord gives notice based on Landlord's Own Use (section 48), Purchaser's Own Use (section 49) or Demolition, Conversion or Repairs (section 50), in bad faith, a tenant can file an application claiming bad faith and may obtain an order for the following:

1. An order that the landlord pay a specified sum to the former tenant for all or any portion of any increased rent that the former tenant has incurred or will incur for a one-year period after vacating the rental unit. An order that the landlord pay a specified sum to the former tenant as general compensation in an amount not exceeding the equivalent of 12 months of the last rent charged to the former tenant. An order under this paragraph may be made regardless of whether the former tenant has incurred any actual expenses or whether an order is made under paragraph 2.
- 1.1 An order that the landlord pay a specified sum to the former tenant for reasonable out-of-pocket moving, storage and other like expenses that the former tenant has incurred or will incur.
2. An order for an abatement of rent.
3. An order that the landlord pay to the Board an administrative fine not exceeding the greater of \$10,000 and the monetary jurisdiction of the Small Claims Court.
4. Any other order that the Board considers appropriate.

Persistent Late Payment

Where the tenant has persistently failed to pay rent on the date it becomes due and payable, a notice may be given using Form N8. The notice shall be at least 28 days to terminate a daily or weekly tenancy or term and 60 days to terminate all other types of tenancies. In all types of tenancies, the termination date must be on the last day of the rental period or term.

Does the *Residential Tenancies Act* allow termination for any other reasons?

The *Residential Tenancies Act* provides for the termination of an unauthorized occupant and the termination of an over-holding subtenant.

Unauthorized Occupancy

A landlord may apply to the Landlord and Tenant Board for an eviction order if the tenant transferred the tenancy to another person without complying with the procedure for assigning or subletting established by the *Residential Tenancies Act*. The landlord may apply for an order evicting the unauthorized person no later than 60 days after the landlord discovers the unauthorized occupancy using Form A2.

Over-holding Subtenant

Where the premises have been sublet and the subtenant continues to occupy the rental unit after the end of the sub-tenancy, the landlord or the tenant may apply to the Landlord and Tenant Board, within 60 days after the end of the sub-tenancy, for an order evicting the subtenant using Form A2.

The **Residential Tenancies Act Fact Sheets** are intended to help landlords learn and understand their rights and responsibilities.

They provide general information not legal advice.